

## **Proposal for future programme of the Working Group**

**Mariana Rulli**

Distinguished members of the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises,

I would like to submit a proposal for your future work programme.

I think it would be important to study and elaborate guidelines on how private lenders should behave when dealing with borrower criminal regimes. Some of the questions that could be posed on this particular topic are:

- 1) Whether and how financial aid to criminal regimes can contribute to campaign of human rights abuses?
- 2) Should lenders investigate ex ante the potential impact of the loans in terms of contributing to human rights violations?
- 3) What are the substantive and procedural rules that lenders should follow in order to make this investigation?
- 4) Should they refrain from lending to criminal sovereign borrowers when their loans could facilitate the human rights violations?
- 5) What are the legal consequences of ignoring the likely consequences of lending to criminal regimes and going ahead with the financial transactions?

I am Professor of Political Science at University of Rio Negro (Patagonia, Argentina) and I do research on this particular issue. I am sending you two pieces on responsibility for financial complicity that could be of your interest.

I also suggest you to have a look at the report elaborated by Prof. Antonio Cassese on the role of lenders in helping the Pinochet's regime (please find its four volumes enclosed).

Thank you for offering this possibility of having a say in your future program.

Kind regards,

Prof. Mariana Rulli  
Universidad Nacional de Rio Negro  
Viedma

# Corporate Complicity and Finance as a ‘Killing Agent’

The Relevance of the Chilean Case

Juan Pablo Bohoslavsky\* and Mariana Rulli\*\*

## Abstract

*The legal basis for corporate accountability for violations of human rights has evolved robustly over the past decades. Yet, accountability for financial complicity has significantly lagged behind. This article attempts to address this gap in order to help close it. It describes the legal and judicial trends in the evolution of corporate responsibility for complicity, identifying points at which financial complicity could have been addressed as a contributing factor to human rights abuses, but was not. As a case study, it examines the political context of the Chilean dictatorship, the official US position on withholding financial aid, the macroeconomic and budgetary impact of the loans extended, and, finally, their effects on the human rights situation in Chile. It develops the argument that when judging financial complicity, the fundamental criterion to employ should be the foreseeable use of the commodity, rather than its inherent quality.*

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## 1. Introduction

This article briefly examines the judicial evolution of corporate complicity in human rights violations, focussing in particular on the role of financial institutions. It explores the historical deficit in legal and analytical precedents on connecting the particular commodity of money to legal liability. This article also looks closely at Chile's Pinochet regime and the financial aid it received. For several reasons, this case offers rich legal, economic, and political raw material for better understanding how money can affect mass violations of human rights. For one, the case is rife with objective facts and figures that detail clearly how financial aid received by the Chilean military government — first public and later private — had an impact on the macroeconomic, budgetary, and bureaucratic realities of Chile, raising questions around both facilitation, and making the regime's crimes more efficient. Second, the official financial position adopted by the United States toward the Pinochet regime raises important red flags about how crucial contributions by other financial actors were to maintaining a regime that had become widely discredited. On the basis of the massive campaign of human rights abuses carried out by this regime, in 1976 the US government decided to stop granting loans and financial aid to the military government. And thirdly, the undeniable proof provided by the report of Professor Antonio Cassese (the 'Cassese Report') — researched and published in 1978 for the United Nations — which explained in astonishing and concrete detail how the financial aid received by the regime was facilitating human rights abuses in Chile.<sup>1</sup>

As the human rights violations perpetrated by the Pinochet regime have had legal and criminal implications, both nationally<sup>2</sup> and internationally,<sup>3</sup> this case is also useful for raising questions around the interrelation between criminal and civil responsibility when evaluating complicity. The recent civil claim filed by victims of the Argentine dictatorship against the foreign banks that financed the last military regime, while criminal trials against dictators are still ongoing shows that these questions are as relevant as they are timely.<sup>4</sup>

- 1 A. Cassese, *Study of the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile*, E/CN.4/Sub.2/412, Vols I–IV (Cassese Report) (1978).
- 2 For a list of the 66 criminal complaints filed against General Pinochet between January 1998 and March 2000 in the Santiago Court of Appeals, see <http://www.memoriayjusticia.cl/english/en.home.html>. For a broad description and explanation of the judicial evolution of these cases see the *Anuario de Derechos Humanos* 2005-2009, Centro de Derechos Humanos, Universidad de Chile, available online at <http://www.cdh.uchile.cl/publicaciones/anuarios/> (both websites visited 19 April 2010).
- 3 J. Malamud Goti et al., *Los dilemas morales de la justicia internacional: El caso Pinochet* (Buenos Aires: Miño y Davila Ed., 2003); N. Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia: University of Pennsylvania Press, 2004).
- 4 The case is *Ibañez Manuel Leandro y otros casos/Diligencia Preliminar Contra Instituciones Financieras No Determinadas*, No. 95.019/2009, Buenos Aires; see also J.P. Bohoslavsky and V. Opgenhaffen, 'The Past and Present of Bank Responsibility for Financing the Argentinean Dictatorship', 23 *Harvard Human Rights Journal* (2009), 157. As regards the criminal cases see Centro de Estudios Legales y Sociales (CELS) webpages, especially <http://www.cels.org.ar/common/documentos/juicios.adelanto.IA.2010.pdf> (visited 19 April 2010).

It is also worth mentioning that from 1998 to 2005 Riggs bank was investigated for its complicity with the Pinochet regime, on allegations it had been receiving, concealing, and laundering the wealth he plundered, since the very beginning of the dictatorship.<sup>5</sup> Since the bank specifically helped Pinochet evade a Spanish court order attempting to freeze his bank accounts, this financial institution was directed to create a fund to compensate victims of the Pinochet regime.<sup>6</sup> This case also illustrates the legal relevance of financial agents in the context of massive campaigns of human rights abuses.<sup>7</sup>

The structure of the article is as follows: After our introduction, we will briefly outline the most important judicial developments around responsibility for complicity, focussing on case law dealing with financial contribution, including the relevant Nuremberg Military Tribunals' decisions, recent civil law cases in US courts applying the Alien Tort Claims Act (ATCA), and statutes on preventing the financing of terrorist groups or activities (Section 2). We then highlight the legal and academic lacuna in the attribution of responsibility for financial complicity when studied in the broader context of corporate complicity, and the reasons why the Chilean case can contribute toward closing this gap (Section 3). Next we will touch on the general political context of dictatorships in the Southern Cone in Latin America; the main economic and criminal characteristics of the last Chilean dictatorship; how the multilateral and non-governmental organizations denounced the crimes; what the US government and Congress did to stop granting financial aid to this regime based on the human rights abuses that it was committing at that moment; and the methodology used in — and the conclusions drawn by — the Cassese Report mentioned above (Section 4). Our final section looks at how both the bilateral refusal to financially help the Chilean dictatorship and the Cassese Report substantially contribute to conceptually understanding, and expanding, the current causal links between human rights abuses and financing, therefore shaping better legal arguments on corporate liability for complicity in the specific realm of finance (Section 5).

- 5 Minority Staff of the Permanent Subcommittee on Investigations, 108th US Cong., Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act (Comm. Print 2004); US Committee on Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations, 'Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act Supplemental Staff Report on US Accounts Used by Augusto Pinochet', 16 March 2005.
- 6 See court order issued by Magistrate-Judge Baltasar Garzon Real, Investigating Court No. 5 (Madrid), Case No. 28079-27-2-1996-0007036-78300 (2/25/05); T. O'Hara, 'Allbrittons, Riggs to Pay Victims of Pinochet', *Washington Post*, 26 February 2005.
- 7 S. Scott, 'Taking Riggs Seriously: the ATCA Case Against a Corporate Abettor of Pinochet Atrocities', 89 *Minnesota Law Review* (2005) 1497–1543.

## 2. The Judicial Development of Corporate Responsibility for Complicity and the Question of Finance

Over the past few decades, as corporations in both domestic and global markets have increasingly shown their tremendous powers to influence events all over the world,<sup>8</sup> corporate accountability, including responsibility for complicity, has also evolved robustly.<sup>9</sup> This evolution has taken many different forms, including the adoption of corporate ‘codes of conduct’,<sup>10</sup> numerous UN reports on the topic,<sup>11</sup> prolific academic research,<sup>12</sup> and a number of judicial interventions.<sup>13</sup>

The interpretation of the ATCA being used in US courts has also substantially helped this trend, particularly since it has advanced the premise that *jus cogens* norms also extend and apply to non-state actors.<sup>14</sup> Revived in the

- 8 A. Clapham, ‘The Question of Jurisdiction Under International Criminal Law Over Legal Persons: Lessons from the Rome Conference on an International Criminal Court’, in M. Kamminga and S. Zia-Zarifi (eds), *Liability of Multinational Corporation Under International Law* (The Hague: Kluwer Law International, 2000) 139–195, at 189 ff.; R. Kapur, ‘From Human Tragedy to Human Rights: Multinational Corporate Accountability for Human Rights Violations’, 10 *Boston College Third World Law Journal* (1990) 1–40, at 2.
- 9 P.T. Muchlinski, *Multinational Enterprises and the Law* (2nd edn., New York: The Oxford International Law Library, 2007), at 514; D. Weissbrodt and M. Kruger, ‘Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights’, 97 *American Journal of International Law* (2003) 901–923, at 903.
- 10 F. McLeay, ‘Corporate Codes of Conduct and the Human Rights Accountability of Transnational Corporations. A Small Piece of a Large Puzzle’, New York University School of Law Working Paper (2005), available online at <http://www.law.nyu.edu/global/workingpapers/2005/ECMDLV.015787> (visited 24 March 2010); J. Zerk, *Multinationals and Corporate Social Responsibility* (Cambridge: Cambridge University Press, 2006).
- 11 Human Rights Council, *Protect, Respect and Remedy: A Framework for Business and Human Rights*, Report of the Special Representative of the General-Secretary on the Issue of Human Rights and Transnational Corporations and other Business Enterprises John Ruggie, UN Doc. A/HRC/8/5, (Ruggie Report) (2008).
- 12 See generally, D. Christensen, ‘Corporate Liability for Overseas Human Rights Abuses: The Alien Tort Statute After *Sosa v. Alvarez-Machain*’, 62 *Washington and Lee Law Review* (2005) 1219 et seq.; O. de Schutter (ed.), *Transnational Corporations and Human Rights* (Oxford: Hart, 2006), at 345–346; A. Ramasastry, ‘Corporate Complicity: From Nuremberg to Rangoon an Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations’, 20 *Berkeley Journal of International Law* (2002) 9–159; M. Ratner, ‘Factors Impacting the Selection and Positioning of Human Rights Class Actions in United States Courts: A Practical Overview’, 58 *NYU Annual Survey of American Law* (2004) 623–647.
- 13 For a complete list of cases in Latin America, Canada and US, see Ch. Hutto and A. Jenkins, ‘Report on Corporate Complicity Litigation in the Americas: Leading Doctrines, Relevant Cases, and Analysis of Trends’, Human Rights Clinic, University of Texas (2010). The most notable current case in the US court is *In re South African Apartheid Litigation*, 617 F. Supp. 2d 228, 257 (S.D.N.Y. 2009).
- 14 Alien Tort Claims Act or Alien Tort Statute, 28 U.S.C. § 1350; *Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995). On corporate responsibility, see for example *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) and, broadly, M. Koebele, *Corporate Responsibility under the Alien Tort Statute: Enforcement of International Law Through US Torts Law* (Leiden: Martinus Nijhoff Publishers, 2009) and the contribution by K. Gallagher in this issue of the *Journal*.

modern-era in 1980, the use of the ATCA picked up in frequency in the 1990s, when 'suits proliferated against private persons and corporations, usually on the basis of "aiding and abetting" human rights violations'.<sup>15</sup> Confusion around whether international law, domestic law, or both should be applied when dealing with civil responsibility for corporate complicity has been particularly provoked by the debate on applying the ATCA in US courts, since its reference to the 'law of nations' has led this issue to the particular way in which American jurisprudence interprets how domestic and international law relate each other.<sup>16</sup> This technical discussion, however, does not seem to be crucial in terms of the practical (judicial) recognition of this kind of responsibility in general, since most domestic legal systems provide for civil recovery for victims of negligent and intentional torts,<sup>17</sup> particularly in cases of human rights abuses.<sup>18</sup> In cases brought in Australia, Canada, several Latin American countries, and the United Kingdom both international and domestic civil law was used to ground the claims of human rights abuses.<sup>19</sup>

Today, there is a growing consensus that there are some legal standards that corporations have to follow when it comes to doing business with known perpetrators of human rights violations. This notion was recently affirmed by the International Commission of Jurists (ICJ) in its 2008 report *Corporate Complicity and Legal Accountability*, which systematically lays out the development of these legal standards in both criminal and civil terms,<sup>20</sup> as well as in the reports that Special Rapporteur John Ruggie has been elaborating in recent years.<sup>21</sup>

- 15 R.O. Faulk, 'The Expanding Role of the Alien Tort Claims Act in International Human Rights Enforcement', 10 *Class Action Litigation Report* (2009), at 304, available online at <http://works.bepress.com/richardfaulk/24> (visited 8 February 2010).
- 16 On this discussion see generally J. Goodman, 'The Administrative Law of Nations: A New Perspective on Sosa, The Alien Tort Statute, and Customary International Law', 50 *Harvard International Law Journal Online* (2009) 1–11.
- 17 In the US, see Restatement (Second) of Torts § 876 (1979).
- 18 For a broad study on how domestic legal systems react toward corporate complicity, see A. Ramasastry and R. Thompson, *Commerce, Crime and Conflict: Legal Remedies for Private Sector Liability for Grave Breaches of International Law. A Survey of 16 Countries*, FAFO Institute of Applied International Studies (2006). Also see A. Sebok, 'Taking Tort Law Seriously in the Alien Tort Statute', 33 *Brooklyn Journal International Law* (2008) 871–898.
- 19 Hutto and Jenkins, *supra* note 13, at 39; A. Reinisch, 'The Changing International Legal Framework for Dealing with Non-State Actors', in P. Alston (ed.), *Non-State Actors and Human Rights* (Oxford: Oxford University Press, 2005), at 55 et seq.
- 20 International Commission of Jurists (ICJ), *Corporate Complicity & Legal Accountability*, Vols I, II & III (ICJ Report) (Geneva, 2008); this report emphasized that corporations should be held responsible for assisting in gross violations of human rights when they 'enable', 'make easier', or 'improve the efficiency' of the commission of those crimes. In other words, corporations should be held responsible when, with their contributions, they 'make possible', 'facilitate', or 'exacerbate' the human rights abuses in question, *ibid.*, Vol. I., at 9.
- 21 See generally Human Rights Council, *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, Report of the Special Representative of the General Secretary on the Issue of Human Rights and Transnational Corporations and other Business Enterprises John Ruggie, UN Doc. A/HRC/4/35 (Ruggie Report) (2007), at 61.

Despite these developments, the notion of complicity for financial actors has been confusing to say the least, producing mixed jurisprudence on the matter, as even the Nuremberg Military Tribunals' decisions initially showed. Arguably having been influenced by strong political motivations,<sup>22</sup> the first judicial representations of the idea that financing crimes can trigger responsibility were indeed contradictory, as evidenced by *Flick*<sup>23</sup> and *Weizsaecker (the Ministries Case)*<sup>24</sup> at the Nuremberg US Military Tribunals. On the one hand, in the *Ministries Case*, the Tribunal understood that money or credit are fungible commodities, which could be used for unlawful enterprises, but this transaction is not a crime under international law.<sup>25</sup> In *Flick* on the other hand, two German industrialists were convicted because even though the prosecution could not show that any part of the money the two had donated to the Schutzstaffel (SS) was directly used for criminal activities, the Tribunal took it for granted that some of the money had gone into maintaining this organization, regardless of whether it was spent on salaries or lethal gas.<sup>26</sup> Both decisions recognized the substantial effect that money can have over a massive criminal campaign — even if only *Flick* affirmed that this contribution represented a crime in terms of international law.

During the 1990s, hundreds of victims of the Holocaust sued American, Austrian, French, German, and Swiss banks in US courts for having aided the Nazi regime by providing it with the necessary financial help to continue World War II for at least another year past the point when it would otherwise have ended; for not returning original bank deposits to the victims; and for having used slave labour.<sup>27</sup> These cases were settled, compensation funds were created by these banks, and victims are still receiving payments from these funds.<sup>28</sup>

The recent US ATCA decision of *In re South African Apartheid Litigation* ratified the notion that corporations can — under strict circumstances — be held responsible when contributing to the commission of serious crimes.<sup>29</sup> This decision stated a requirement that the corporate contribution needs to be proven to have had *substantial effect* on the perpetration of the

22 J. Bush, 'The Prehistory of Corporations and Conspiracy in International Criminal Law: What Nuremberg Really Said', 109 *Columbia Law Review* (2009), 1094 et seq.; Ch. Simpson (ed.), *War Crimes of the Deutsche Bank and the Dresdner Bank* (New York: Holmes & Meyer, 2002), especially at 1–34.

23 *US v. Flick (Flick case)*, 22 December 1947, *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, No. 10 (1952) 1.

24 *US v. Weizsaecker (Ministries case)*, *Trials of War Criminals Before the Nuremberg Military Tribunals Under Control Council Law No. 10*, No. 14 (1952), at 621–622.

25 *Ibid.*

26 *Ibid.*, at 1221.

27 See Simpson, *supra* note 22.

28 B. Neuborne, 'Holocaust Reparations Litigation: Lessons for the Slavery Reparations Movement', 58 *New York University Annual Survey of American Law* (2003) 615–622.

29 See *Apartheid Litigation*, *supra* note 13.

crime (*actus reus*), and the contributor as a whole entity (the sum of its managers and employees)<sup>30</sup> had the knowledge — although not necessarily purposeful intent — that his action would substantially assist the perpetrator in the commission of a crime (*mens rea*).<sup>31</sup> It is worth mentioning that in its decision, the Court — using the 'inherent quality' of the commodities as its criterion — made a distinction between an agent like poison gas being provided to a regime (referring to the 1946 *Zyklon B* case before a post-World War II British Military Court<sup>32</sup>) and a fungible resource, like finance or investment (referring to the *Ministries* case defendant Karl Rasche<sup>33</sup>), which it felt did not meet the legal standards for responsibility in this case.<sup>34</sup> The court decided when analysing the *actus reus* component that loans could not empirically be sufficiently connected to the crimes in question.<sup>35</sup> Ironically, the Court simultaneously allowed the case to go forward and be heard against IBM for providing computers and software to the Apartheid regime, charging that it had helped to implement a 'de-nationalization' policy against black South Africans.<sup>36</sup>

The criterion of 'inherent quality' seems to ignore the very definition of money as a good that acts as a medium of exchange in transactions, a unit of account, and a store of value.<sup>37</sup> Money allows its holder to do something by virtue of its *purchasing power*. Therefore, what is crucial is what the holder will do with it and this is the point where the foreseeable consequences of

30 This criterion has also been applied in the US to money laundering prosecutions, *US v Bank of New England*, 821 F.d 844, 856 (1st Cir. 1987).

31 See *Apartheid Litigation*, *supra* note 13, at 36 et seq. The mental state requirement has been debated in the jurisprudence: Confirming the 'knowledge test', *Flick*, *supra* note 23; Judgment, *Akayesu* (ICTR-96-4-T), Trial Chamber, 2 September 1998, § 545; Judgment, *Furundžija* (IT-95-17/1-T), Trial Chamber, 10 December 1998, § 193 note 217. On the contrary, arguing that it is necessary to show that the corporation acted with the purpose of supporting the human rights violation, see *The Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 261 (2d Cir. 2009), relying on Judge Katzmans's concurring opinion in *Khulumani v. Barclay National Bank, Ltd.*, 504 F.3d 254, 282 (2nd Cir. 2007), at 268-277. For a detailed analysis of this discussion see the contributions by K. Gallagher and N. Farrell in this issue of the *Journal*.

32 Trial of Bruno Tesch and Two Others (*The Zyklon B Case*), 1 *Law Reports of Trials of War Criminals* (1947), at 93–103.

33 *Ministries Case*, *supra* note 24, at 620–622.

34 For broader comments on this decision see S. Michalowski and J.P. Bohoslavsky, 'Ius Cogens, Transitional Justice and other Trends of the Debate on Odious Debts. A Response to the World Bank Discussion Paper on Odious Debts', 48 *Columbia Journal of Transnational Law* (2010) 61–120.

35 'Supplying a violator of the law of nations with funds — even funds that could not have been obtained but for those loans — is not sufficiently connected to the primary violation to fulfil the *actus reus* requirement of aiding and abetting a violation of the law of nations', *Apartheid Litigation*, *supra* note 13, at 70.

36 *Ibid.*, at 265.

37 F. Mann, *El Aspecto Legal del Dinero* (México: Fondo de Cultura Económica, 1986), at 48; A. Nussbaum, *Teoría Jurídica del Dinero (El Dinero en la Teoría y en la Práctica del Derecho Alemán y Extranjero)* (Madrid: Librería General de Victoriano Suárez, 1929), at 40.



giving money to someone enter into play; this is similar to how most tort law systems assess foreseeable damages and the consequent judgment for just ‘repairs’.<sup>38</sup>

This rationale was very well explained in the aforementioned Cassese Report, which looked at the very roots of human rights violations (which includes the surrounding conditions that permit them) and showed how financial aid can have a negative or positive impact in the human rights situation of any given country.<sup>39</sup> This showed why due diligence rules can, on the one hand, make a difference in terms of preventing financing of harmful activities, and on the other one, how it could help corporations avoid bearing expensive judicial decisions by assessing the real risk of financing, making it more than a zero-sum game.<sup>40</sup> Due diligence involves taking of steps so that a corporation can reasonably foresee or predict the potential consequences of its behaviour, applying the ‘mental state’ requirement in a way that ostensibly reduces risks both to society and the businesses themselves.<sup>41</sup>

US courts decisions related to responsibility for financing terrorism, like those taken in *Boim*<sup>42</sup> and *Almog*<sup>43</sup> confirm and strengthen the idea that lenders can be held responsible for facilitating crimes. The notable differences between what Al Qaeda, Hamas, or the Pinochet regime do are not as important as the fact that these cases indicate that financial contributions can work as a commodity that can make possible, facilitate, or exacerbate crimes. Are the statutory particularities what justify holding terrorist financing as a legitimate cause for charging civil responsibility? More precisely, is this responsibility accepted because of the existence of an International Convention for the Suppression of the Financing of Terrorism? In *Boim*, civil responsibility for financing was based under 18 U.S.C. § 2333(a), even when the court recognized that this statute does not mention secondary liability.<sup>44</sup> In *Almog*, civil responsibility was based not only on the Antiterrorism Act of 1990 but also on the ATCA.<sup>45</sup> Putting together those decisions on terrorist financing with the jurisprudence on corporate complicity, it seems that when customary international law and peremptory norms are involved, the fact that secondary civil liability is

38 L. Corenlis in L. Simont and A. Bruyneel (eds), *La Responsabilité Extra-Contractuelle du Donneur de Crédit en Droit Comparé* (Siena: Feduci, 1984), at 175.

39 Cassese Report, Vol. I, at 3 and 18.

40 On how due diligence can help companies to avoid complicity see Ruggie Report, *supra* note 11, at 20.

41 J. Sherman III and A. Lehr, ‘Human Rights Due Diligence: Is it Too Risky?’ *Corporate Social Responsibility Journal* (2010), at 6.

42 *Boim v. Holy Land Found. for Relief and Development*, 549 F.3d 685 (7th Cir. 2008).

43 *Almog v Arab Bank* (471 F.Supp.2d 257, E.D.N.Y. 2007).

44 See *Boim*, *supra* note 42, at 689.

45 See *Almog*, *supra* note 43, at 259–264.

explicitly mentioned in a particular statute<sup>46</sup> is not conclusive for American courts.<sup>47</sup>

### 3. Underdevelopment of Financial Complicity and the Relevance of the Chilean Case

In the context of a general need for more consistent and efficient standards and mechanisms for civil liability for gross human rights violations on a global scale,<sup>48</sup> academic research on the legal aspects of corporate complicity and accountability has become increasingly prolific over the past 15 years.<sup>49</sup> This has coincided with a rise in legal action and activism aimed at holding corporations to account for negative impact on human beings and the environment around the world.<sup>50</sup>

There is an increasing awareness of the links between business and human rights abuses,<sup>51</sup> a fact reflected in the judicial and scholarly evolution of both international and domestic law.<sup>52</sup> But few cases and virtually no research has managed to achieve similar success and legal options for specifically linking financial institutions to the commission of human rights violations.<sup>53</sup> What justifies this omission? Why are financial institutions held to such different standards than their business counterparts in the extractive and manufacturing industries, for example?<sup>54</sup> What are some of the unique qualities of finance that make it difficult to draw concrete, i.e. actionable, links between financial flows and the human consequences of these investments?

46 See *Central Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.* 511 U.S. 164 (1994), involving the 1934 Securities Act and a futile attempt to imply aiding and abetting liability in the context of a complex regulatory scheme.

47 K Hutchens, 'International Law in the American Courts — Khulumani v. Barclay National Bank Ltd.: The Decision Heard Round the Corporate World', 9 *German Law Journal* (2009) 639–681, at 680.

48 See generally S. Bachmann, *Civil Responsibility for Gross Human Rights. The Need for a Global Instrument* (Cape Town: Pretoria University Law Press, 2007).

49 Ramasastry, *supra* note 12, at 91; M. Ramsey, 'International Law Limits on Investor Liability in Human Rights', 50 *Harvard International Law Journal* (2009) 271–321.

50 G. Skinner, 'Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in US Courts Under the Alien Tort Statute', 71 *Albany Law Review* (2008) 321–368.

51 P. Alston, 'The Not-a-Cat Syndrome: Can the International Human Rights Regime Accommodate Non-State Actors?' in Alston (ed.), *supra* note 19, at 11.

52 Hutto and Jenkins, *supra* note 13, at 6; Ramasastry, *supra* note 12, at 91.

53 *In re Austrian and German Bank Holocaust Litigation*, No. 98 Civ. 3938 (S.D.N.Y. 2001); *In re Holocaust Victim Assets Litigation*, No. 96 Civ. 4849 (E.D.N.Y. 2000) (Swiss corporations); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 2000) (French corporations). On academic research see Bohoslavsky and Oppenhaffen, *supra* note 4; E. Reichard, 'Catching the Money Train: Using the Alien Tort Claims Act to Hold Private Banks Liable for Human Rights Abuses', 36 *Case Western Reserve Journal of International Law* (2004) 255–286.

54 C. Kaeb, 'Emerging Issues of Human Rights Responsibility in the Extractive and Manufacturing Industries: Patterns and Liability Risks', 6 *Northwestern Journal of International Human Rights* (2008) 327–353.

Against the backdrop of these questions, and in the hope of contributing to the promotion of more consistent legal standards on corporate responsibility for financial complicity, we will explore the case of Chile. In doing so, we will look especially closely at the stance taken by the United States and other governments in terms of their decision not to grant financial aid on the basis of the borrower's human rights violations, at the same time that private banks started to lend Chile enormous sums money, altering the very macroeconomic ratios of the country and having an impact upon its national budget. The official financial decision of not granting loans to certain military regimes was based on the fundamental idea that money can efficiently be connected to the perpetration of human rights violations. Therefore its contribution toward understanding financial complicity is rather obvious.

In 1977 Professor Antonio Cassese was appointed by the UN Commission on Human Rights as a Special Rapporteur to assess the link between the financial aid that the Pinochet regime was receiving at that moment and the human rights violations the Chilean people were experiencing.<sup>55</sup> In his 260-page report, Cassese developed a sophisticated methodology to evaluate the impact of the financial aid on the human rights situation, concluding that: '[a]s foreign economic assistance largely serves to strengthen and prop up the economic system adopted by the Chilean authorities, which in its turn needs to be based on the repression of civil and political rights, the conclusions warranted that the bulk of present economic assistance is instrumental in consolidating and perpetuating the present repression of those rights.'<sup>56</sup>

Despite the publication in 1979 of a summary version of this report by an important academic journal,<sup>57</sup> the Report was inexplicably ignored for decades by those engaging in the corporate complicity debate. It is our hope that adding this report to the discussion on financial complicity will go far to make it more robust and consistent. Likewise Cassese's findings could significantly contribute to fleshing out Chile's historical narrative. The debate in this country around the links between the military regime and economic factors has been limited to the discovery of substantial Pinochet-owned offshore bank accounts, which decisively broke the myth of his incorruptibility but did little to address the role of outside financial actors.<sup>58</sup> Even when this fact is relevant from the transitional justice perspective,<sup>59</sup> the debate on how economic factors allowed the Pinochet regime to succeed in its criminal campaign still remains.

55 Cassese Report, Vols I–IV.

56 *Ibid.*, Vol. IV, at 24.

57 A. Cassese, 'Foreign Economic Assistance and Respect for Civil and Political Rights: Chile – A Case Study', 14 *Texas International Law Journal* (1979) 251–263, at 251–253.

58 Even when the same bank that kept these accounts hidden also financed the Chilean military regime, see P. Kornbluh, *The Pinochet File: A Declassified Dossier on Atrocity and Accountability* (New York: New Press, 2003), at 224. Discussions were related to economic crimes committed by Pinochet thanks to the help received by banks, see Scott, *supra* note 7, at 1497.

59 R. Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' 2 *The International Journal of Transitional Justice* (2008) 310–330.

## 4. The Chilean Case: Money Seen as a 'Killing Agent'

In the hope of helping to create a better theoretical understanding of how money can be efficiently connected to certain crimes, we now turn to empirically study how financial aid granted to the Pinochet regime affected the human rights situation of Chile. Analysing this connection we follow the methodology developed in the Cassese Report, a global and dynamic approach to understanding how finance interacts with macroeconomic ratios, economic goals of the government, national budget, military expenditures, and therefore, how all this impacts, whether positively or negatively, the civil and political rights situation.<sup>60</sup>

We will also discuss how multilateral and non-governmental organizations reacted toward this dictatorship — especially how the US legislative and executive branches understood the connection between financial aid and large-scale human rights abuses.

### A. The Dictatorships in the Southern Cone in Context

The socialist revolution in Cuba (1959) and support from the former United Soviet Socialist Russia fed the threat of political, economical, and social instability in the Southern Cone.<sup>61</sup> During the 1960s and 1970s, several countries in this region suffered military coups and dictatorships with distinctive political and social characteristics. These military governments were supported and legitimated by important sectors of the societies as a reaction to extended political activation of the popular sector, which was perceived by other social classes as a threat to their interests and international affiliations.<sup>62</sup>

Academic literature has largely focused research on the political and social processes of these authoritarian regimes in Latin America<sup>63</sup> and the link between the dominant national classes, the military forces, and the international financial institutions.<sup>64</sup> These regimes, often seen as *bureaucratic-authoritarian states* arose in Latin America in the 1960s, first in Brazil (1964), then

60 Cassese Report, Vol. I, at 3, 18; Vol. IV, at 2.

61 See broadly M. Alcántara and I. Crespo, *Los Límites de la consolidación Democrática en América Latina* (Salamanca: Ediciones Universidad de Salamanca, 1995); T. Halperin Donghi, *Historia Contemporánea de América Latina* (Madrid: Alianza Editorial, 1998); M. Vellinga, *Democracia Política en América Latina* (México: Siglo XXI Editores, 1993).

62 G. O'Donnell, 'Reflections on the Patterns of Change in the Bureaucratic-Authoritarian State', 13 *Latin American Research Review* (1978) 3–38, at 6.

63 G. O'Donnell, *Bureaucratic Authoritarianism: Argentina 1966-1973 in Comparative Perspective* (Berkeley: University of California Press, 1988); G. O'Donnell, 'Modernización y Golpes Militares, Teoría Comparación y el Caso Argentino', 12 *Desarrollo Económico* (1972), 19 et seq.; G. O'Donnell and P. Schmitter, 'Tentative Conclusions about Uncertain Transitions', in G. O'Donnell, P. Schmitter and L. Whitehead (eds), *Transitions from Authoritarian Rule: Southern Europe and Latin America* (Baltimore, MD: The John Hopkins University Press, 1986); D. Collier (ed.), *The New Authoritarianism in Latin America* (Princeton, NJ: Princeton University Press, 1979).

64 S. Mainwaring, 'Autoritarismo y Democracia en la Argentina: Una Revisión Crítica', 24 *Desarrollo Económico* (1984) 447–457, 449.

Argentina (1966, 1976) and finally in Uruguay (1973), and Chile (1973). The main characteristics of the bureaucratic-authoritarian state are that higher governmental positions are occupied by people from highly bureaucratized organizations (such as the military, the bureaucracy, and the private sector) and that these regimes pursue the political and economic exclusion of the popular classes.<sup>65</sup>

Two elements are the key to understanding the political and social process during the Chilean dictatorship. First, the origin, success, crisis and failure of the bureaucratic–authoritarian states were strongly related not only to the attitude of the dominant classes and the military forces of the country, but also to the amount of support received from the international financial institutions.<sup>66</sup> Without this support, the authoritarian regimes could not have succeeded in terms of either political stability or economic outcome.<sup>67</sup> Second, the economic and social conditions under which the bureaucratic authoritarian regimes took shape help to explain the depth and brutality through which unpopular governmental policies were implemented. The deeper the economic crisis and the social conflict, the more the dominant classes' interests felt threatened, (therefore) the stronger the support of these classes and the military forces to implementing drastic policies to dissipate those threats.<sup>68</sup> At the same time, even when economic policies impeded reaching the investment rates needed to lever a genuine economic growth or at least overcome crisis, the high level of cohesion between the dominant classes, the military forces, and their international allies compensated expected economic failure, as Chile in 1973 and Argentina in 1976 showed.<sup>69</sup>

### ***B. The Crimes of the Pinochet Regime: Hard Facts***

In 1973, Chilean military forces commanded by Pinochet overthrew and killed then-President Salvador Allende, whose government promoted and implemented several socialist policies and ruled in a context of generalized political and economic crisis in which the United States had some role.<sup>70</sup> The repression unleashed immediately after the coup had a notable criminal and ideological anti-communist and antidemocratic profile.<sup>71</sup> Early on in the regime, the

65 O'Donnell, *supra* note 63, at 6.

66 Mainwaring, *supra* note 64, at 449.

67 *Ibid.*, at 448.

68 *Ibid.*, at 449.

69 *Ibid.*

70 See US Senate, 'Covert Action in Chile 1963-1973', Staff Report of the Select Committee To Study Governmental Operations With Respect to Intelligence Activities, 18 December 1975 at <http://foia.state.gov/Reports/ChurchReport.asp>; 'Hinchey Report. CIA Activities in Chile', CIA, 18 September 2000, available at <http://foia.state.gov/Reports/HincheyReport.asp> (both websites visited 19 April 2010).

71 W. Heinz and H. Frühling, *Determinants of Gross Human Rights Violations by State and State-Sponsored Actors in Brazil, Uruguay, Chile, and Argentina (1960-1990)* (The Hague: Kluwer Law International, 1999), at 584.

Organization of American States (OAS), the United Nations, and several non-governmental human rights organizations documented and denounced the many human rights abuses being perpetrated in Chile.<sup>72</sup> These facts are important since, from a legal perspective, they can have substantial impact in terms of mental state of accomplices or contributors.

The OAS started its actions as early as October 1973, when its Secretary-General visited Chile for a preliminary investigation, which was followed by the 1974 formal investigation by its human rights arm, the Inter-American Commission on Human Rights (IACHR).<sup>73</sup> After these visits, Pinochet did not allow these organizations any further access to fact-finding and documentation in Chile. According to the IACHR, Pinochet's 17-year regime saw Chile go through a prolonged period of repression and systematic human rights violations.<sup>74</sup> UN responses to the violations also came at the very onset of the dictatorship. On 1 March 1974, the Commission on Human Rights sent a notification to the Chilean government expressing deep concerns about the serious human rights situation in the country. In 1975, this Commission established an Ad Hoc Working Group on the Situation of Human Rights in Chile, which was renewed until 1979.<sup>75</sup> On 14 September 1973, three days after the coup, Amnesty International formally started reporting on the situation of Chile to the IACHR.<sup>76</sup> In its 1977 report, the ICJ confirmed that thousands were being persecuted, tortured, 'disappeared', or forced to flee the country.

At the domestic level, the criminal campaign is well documented by the 'Rettig Report', a survey elaborated by the Chilean National Commission for Truth and Reconciliation confirming previous claims that more than 3,200 people had been killed or disappeared in Chile and more than 27,000 people were political prisoners and tortured.<sup>77</sup> All this shows the massiveness, scale,

72 Some international journalistic repercussions of the crimes can be read in the following articles: 'Chile's Junta After a Year: Unrelenting Dictatorship', *New York Times*, 13 September 1974; 'U.S.-Chilean Ties Called Strained', *New York Times*, 19 November 1975; 'Torture in Chile Is Charged by a U.N. Inquiry Team', *New York Times*, 15 October 1975; 'Chile Study Says Torture Goes On', *New York Times*, 8 June 1976; 'U.N. Panel Asserts Chile Continues To Abuse Rights but on a Reduced Scale', *New York Times*, 25 October 1977.

73 The IACHR reported the situation of human rights in the country in 1974, 1976, 1977 and 1985. 'Informe sobre la situación de los derechos humanos en Chile', Secretaría General, Organización de los Estados Americanos, OEA/Ser.L/V/II.40 Doc., 10 February 1977; OEA/Ser.L/IL.66doc, 17 September 1985.

74 IACHR, 'Tercer informe sobre la situación de derechos humanos en Chile', OAS (Washington, 1977); IACHR, 'Informe sobre la situación de los derechos humanos en Chile', OAS (Washington, 1985).

75 UN Docs A/10285 (1975), A/31/253 (1976), A/32/227 (1977), A/33/331 (1978), A/34/583.

76 Amnesty International, *Human Rights in Chile* (London, 1974).

77 See Informe Rettig (1991), 'Comisión Nacional de la Verdad y la Reconciliación' created by D.S. N° 355/1990, Ministerio del Interior. The report was published by Andros Editores in 1996. <http://www.ddhh.gov.cl/ddhh.rettig.html>. See also Informe de la Comisión Nacional sobre Política y Tortura, 'Comisión Asesora para la Calificación de Detenidos Desaparecidos, Ejecutados Políticos y Víctimas de Prisión Política y Tortura', created by law N° 20.405, available online at <http://www.comisionvalech.gov.cl/InformeValech.html> (websites visited 19 April 2010).

and seriousness of the crimes perpetrated by the Pinochet regime which, of course, worked in certain financial, economic and budgetary context.

### C. *Financial Aid and Economic Policy*

Even when important qualifications must to be made when analysing the evolution of the Chilean economy,<sup>78</sup> from September 1973 onward, the military government basically pursued the three following economic objectives: solving the inflation problem; reducing the balance of payments instability, and providing incentives to revive the national economy.<sup>79</sup> To reach these goals the government implemented a set of measures, including restoring the private sector, strategic state enterprises, and lands that belonged to the *Corporación de la Reforma Agraria*,<sup>80</sup> the lifting of price controls on many items,<sup>81</sup> opening the markets through lowering trade barriers,<sup>82</sup> monetarist policies such as devaluation of the peso and restriction of credit expansion,<sup>83</sup> reducing the state expenditures,<sup>83</sup> and the freezing of wages.<sup>84</sup>

The monetarist approach to the balance of payments in a context of decreasing saving and investment rates and an excess of imports — accounting for more than US\$7.4 billion between 1977 and 1982, almost three quarters of the total external indebtedness during the same period — contributed to intensifying the need for the import of hard currency in Chile.<sup>85</sup> In this context, it is not surprising that:

the goal of attracting foreign loans, credits and investment capital has played a key role in the formulation of Chilean economic and other policies since the military take-over in 1973. With what is reported to be Latin America's highest per capita debt... and its second-highest ratio of debt servicing payments to export receipts in 1976, Chile's need for external financial support has been a constant policy preoccupation.<sup>86</sup>

This diagnosis is confirmed by hard numbers. In 1973, the Chilean public external debt was US\$2.86 billion, US\$6.27 billion in 1979 and US\$14.34 billion in 1983.<sup>87</sup> Private external debt also grew dramatically during the

78 R. Ffrench-Davis, 'El Experimento Monetarista en Chile: Una Síntesis Crítica', 23 *Desarrollo Económico* (1983), at 163-196

79 A. Foxley, 'Experimentos Neoliberales en América Latina', *Colección Estudios*, CIEPLAN 7 (Santiago, 1982), at 166; Cassese Report, Vol. II, at 2.

80 *El Mercurio*, 5 and 17 January, 4 and 23 March 1978; *Le Monde*, 18 February and 23 June 1978.

81 *El Mercurio*, 4 February 1978.

82 *Ibid.*, 17 and 19 February 1978.

83 Cassese Report, Vol. II, at 8.

84 *Ibid.*, at 2.

85 See generally R. Ffrench-Davis and J. De Gregorio, 'Lo interno de la deuda externa. El caso chileno', 84 *Nueva Sociedad* (1986), at 28.

86 Cassese Report, Vol. III, at 3, 12.

87 Banco Central de Chile, 'Indicadores Económicos y Sociales de Chile 1960-2000' (Santiago, 2001).

dictatorship: in 1975, it was US\$786 million, US\$3.42 billion in 1979, and US\$9.37 billion in 1983.<sup>88</sup> The proportion of public debt in relation to the total Chilean debt evolved in the following way: it was more than 85% by 1973, 61% by 1979, and 50% by 1983.<sup>89</sup> When focussing on the creditor side, while in 1974 only 19% of Chile's external debt was owed to private creditors, this number grew to 80% by 1981. The Chilean debts with banks grew more than 57% between 1977 and 1981, while the average for most developing countries was 28%.<sup>90</sup> The external financial dependency of Chile was notorious.

#### *D. The US Position, the Cassese Report, and the Link between Finance and Human Rights*

Soon after the military coup in 1973, the military government started receiving financial aid from several countries, especially the United States, and multilateral financial institutions.<sup>91</sup> This fact betrays the initial US support to the Pinochet regime, grounded in geopolitical reasons on the fight against communism,<sup>92</sup> as happened with other Latin America countries.<sup>93</sup> As international and US Congressional concerns over human rights violations grew from 1976 onward, official financial and military aid decreased dramatically.<sup>94</sup> Some countries continued to grant aid, saying it was for concrete humanitarian or developmental goals, but the ways in which the government spent these funds did not, in fact, benefit the needy.<sup>95</sup> Likewise, this assistance was often used by the government to replace national resources, which were diverted to other ends, including that of financing the apparatus of repression.<sup>96</sup>

Enabling the government to keep the economic scheme in operation provoked severe repercussions for the population.<sup>97</sup> According to the Cassese Report:

[this] government economic policy produces to a great extent harmful consequences for the social condition of the vast majority of the population.<sup>98</sup> Therefore it is not surprising, 'that policy cannot but give rise to discontent and unrest. In order to keep them under control,

88 Banco Central de Chile, 'Deuda externa de Chile' (Santiago, 1984).

89 *Ibid.*

90 Ffrench-Davis and De Gregorio, *supra* note 85.

91 Cassese Report, Vol. III, at 5.

92 Heinz and Frühling, *supra* note 71, at 585.

93 J. Dinges, 'Green Light-Red Light: Henry Kissinger's Two-Track Approach to Human Rights During the 'Condor Years' in Chile and Argentina', in C. Arnson (ed.), *Argentina-United States Bilateral Relations: An Historical Perspective and Future Challenges* (Washington, DC: Woodrow Wilson International Center for Scholars, 2003), at 59–76.

94 Heinz and Frühling, *supra* note 71, at 520.

95 Cassese Report, Vol. III, at 11; Vol. IV, at 15.

96 Cassese Report, Vol. IV, at 24.

97 *Ibid.*, at 22.

98 *Ibid.*, at 24.



the Chilean authorities need a repressive system, based on the denial of the basic and political rights.<sup>99</sup>

A concrete representation of this idea is confirmed when we see that while social expenditures decreased dramatically during the military government, expenditures in the police and military sector massively grew in the national budget — from 15% in 1969 to 23.3% by 1982.<sup>100</sup> Military expenditures included salaries, support for the maintenance of concentration camps, help with the implementation of logistics, intelligence, counter intelligence, the purchase of arms and military equipment, etc.<sup>101</sup>

From 1976 on, official creditors were replaced by private multinational banks that started lending enormous sums with no stated regard for the potential impact of these loans.<sup>102</sup> This allowed the country to avoid the embarrassing process of renegotiation its external debt in 1976 and 1977.<sup>103</sup> At this same time, following a similar position adopted by the Federal Republic of Germany,<sup>104</sup> the Netherlands,<sup>105</sup> Italy,<sup>106</sup> and Norway,<sup>107</sup> the US government suspended most forms of bilateral economic aid to Chile, expressing disapproval of human rights abuses by the Pinochet government.<sup>108</sup> In fact, the American government expressly warned banks that lending money to Chile

99 *Ibid.* The former Minister of Finance of Chile and ambassador in Washington, DC during the military regime, publicly recognized that only political repression could allow this version of the free market system to survive in Chile. Both conceptual and practical difficulties that a democratic system presents in order to apply this economic and social scheme would disappear as soon as it is agreed to use 'other measures, in the form of the establishment of a centralized system, with the consequent loss of freedom', J. Cauas Lama, 'Política Económica de Corto Plazo', 2 *Banco Central de Chile: Estudios Monetarios* (1970), at 25, 41–42, 44–45.

100 T. Sheetz, 'Gastos Militares en Chile, Perú y la Argentina', 25 *Desarrollo Económico* (1985), at 316–317.

101 T. Scheetz, 'Gastos Militares en América del Sur', Centro Regional de las Naciones Unidas para la Paz, el Desarme y el Desarrollo en América Latina y el Caribe (ed.), *Proliferación de Armamentos y Medidas de Fomento de la Confianza y la Seguridad en América Latina* (Lima, 1994).

102 Cassese Report, Vol. III, at 67. As the article 'How Chile Reappeared on the Tombstones' by Ch. Meynell said in *Euromoney* in its edition of June 1977, at 101–105: 'Both countries [Chile and Argentina] have arguably staged an economic turnaround which appears to have impressed the international banking fraternity. Although the Carter tirade against those countries infringing Human Rights gave somewhat sticky start to the development of the two countries as a much needed sink-hole for excess banking liquidity, it is plain that doubts over the wisdom of lending to countries that contravene Human Rights are fast being dismissed'.

103 Cassese Report, Vol. III, at 72.

104 Report of the Economic and Social Council: Protection of Human Rights in Chile, Report of the Secretary General, 32 UN GAOR (Agenda Item 12) 9, UN Doc. A/32/234 (1977).

105 *Ibid.*, at 12–13.

106 Study on the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile, 31 Sub-Commission on Prevention of Discrimination and Protection of Minorities (provisional Agenda Item 13), UN Doc. E/CN.4/Sub.2/412 (1978), § 407.

107 *Ibid.*, § 409.

108 Center for International Policy, 'Chile: An Analysis of Human Rights Violations and United States Security Assistance and Economic Programmes', 1–2 July 1978.

was eroding US foreign policy, which considered human rights a crucial factor when deciding financially to support a regime.<sup>109</sup>

According to the Cassese Report, the aforementioned policies supported by the majority of the international community were being rendered ineffective by the lending practices of a small number of private banks.<sup>110</sup> The Chairman of the US House Banking Committee officially told six of the main multinational banks lending to Chile that their actions appeared inconsistent with standards intended to prevent banking practices from interfering with public interest and thus that he hoped they would make public a full explanation.<sup>111</sup> Leaders of the banking community, however, argued that financial institutions should not be impeded from doing their 'normal business' regardless of the governments they were engaged with.<sup>112</sup>

This stubborn reluctance by international financial institutions to be held in the least bit accountable for the consequences of their loans helped to prompt an unusual step by the United States. In 1978, Senator Edward Kennedy introduced the Foreign Bank Loans Disclosure Act<sup>113</sup> requiring disclosure of bank loans made to known human rights violators. In proposing this act, Senator Kennedy affirmed the fact that 'one of the guiding principles of (US) foreign policy is that except in cases of humanitarian assistance, we shall give no aid to gross violators of human rights.'<sup>114</sup> It also led to discussion on the Senate floor about the capacity of various Latin American dictatorships to retain their stronghold, with his colleague, Senator Church, commenting that, 'massive funding such as (what Hanover Trust provided to Chile's Pinochet) may be what enabled five Latin American governments...to continue their anti-democratic practices and violations of human rights.'<sup>115</sup>

During the Carter administration not only military and bilateral aid was stopped,<sup>116</sup> but also multilateral development bank loans to Southern Cone

109 'Rights Policy Not Helped by Loans To Chile From Banks', *The Washington Post*, 13 April 1978, at A19.

110 Cassese Report, Vol. III, at 29.

111 'Several US banks Accused of Undercutting Policy on Chile', *The Washington Post*, 12 April 1978.

112 For example, in his trip to Argentina in 1978, David Rockefeller — then-chair of US bank Chase Manhattan — made a public speech denouncing President Carter's human rights policy and stressing that it should not be allowed to 'interfere with the normal relations between nations'. In 1978, the chairman of Lloyds Bank in London responded to criticism for granting loans to the Chilean dictatorship, admitting that this regime was repressive, but also alleging that lending money to Chile was not banned. See 'Lloyds bounces Chile protest', *The Guardian*, 31 March 1978.

113 S 3631-Foreign Loans Disclosure Act of 1978, 124 Cong. Rec. 37 678 1978.

114 *Ibid.*

115 *Ibid.*

116 International Security Assistance and Arms Export Control Act of 1976, Sec 406, US Code, Vol. 22, sec. 2370. The human rights policy of the Carter administration was applied through several avenues: diplomatic channels, raising these concerns through public statements of Carter and Patricia Derian, and supporting the reports from the OAS and UN. See R. Cohen, 'Human Rights Diplomacy: The Carter Administration and the Southern Cone', 4 *Human Rights Quarterly* (1982) 212–242, at 217; President Carter, Remarks at the Opening Session of the 8th General Assembly, OAS, Washington, DC, 21 June–1 July 1978. Statements of

governments when they were not intended for meeting basic human needs as required by law.<sup>117</sup> In the case of Chile, the United States opposed the loans because of its already disastrous record on human rights.<sup>118</sup> These measures taken by the United States reflect an understanding that there was a crucial relationship between financial support and the capacities of the Chilean dictatorship to not only survive as a regime, but to actually execute its now famous campaign of mass human rights abuses against its own population.<sup>119</sup>

It is less clear how financial support to the private sector of a country ruled by a military regime impacts in terms of human rights. Even though, if one thinks of the effects of the economic system over the governmental decisions (basically in terms of political and social acceptance of the rulers and public revenues) a broader analysis incorporating private borrowers has to be done.

Even when the foreign policy of the Carter administration helped to improve the human rights situation in Chile,<sup>120</sup> there were also steps that the US government failed to take to promote human rights. For example, the US government failed in the attempt to influence the American private business sectors as we mentioned before. Furthermore, the US government did not succeed in its attempt to internationalize sanctions against the Southern Cone dictatorships. For instance, Chile and Argentina turned to Western European suppliers and Israel when the United States imposed arms embargoes.<sup>121</sup>

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Patricia M. Derian, Human Rights in Latin America, Current Policy No. 68, Department of State, Washington DC, June 1979; in Review of Human Rights in Latin America, Current Policy No. 176, Department of State, Washington, DC, April 1980; in Country Reports on Human Rights Practices, Hearings and Markup before the Subcommittee on Human Rights and International Organizations of the Committee on Foreign Affairs, House of Representatives, 97<sup>th</sup> Congress, 1st Session, March and April 1981, available online at <http://mirlyn.lib.umich.edu/Record/002758048> (visited 19 April 2010). Also symbolic gestures were used to promote human rights. For example, Carter made clear that undemocratic governments in Latin America would not receive a warm welcome in Washington, see Cohen, *ibid.*, at 220.

117 International Financial Institutions Act of 1977, Sec. 701, 22 USC Sec. 262d (supp. II 1978). From January 1977 to August 1980, the United States opposed, either by voting against or abstaining, 23 loans to Argentina, 5 to Chile, 7 to Paraguay and 11 to Uruguay. Cohen, *supra* note 116, at 226; L. Schoultz, *Human Rights and United States Policy Toward Latin America* (Princeton: Princeton University Press, 1981), at 196–198.

118 A detail of US negative votes and abstentions on multilateral development banks loans for human rights reasons, in J.M. Griesgraber, *Implementation by the Carter Administration of Human Rights Legislation Affecting Latin America* (unpublished PhD dissertation, Georgetown University, 1983) (on file with author), at 368.

119 This way to see the link between loans and damages seems to follow the same rationale behind the modern so-called ‘Equator Principles’ implemented by banks; see R. Hansen, *The Impact of the Equator Principles on Lender Liability: Risks of Responsible Lending* (LLM Dissertation, London School of Economics and Political Science, November 2006), available online at <http://papers.ssrn.com/sol3/papers.cfm?abstractid=948228> (visited 19 April 2010).

120 Cohen, *supra* note 116.

121 *Ibid.*, at 233.

## 5. Contributing to the Current Debate on Liability for Financial Complicity

It is obvious that confusion remains around how finance can factually contribute to the commission of human rights violations, and consequently, how the law must react toward institutions that finance their perpetrators. These are the kind of answers that victims of the last dictatorship in Argentina asked in 2009 when they filed a civil claim in Buenos Aires against a number of banks known to have financed the military junta, on allegations of corporate complicity for human rights abuses.<sup>122</sup>

The answers to those questions must be based on the real way in which finance works. For instance, in an *amicus curiae* recently submitted by Essex University and Centro de Estudios Legales y Sociales (CELS) in this same trial in Buenos Aires, some concrete guidelines and responses were suggested as follows: Both international and domestic laws recognize responsibility for corporate complicity, including that of finance. The concrete bank loans granted to the military junta could have had a substantial effect on the crimes perpetrated by the Argentine military junta. According to the public character of the human rights abuses, banks were aware of the potential and foreseeable consequences of lending a huge amount of money to Argentina.<sup>123</sup> Thus, as such, banks failed to apply the due diligence rules contained in non-binding international instruments such as the Equator Principles<sup>124</sup> and inter-governmental bodies such as the Financial Action Task Force (FATF).<sup>125</sup>

Rediscovering the Cassese Report that analyses in a great depth both conceptually and empirically how the link between the financial aid received by the Pinochet regime and the human rights violations carried on by this regime worked definitively helps to understand better the features of one of the most underdeveloped chapter of corporate responsibility for complicity: finance. When analysing the link between financial aid at a high scale and human rights violations the macro and budgetary impacts of the loans must be observed in order to trace how those abuses could be carried on. Reinforcing the holistic approach that financial complicity requires, the

122 R. Mattarollo, 'Los bancos de la dictadura', *Página 12*, 23 November 2009, available online at <http://www.pagina12.com.ar/diario/elpais/1-135803-2009-11-24.html>; R. Mattarollo, 'El círculo que se cierra', *Le Monde Diplomatique – El Dipló*, No. 127, January 2010; H. Verbitsky, 'Los prestamistas de la muerte', *Página 12*, 16 March 2009, available online at <http://www.pagina12.com.ar/diario/elpais/1-121607-2009-03-16.html> (websites visited 7 February 2010).

123 *Amicus curiae* presented on 26 March 2010 in the case cited *supra* note 4, at 1–26, available online at the Business & Human Rights website <http://www.business-humanrights.org/Links/Repository/1000191/link.page.view> (visited 20 April 2010). Also see G. Morini, 'En los laberintos de la Justicia', *Página 12*, 24 March 2010, available online at <http://www.pagina12.com.ar/diario/elpais/subnotas/142578-45899-2010-03-24.html> (visited 24 March 2010).

124 For a description of the 'Equator Principles' see <http://www.equator-principles.com/join.shtml> (visited 10 April 2010).

125 On the specific obligation to *Know Your Customer* (KYC) see 'FATF 40 Recommendations (2003)', online at <http://www.fatf-gafi.org> (visited 10 April 2010); see also the *amicus curiae*, *supra* note 123, at 21.

political, economic and sociological perspectives contribute to understanding the whole process since they offer more scientific tools to analyse the link between the dominant national classes, the military forces, and financial institutions. As we explain above, the success and failure of Latin American dictatorships, in terms of both political stability and economic outcomes, strongly depended on the financial support they received.

In this same vein, measures taken early on by the United States and other governments refusing financially help the Chilean military regime are also meaningful in terms of bringing some clarity to this debate. We can conclude that at some point it was officially recognized by the United States and other governments that massive contributions of funds can indeed facilitate crimes against humanity. In particular, what the Carter administration did more than 30 years ago, as well as the efforts of Senator Edward Kennedy and other American parliamentarians decidedly contribute to the current debate on how money works in terms of complicity and how law should answer to this challenge. It is hard to believe that even the Carter administration would have gone to the point of formally banning private lending to the Chilean regime.<sup>126</sup> However, the legal status of the rules that impeded contributing to the perpetration of serious human rights abuses could not have been affected by this omission. Indeed, if one pays close attention to the norms in which refusals to grant US official aid to Latin American dictatorships were grounded, little doubt remains on their *jus cogens* nature.<sup>127</sup>

A concrete example that helps to understand that what really matters is the effect of the commodity instead of its inherent quality, demonstrating that money can not only worsen a situation but also promote its improvement is evident in the impact of the US stance: When it rejected financial support to the Chilean government, it gradually started to change this position by emphasizing the fact that the authorities were in the process of improving the human rights situation in the country. ‘Even this new stand reveals that a close link is instituted between foreign economic assistance and respect for human rights in Chile.’<sup>128</sup>

As with any other commodity, the impact of funding depends on what the user of the service or consumer of the good plans to do with it. The recent decision *In re South African Apartheid Litigation* — even though it generally refuted the idea that money can provoke damages because it is not an agent designed to kill or inflict pain — recognized that poison gas also ‘may have legitimate uses.’<sup>129</sup> It is worth recalling that this same decision stated that IBM

126 *Weekly Compilation of Presidential Documents*, Vol. 14, No. 13, at 629, publishing the discourse of Carter explaining (referring to Brazil) that free enterprise system and the belief of enhancing human rights around the world are compatible.

127 Referring to the Argentine case: *Arms Trade in the Western Hemisphere: Hearing Before the Subcommittee on Inter-American Affairs of the Committee on International Relations*, 95th Cong. (1978) (statement of Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs).

128 Cassese Report, Vol. III, at 89.

129 *Apartheid Litigation*, *supra* note 31, at 44 and note 157.

can be held responsible for selling computers and software to the regime. Focussing on the inherent quality of the commodity instead of the actual effects and purpose of its use provokes this kind of contradictory reasoning.<sup>130</sup>

In any case, why is it that legal standards for financial institution are taking such a long time to evolve, while other kinds of corporate contributions are bearing increased rigorous responsibility? Is the political weight of the financial sector blocking the entrance of a minimum set of standards that are already accepted for other corporations? If this is the case, it is to be expected that after the current global crisis financial institutions will have to face tougher questions when they are asked in courts to explain why they granted loans when all signs pointed to the fact that their contribution could provoke serious damages. The international community seems to have started assuming that financial institutions need to be under certain and effective regulation.<sup>131</sup>

However, the challenges that understanding and shaping corporate responsibility for financial complicity propose surpass these sociological and political characteristics. There is an inherent difficulty in tracing money and then assessing its impact on a given human rights context, aggravated in part because international law has historically dealt exclusively with the nation state system and corporations have largely evaded oversight given their status in the cracks of that particular legal regime. At the same time, this obstacle is also the primary motivation for more research and greater efforts in this field, with the aim of setting fair and efficient legal standards for corporate complicity when dealing with the specific commodity of money.

Compared to the legal theory already developed in the civil realm, criminal responsibility for corporate complicity presents a certain 'backwardness'. Some questions regarding criminal responsibility for complicity and its connection with civil liability show the state of the art.<sup>132</sup> We are just beginning to pose questions on the usefulness and feasibility of mobilizing criminal law to establish corporate complicity,<sup>133</sup> two features that seems to be well-established when we think of civil responsibility.

130 Michalowski and Bohoslavsky, *supra* note 34.

131 See for example 'Outcome of United Nations Conference on the World Financial and Economic Crisis and its Impact on Development', UN Doc. A/RES/63/303, New York, 13 June 2009, available online at <http://www.un.org/ga/search/view.doc.asp?symbol=A/RES/63/303&Lang=E> (visited 19 April 2010).

132 See ICJ Report, Vol. II, *supra* note 20.

133 Looking at the atrocities themselves, how does the efficiency of the legal system work in criminal law when we think of corporate contributions? Is it possible and desirable that criminal law could operate to *neutralize corporate techniques* that develop the necessary social, political and economic conditions so mass human rights violations can be perpetrated? On this topic see generally R. Zaffaroni, 'Is an Efficient Criminal Contribution Possible to Prevent Crimes Against Humanity?' 3 *Rivista di Criminologia, Vittimologia e Sicurezza* (2009) 6–30. Should amnesties benefiting the perpetrators of human rights violations be allowed to impede options for suing the corporations that helped to contribute to them? This last one is a concrete question in the Chilean case since in 1978 an Amnesty Decree Law was passed to give immunity to the military perpetrators of the human rights violations.

The ‘justice cascade’ of truth commissions and domestic, foreign, and international criminal trials holding former Latin America dictators to account, reflect a more general trend in world politics towards greater accountability.<sup>134</sup> The same has not yet evolved in terms of robust accountability for economic accomplices, which clearly erodes the ultimate preventive, restorative, and reparations goals of transitional justice processes. The civil claim recently filed by victims of the Argentine dictatorship against banks that financed this regime challenges this idea.<sup>135</sup> And the Chilean case offers another opportunity to seriously re-think the link between finance and human rights violations.

134 E. Lutz and K. Sikkink, ‘The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America’, 2 *Chicago Journal of International Law* (2001) 1–33; K. Sikkink and C. Walling, ‘The Impact of Human Rights Trials in Latin America’, 44 *Journal of Peace Research* (2007) 427–445.

135 Bohoslavsky and Opgenhaffen, *supra* note 4.

# The Past and Present of Corporate Complicity: Financing the Argentinean Dictatorship<sup>1</sup>

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Juan Pablo Bohoslavsky<sup>2</sup> and Veerle Opgenhaffen<sup>3</sup>

From 1976 to 1983, Argentina was ruled by a military dictatorship whose tactics included the widespread torture, murder, and enforced disappearance of thousands of people. Since the junta's fall, the country has taken steps to pursue justice for this period of mass repression. With the repeal of controversial amnesty laws in 2003, the dossier on impunity has again been thrown open.

This paper examines a missing element along this spectrum of Argentina's long search for accountability and justice: the role of foreign financial institutions and the potential to claim that they were complicit in supporting a regime well-known to have been committing mass human rights violations. The article begins by considering the technical legal features of corporate complicity in domestic and international law, paying particular attention to jurisprudence on commercial contributions to states that commit crimes against humanity. It then turns to an examination of em-

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1. A similar article written in Spanish, but tailored specifically to an Argentinean audience, has been published in 10 REVISTA JURÍDICA DE LA UNIVERSIDAD DE PALERMO, ARGENTINA 241 (2009).

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pirical and historical data from the Argentinean dictatorship to apply these understandings of corporate accountability to a case-study. It also juxtaposes other factors—such as the Carter administration's withholding of financial assistance to Argentina on the explicit basis of the massive violations of human rights known to be taking place there—suggesting evidence that particular banks were enabling the junta to continue to function in a world that had largely shut down previous channels of economic and political support.

Finally, the authors suggest that the assistance provided by private financial institutions played a significant enough role in the Argentinean dictatorship to warrant a closer examination and possible future legal action on the basis of complicity in crimes against humanity. The authors conclude that further investigation along these lines could fulfill dual goals of filling a missing piece of the Argentinean historical narrative of responsibility for these crimes and, more broadly, furthering the study and evolution of civil responsibility for corporate complicity.

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“By their “rationale,” loans to Nazi Germany would have received *pro forma* approval so long as they were economically viable. Somewhere the line has got to be drawn.”<sup>4</sup>

## INTRODUCTION

This paper examines the main legal aspects of corporate civil responsibility for facilitating serious violations of human rights, focusing specifically on bank activity. It analyzes, in detail, the Argentinean case and the financial support received by the last military dictatorship (1976-83).

There are at least three options for legal remedies to channel the consequences of financing crimes against humanity. The first option is to challenge the very validity of the loan, which is related to the odious debt debate.<sup>5</sup> The second is to prove the criminal responsibility of the accomplices.<sup>6</sup> And the third—the option this paper focuses on—is to demonstrate civil responsibility for the corporate complicity in question.

The first section of this piece lays out the legal evolution of corporate responsibility for complicity with human rights abuses. It begins by addressing how this concept of responsibility has evolved from the jurisprudence of the post-World War II tribunals to the activities and statutes of current international criminal courts, as well as elaborating generally on soft law in this area. It next touches on some particularly striking developments in corporate accountability, such as recent progressions with the use of the U.S. Alien Tort Claims Act. Following this general description, the paper analyzes the factors that make corporate complicity illegal, the ‘mental state’ requirements for being held responsible, the types of damages recognized as requiring compensation, and the causal links between a corporation’s contribution and these damages. It also presents some of the legal and practical realities that continue to make civil liability for corporate complicity a thorny issue in international law.

The second section—in essence a case-study—provides an empirical analysis of the behavior of the lender banks, the U.S. government, and the

4. Letter from Steven Oxman, U.S. Diplomat, to Warren Christopher, U.S. Deputy Sec’y of State (Jun. 20, 1977) (handwritten notes on a copy of a memorandum from Hal F. Reynolds to A. Nachmannoff) (on file with authors).

5. See generally SABINE MICHALOWSKI, UNCONSTITUTIONAL REGIMES AND THE VALIDITY OF SOVEREIGN DEBT: A LEGAL PERSPECTIVE (2007); Juan Pablo Bohoslavsky, *El Pago al Club de Paris y la Evocación a la Revitalizada Doctrina de las Deudas Odiosas*, J.A. (2008-IV-1407) (exploring the odious debt debate and applying it to the Argentinean case); Lee C. Buchheit, G. Mitu Gulati, & Robert B. Thompson, *The Dilemma of Odious Debts*, 56 DUKE L.J. 1201 (2007); Anita Ramasastry, *Odious Debt or Odious Payments? Using Anti-Corruption Measures to Prevent Odious Debt*, 32 N.C. J. INT’L L. & COM. REG. 819 (2007).

6. Cristina Chiomenti, *Corporations and the International Court*, in TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS 287 (Olivier de Schutter, ed., 2006); Daniel M. Greenfield, *The Crime of Complicity in Genocide: How the International Criminal Tribunals for Rwanda and Yugoslavia Got It Wrong, and Why It Matters*, 98 J. CRIM. L. & CRIMINOLOGY, 921, 952 (2008); Report of the International Law Commission to the General Assembly, [1996] 2 Y.B. INT’L L. COMM’N 1, U.N. Doc. A/CN.4/SER.A/1996/Add.1 (Part 2).

international community toward the last Argentinean dictatorship. In order to assess correlations between the bank loans granted to this country and the criminal activities of the junta, the second section also looks closely at the macroeconomic performance of the Argentinean economy between 1976 and 1983 and the evolution of military expenditures during that time.

This kind of empirical analysis contributes to the essential task of establishing whether the legal requirements of civil responsibility for corporate complicity are present in this case. The Argentinean case is particularly relevant since criminal trials against the former dictators are ongoing today, and the country continues to grapple with unfinished questions of accountability and truth about this era. In this way, studying the Argentinean case is more than an exercise in assessing the boundaries of corporate complicity: on a more fundamental level, examining the role that banks played allows the country to look at a missing piece of the puzzle, to pursue the full spectrum of justice for this era, and to understand both the national and international dynamics that contributed to the junta's rule.

## I. CORPORATE CIVIL RESPONSIBILITY FOR CONTRIBUTING TO THE VIOLATION OF HUMAN RIGHTS

### A. *The Evolution of Responsibility for Complicity*

Current notions of corporate responsibility for facilitating human rights abuses are backed by legal theories whose origins can be traced back to the trials that followed the Second World War.

The first formal reaction toward corporate responsibility emanated from criminal law. Article 6 of the statute of the Nuremberg Military Tribunal imposed sanctions on individuals who cooperated or contributed to the commission of principal crimes. The so-called "industrial cases," tried in both the Nuremberg and United Kingdom tribunals, have been the foundation stone for this kind of responsibility for complicity. In these trials, grounded in customary international law, German industrialists who collaborated with the Nazi regime were held responsible for their financial and material support. Among other civilians who were tried for assisting in carrying out the genocide committed by the Nazi regime<sup>7</sup> were Bruno Tesch, who was found to have contributed commercially by providing the lethal gas used in the Auschwitz concentration camp,<sup>8</sup> and Friedrich Flick, who was found to have contributed financially by profiting from slave labor

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7. See Anita Ramasastry, *Corporate Complicity: From Nuremberg to Rangoon, An Examination of Forced Labor Cases and Their Impact on the Liability of Multinational Corporations*, 20 BERKELEY J. INT'L L. 91 (2002).

8. Trial of Bruno Tesch and Two Others (*The Zyklon B Case*), 1 U.N. WAR CRIMES COMM'N, LAW REPORTS OF TRIALS OF WAR CRIMINALS 93, 93 (1947) (Brit. Mil. Ct. 1946).

in the camps and then donating a portion of the profits to the SS command to help sustain its activities.<sup>9</sup>

The sentences that such individuals received were clear in terms of analyzing and judging the behavior of corporations,<sup>10</sup> a fact that continues to be elaborated on in contemporary scholarship dealing with this issue.<sup>11</sup> This notion of responsibility for complicity was recognized by these post-World War II tribunals, which gave content and vigor to the modern status of corporate responsibility for complicity or, in other words, made clear that so-called entrepreneurs could be held responsible for abetting or facilitating the commission of crimes against humanity.<sup>12</sup> The Nuremberg trial—distinguishing due obedience from cooperation—explicitly pointed out this idea:

Those who execute the plan do not avoid responsibility by showing that they acted under the direction of the man who conceived it . . . . He had to have the cooperation of statesmen, military leaders, diplomats and businessmen. When they, with knowledge of his aims, gave him their cooperation, they made themselves parties to the plan he had initiated. They are not to be deemed innocent . . . if they knew what they were doing.<sup>13</sup>

Since 1945, several international conventions that protect fundamental human rights have been approved. Most of them incorporate specific norms about the responsibility of the accomplices who contribute to or collaborate with the principal perpetrators of these crimes. These norms can be found in Article 4 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Article 3b of the International Convention on the Suppression and Punishment of the Crime of Apartheid; Article 6 of the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Article 3e of the Convention on the Prevention and Punishment of the Crime of Genocide; Article 1.2 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; Article 5.1.b of the United Nations Convention Against Transnational Organized Crime; Article 2.5.a of the International Convention for the Suppression of the Financing of Terrorism; and Article 2.3.a of the International Convention to Repress Terrorist Attacks with Bombs.

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9. United States v. Flick (*The Flick Case*), Case No. 5, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 3 (1952) (Nuernberg Mil. Trib. 1947).

10. See Gwynne Skinner, *Nuremberg's Legacy Continues: The Nuremberg Trials' Influence on Human Rights Litigation in U.S. Courts Under the Alien Tort Statute*, 71 ALB. L. REV. 321, 325, 343, 362 (2008).

11. See Jonathan Bush, *The Prehistory of Corporations and Conspiracy in International Criminal Law: What Nuremberg Really Said*, 109 COLUM. L. REV. 1094 (2009).

12. Richard Herz, *Text of Remarks: Corporate Alien Tort Liability and the Legacy of Nuremberg*, 10 GONZ. L. REV. 76, 76 (2007).

13. United States v. Goering (*The Nurnberg Trial*), 6 F.R.D. 69, 112 (Int'l Mil. Trib. 1946).

Likewise, Article 25.3 of the statute of the International Criminal Court and the statutes of the International Criminal Tribunal for Rwanda (art. 6, applied in *Akayesu*<sup>14</sup>) and the International Criminal Tribunal for the former Yugoslavia (art. 7, applied in the cases *Furundzija*<sup>15</sup> and *Vasiljevic*<sup>16</sup>) explicitly sanction and punish acts of complicity in the commission of crimes against humanity.

Accountability for corporations has evolved over the years, gradually incorporating notions of civil responsibility for the corporations themselves.<sup>17</sup> Emerging soft law, embodied in codes of conduct that give life to social corporate responsibility,<sup>18</sup> has also headed in this same direction. These codes have been promoted and developed by the United Nations (“UN”),<sup>19</sup> the Organization of Economic Cooperation and Development (“OECD”),<sup>20</sup> and Amnesty International,<sup>21</sup> and, notably, some already existed prior to the Argentinean dictatorship.<sup>22</sup>

The cumulative evolution of these codes was crystallized and developed in a recent 2008 report, *Corporate Complicity and Legal Accountability*, by the International Commission of Jurists (“ICJ”).<sup>23</sup> This report emphasized that corporations should be held responsible for assisting in gross violations of human rights when they “enable,” “make easier,” or “improve the efficiency” of the commission of those crimes.<sup>24</sup> In other words, corporations should be held responsible when, with their contributions, they “make possible,” “facilitate,” or “exacerbate” the human rights abuses in question.<sup>25</sup>

In terms of the types of crimes that can be seen as connected to this “contribution” from corporations, it has been established that the contribution must be linked to behavior that affects interests protected by the maximum legal strength offered by the law: those protected by *jus cogens*

14. Prosecutor v. Akayesu, Case No. ICTR 96-4-T, Judgment, ¶¶ 471-91 (Sept. 2, 1998).

15. Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶¶ 187-90 (Dec. 10, 1998).

16. Prosecutor v. Vasiljevic, Case No. IT-94-32-A, Judgment, ¶¶ 94-95, 102 (Feb. 25, 2004).

17. See PETER T. MUCHLINSKI, MULTINATIONAL ENTERPRISES AND THE LAW 514 (2d ed., 2007).

18. See JENNIFER A. ZERK, MULTATIONALS AND CORPORATE SOCIAL RESPONSIBILITY: LIMITATIONS AND OPPORTUNITIES IN INTERNATIONAL LAW (2006); Fiona McLeay, *Corporate Codes of Conduct and the Human Rights Accountability of Transnational Corporations—A Small Piece of a Large Puzzle* (NYU Sch. of Law, Global Law Working Paper 01/05), available at [http://www.law.nyu.edu/idcplg?IdcService=GET\\_FILE&dDocName=ECM\\_DLW\\_015830&RevisionSelectionMethod=LatestReleased](http://www.law.nyu.edu/idcplg?IdcService=GET_FILE&dDocName=ECM_DLW_015830&RevisionSelectionMethod=LatestReleased).

19. U.N. Econ. & Soc. Council [ECOSOC], Sub-Comm’n on the Promotion and Protection of Human Rights, *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights*, U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 26, 2003).

20. Org. for Econ. Co-Operation and Development [OECD], *OECD Guidelines for Multinational Enterprises* (Jun. 27, 2000).

21. Amnesty Int’l, *Human Rights Principles for Companies*, AI Index ACT 70/01/98, 1998.

22. Declaration on the Establishment of a New International Economic Order, G.A. Res. 3201, at 3, U.N. GAOR, 6th Special Sess., Supp. No. 1, U.N. Doc. A/9559 (May 1, 1974); E.S.C. Res. 1913, 57th Sess., Supp. No. 1A, U.N. Doc. E/5570/Add.1 (1975).

23. 1 INTERNATIONAL COMMISSION OF JURISTS, EXPERT LEGAL PANEL ON CORPORATE COMPLICITY IN INTERNATIONAL CRIMES, CORPORATE COMPLICITY & LEGAL ACCOUNTABILITY (2008) [hereinafter ICJ VOL. 1].

24. *Id.* at 9.

25. *Id.*

norms.<sup>26</sup> To date, litigation has only been successful in cases dealing with the most egregious violations of international law.<sup>27</sup>

American jurisdiction has also been forced to tackle these questions of civil corporate responsibility, following a rash of claims (there have been more than forty cases to date<sup>28</sup>) against corporations that in one way or another have been charged with facilitating the perpetration of serious crimes. These cases, which have produced a range of solutions, according to the circumstances of each case, have included claims against the following:

- Chiquita, for allegedly bankrolling Colombian paramilitaries in order to keep its banana plantations free of “labor opposition and social unrest;”<sup>29</sup>
- Several American, Austrian, French, German, and Swiss banks and corporations for having aided the Nazi regime by providing it with the necessary financial help to continue World War II for at least another year past the point when it would otherwise have ended, for not reintegrating the bank deposits to the victims, and for using slave labor;<sup>30</sup>
- Banque Nationale Paris Paribas, for allegedly having paid Saddam Hussein’s regime, in violation of the UN’s Oil for Food program;<sup>31</sup>

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26. “*Jus cogens* is a norm thought to be so fundamental that it even invalidates rules drawn from treaty or custom. Usually, a *jus cogens* norm presupposes an international public order sufficiently potent to control states that might otherwise establish contrary rules on a consensual basis.” MARK. W. JANIS, AN INTRODUCTION TO INTERNATIONAL LAW 62-63 (4th ed. 2003). See also Int’l Law Comm’n, Study Group, *Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law*, at 189, U.N. Doc. A/CN.4/L.682 (Apr. 13, 2006) (finalized by Martti Koskeniemi); *Report of the International Law Commission to the General Assembly on the Work of its Fifty-Third Session*, at 289-90, U.N. Doc. A/56/10, reprinted in [2001] 2 Y.B. Int’l L. Comm’n 1, U.N. Doc. A/CN.4/SER.A/2001/Add.1 (Part 2).

27. Ramasastry, *supra* note 7, at 98.

28. Human Rights Council [HRC], *Promotion and Protection of All Human Rights, Civil, Political, Economic and Cultural Rights, Including the Right to Development*, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008); The Special Representative of the Secretary-General, *Business and Human Rights: Towards Operationalizing the “Protect, Respect, and Remedy” Framework, delivered to the Human Rights Council and the General Assembly*, U.N. Doc. A/HRC/11/13 (Apr. 22, 2009) (clarifying the concepts of “sphere of influence” and “complicity”).

29. Complaint, ¶ 2, *Does v. Chiquita Brands Int’l, Inc.*, No. 07-CV-10300 (S.D.N.Y. Nov. 14, 2007).

30. See *In re Austrian and German Bank Holocaust Litig.*, No. 98 Civ. 3938 (S.D.N.Y. Mar. 7, 2001); *In re Holocaust Victim Assets Litig.*, No. 96 Civ. 4849 (E.D.N.Y. Nov. 22, 2000) (Swiss corporations); *Bodner v. Banque Paribas*, 114 F. Supp. 2d 117 (E.D.N.Y. 2000) (French corporations); see also Roger Alford, *The Claim Resolution Tribunal and Holocaust Claims Against Swiss Banks*, 20 BERKELEY J. INT’L L. 250 (2002); John Authers, *Making Good Again: German Compensation for Forced and Slave Laborers*, in THE HANDBOOK OF REPARATIONS 420-48 (Pablo de Greiff ed., 2006); Burt Neuborne, *Holocaust Reparations Litigation: Lessons for the Slavery Reparations Movement*, 58 N.Y.U. ANN. SURV. AM. L. 615, 615-22; Anita Ramasastry, *Secrets and Lies? Swiss Banks and International Human Rights*, 31 VAND. J. TRANSNAT’L L. 325 (1998); Morris Ratner, *Factors Impacting the Selection and Positioning of Human Rights Class Actions in United States Courts: A Practical Overview*, 58 N.Y.U. ANN. SURV. AM. L. 623 (2003).

31. *Mastafa v. Australian Wheat Bd. Ltd.*, No. 07 Civ. 7955 (S.D.N.Y. Sept. 25, 2008).

- Yahoo, for providing the Chinese government with information and records that permitted it to identify and allegedly torture a human rights activist;<sup>32</sup>
- Nestlé, for buying cocoa from and providing services to plantations using children as workers;<sup>33</sup>
- Unocal, for participating in the building project of an oil pipeline that allegedly hired security forces that forced people to work and relocated, killed, and raped people in Burma;<sup>34</sup> and,
- Barclay's Bank and other multinational companies for providing loans, vehicles, and other essential equipment to support the *apartheid* regime in South Africa.<sup>35</sup>

Corporations have increasingly become key players in the functioning of the modern economy and also have become increasingly relevant to the decisions and activities that states make and conduct.<sup>36</sup> This expansion of the power of corporations has also presumably influenced the legal strengthening of the idea, echoed by courts, that corporations can violate or substantially contribute to the violation of human rights,<sup>37</sup> as a result, these private entities also have increasing duties.<sup>38</sup>

### B. *What Factors Make it Illegal to Contribute to the Commission of Human Rights Violations?*

Both sovereign states and private entities,<sup>39</sup> including corporations,<sup>40</sup> must fulfill the international obligations that emanate from *jus cogens*

32. Plaintiff's Second Amended Complaint, ¶ 2, *Xiaoning v. Yahoo! Inc.*, No. 07-CV-02151 (N.D. Cal. July 30, 2007) (case settled).

33. Complaint, ¶¶ 35-37, *Doe v. Nestlé, S.A.*, No. 05-CV-05133 (C.D. Cal. July 14, 2005).

34. *Doe I v. Unocal Corp.*, 395 F.3d 932 (9th Cir. 2002), *reb'g en banc granted*, 395 F.3d 978 (9th Cir. 2003), *and vacated and appeal dismissed following settlement*, 403 F.3d 708 (9th Cir. 2005).

35. *Khulumani v. Barclays Nat'l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007), *aff'd without opinion sub nom*; *Am. Isuzu Motors Inc. v. Ntsebeza*, 128 S.Ct. 2424 (May 12, 2008), *claims dismissed in part on remand sub nom*. *In re South African Apartheid Litig.*, 617 F. Supp. 2d 228 (S.D.N.Y. 2009).

36. ZERK, *supra* note 18, at 8.

37. See Adam McBeth, *Holding the Purse Strings: The Continuing Evolution of Human Rights Law and the Potential Liability of the Finance Industry for Human Rights Abuses*, 23 NETH. Q. HUM. RTS. 7, 20 n.1 (2005); Skinner, *supra* note 10, at 364.

38. Michael Addo, *Human Rights Perspectives of Corporate Groups*, 37 CONN. L. REV. 667, 677 (2005); Andrew Clapham, *The Question of Jurisdiction Under International Criminal Law Over Legal Persons: Lessons from the Rome Conference on an International Criminal Court*, in *LIABILITY OF MULTINATIONAL CORPORATIONS UNDER INTERNATIONAL LAW* 139, 189-90 (Menno Kamminga & Saman Zia-Zarifi eds., 2000).

39. See Ramasastry, *supra* note 7, at 95.

40. *In re Agent Orange Prod. Liab. Litig.*, 373 F. Supp. 2d 7, 59 (E.D.N.Y. 2005); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289, 305-14 (S.D.N.Y. 2003); Harold Hongju Koh, *Separating Myth from Reality About Corporate Responsibility Litigation*, 7 J. INT'L ECON. L. 263, 265-67 (2004). See also Steven Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L. J. 443 (2001). Explaining the rationale behind corporate responsibility, the U.S. Supreme Court has said that there was "no good reason why corporations may not be held responsible for and charged with the knowledge and purposes of their agents. . . . If it were not so, many offenses might go unpunished. . . ." *New York Cent. & Hudson River R.R. Co. v. United States*, 212 U.S. 481, 494-5 (1909).

norms<sup>41</sup> as they relate to states (in lending money, for example<sup>42</sup>). This implies that there is also a responsibility to refrain from perpetrating (as principal) or facilitating (as accomplice) crimes that infringe on those norms that are at the very heart of international law.

On this particular issue, *ius cogens* norms have given expression to customary international law, which was first explicitly recognized and shaped during the Nuremberg trials. Customary international law has been further strengthened and solidified through the passage of various international conventions, treaties, and emerging jurisprudence, which today constitute the legal umbrella for the sanctions around aiding, abetting, and complicity. In terms of reparations, rules of international law<sup>43</sup> translate into the duty to compensate for the damages produced—a duty that must be respected by both public and private entities, even if they did not necessarily perpetrate the crimes themselves and are not the primary perpetrators. In this regard, customary international law has been understood to give rise not only to criminal but also civil remedies.<sup>44</sup>

From the perspective of U.S. jurisprudence, the question of whether the legal requirements for this responsibility are defined by international or domestic norms remains controversial.<sup>45</sup> This debate stems largely from the fact that the Alien Tort Claims Act (“ATCA”), which opens the jurisdiction of U.S. courts to the hearing of cases in which the law of nations has been violated in other countries, requires that basic norms of international

41. See generally THE FUNDAMENTAL RULES OF THE INTERNATIONAL LEGAL ORDER. *Jus Cogens* and Obligations Erga Omnes, (Christian Tomuschat & Jean-Marc Thouvenin eds., 2006).

42. See Elizabeth Reichard, *Catching the Money Train: Using the Alien Tort Claims Act to Hold Private Banks Liable for Human Rights Abuses*, 36 CASE W. RES. J. INT'L L. 255, 260 (2004).

43. Such rules include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85; the International Convention on the Suppression and Punishment of the Crime of Apartheid, Nov. 30, 1973, 1015 U.N.T.S. 244; the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Sept. 7, 1956, 266 U.N.T.S. 3; and the Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

44. *The Nereide*, 13 U.S. (9 Cranch) 388, 423 (1815); *Thirty Hogsheads of Sugar v. Boyle*, 13 U.S. (9 Cranch) 191, 198 (1815); *Talbot v. Seeman*, 5 U.S. (1 Cranch) 1, 36 (1801); *Talbot v. Jansen*, 3 U.S. (3 Dall.) 133, 161 (1795); *República v. De Longchamps*, 1 U.S. (1 Dall.) 111, 114 (1784). See generally Memorandum of Law Submitted by Plaintiffs in Response to Expert Submissions Filed by Legal Academics Retained by Defendants, *In re Holocaust Victim Assets Litig.*, No. 96 Civ. 4849 (E.D.N.Y. June 17, 1997).

45. *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004); *Khulumani v. Barclays Nat'l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007). See David Christensen, *Corporate Liability for Overseas Human Rights Abuses: The Alien Tort Statute After Sosa v. Alvarez-Machain*, 62 WASH. & LEE L. REV. 1219 (2005); Carlos Vásquez, *Sosa v. Alvarez-Machain and Human Rights Claims Against Corporations Under the Alien Torts Statute*, (Georgetown Univ. Law Ctr., Business, Economics and Regulatory Policy Working Paper No. 844350, 2005). On this discussion see Curtis Bradley, Jack Goldsmith & David Moore, *Sosa, Customary International Law, and the Continuing Relevance of Erie*, 120 HARV. L. REV. 869, 924–29 (2007); Paul L. Hoffman & Daniel A. Zaher, *The Rules of the Road: Federal Common Law and Aiding and Abetting Under the Alien Tort Claims Act*, 26 LOY. L.A. INT'L & COMP. L. REV. 47 (2003); Ralph Steinhardt, *Laying One Bankrupt Critique to Rest: Sosa v. Alvarez-Machain and the Future of International Human Rights Litigation in U.S. Courts*, 57 VAND. L. REV. 2241, 2251 (2004); William Casto, *The New Federal Common Law of Tort Remedies for Violations of International Law*, 37 RUTGERS L.J. 635, 650 (2006).



law have been violated in order to justify this extraterritorial jurisdiction.<sup>46</sup> The debate also stems from the particular relationship between the U.S. legal system and customary international law.<sup>47</sup> Apart from the particular case of the ATCA, however, the fundamental bases of responsibility for complicity in the U.S. are reflected in the domestic laws of states. It is the states that specifically regulate complicity and respond when corporate civil responsibility for damages provoked in the territory of a state is being debated (*lex loci delicti*, which significantly reduces the application of the *forum non conveniens* doctrine<sup>48</sup>). In this way the U.S. legal system has established particular compensatory norms for matters of complicity.<sup>49</sup> If the ATCA requires that domestic law provide a direct basis in cases related to aiding and abetting, U.S. federal law already provides this direct basis for corporate complicity.<sup>50</sup>

Argentinean tort law protects those who were illegitimately harmed<sup>51</sup> or suffered damages stemming from human right abuses; in these cases, the protection offered by constitutional law is even more rigorous. For example, Article 1081 of the Civil Code obliges accomplices to compensate for damages provoked by the primary perpetrator of the illicit act.<sup>52</sup> This notion of complicity for contributing to the commission of a crime in Argentinean law is compatible with existing ideas in international law as discussed above.

On the specific issue of banking, the responsibility for granting abusive loans is viewed as a particular kind of “extra-contractual” liability and is recognized by numerous legal systems, including the Argentinean system.<sup>53</sup> This liability is characterized by the failure to fulfill the duty to assess adequately the credit risk of the borrower, and it can generate civil responsibility if the finances being provided facilitate an illicit activity, such as

46. Alien Tort Claims Act, 28 U.S.C. § 1350 (2000). See generally Michael Ramsey, *International Law Limits on Investor Liability in Human Rights*, 50 HARV. INT'L L. J. 271 (2009).

47. See generally Josh Goodman, *The Administrative Law of Nations: A New Perspective on Sosa, The Alien Tort Statute, and Customary International Law*, 50 HARV. INT'L L. J. ONLINE 1 (2009), <http://harvardilj.org/online/164>.

48. This doctrine allows a court to refuse to hear a case because there is a more appropriate forum available for the parties of this case brought before it.

49. See RESTATEMENT (SECOND) OF TORTS § 876 (1979). See generally Anthony J. Sebok, *Taking Tort Law Seriously in the Alien Tort Statute*, 33 BROOK. J. INT'L L. 871 (2008).

50. See generally *Boim v. Quranic Literacy Inst.*, 291 F.3d 1000, 1019 (7th Cir. 2002) (supporting the idea that ATCA can be applied to cases of aiding and abetting in certain circumstances); Nilay Vora, Note, *Federal Common Law and Alien Tort Statute Litigation: Why Federal Common Law Can (and Should) Provide Aiding and Abetting Liability*, 50 HARV. INT'L L. J. ONLINE 195, 212 (2009), <http://harvardilj.org/online/152>.

51. CÓDIGO CIVIL [CÓD. CIV.] arts. 1067, 1109 (Arg.).

52. Cód. Civ. art. 1081 (Arg.).

53. Cód. Civ. art. 1109 (Arg.); JUAN PABLO BOHOSLAVSKY, CRÉDITOS ABUSIVOS: SOBREEN-DEUDAMIENTO DE ESTADOS, EMPRESAS Y CONSUMIDORES (Ábaco de Rodolfo Depalma ed. 2009); FABRIZIO DI MARZIO, ABUSO NELLA CONCESSIONE DEL CREDITO (2004); GUY-AUGUSTE LIKILLIMBA, LE SOUTIEN ABUSIF D'UNE ENTREPRISE EN DIFFICULTÉ, (2001); LA RESPONSABILITÉ EXTRA-CONTRACTUELLE DU DONNEUR DE CRÉDIT EN DROIT COMPARÉ (Lucien Simont & André Bruyneel eds., 1984).

the perpetration of crimes against humanity, which is a harmful activity *par excellence*. This duty implies, at the very least, the duty to be aware of the political contingencies of the sovereign borrower.

Financial institutions, regardless of whether they are private, official, or multilateral, are held to a sophisticated deontology when evaluating the risks assumed in granting loans. This requirement promotes the efficient use of resources and protection of the institution's credit;<sup>54</sup> it also aims to prevent damages to third parties. For the purposes of this discussion, it is important to understand that the fundamental intent here is to avoid the harmful consequences that can result from loans granted in a speculative or reckless way, as these loans violate the most basic rules for assessing credit risk. Assessing the risk not only includes anticipating the financial capacity to repay the loan but also creates responsibilities around what the borrower presumably does with the money being lent. Particularly clear examples of this kind of bank liability are evident in legal responsibilities for financing terrorist activities<sup>55</sup> or projects that are environmentally damaging.<sup>56</sup>

The international norms and jurisprudence supporting responsibility for complicity also lend political weight to the compensating duties, as these create incentives for actors in the international community to take greater responsibility for how complicity operates. This is the dialogue that tort law strikes up with constitutional law when damages derived from crimes violating basic human rights lead to claims for compensation. It is precisely this interaction between tort law—embodied in the general norms of civil responsibility—and the international system for protecting fundamental human rights that adds the concept of deterrence to this particular set of economic responsibilities, understood as a responsibility to deter financial activities that are harmful to the interests of the international community.

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54. "It must, at present day, anticipate dangers in imposing upon communities having no voice in negotiation fiscal burdens lacking local approval, unless the benefits of the loan through the expenditure of the proceeds are confined to the territory burdened with service." Charles Hyde, *The Negotiation of External Loans with Foreign Governments*, 16 AM. J. INT'L L. 523, 531 (1922).

55. G.A. Res. 54/109, U.N. GAOR, 54th Sess., U.N. Doc. A/RES/54/109 (Dec. 9, 1999). The UN Security Council urged states to "ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts." S.C. Res. 1373, ¶ 2(e), U.N. Doc. S/RES/1373, (Sept. 28, 2001). When considering whether routine banking activities can give rise to complicity liability, a U.S. court affirmed the following: "[A]cts which in themselves may be benign, if done for a benign purpose, may be actionable if done with the knowledge that they are supporting unlawful acts. . . . Nor is there a requirement of an allegation that the suicide bombers would not, or could not, have acted but for the assistance of Arab Bank." *Almog v. Arab Bank*, 471 F. Supp. 2d 257, 291-92 (E.D.N.Y. 2007).

56. See Jean-Pierre Buyle, *La Responsabilité du Banquier, Dispensateur de Crédit, en Matière d'Environnement*, in AMÉNAGEMENT ENVIRONNEMENT 165 (2004) (regarding the normative and jurisprudential developments in this field).

### C. *Mental State of the Accomplice*

There is substantial controversy in international criminal law around the degree to which one must prove that an accomplice had knowledge that its actions would facilitate the perpetration of a crime and whether it is necessary to prove the intent of that person or entity to facilitate the crime (the “purpose” test, which is elaborated below).<sup>57</sup>

Most of the international statutes and jurisprudence on corporate accountability require that there be some degree of knowledge on behalf of the abetting party, and some assert that this knowledge can be a liability, even if the entity’s primary purpose was not to commit the principal crime in question. The Nuremberg Tribunals<sup>58</sup> and the International Criminal Tribunals for Rwanda<sup>59</sup> (“ICTR”) and for the former Yugoslavia<sup>60</sup> (“ICTY”) all arrived at this conclusion.

In contrast, a few months prior to the ICTY’s decision on this matter in the *Furundzija* case, the Rome Statute of the International Criminal Court (“ICC”) was approved, establishing in Article 25.3 a much more stringent requirement to prove both the actor’s knowledge and purpose in facilitating or abetting a crime.<sup>61</sup> Some commentators have said that this purpose can be secondary or non-exclusive. For example, “one who knowingly sells gas to the gas chamber operator for the primary purpose of profit may be inferred to have a secondary purpose of killing people, so that he can keep selling more gas to kill more people.”<sup>62</sup> This thesis seems to be supported by the fact that Article 25.3.d of this same statute stipulates that the criminal responsibility of the member of a group only requires the knowledge of the criminal purpose of the group, rather than full knowledge of the specific criminal acts being considered.

57. See Doug Cassel, *Corporate Aiding and Abetting of Human Rights Violations: Confusion in the Courts*, 6 Nw. J. INT’L HUM. RTS. 304 (2008).

58. United States v. Flick (*The Flick Case*), Case No. 5, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 1217 (1952) (Nuernberg Mil. Trib. 1947). In this case, two industrialists, Flick and Steinbrinck, were convicted for contributing funds to the SS with knowledge of the crimes committed by that organization. According to the tribunal, “[o]ne who knowingly by his influence and money contributes to the support thereof must, under settled legal principles, be deemed to be, if not a principal, certainly an accessory to such crimes.” *Id.* See also United States v. Von Weizsaecker (*The Ministries Case*), Case No. 11, 14 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 620-22 (1952) (Nuernberg Mil. Trib. 1949); Trial of Bruno Tesch and Two Others (*The Zyklon B Case*), 1 U.N. WAR CRIMES COMM’N, LAW REPORTS OF TRIALS OF WAR CRIMINALS 93, 93-103 (1947) (Brit. Mil. Ct. 1946).

59. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 545 (Sept. 2, 1998). See Andrew Clapham & Scout Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT’L & COMP. L. REV. 339 (2001) (analyzing the Akayesu judgment in detail).

60. Prosecutor v. Furundzija, Case No. IT-95-17/1-T, Judgment, ¶ 193 n.217 (Dec. 10, 1998).

61. Rome Statute of the International Criminal Court art. 25, July 17, 1998, 2187 U.N.T.S. 90 (July, 2002).

62. CASSEL, *supra* note 57, at 315.

[D]espite the ‘purpose’ test in ICC Statute article 25 (3) (c), one can make a responsible argument that customary international law, as reflected in the majority of the post-World War II case law, the case law of the ICTY and ICTR, the ILC Draft Code, and group crimes under article 25 (3) (d) of the ICC Statute, requires that those who aid and abet merely have knowledge that they are assisting criminal activity.<sup>63</sup>

Although some claim that negligence emanates from domestic tort law,<sup>64</sup> since civil responsibility for complicity currently derives its primary content from international law, it is prudent not to force both concepts in terms of the mental state of the accomplice. It is important to recognize the authority of international law in supporting, not without some resistance,<sup>65</sup> the knowledge test,<sup>66</sup> which from a procedural perspective allows for contemplation of both actual and constructive knowledge.<sup>67</sup>

According to the ICJ report on complicity, which supports the standard for mental state suggested here, a corporation can be held liable if:

[It] actively sought to contribute to gross human rights abuses, or simply [if] it knew that its course of conduct was likely to contribute to such abuses and, even though it may not have wanted the abuses to occur, undertook the course of conduct anyway.<sup>68</sup>

It is clear that this group of experts demands either the corporation’s knowledge and acceptance of the consequences of its contribution or its concurrence with the criminal intention of the principal perpetrator.

63. *Id.* at 314.

64. ANITA RAMASASTRY & ROBERT C. THOMPSON, FAFO INSTITUTE OF APPLIED INTERNATIONAL STUDIES, COMMERCE, CRIME AND CONFLICT: LEGAL REMEDIES FOR PRIVATE SECTOR LIABILITY FOR GRAVE BREACHES OF INTERNATIONAL LAW: A SURVEY OF 16 COUNTRIES 22 (2006); FAFO & INTERNATIONAL PEACE ACADEMY, BUSINESS AND INTERNATIONAL CRIMES: ASSESSING THE LIABILITY OF BUSINESS ENTITIES FOR GRAVE VIOLATIONS OF INTERNATIONAL LAW 26 (2003).

65. *See, e.g.*, Presbyterian Church of Sudan v. Talisman Energy, 582 F.3d 244, 261 (2d Cir. 2009) (arguing that knowledge is not sufficient and that it is instead necessary to show that the corporation acted with the purpose to support the human rights abuses perpetrated by the principal).

66. Cassel, *supra* note 57, at 325; *see In re South African Apartheid Litig.* 617 F. Supp. 2d 228, 259 (S.D.N.Y. 2009).

67. As one of the judges explained in *Khulumani*: “Under a proper application of [Restatement (Second) of Torts ] § 876 to ATCA civil aiding and abetting claims, liability should be found only where there is evidence that a defendant furthered the violation of a clearly established international law norm in one of three ways: (1) by knowingly and substantially assisting a principal tortfeasor, such as a foreign government or its proxy, to commit an act that violates a clearly established international law norm; (2) by encouraging, advising, contracting with, or otherwise soliciting a principal tortfeasor to commit an act while having actual or constructive knowledge that the principal tortfeasor will violate a clearly established customary international law norm in the process of completing that act; or (3) by facilitating the commission of human rights violations by providing the principal tortfeasor with the tools, instrumentalities, or services to commit those violations with actual or constructive knowledge that those tools, instrumentalities, or services will be (or only could be) used in connection with that purpose.” *Khulumani v. Barclays Nat’l Bank Ltd.* 504 F.3d 254, 288-89 (2d. Cir. 2007).

68. ICJ Vol. 1, *supra* note 23, at 19.

In the context of banks, which present a case of extra-contractual or civil responsibility, it must be proven either that the lenders knew or could not have *not known* about the criminal activity of the government borrower that they were financing and economically supporting. Even when the abettor and perpetrator do not share the same criminal intention, a corporate entity's knowledge of its essential contribution to the commission of these abuses implies that this course of action has been accepted: "Even where a company does not actively wish to contribute to gross human rights abuses, it may still be legally responsible if it knew or should have known that its conduct was likely to help cause such abuses."<sup>69</sup> This notion of serious negligence can be used as indirect evidence to prove the *dolus* of the collaborator.<sup>70</sup>

In order to assess whether a corporation passes this test of actual or constructive knowledge, it is necessary to analyze all the information reasonably available at that moment.<sup>71</sup> Banks, in particular, because they are characterized by a high degree of professional diligence,<sup>72</sup> have to fulfill rigorous obligations of means in order to establish the risk that their transactions involve. This means that when a bank is conscious of the fact that particular kinds of harm can result from its conduct, and even when it behaves with the hope that this damage will not happen, giving priority to the profit derived from the transaction can be seen as consenting to the harm, or acting with *dolus eventualis*.<sup>73</sup> Specialized jurisprudence has established that this knowledge can be proven through direct or indirect means, including by inference from objective facts.<sup>74</sup> The types of indirect evidence to be taken into account may include: the date and volume of the loans, the state of public knowledge about the crimes at the time, the seriousness or gravity of the crimes, and whatever corporate "consciousness" can be assumed about how likely the loans were to contribute to the sustenance and strengthening of a regime and, consequently, how the loans contributed to the perpetration of the crimes.

69. ICJ VOL. 1, *supra* note 23, at 20.

70. Daniel Diskin, Note, *The Historical and Modern Foundations for Aiding and Abetting Liability Under the Alien Tort Statute*, 47 ARIZ. L. REV. 805, 831 (2005) (commenting on § 876 of the Restatement (Second) of Torts).

71. See 2 INTERNATIONAL COMMISSION OF JURISTS, CORPORATE COMPLICITY & LEGAL ACCOUNTABILITY 33 (2008).

72. TRATADO DE RESPONSABILIDAD CIVIL 188 (L. Fernando Reglero Campos ed., 2002).

73. 3 INTERNATIONAL COMMISSION OF JURISTS, CORPORATE COMPLICITY & LEGAL ACCOUNTABILITY 13 (2008) [hereinafter ICJ VOL. 3]; SARAH JOSEPH, CORPORATIONS AND TRANSNATIONAL HUMAN RIGHTS LITIGATION 50-53 (2004).

74. Prosecutor v. Akayesu, Case No. ICTR-96-4-T, Judgment, ¶ 548 (Sept. 2, 1998); Prosecutor v. Aleksovski, Case No. IT-95-14/1-T, Judgment, ¶ 65 (June 25, 1999); Prosecutor v. Tadic, Case No. IT-94-1-T, Opinion and Judgment, ¶¶ 675-76, 689 (May 7, 1997); United States v. Goering (*The Nurnberg Trial*), 6 F.R.D. 69, 163-65 (Int'l Mil. Trib. 1946); United States v. Carl Krauch (*The Farben Case*), 8 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 1187 (1949) (Nuernberg Mil. Trib., July 29, 1948).

The sophisticated legal theory around responsibility for granting abusive loans requires banks to undertake a serious and reasoned analysis of the economic and political characteristics of the borrower. Though banks enjoy considerable leeway in making these assessments, they cannot take unreasonable or limitless risks, precisely because of the potential damages caused by their activity to public interests and third parties. A bank is judged on the basis of what it knew or can be presumed to have known. In other words, the ostrich syndrome cannot be invoked as a legitimate defense; this is also the rationale behind the extended know your customer rule, a standard in international and domestic banking practices.<sup>75</sup>

#### D. Compensable Damages

Because the kind of responsibility studied in this paper is activated when an entity contributes to the violation of fundamental human rights, it would be prudent to show that the types of damages that require compensation are connected to crimes that have violated *jus cogens* norms.<sup>76</sup> This catalog of crimes includes genocide,<sup>77</sup> slavery,<sup>78</sup> torture,<sup>79</sup> and other crimes against humanity.<sup>80</sup> In contexts where reparations are granted by the same state that committed the crimes, reparations may be uniform<sup>81</sup> or standardized,<sup>82</sup> and limited in proportion to the state's own budgetary restrictions.<sup>83</sup> In these cases, the responsibility of the accomplices can remain an enduring

75. See generally Financial Action Task Force, <http://www.fatf-gafi.org> (last visited Nov. 20, 2009).

76. See Andreas Paulus, *Jus Cogens in a Time of Hegemony and Fragmentation*, 74 *NORDIC J. INT'L L.* 306 (2005).

77. See Corte Suprema de Justicia [CSJN], 24/8/2004, "Arancibia Clavel, Enrique Lautaro asociación ilícita," Fallos (2004-327 3304) (Arg.).

78. See *Doe v. Unocal*, 395 F.3d 932, 945 (9th Cir. 2002).

79. *Siderman de Blake v. Republic of Argentina*, 965 F.2d 699, 714 (9th Cir. 1992); *Prosecutor v. Furundzija*, Case No: IT-95-17/1-T, Judgment, ¶¶ 155-57 (Dec. 10, 1998).

80. Rome Statute, *supra* note 61, art. 7(1).

81. The Argentinean state implemented several initiatives seeking compensation for the damages suffered by the victims of the last dictatorship. The different norms that established these reparations policies recognized standardized and limited compensation. Decrees 70/1991 and 1313/1994 and statutes 24.043, 24.411, 24.823 and 25.914 linked the compensations (for detentions, injuries, and murders) to the salaries of the state employees, independently of the circumstances of each victim beyond the generic categories of "disappeared," "assassinated," "injured," and "heir or relative of a disappeared or murdered." Law No. 24043, Nov. 27, 1991, [LII-A] A.D.L.A. 30; Law No. 24411, Jul. 12, 1994, [LV-A] A.D.L.A. 7; Law No. 24823, May 23, 1997, [LVII-C] A.D.L.A. 2894; Law No. 25914, Aug. 25, 2004, [30473] B.O. 1; Decree No. 70, Oct. 1, 1991, [LI-A] A.D.L.A. 332; Decree No. 1313, Jan. 8, 1994, [LIV-C] A.D.L.A. 3373. For a complete description of the evolution of reparations implemented in Argentina, see Christina Wilson, *Argentina's Reparation Bonds: An Analysis of Continuing Obligations*, 28 *FORDHAM INT'L L. J.* 786 (2005). See e.g., M.J. Guembe, *Economic Reparations for Grave Human Rights Violations: The Argentinean Experience*, in *THE HANDBOOK OF REPARATIONS* 21-54 (Pablo De Greiff ed., 2006).

82. J. Malamud-Goti & L. Grossman, *Reparations and Civil Litigation: Compensation for Human Rights Violations in Transitional Democracies*, in *THE HANDBOOK OF REPARATIONS* 539-59 (Pablo De Greiff ed., 2006).

83. Office of the U.N. High Comm'r for Human Rights [OHCHR], *Rule-Of-Law Tools for Post-Conflict States: Reparations Programmes*, 27-28, U.N. Doc. HR/PUB/08/01 (2008).

issue of significant relevance.<sup>84</sup> This stems from the fact that, as articulated in U.N. General Assembly Resolution 60/147, reparations that follow massive human rights violations must cover all measurable economic damage, and the compensation must be proportional to the seriousness of the facts of each case.<sup>85</sup> Additionally, the individual circumstances of each victim must be taken into account.<sup>86</sup> At the same time, this resolution seeks reparations that produce “satisfaction” in the sense that the facts related to the human rights abuses must be discovered and revealed, which inevitably reveals complicities.<sup>87</sup> Additionally, the statute of the ICC establishes that reparations cannot “be interpreted as prejudicing the rights of victims under national or international law.”<sup>88</sup>

*E. Establishing Causal Links between Corporate Contributions and Human Rights Abuses*

According to the 2008 ICJ report on corporate accountability, in order for a corporation to be held liable, it must have granted the commercial assistance with knowledge of the risks implied in terms of their potential contribution to human rights violations. The corporation must have been in a place of proximity to the principal perpetrator of the crime, in terms of the nature of the connection, commercial transactions, and duration and frequency of the relationship. The closer the company’s contribution is to the actual commission of the crimes, “the more likely it is that [the company] will have the power, influence, authority or opportunity necessary for its conduct to have a sufficient impact on the conduct of the principal perpetrator to establish legal liability.”<sup>89</sup>

Such contribution can be seen in a wide variety of corporate activities including, for example, providing transportation or logistics and supplying goods or technological services; however, this paper focuses specifically on how financial institutions can contribute to the commission of human rights crimes.<sup>90</sup> The key challenge is always to determine whether, without this contribution, the chain of causality would have been interrupted or whether the contribution had a substantial effect on the development of the

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84. When the Argentinean Supreme Court had the opportunity to judge in detail a compensatory judicial claim due to certain crimes against humanity committed during the last dictatorship, analyzing the concrete damages and sufferings, it took into account a wide range of variables and personal circumstances that contributed to provoking that damage. Corte Suprema de Justicia [CSJN] [Supreme Court of Justice], 31/8/1999, “Tarnopolsky, Daniel v. Estado Nacional/proceso de conocimiento,” Fallos (1999-322-1891) (Arg.).

85. G.A. Res. 60/147, ¶ 20, U.N. GAOR, 60th Sess., U.N. Doc. A/RES/60/147 (Mar. 21, 2006).

86. *Id.* ¶ 18.

87. *Id.* ¶¶ 22, 24.

88. Rome Statute, *supra* note 80, art. 75(6).

89. ICJ VOL. 1, *supra* note 23, at 24.

90. *Id.* at 10, 27-28; ICJ VOL. 3, *supra* note 73, at 27 (2008).

financed activity.<sup>91</sup> The presence of this substantial effect is what permits us, in the long run, to assert that an efficient causal link exists.

In terms of defining how to measure and establish whether a substantial contribution from the collaborator existed, U.S. jurisprudence has identified the following key factors: the nature of the act supported or backed;<sup>92</sup> the quantity of the collaboration provided;<sup>93</sup> the entity's presence at the moment when the damages were provoked;<sup>94</sup> the entity's relationship to the principal(s) of the crime;<sup>95</sup> the entity's knowledge about the facts;<sup>96</sup> and the duration of the assistance provided.<sup>97</sup> The issue of financial contribution was discussed at length during the Nuremberg Tribunal, but the court produced contradictory opinions on the topic. On the one hand, in the *Ministries Case*, the Tribunal stated that:

A bank sells money or credit in the same manner as the merchandiser of any other commodity . . . . Loans or sale of commodities to be used in an unlawful enterprise may well be condemned from a moral standpoint and reflect no credit on the part of the lender or seller in either case, but the transaction can hardly be said to be a crime. Our duty is to try and punish those guilty of violating international law, and we are not prepared to state that such loans constitute a violation of that law.<sup>98</sup>

Despite this stance, two German industrialists were convicted in *Flick* because even though the prosecution could not show that any part of the money the two had donated to the Schutzstaffel ("SS") was directly used for criminal activities,<sup>99</sup> the Tribunal took it for granted that some of the money had gone into maintaining this organization:

[I]t remains clear from the evidence that each of them gave to Himmler, the Reich Leader SS, a blank check. His criminal organization was maintained and we have no doubt that some of

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91. ICJ VOL. 1, *supra* note 23, at 12; ICJ VOL. 3, *supra* note 73, at 22.

92. *Halberstam v. Welch*, 705 F.2d 472, 483-84 (D.C. Cir. 1983).

93. *Id.*

94. *Id.*

95. See *Khulumani v. Barclays Nat'l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007) (noting that in October 2008, the plaintiffs in the case decided to concentrate on the bank that had directly granted loans to the military/police South African sector; they emphasized that one of the directors of the lender bank participated in a state board that took decisions related to the implementation of domestic security measures during the apartheid).

96. See *Halberstam*, 705 F.2d at 483-84.

97. *Id.*

98. *United States v. Von Weizsaecker (The Ministries Case)*, Case No. 11, 14 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 622 (1952) (Nuernberg Mil. Trib. 1949).

99. *United States v. Flick (The Flick Case)*, Case No. 5, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 1217-23 (1952) (Nuernberg Mil. Trib. 1947).



this money went to its maintenance. It seems to be immaterial whether it was spent on salaries or for lethal gas.<sup>100</sup>

Beyond the different legal conclusions drawn in these cases, they both affirm the notion that loans can contribute to the commission of crimes. Nuremberg case law does not draw a clear line between the liability of someone who provided the financial means to make the commission of crimes possible and that of someone who committed the crimes himself.<sup>101</sup> However, it is not essential to resolve this contradiction here, as international law has developed considerably since the Nuremberg trials in its “denunciation of financing human rights abuses.”<sup>102</sup>

When analyzing these causal links, the objective must be to assess which loans actually harmed the borrower’s population in terms of *jus cogens* and to establish that this would have been foreseeable to the lenders if they had made a serious evaluation regarding the probable application of these funds. Hence, the *dolus* lies in foreseeing the effects of the loan, anticipating that it will substantially contribute to the production of the damage, looking for the profits obtained through this activity, and accepting the high probability of the occurrence of harmful consequences.<sup>103</sup> It has been said that in the context of dictatorial regimes, it should be presumed that the money borrowed will be used to support the political system and, in that way, that these funds will enable the commission of the regime’s crimes.<sup>104</sup> In some contexts, it could be argued that particular public projects benefit the population; for example, even Saddam Hussein’s palaces served a marginal social utility. However, it can also be argued that the very availability of these funds allows the government to free other funds that they can then apply to harmful purposes (i.e. military expenditures to commit the crimes)<sup>105</sup> and, moreover, that these expenditures suppress critics and thus

100. *Id.* at 1221.

101. See Sabine Michalowski & Juan Pablo Bohoslavsky, *Jus Cogens, Transitional Justice and Other Trends of the Debate on Odious Debts—A Response to the World Bank Discussion Paper on Odious Debts*, 48 COLUM. J. TRANSNAT’L L. 61 (2010).

102. Shaw W. Scott, Note, *Taking Riggs Seriously: the ATCA Case Against a Corporate Abettor of Pinochet Atrocities*, 89 MINN. L. REV. 1497, 1533 (2005) (referring to the U.S. decisions in *Doe v. Unocal*, 395 F.3d 932 (9th Cir. 2002) and *Burnett v. Al Baraka Inv. & Dev. Corp.*, 274 F. Supp. 2d 86 (S.D.N.Y. 2003) and developments in the context of international codes of conduct for transnational corporations, money-laundering and funding of terrorist activities). See also Ines Tofalo, *Overt and Hidden Accomplices: Transnational Corporations’ Range of Complicity for Human Rights Violations*, in TRANSNATIONAL CORPORATIONS AND HUMAN RIGHTS 345-46 (De Schutter ed., 2006) (referring to anti-terrorist funding laws and U.N. Security Council resolutions on asset freezing for such funding); Ramasastry, *supra* note 7, at 113 (arguing that the *Ministries* decision is outdated in that international criminal law and accomplice liability have since developed and, in any case, this decision itself should be tempered by an examination of the nature of the relationship between the financier and the criminal perpetrator and stating: “[i]f the bank or the banker provides continuous, ongoing and knowing financial support for criminal conduct in the form of loans, why should it not trigger accomplice liability?”).

103. Clapham & Jerbi, *supra* note 59, at 339.

104. Scott, *supra* note 102, at 1497.

105. ERNST H. FEILCHENFELD, PUBLIC DEBTS AND STATE SUCCESSION 707 (1931).

help to consolidate the regime.<sup>106</sup> Bearing in mind the fact that this issue has not been sufficiently settled in international law, it would be prudent to assume that even in the occasional context when a loan to a dictatorship appears to have some benefit (the so-called “good projects”), the overall support to that regime’s capacity to carry out human rights abuses could, according to the factual characteristics of each case, negate these benefits and call for some level of shared responsibility.<sup>107</sup>

The cornerstone of legal responsibility here lies in the foreseeable application of the funds borrowed by the sovereign. In other words, there would be liability for knowing that this money would contribute to the financial support of a particular state machinery through which crimes against humanity would be openly perpetrated, and yet granting the loans despite these highly probable consequences.<sup>108</sup> To establish the causal link between harmful action and civil responsibility, most legal systems require evidence that the outcome is a foreseeable consequence of this conduct and normally occurs as a result of the act. In each case it must be determined whether it is logical to expect that the loans being granted to a government that is committing crimes against humanity will substantially influence, facilitate, or give continuity to these practices. For example, one must be able to assess to what extent a government needed the loans to maintain its grip on power, whether the volume of the loans itself had an impact on the performance of the bureaucratic apparatus, and whether the loans had an effect on the military’s budget and expenditures.

Recognizing that loans to governments who perpetrate serious crimes against their own populations assist the governments in committing those crimes, two economists have presented an innovative proposal that would discourage this kind of financial support.<sup>109</sup> An international organism (e.g. the U.N. or the Organization for Co-operation and Development) would declare the character of a particular government as “odious” and, thereafter, any loan granted to it would bear this label, rendering the lend-

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106. SABINE MICHALOWSKI, UNCONSTITUTIONAL REGIMES AND THE VALIDITY OF SOVEREIGN DEBT 52-58, 82-83 (2007). More than 30 years ago, Professor Antonio Cassese addressed the issue of how economic assistance to Chile similarly helped to strengthen and maintain a dictatorial regime’s grip on power and pursuit of a policy of large-scale violations of human rights. Antonio Cassese, *Foreign Economic Assistance and Respect for Civil and Political Rights: Chile—A Case Study*, 14 TEX. INT’L L.J. 251 (1979).

107. Omri Ben-Shahar & G. Mitu Gulati, *Partially Odious Debts*, 70 J. L. & CONTEMP. PROBS. 47, 74-75 (2007).

108. *See Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685, 691-92 (7th Cir. 2008). This case made several distinctions between civil and criminal liability with regard to financing a known terrorist organization, but it resulted in a majority rule of sweeping primary liability for donors to terrorist organizations, even in cases where the said organization might have a humanitarian “arm.” The ruling states that the causation element of civil liability statute could be satisfied if defendants have donated money to a terrorist organization but there also must be a showing of deliberate disregard of the interests of others.

109. Michael Kremer & Seema Jayachandran, *Odious Debt*, 96 AM. ECON. REV. 82 (2006) (Paper presentation at the Int’l Monetary Fund Conference on Macroeconomic Policies and Poverty Reduction (Mar. 14-15, 2002)).

ing entity complicit and thus strongly discouraging it from completing the loan. In the most recent incarnation of this proposal, once the government's odious nature has been declared, further credit would be considered legitimate only if the lending body could prove the legal nature and function of its funds and applied a special due diligence to monitoring the true destination of this funding.<sup>110</sup>

Former leaders in South Africa have admitted that the impact of corporate support was beneficial in the continuation of the apartheid government. One of the country's former prime ministers, referring to the support several corporations provided to the government at that time said that "each bank loan, each new investment [was] another brick in the wall of our continued existence."<sup>111</sup> The president of the South African Reserve Bank was even more direct:

[I]f the international association of bankers should effectively shut South Africa off from the international trade and payments system, that would be a far more powerful sanctions measure than the trade restrictions which foreign governments imposed.<sup>112</sup>

Along this same vein, in 1973, the Corporate Information Center of the National Council of Churches warned that "contributions to South Africa's economic strength are indirect contributions to its military and police systems, designed to perpetuate the domestic racial helotry."<sup>113</sup>

However, the latest decision *In re South Africa Apartheid Litigation*<sup>114</sup> did not follow this line of reasoning. Following the requirements of *actus reus* and *mens rea* developed in this paper, in order to determine the meaning of "substantial effect," the *Khulumani* court referred to the inherent quality of the resources provided to the perpetrator of the crime. Without doing an empirical analysis of the concrete effect of the loans, the decision established that funds can never be sufficiently connected to the crimes, because they are not "lethal commodities."<sup>115</sup> This differentiation, which focuses on the intrinsic qualities of the goods in question rather than assessing the provisions' use and impacts, not only took a very narrow interpretation of previous developments in international law with regard to corporate complicity,

110. See Jonathan Shafer, *The Due Diligence Model: A New Approach to the Problem of Odious Debt*, 21 ETHICS & INT'L AFF. 49 (2007). See also Seema Jayachandran, Michael Kremer, & Jonathan Shafer, Presentation at the Harvard Univ. Ctr. For Int'l Dev. Blue Sky Conference: Applying the Odious Debts Doctrine While Preserving Legitimate Lending (Sept. 9, 2006).

111. Beate Klein, *Bricks in the Wall: An Update on Foreign Bank Investment in South Africa*, WORLD COUNCIL OF CHURCHES, PROGRAMME TO COMBAT RACISM (1981).

112. MASCHA MADÖRIN & GOTTFRIED WELLMER, APARTHEID-CAUSED DEBT: THE ROLE OF GERMAN AND SWISS FINANCE 32 (1999).

113. Corp. Info. Ctr., Nat'l Council of Churches, *The Frankfurt Documents: Secret Bank Loans to the South African Government*, CORP. EXAMINER 3A (1973).

114. *In re South African Apartheid Litig.*, 617 F. Supp. 2d 228, 257 (S.D.N.Y. 2009).

115. *Id.* at 258.

particularly for financing *jus cogens* violations (e.g. *Flick*<sup>116</sup> and *Almog*<sup>117</sup>) but also used a somewhat confusing rationale. On one hand, it accepted that the computers provided by IBM to the apartheid regime were “sufficiently risky” commodities in their connection to aiding in the denationalization of black South Africans, thus contributing to the State’s crimes.<sup>118</sup> Simultaneously, however, the court asserted that even lethal gas could be used in some cases for so-called legitimate purposes.<sup>119</sup> This decision, which denies that financial assistance can contribute to, facilitate, or render a campaign more effective in committing human rights abuses, represents a conservative jurisprudential turn in international practice. It also shows that the full scope of a country’s economic reality may not be taken into account when evaluating corporate responsibility for crimes. In this case, the judgment did not focus on issues such as high financial vulnerability and dependence on external capital, or the possibility that external investments could thus have substantial political impact on the country.<sup>120</sup>

Taking all of these factors into account, it seems that loans in these contexts can have a significant impact on the repressive structure of a state, whether by providing military salaries, supporting the maintenance of concentration camps, helping with the implementation of logistics, intelligence, counter intelligence, the purchase of arms and military equipment, etc.<sup>121</sup> As will be elaborated in the case study on Argentina in the next section, there is substantial evidence that loans can influence decisions. For example, the U.S. government made its military and financial aid to the Argentinean dictatorship dependent on the government’s capacity to demonstrate improvements in diminishing its human rights violations,<sup>122</sup> a rationale that manifested itself in a very concrete way.<sup>123</sup>

116. See *United States v. Flick (The Flick Case)*, Case No. 5, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN (1952) (Nuernberg Mil. Trib. 1947).

117. See *Almog v. Arab Bank*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007).

118. *In re South African Apartheid Litig.*, 617 F. Supp. 2d at 265 (arguing that “not every violation of the law of nations involves a killing, and therefore not every corporate entity that aids and abets violations of customary international law need provide a gun, a tank, or poison gas”).

119. *In re South African Apartheid Litig.*, 617 F. Supp. 2d at 259.

120. See generally KUNIBERT RAFFER & HANS WOLFGANG SINGER, *THE ECONOMIC NORTH-SOUTH DIVIDE: SIX DECADES OF UNEQUAL DEVELOPMENT* (2001).

121. See Michalowski & Bohoslavsky, *supra* note 101.

122. Letter from Raul Castro, U.S. Ambassador to Argentina, to Claus Ruser, Director, East Coast Affairs, U.S. Dep’t of State (Feb. 28, 1978).

123. Although the U.S. did not generally believe that trade sanctions could be a primary tool to promote human rights with regards to other countries, the situation in Argentina was so extreme that the Department of State declined the Export-Import Bank credit request in 1978 to buy turbines from the Allis-Chalmers Corporation for the Yacyreta hydroelectric dam. After this rejection, Videla, then-president of the Argentinean military junta, met the American vice-president at the Vatican during the coronation of John Paul II. The military junta agreed to submit to a formal visit from the Inter American Human Rights Commission in order to elaborate a report about the human rights situation, in exchange for approval of this credit. See U.S. Dep’t of State, Memorandum of Conversation: Videla-Mondale, Military Unity, Political Activity (Sept. 15, 1978), available at <http://foia.state.gov/documents/Argentina/0000AA8B.pdf>; Joe Marie Griesgraber, Implementation by the Carter Administration

The message that a decision like *Kbulumani* sends to financial institutions is not consistent with the general legal movement on corporate complicity, which increasingly asks for greater commitments from corporations in promoting human rights. Yet, as the next section briefly explores, the decision also exposes some of the enduring lack of clarity around corporate accountability in international law. By dismissing the claims against the banks, *Kbulumani* implies immunity for banks from the consequences of their actions. While it is hard to predict how other domestic and international courts will react toward the criterion adopted by this decision, it is a reaction that stands to be further affected by the current global crisis and the new duties that the international community will bear in terms of regulating bank activity. If there is little doubt that money is essential to develop projects that pollute or to finance terrorist attacks, it will not be easy to reach consensus if courts continue to deny that money is a commodity that can, on certain occasions, leverage human rights violations. What we can anticipate at this juncture is discontent among the non-financial institutions because they will bear all of the liability for complicity charges. It is reasonable to assume they will try to extend this judicial bill of indemnity to all kinds of corporations and, in a subsidiary manner, force banks to share some financial losses.

*F. Looking Ahead: Current Issues in Corporate Accountability*

Despite the paths to civil liability for corporate complicity thus far explored in this paper—and being tested globally in active litigation—the issue remains much contested throughout the academic, political, and judicial spheres. Thus, while we believe there is a legal basis and necessity for such liability, the matter has, in practice and interpretation, certainly not become a foregone conclusion.

There are several identifiable factors that contribute to this lack of clarity, including the fact that, due to the primacy rationale of the sovereign nation-state system, the corporation has not yet reached indisputable “subject” status in international law. Furthermore, there are no clear, enforceable regulatory standards or international mechanisms for addressing corporate behavior generally, and jurisprudence on this issue has been mixed and often contradictory. Although many of these issues are beyond the scope of this paper, we seek to briefly explore these issues so as to paint a comprehensive picture of the field as it stands today and a realistic assessment of what the legal regime surrounding corporate complicity may look like going forward.

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of Human Rights Legislation Affecting Latin America 227 (Aug. 1983) (unpublished Ph.D. dissertation, Georgetown University) (on file with author); LARS SCHOULTZ, HUMAN RIGHTS AND UNITED STATES POLICY TOWARDS LATIN AMERICA 311 (1981); KATHRYN SIKKINK, MIXED SIGNALS: HUMAN RIGHTS POLICY AND LATIN AMERICA 133 (2004).

First, there is a lack of clear accountability mechanisms and legal status for non-state actors because they have not attained the full “international personality” required to be subject to these global laws:<sup>124</sup>

A critical unresolved question confronting contemporary international legal scholars and practitioners centers on the extent to which other actors in the international sphere, besides states and intergovernment[al] organizations, possess international legal personality . . . . Many jurists, scholars, and commentators have questioned the conclusion that the extension of international legal personality to corporations is an established fact.<sup>125</sup>

Thus, while many corporations actually exceed the wealth of nations,<sup>126</sup> to some extent they remain unaffected by the laws of nations and principles of sovereign obligations to citizens, the environment, and other states. International law has not integrated the corporation into the same kind of systemic regulatory structure that binds nations with regards to obligations<sup>127</sup> to protect their citizens from violations.<sup>128</sup> At the same time, however, corporations have standing in international law—corporations have the right to sue under law for such matters as intellectual property rights, free speech, and due process. According to those who argue that stronger accountability for corporate complicity is necessary, this duality has produced a system in which “human rights victims’ remedies still generally pale in comparison to the strong remedies available to investors.”<sup>129</sup>

As a result, it is argued that corporations today enjoy a variety of protections and access to justice that are not available to human rights victims.<sup>130</sup> “Unlike most human rights victims or environmental damage claimants, private foreign investors can appear directly against sovereign nations in international tribunals, bypass normal procedural obstacles such as foreign

124. J.W. Pitts III, *Corporate Social Responsibility: Current Status and Future Evolution*, 6 RUTGERS J. L. & PUB. POL’Y 348, 361 (2009).

125. Emeka Duruigbo, *Corporate Accountability and Liability for International Human Rights Abuses: Recent Changes and Recurring Challenges*, 6 NW. J. INT’L HUM. RTS. 222, 227-40 (2008).

126. For example, in 2005, all of the Fortune 500 companies (the world’s largest corporations) had revenues that exceeded the GDP of countries such as Jordan and Jamaica. See Janet Guyon, *The Fortune Global 500*, FORTUNE, July 25, 2005, available at [http://money.cnn.com/magazines/fortune/fortune\\_archive/2005/07/25/8266629/index.htm](http://money.cnn.com/magazines/fortune/fortune_archive/2005/07/25/8266629/index.htm). This disparity has granted corporations enormous power where they operate locally and have tremendous leverage with the government in terms of operational standards. See Allison D. Garrett, *The Corporation as Sovereign*, 60 ME. L. REV. 130, 147 (2008).

127. See generally MUCHLINSKI, *supra* note 17, at 514.

128. For a detailed account of documented human rights violations committed by businesses over the last decade, see Ctr. for Human Rights & Global Justice & Human Rights Watch, *On the Margins of Profit*, Feb. 18, 2008.

129. Pitts III, *supra* note 124, at 348.

130. In the authors’ view, this imbalance is more a by-product of a faulty evolution in corporate accountability than a validation of the primacy of the rights of corporate entities. We have argued precisely that the legal structures to hold corporations liable for complicity do in fact exist and should be further developed to prevent corporations from enjoying impunity when they contribute to human rights abuses.

sovereign immunity and the act of state doctrine, make treaty based claims, and obtain damages for any treaty violations found.”<sup>131</sup> However, the fact that the perfect regulatory structure has not yet developed should not be misinterpreted as a legal exemption for corporations. Rather, it points to the need for increased clarity and stronger legal sanctions going forward.

Corporations have generally been held to few globally recognized regulatory standards, allowing them to set their own internal rules for labor standards, security conditions, environmental impact, and a range of other factors.<sup>132</sup> Corporations have operated on the basis of a “private law unification—a sort of commercial *lex mercatoria* (“law of merchants”) presaging the more environmentally sensitive and rights-based CSR *lex mercatoria* that also emerged during the 20th century.”<sup>133</sup> While this *lex mercatoria* traditionally dealt with regulating trade practices among corporations, there has been a global push for creating a new *lex mercatoria* that surpasses the merely commercial aspects of regulation to include principles of corporate social responsibility (“CSR”). Advocates for this shift are working to change the conception that “corporations are wholly private actors subject only to local and national law with rights but no duties under what might be termed emergent customary global law.”<sup>134</sup>

*Soft law* in this field seems to reflect some degree of accord about the need for clarifying rights and duties.<sup>135</sup> This is evident in the advent of recent proactive corporate efforts to “do good” or at least minimize their harms by contributing to the welfare of the local environment or population in which they operate.<sup>136</sup> The so-called “Equator Principles” implemented by banks are a good example of this internal attempt to create common standards.<sup>137</sup> However, because participation in CSR is voluntary, it is still possible that corporations may contribute to the abuse of human rights. Human rights advocates argue that codes of conduct do not usually suffi-

131. Pitts III, *supra* note 124, at 347.

132. MUCHLINSKI, *supra* note 17, at 81.

133. Pitts III, *supra* note 124, at 348.

134. *Id.* at 359.

135. See Special Representative of the Secretary-General, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie: *Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts*, delivered to the Human Rights Council, at 61, U.N. Doc. A/HRC/4/35 (Feb. 9, 2007).

136. For example, in 2007 the Coca-Cola Corporation’s South Africa branch partnered with UNAIDS to aggressively promote and make available safe sex education, condoms, and health care to the general population. While the corporation was clearly not the cause of the AIDS epidemic in that country, the corporation nonetheless saw that its own operations were deeply intertwined with the health of its labor pool and took the proactive step to protect it. This notion of ‘doing good’ as a corporation has slowly evolved alongside global criticism of the harms caused by corporations. See Pitts III, *supra* note 124, at 368.

137. ‘The Equator Principles’: A Financial Industry Benchmark for Determining, Assessing and Managing Social & Environmental Risk in Project Financing, July 2006, available at [http://www.equator-principles.com/documents/Equator\\_Principles.pdf](http://www.equator-principles.com/documents/Equator_Principles.pdf). See Ryan Christopher Hansen, *The Impact of the Equator Principles on Lender Liability: Risks of Responsible Lending*, (Nov. 2006) (LL.M. Dissertation, London Sch. of Econ. & Political Sci.), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=948228](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=948228).

ciently delineate corporations' obligations from the human rights perspective; the voluntary nature of CSR means there is no enforceability. This fact conspires against the declaimed goals of those codes, despite the fact that from a public relations stand-point, many companies seek to look as if they are being "responsible."<sup>138</sup> The bottom line is that most companies give absolute priority to their shareholders' interests and bow to corporate responsibility standards when convenient from a public relations perspective, which impacts profitability. For example, Shell has had a much-publicized CSR campaign and was one of the pioneers in the so called *triple bottom line* (people, planet, profit), but it was, at the same time, involved in financing crimes in Nigeria, as we will see below.<sup>139</sup>

Liability for corporate complicity risks trivializing human rights if corporations are allowed to claim a lack of direct human rights obligations,<sup>140</sup> and there is a shortage of tools for enforcing human rights standards even in the limited "state-centered" regime.<sup>141</sup> In order to prevent corporate abuses and complicity with abusive actors and to hold corporations responsible for playing a role both on the procedural level and in material terms, realistic and efficient mechanisms must be developed.<sup>142</sup> One measure to achieve this end, for example, could be to systematically assess the costs and impact that ATCA case law or voluntary codes have had in preventing corporate complicity with rights violations to date.

The Optional Protocol ("OP") to the International Covenant on Economic, Social, and Cultural Rights ("ESCR") is one attempt to tackle the limitations of sovereignty and enforceability.<sup>143</sup> The OP will:

[P]rovide victims of economic, social and cultural rights violations who are not able to get an effective remedy in their domestic legal system with redress at the international level. It is the result of several decades of work by governments, civil society, human rights experts and the UN human rights bodies to remedy a long-term gap in human rights protection under the international system. It has appropriately been described by Louise Arbour, the previous High Commissioner for Human Rights as "human rights made whole."<sup>144</sup>

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138. See MCBARET ET AL., *THE NEW CORPORATE ACCOUNTABILITY: CORPORATE SOCIAL RESPONSIBILITY AND THE LAW* (2007).

139. See Meghan Conley, Presentation at the Annual Meeting of the Int'l Commc'ns Ass'n: "Profits and Principles": Discourse Analysis and Shell Oil's "Living the Values" Campaign (May 25, 2009), available at [http://www.allacademic.com/meta/p14070\\_index.html](http://www.allacademic.com/meta/p14070_index.html).

140. See ANDREW CLAPHAM, *HUMAN RIGHTS OBLIGATIONS OF NON STATE ACTORS* 33-35 (1st ed. 2006).

141. See Centre Europe Tiers Monde, *The Activities of Transnational Corporations: The Need for a Legal Framework*, [http://www.cetim.ch/en/dossier\\_stnbroch01texte.php](http://www.cetim.ch/en/dossier_stnbroch01texte.php) (last visited Nov. 20, 2009).

142. Duruigbo, *supra* note 125, at 227-40.

143. See G.A. Res. A/HRC/8/7, U.N. GAOR, 8th Sess., U.N. Doc. A/HRC/8/7\* (May 23, 2008).

144. Press Release, NGO Coalition for an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, NGOs Celebrate Historic Adoption of Optional Protocol for



On September 24, 2009, the OP was opened for signature at a public ceremony at UN headquarters.<sup>145</sup> Once operationalized, it will enable individuals and groups whose economic, social and cultural rights have been violated and who have been denied a remedy in their countries to seek justice internationally by endowing the Committee on ESCR with the competence to review and investigate claims.<sup>146</sup> The OP also aims to influence judicial decisions at the national and regional levels by creating more opportunities for people to advocate for the enforcement of economic, social, and cultural rights within their own countries.<sup>147</sup> Much of the impetus behind this mechanism came from growing acknowledgment of the failure of the international legal system to protect individuals from abuses committed by corporations and the need to create a structure capable of superseding national boundaries.

Another primary goal is to strengthen domestic and regional jurisprudence on these issues, acknowledging that so far it has been both weak and confusing.<sup>148</sup> Jurisprudence to date has shown mixed interpretations of the limits and definitions of corporate responsibility with regards to human rights, resulting in both confusion and controversy, particularly in the case of financial institutions or investors.<sup>149</sup> This fact stems in part from the lack of substantive and systematic technical studies clarifying how commodities, particularly money, may lead to corporate complicity in the commission of crimes. It also reflects the fact that the field is relatively young and divided in terms of grappling with these issues in a consistent manner.

Recent decisions on corporate complicity for human rights violations have produced mixed results. For example, the recent case of *Wiwa v. Shell* (2009),<sup>150</sup> which was initiated on the accusation that the Shell corporation in Nigeria had been complicit in brutal human rights violations—by directly funding the Nigerian military to suppress civilians living in Shell's operational zone—reached closure through an out of court settlement. This

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Economic, Social and Cultural Rights at the United Nations (Dec. 10, 2008) (available at <http://www.opiescr-coalition.org/PressReleaseDecember10.pdf>).

145. As of September 29, 2009, 30 states had ratified the OP and only ten ratifications by State parties to the Convention on Economic, Social and Cultural Rights were required to activate it. See ESCR-NET, <http://www.escr-net.org> (last visited Nov. 20, 2009).

146. See U.N. GAOR, 63d Sess., U.N. Doc. A/RES/63/117 (Dec. 10, 2008).

147. *Id.*

148. See *Optional Protocol to the International Covenant on Economic, Social & Cultural Rights*, RIGHT TO EDUCATION PROJECT, available at <http://www.right-to-education.org/node/571>.

149. See *Boim v. Holy Land Foundation for Relief and Development*, 549 F.3d 685 (7th Cir. 2008); *Khulumani v. Barclays Nat'l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007); *Almog v. Arab Bank*, 471 F. Supp. 2d 257 (E.D.N.Y. 2007); *Mastafa v. Australian Wheat Bd. Ltd.*, No. 07 Civ. 7955 (S.D.N.Y. Sept. 25, 2008); *United States v. Von Weizsaecker (The Ministries Case)*, Case No. 11, 14 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN (1952) (Nuernberg Mil. Trib. 1949); *United States v. Flick (The Flick Case)*, Case No. 5, 6 TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. TEN 3 (1952) (Nuernberg Mil. Trib. 1947).

150. See generally *Complaint, Wiwa v. Royal Dutch Petroleum Co.*, No. 96 Civ. 8386 (S.D.N.Y. Nov. 8, 1996).

settlement may have implicitly acknowledged Shell's role in contributing to violations against the nine plaintiffs, but it also kept issues around the Shell violations in the region from receiving formal legal treatment, which could have strengthened jurisprudence around matters of funding human rights violations.<sup>151</sup>

In *Kbulumani v. Barclays*, the U.S. Second Circuit decided in October 2007 that there could be liability for corporations who aid and abet the perpetration of gross human rights abuses and that the case was, as such, permissible under the ATCA.<sup>152</sup> The case was originally brought against twenty-three corporate defendants who did business with, and profited from, the South African Apartheid regime. The Circuit Court in *Kbulumani* ultimately ruled in favor of the plaintiff, but a recent 2009 decision narrowed the scope of the case by dismissing claims against Barclays National Bank for loaning money and backing the purchase of South African defense forces bonds.<sup>153</sup>

The *Kbulumani* case exposes two important issues that have received little attention from scholars: the double standard that courts have applied to judge financial institutions versus other types of corporations, and the challenge of determining the boundaries for corporate accountability, particularly financial investments. *Kbulumani* indicates that there may be more protection for financial contributors than to providers of other commodities (such as IBM computers). It also points to the fact that, even if it is recognized that corporations can be held accountable for complicity,<sup>154</sup> there remains confusion about the scope of this responsibility and its broader implications. For example, one question that may arise is if investors bear secondary responsibility for human rights violations committed using funds they have provided, what does this imply for governments who do business with abusive regimes and to what extent can or should every money trail be followed to its conclusion to imply complicity? Is it necessary to develop entirely new procedural criteria to interpret the facts in cases alleging complicity, or do the existing legal tools provide a sufficient framework?

Judge Sprizzo, the former judge in the *Kbulumani* case, stated that doing business with a country that perpetrates human rights abuses does not represent a violation of the law of nations, because aiding and abetting liability do not serve as a legitimate basis for the ATCA.<sup>155</sup> Judge Scheinlin, who took over the case after Judge Sprizzo, opted to set a different limit on

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151. See Press Release, Ctr. for Constitutional Rights, Settlement Reached in Human Rights Cases Against Royal Dutch Shell (June 8, 2009), available at <http://ccrjustice.org/newsroom/press-releases/settlement-reached-human-rights-cases-against-royal-dutch/shell>.

152. *Kbulumani v. Barclays Nat'l Bank Ltd.*, 504 F.3d 254 (2d Cir. 2007); *In re South African Apartheid Litigation*, 617 F. Supp. 2d 228, 244 (S.D.N.Y. 2009).

153. *In re South African Apartheid Litigation*, 617 F. Supp. 2d 228, 260-62 (S.D.N.Y. 2009).

154. See generally Kristen Hutchens, *International Law in the American Courts—Kbulumani v. Barclay National Bank Ltd.: The Decision Heard Round the Corporate World*, 9 GERMAN L. J. 667 (2009).

155. *In re South African Apartheid Litig.*, 346 F. Supp. 2d 228, 244 (S.D.N.Y. 2004).

the extent to which liability could be pursued for financial institutions in South Africa by dismissing the claims against Barclays Bank PLC (for denying job opportunities on the basis of race) and both Barclays Bank PLC and UBS for loaning money to the South African government and backing the purchase of South African defense forces bonds, drawing a distinction between the provision of goods specifically designed to kill, such as the poison gas used in the Nazi concentration camps, and the more general sale of raw materials or the provisions of loans.<sup>156</sup> It is worth noting that in this decision computers and software were held to be lethal.<sup>157</sup>

In contrast, in 2007, judges from the Eastern District of New York declared exactly the opposite in *Almog v. Arab Bank*,<sup>158</sup> when they allowed the plaintiffs to claim liability for human rights violations by a financial institution. In *Almog*, the plaintiffs alleged that Arab Bank “aided and abetted, was complicit in, intentionally facilitated, and participated in a joint venture to engage in acts of genocide in violation of the laws of nations by providing financial and other practical assistance . . . to HAMAS . . . .”<sup>159</sup> On September 11, 2009, the company TIAA-CREF made public its voluntary decision to withdraw all of its financial investments in the Africa-Israel company in response to widely publicized reports about the company’s human rights abuses in the diamond industries of Angola and Namibia and its support of Israeli settlements being built in the West Bank.<sup>160</sup>

The issue of corporate complicity is one that is constantly being refined both in theory and in practice. In particular, the publication of the hugely influential 2007 *Ruggie Report* strengthened the assertion that there are some minimum international and domestic obligations that affect corporations.<sup>161</sup> It remains to be seen whether this trend is likely to tilt toward honoring those responsibilities. The purpose of this paper is to provide the type of concrete and empirical analysis we believe should be undertaken in order to endow substance and viability to the emerging legal theories and practice pushing the evolution of responsibility for corporate complicity.<sup>162</sup> Since private law has long been working on this issue,<sup>163</sup> we think it would also be useful to look at the development of tort law in this area in order to

156. *In re South African Apartheid Litig.*, 617 F. Supp. 2d at 258 (S.D.N.Y. 2009).

157. *Id.* at 265.

158. *Almog v. Arab Bank*, 471 F. Supp. 2d at 257 (E.D.N.Y. 2007).

159. *Id.* at 265.

160. See Press Release, TIAA-CREF, Statement About Former Holding In Africa-Israel Investments Ltd. (Sept. 14, 2009), available at [http://www.tiaa-cref.org/support/news/articles/gen0909\\_185.html](http://www.tiaa-cref.org/support/news/articles/gen0909_185.html).

161. See Kendra Magraw, *Not Universally Liable? Corporate-Complicity Liability under the Principle of Universal Jurisdiction*, 18 MINN. J. INT’L L. 458 (2009).

162. “The doctrine of international law should take into consideration the realities of international relations and should be in a precise relation to these realities. Otherwise, the doctrine becomes mere philosophical speculation or mental gymnastics, often beautiful and admirable, but of inconsequential value to a jurist.” Marek St. Korowicz, *The Problem of the International Personality of Individuals*, 50 AM. J. INT’L L. 533, 561 (1956).

163. Buyle, *supra* note 56; Likillimba, *supra* note 53.

improve our understanding of the factual mechanisms that link the commodity to the damage being claimed.

We argue, using the example of the Argentinean experience, that the link between human rights violations and the profiteers of the system that facilitated the abuses bolsters the call for clear legal standards and penalties for corporate complicity. While some may argue that this is an *ex-post facto* case that both preceded the evolution of international law and would have reached a statute of limitations, we posit that the Argentinean case is, in fact, legally relevant and very much alive today. As the next section will argue, a case recently filed in Buenos Aires against the banks could significantly bolster international legal jurisprudence on the issue of corporate complicity, contribute to understanding international law from a historical perspective, and also deliver some long overdue accountability.

## II. THE ARGENTINEAN CASE

In this section, the legal theory of civil complicity developed in the first section of the paper will be applied to, and combined with, an empirical analysis of the behavior of the banks during the last dictatorship in Argentina. The relevance and timing of this exercise is no accident. This exploration of bank accountability comes at a time in Argentina's history when criminal trials against the former dictators have been revived, with renewed interest in questioning how the dictatorship functioned. Hopefully, examining the role of external financial actors will not only help provide a more complete picture of accountability for this era of abuses but will also contribute to the development of international and national corporate complicity law, particularly laws pertaining specifically to lending, which would ultimately have a deterrent effect.

### A. *The Basic Economic Facts of the Military Junta*

Between 1976 and 1982 the Argentinean military junta perpetrated thousands of crimes against humanity, violating *jus cogens* norms through their systematic use of arbitrary detention, enforced disappearances, torture, and extrajudicial executions.<sup>164</sup> The nature of these crimes led the Argentinean Supreme Court to declare that criminal liability could be imposed against the former dictators and that the actions of the government could not be renounced.<sup>165</sup> It is partially due to this determination by the Argen-

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164. Nunca Más [Never Again], Report of Conadep [Nat'l Comm'n on the Disappearance of Persons], [http://web.archive.org/web/20030803004404/nuncamas.org/english/library/nevagain/nevagain\\_000.htm](http://web.archive.org/web/20030803004404/nuncamas.org/english/library/nevagain/nevagain_000.htm) (last visited Nov. 20, 2009) [hereinafter Conadep Report].

165. Corte Suprema de Justicia [CSJN] [Supreme Court of Justice], 17/2/2009, "Etchecolatz, Miguel Osvaldo/ recurso extraordinario," (Arg.), available at <http://www.cij.gov.ar/adj/pdfs/ADJ-0.288435001237979621.pdf>; Corte Suprema de Justicia [CSJN], 13/7/2007, "Mazzeo, Julio Lilo y otros/ rec. de casación e inconstitucionalidad," Fallos (2007-330-3285) (Arg.); Corte Suprema de Justicia [CSJN], 14/6/2005, "Julio Hector Simon y otros/ privación ilegítima de la libertad," Fallos (2005-328-2172)

tinean Supreme Court that these proceedings are still ongoing decades after the offenses were allegedly committed.

During the Argentinean dictatorship, the country's level of debt skyrocketed.<sup>166</sup> The loans were fundamentally granted by syndicates of U.S. and European commercial banks, although Canadian, Arab, and Soviet banks, and even international financial institutions also participated, although in a smaller manner: in 1983 the debt to the commercial banks and its syndicates was U.S.\$20.526 billion, without including the public bonds (U.S.\$6.830 billion) that some of the banks could have held.<sup>167</sup>

In order to assess whether the bank loans could have made possible, made easier, or rendered more efficient the commission of human rights violations, it is necessary to analyze the political and economic circumstances of the Argentinean state during the period in which such violations were committed. It is also necessary to look at the concrete behavior of the banks, the way in which the state spent these funds in the military sector, the available information about the crimes, and the conduct of the U.S. government.

#### *B. The Economic Context of the Military Regime and the Necessity of Financial Assistance*

To different degrees, developing countries have presented a permanent dependency on external capital since their abrupt ingress into international financial markets during the 1970s. Massive sovereign moratoriums of the early 1980s and the financial crises of the 1990s demonstrate this economic vulnerability and external financial dependency.<sup>168</sup> These factors help give capital markets a strong influence over the operation of these developing countries' governments.

Concern over the economic vulnerability of developing countries was made evident as early as the Bretton Woods Conferences. This concern became even more evident following the deterioration of the terms of trade in the 1970s, which affected the primary commodities exporter countries, pushing them toward greater financial instability.<sup>169</sup> Argentina added to this general trade phenomenon (which had begun prior to the military

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(Arg.). See Corte Suprema de Justicia [CSJN], 24/8/2004, "Arancibia Clavel, Enrique Lautaro/ homicidio calificado y asociación ilícita y otros," Fallos (2004-327 3304) (Arg.).

166. See, e.g., U.N. ECON. COMM'N FOR LATIN AM. & THE CARIBBEAN, ESTUDIO ECONÓMICO DE AMÉRICA LATINA Y EL CARIBE-1984, at 79, U.N. Doc. LC/G.1398, U.N. Sales No. 86.II.G.2 (1986); ALDO FERRER, ¿PUEDE ARGENTINA PAGAR SU DEUDA EXTERNA? 54, 63 (El Cid ed., 1982).

167. U.N. Econ. Comm'n for Latin Am. & the Caribbean, *Los Bancos Transnacionales y el Endudamiento Externo en la Argentina*, at 24, U.N. Doc. LC/G.1483-P (Oct. 31, 1987) (prepared by Eric Calcagno).

168. See generally EDUARDO BORENSZTEIN, *LIVING WITH DEBT: HOW TO LIMIT THE RISKS OF SOVEREIGN FINANCE: ECONOMIC AND SOCIAL PROGRESS IN LATIN AMERICA* (2006); NOURIEL ROUBINI & BRAD SETSER, *BAILOUTS OR BAIL-INS? RESPONDING TO FINANCIAL CRISES IN EMERGING ECONOMIES* (2006).

169. See generally RAFFER & SINGER, *supra* note 120.

coup) additional external debt which, as we will see, also provoked greater external financial dependency.

Between 1976 and 1982, Argentina received enormous funds from commercial banks based in developed countries.<sup>170</sup> The derivation of this mass of money has been attributed to the way in which the Euromarket expanded and to the recycling of petrodollars.<sup>171</sup> It can be argued that the banks implemented policies of loan pushing, granting loans to states that did not have the economic capacity to repay these funds<sup>172</sup> and who used public resources to repress their own populations.

In Argentina, these loans were used to support an economic policy that was typically monetarist and included wide economic and financial liberalization, elimination of tariff protections, high domestic rates, and overvaluation of the national currency through precise official measures.<sup>173</sup> In this general scheme, external finance played a key role in the state's economic development and political reality.

This financial dependency was more extreme if we look at how the military government, steeped in an economic policy of assigning internal resources according to the signal of the prices derived from the international market, adopted a system of adjusting internal prices in relation to international ones,<sup>174</sup> which promoted the "dollarization" of the economy. In the face of the demand for dollars in the domestic market and the inefficiency of the country's system of external trade, the state slipped deeper into debt. These dollars were injected into the domestic market at an inferior value, a mechanism implemented through a system known as "the little table," a system that periodically determined the exchange rate.<sup>175</sup> During the first few years through which this system was implemented, 1976 to 1979, funds swelled the international reserves,<sup>176</sup> fed the capital flight circuit,<sup>177</sup> and often were deposited into the same banks from which the funds had been acquired as loans.<sup>178</sup> In this way, the impact of the bank loans on

170. See Eduardo Basualdo, *La Reestructuración de la Economía Argentina Durante las Últimas Décadas: De la Sustitución de Importaciones a la Valorización Financiera*, in NEOLIBERALISMO Y SECTORES DOMINANTES. TENDENCIAS GLOBALES Y EXPERIENCIAS NACIONALES (Eduardo Basualdo & Enrique Arceo eds., 2006).

171. RAFFER & SINGER, *supra* note 120, at 120.

172. See generally WILLIAM DARITY, JR. & BOBBIE L. HORN, THE LOAN PUSHERS. THE ROLE OF COMMERCIAL BANKS IN THE INTERNATIONAL DEBT CRISIS (1988); Cynthia C. Lichtenstein, *The U.S. Response to the International Debt Crisis: The International Lending Supervision Act 1983*, 25 VA. J. INT'L L. 401 (1985).

173. See generally JORGE SCHVARZER, ARGENTINA 1976-81: EL ENDEUDAMIENTO EXTERNO COMO PIVOTE DE LA ESPECULACION FINANCIERA 12 (1983).

174. ALDO FERRER, ¿PUEDE ARGENTINA PAGAR SU DEUDA EXTERNA? 53 (El Cid ed., 1982).

175. See SCHVARZER, *supra* note 173.

176. FERRER, *supra* note 174, at 62.

177. World Bank, *World Development Report 1985* (May 24, 1985).

178. For a thorough explanation of private sector behavior during this period, see generally Eduardo Basualdo, *La Reestructuración de la Economía Argentina Durante las Últimas Décadas: De la Sustitución de Importaciones a la Valorización Financiera*, in NEOLIBERALISMO Y SECTORES DOMINANTES. TENDENCIAS GLOBALES Y EXPERIENCIAS NACIONALES (Eduardo Basualdo & Enrique Arceo eds., 2006);

Argentina can be visualized from two perspectives, one general and macroeconomic and the other more specific to the military expenditures associated with the repression.

In order to grasp the significance of the volume of loans that Argentina received, it is necessary to keep in mind that the total expenditures of the public sector represented more than a quarter of the GDP during the whole period of the dictatorship (from 25.05% in 1976 to 28.38% in 1982).<sup>179</sup> During this time, public expenditure was growing:

Results on the public sector<sup>180</sup>  
(in thousands of dollars)

	Incomes	Expenditures
1975	4,587,700	7,418,788
1976	8,242,294	11,682,397
1977	16,400,397	18,731,123
1978	23,872,867	28,081,505
1979	35,570,706	42,942,564
1980	54,912,860	67,260,035
1981	31,288,550	43,947,663
1982	13,361,217	19,666,174

It should be noted that from 1976 to 1983 the internal demand and the industrial activity in Argentina continued to decrease—they had begun falling even before 1976<sup>181</sup>—provoking a negative evolution of the GDP.<sup>182</sup> It is not surprising then that the average fiscal deficit from 1976 to 1980 was 7.4% of the GDP; from 1981 to 1983, during which the Malvinas War occurred, this percentage increased to 14.6% of the GDP.<sup>183</sup>

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Eduardo Basualdo & Matías Kulfas, Presentation at *La Globalización Económica-Financiera y el Impacto en la Región, Las Estrategias de Regulación y las Respuestas Sociales y Políticas del Movimiento Popular: Fuga de Capitales y Endeudamiento Externo en la Argentina* (Jan. 1, 2000).

179. ORLANDO J. FERRERES, *DOS SIGLOS DE ECONOMÍA ARGENTINA (1810-2004): HISTORIA ARGENTINA EN CIFRAS* 513 (2005).

180. The public sector comprises the central administration, decentralized organisms, social security systems, public enterprises, fiduciary funds, other entities, states and counties. *Id.* at 517.

181. Industrial activity represented 27.8% of the GDP in 1975, and 22.3% in 1982. ERNESTO FELDMAN & JUAN SOMMER, *CRISIS FINANCIERA Y ENDEUDAMIENTO EXTERNO EN ARGENTINA* 114 (1984).

182. The level of global activity in 1982 was 1.3% lower than 1975. *Id.* at 115; FERRER, *supra* note 174, at 93.

183. M. Damil & R. Frenkel, *Restauración Democrática y Política Económica: Argentina 1984-1991*, in *LA POLÍTICA ECONÓMICA EN LA TRANSICIÓN A LA DEMOCRACIA: LECCIONES DE ARGENTINA, BOLIVIA, CHILE Y URUGUAY* 85 (Morales & McMahon eds., 1993).

Considering that these macroeconomic variables deteriorated significantly, the external banking support seems to have been key to the survival of the country's economic and financial systems. In general, the notion that investment leads to democratic spillover effects such as economic growth, increased work force, and improved education in countries where there are massive human rights abuses has been a controversial issue.<sup>184</sup> However, in the case of Argentina, where the GDP experienced a "devolution" during the dictatorship, this discussion becomes even more abstract because the loans did not contribute to significant economic growth. Rather, they arguably subsidized a non-viable monetarist policy in the context of an economic recession.<sup>185</sup> This kind of fiscal deficit and the deceleration of real economic activity can ruin a nation's economic system, whether through budgetary adjustments or debt moratoriums, given all the domestic political and social costs that these imply. As illustrated below, the external debt of Argentina increased during the years in which the country was ruled by the military dictatorship:

The evolution of external debt<sup>186</sup>  
(In billions of dollars)

	Public external debt	Private external debt	Total external debt
1975	4.021	3.854	7.875
1976	5.189	3.090	8.279
1977	6.044	3.635	9.279
1978	8.357	4.139	12.496
1979	9.960	9.074	19.034
1980	14.459	12.703	27.162
1981	20.024	15.647	35.671
1982	26.341	14.362	40.703

External financing seems to have been vital to the temporary sustenance of this monetarist system which, at a very high economic cost, facilitated the maintenance of the financial system's stability, provided liquidity to the government, and helped to curb the claims of several domestic economic players, which had been steadily increasing over the years. At the same

184. See generally AMNESTY INT'L, HUMAN RIGHTS, TRADE AND INVESTMENT MATTERS (2006), available at <http://www.amnestyusa.org/business/HRTradeInvestmentMatters.pdf>.

185. See Tofalo, *supra* note 102.

186. On data from IMF & BAI, see FERRER, *supra* note 174, at 54, 63.



time, this financing allowed the government to meet the financial demands of operating the state apparatus.

Because of these numbers, it is important to ask the hypothetical questions pertaining to the management of a national economy. Economic experts have observed that, prior to the increase in the external indebtedness of Argentina, it would have been difficult to maintain the financial policy implemented by the military junta.<sup>187</sup> At the same time, even if this financial policy had been maintained and if, in addition to external borrowing, other sources had been available to provide financial support to the state, the reserves still would not have been enough and the crisis of the external sector would have likely exploded earlier. Under another scenario, if a stricter monetary policy had been implemented and it had not been turned to the external public indebtedness, the interest rates would have climbed to unforeseeable limits, which would also have sped up the crisis of the policy carried on since 1977.

It is difficult to speculate about the consequences Argentina might have faced in terms of democratization had the economy collapsed earlier, but this is linked to a broader discussion related to the goals and efficacies of international economic sanctions against criminal regimes.<sup>188</sup> It is reasonable to assume that eroding some economic ratios of a country ruled by a military government helps to limit both its operational capacities to carry out its criminal plans and some of the social domestic legitimacy that it can enjoy.

One must ask whether the dictatorship would have been able to pump money into the military without funds from foreign institutions. This kind of question has a limited legal effect in terms of causal links,<sup>189</sup> but given that the secondary market was not yet well developed, the domestic Argentinean savings rate was negatively affected by the economic crisis, and the U.S. was reluctant to provide financing to Argentina, it is highly probable that the junta would have faced significant obstacles in obtaining these funds through other means. In fact, the relevance of private financial support to Argentina was explicitly mentioned in a document approved by a then-high ranking U.S. State Department official:

The Argentine strategy for relations with the U.S. has been based on the following assumptions . . . . Argentina can survive U.S. hostility because of access to alternate suppliers of military aid

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187. *Id.* at 154.

188. See *Hearings to Examine Issues Involved in and Proposals Regarding the use of Economic Sanctions as an Instrument of U.S. Foreign Policy Before the S. Task Force on Economic Sanctions*, 105th Cong. (1998) (testimony of Kenneth Roth, Exec. Dir., Human Rights Watch).

189. “[I]t is not a defense to criminal or civil liability that another company would have worked with the principal actor if the company in question had not done so. By enabling, exacerbating, or facilitating gross human rights abuses committed by the principal actor, the company may have inserted itself in the chain of causation and must accept the consequences.” ICJ Vol. 1, *supra* note 23, at 17.

and economic and financial opportunities . . . . Negative IFI votes are a political embarrassment to Argentina, but such votes do not block access to critical financing. The Videla government's economic success in the external sector has ensured the availability of financial opportunities from a variety of foreign sources.<sup>190</sup>

The increment of the interest rates and the reduction of liquidity in the international financial markets unchained a global crisis starting in 1982 onward, creating a situation in which banks stopped lending more money to sovereign borrowers, including Argentina.<sup>191</sup> Alongside other political facts, the beginning of the transition to democracy was connected to the outbreak of the so-called debt crisis and the collapse of the Argentinean economy. This collapse led to the destruction of any remnants of the social support base that the dictatorship still enjoyed and resulted in massive bankruptcies of domestic companies and the widespread dismissal of workers.<sup>192</sup> This shows that, even when other factors influence the evolution of this kind of political phenomenon, large-scale financial aid plays a pivotal role in facilitating or hampering the state's ability to implement its plans.

As previously stated, even when other economic, political and social variables factor into government decisions, there seems to be a co-causal nexus between the decision to grant a loan and what the government borrower does with this money, which indicates the strength of the connection between lending and the endurance of *de facto* legitimacy.<sup>193</sup> As members of the U.S. Congress pointed out when analyzing the role of the Riggs Bank in financing Pinochet's government: "[H]istory has shown that financing is key to terrorism, corruption, and other criminal acts."<sup>194</sup>

### C. Bank Loans and Domestic Military Expenditures of the Dictatorship

Bank loans can have a direct impact on the concrete criminal activities of the borrower state; the massive provision of cash flow enables and/or improves the otherwise regular functioning of the bureaucratic state structure, which includes all military and repressive logistics. In the case of Argentina, these loans helped to encourage a policy of growing military expenditures<sup>195</sup> that, in the first (and bloodiest) years of the dictatorship, were not

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190. U.S. Dep't of State: Evolution of U.S. Human Rights Policy in Argentina 5, 8 (Sept. 11, 1978) (unclassified draft memorandum), available at <http://foia.state.gov/documents/Argentina/0000AA65.pdf>.

191. See RAFFER & SINGER, *supra* note 120, at 160-61.

192. See *id.* at 115-16.

193. See *id.* at 38.

194. MINORITY STAFF OF PERMANENT SUBCOMM. ON INVESTIGATIONS OF THE S. COMM. ON GOVERNMENTAL AFFAIRS, 108TH CONG., MONEY LAUNDERING AND FOREIGN CORRUPTION: ENFORCEMENT AND EFFECTIVENESS OF THE PATRIOT ACT (Comm. Print 2004).

195. These expenditures comprise the direct costs of the external defense service and include, among other things, those areas that seem to be most closely related to the repression of the population:

associated with a “real war hypothesis” but with matters of so-called “domestic security.”<sup>196</sup> In practice, these translated into the repression of the Argentinean population.

As the following chart shows, the evolution of increases in military expenditures also implied a growing participation of the military sector in the GDP itself.<sup>197</sup>

The evolution of military expenditures  
(In billions of dollars)

	Military expenditures	% of the GDP
1975	1.929	3.7%
1976	2.028	4.2%
1977	2.179	4.3%
1978	2.401	5%
1979	2.499	4.9%
1980	3.009	5.5%
1981	2.867	5.8%
1982	2.604	5.7%

The theory that higher military expenditures during 1976 and 1977 were a response to perceived “domestic security” threats is substantiated by the evolution of the defense imports expenditures that, according to conservative estimations, were as follows: U.S.\$1.57 billion in 1975, U.S.\$1.19 billion in 1976, and U.S.\$626.1 million in 1977.<sup>198</sup> In summary, during the first years of the dictatorship, although military expenditures increased, spending on arms imports actually decreased, indicating that financial resources were directed in large part toward the support of the internal fight against “subversion,” which was the very framework within which crimes against humanity were perpetrated.

This data also contradicts the idea that the loans were taken by the Argentinean state solely for purchasing weapons to defend the territory during the military conflicts with Chile and the United Kingdom. The loans and

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1) All the labor costs of the military and civil employees; 2) Costs of operation and maintenance; 3) Purchase of all the materials; 4) Military construction; 5) Expenditures incurred by military attaché; 6) Civil defense; 7) Programs of military public relations; 8) Military intelligence. Cf. THOMAS EDWARD SCHEETZ, “*Gastos militares en America del Sur*”, in *PROLIFERACIÓN DE ARMAMENTOS Y MEDIDAS DE FOMENTO DE LA CONFIANZA Y LA SEGURIDAD EN AMÉRICA LATINA* (on file with authors).

196. See discussion of military expenditures and accompanying data *infra*.

197. See Thomas Scheetz, *Gastos militares en Chile, Perú y la Argentina*, DESARROLLO ECONÓMICO, Oct.-Dec. 1985, at 319 (data in 1977 U.S. dollars).

198. SCHEETZ, *supra* note 195 (data in 1982 U.S. dollars).

the incremental increase of military expenditures started before these conflicts, and, until 1978, the military junta spent the larger part of its military budget in areas that were not directly related to external aggressions.

#### D. *The Public Character of the Human Rights Abuses*

The first external indicator that systematic human rights abuses were being committed in Argentina came from journalists' reports.<sup>199</sup> The prestige of the foreign newspapers that published this news, the sheer volume of articles describing this situation, and the degree to which journalists emphasized the extreme gravity of what was happening, should have helped banks assess the foreseeable consequences of their loans.

The early position of the U.S. government, as discussed below, which warned the military junta that it was exceeding the inalienable limits of the law, should also have sent a clear message to the banks that the loans they were issuing could be used for potentially lethal purposes. As early as 1976, the U.S. Department of State, in a report submitted to Congress detailing potential human rights issues in numerous countries, explicitly noted that the Argentinean leaders were seeking to curb violations of human rights but were thus far unable to control the situation effectively.<sup>200</sup> In early 1977, the urgency of the Argentinean situation was again officially confirmed by the U.S. Department of State in a second report to Congress.<sup>201</sup>

International organizations publicized the Argentinean government's abuses. In March 1977, Amnesty International released a report denouncing the human rights abuses occurring in Argentina. The report included an eighteen-page list of the names of people who had disappeared, including the date of their kidnapping and other relevant details.<sup>202</sup> A conclusive 1978 report made by the Inter-American Human Rights Commission put to rest any remaining doubts about the situation in Argentina, concluding that "it seems evident that the decision of organizing command units that were involved in the disappearance and possible extermination of those thousands of people, was adopted by the maximum level of the Armed

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199. As early as May 26, 1976, the *New York Times* publicized the fact that elements of the military forces seemed to be accelerating the campaign of assassinations, arbitrary detentions and drastic purges. *Repression in Argentina*, N.Y. TIMES, May 26, 1976, at 26. See also *Carter Rights Aide, Visiting Argentina, Warns on Violation*, N.Y. TIMES, Apr. 3, 1977, at 11; *N.Y. group pleased with Venezuela Argentina called worst human rights violator*, GLOBE & MAIL, Dec. 23, 1977.

200. U.S. DEP'T OF STATE, REPORT TO H. COMM. ON INT'L RELATIONS, 94TH CONG., HUMAN RIGHTS AND U.S. POLICY: ARGENTINA, HAITI, INDONESIA, IRAN, PERU, AND THE PHILIPPINES 5 (Comm. Print 1976) [hereinafter 1976 STATE DEPT. REPORT].

201. U.S. DEP'T OF STATE, REPORT TO SUBCOMM. ON FOREIGN ASSISTANCE OF THE S. COMM. ON FOREIGN RELATIONS, 95TH CONG., HUMAN RIGHTS REPORTS 106-08 (Comm. Print 1977) [hereinafter 1977 STATE DEPT. REPORT].

202. Amnesty Int'l, *Report of an Amnesty International Mission to Argentina*, A1 Index PUB 68/00/77, 1977.

Forces.”<sup>203</sup> In the late 1970s, Amnesty International,<sup>204</sup> echoing reports elaborated by the Asamblea Permanente por los Derechos Humanos (“APDH”),<sup>205</sup> the New York City Bar Association,<sup>206</sup> and the U.S. Department of State,<sup>207</sup> continued to denounce the serious and frequent occurrence of kidnappings, disappearances, tortures, illegal detentions, and murders in Argentina.<sup>208</sup>

Despite evidence suggesting that banks should have been alerted to the possibility that their loans would be used for illegal purposes, it is necessary to address the counter-factual questions regarding the bank’s knowledge about the potential consequences of the loans issued. First, did financial institutions know that there would be no “democratic spillover” as a consequence of lending money to the military regime? From a macroeconomic point of view, the economy had begun deteriorating at the beginning of the dictatorship, and it did not grow during the dictatorship. Therefore, it is unlikely that people could have reasonably expected that there would be general spillovers. From a microeconomic point of view, in Argentina, the projects for specific (“good”) purposes were only a few, so their destinations and *prima facie* benefits would have been very difficult to prove.

Second, could Argentinean citizens have been worse off if banking institutions had refrained from lending money, and their country had descended further into poverty? Since the evidence shows that even from the very beginning of the dictatorship these loans did not improve the economic situation of citizens of Argentina, there is little to support this stance. Regardless, this economic trade-off analysis ignores the possibility that loans of this nature could simultaneously contribute to the increased wealth of Argentinean citizens even while financing human rights violations committed against the same group of people.

### E. *The Conduct of the U.S. Government*

President Jimmy Carter’s victory in 1976 set a new stage in terms of human rights, particularly in U.S. policies toward Latin America. This

203. Inter-Am. Comm’n on Human Rights, Org. of Am. States, OEA/Ser.L./V/II.49 (Apr. 11, 1980).

204. See, e.g., Amnesty Int’l, *Summary of the Report of the Inter-American Commission on Human Rights on the Human Rights Situation in Argentina*, AI Index AMR 13/27/80, April 1980, cited in WOLFGANG S. HEINZ & HUGO FRÜHLING, DETERMINANTS OF GROSS HUMAN RIGHTS VIOLATIONS BY STATE AND STATE-SPONSORED ACTORS IN BRAZIL, URUGUAY, CHILE, AND ARGENTINA: 1960-1990 649 (1999).

205. See, e.g., Asamblea Permanente por los Derechos Humanos, Declaración, May 22, 1977, cited in WOLFGANG S. HEINZ & HUGO FRÜHLING, DETERMINANTS OF GROSS HUMAN RIGHTS VIOLATIONS BY STATE AND STATE-SPONSORED ACTORS IN BRAZIL, URUGUAY, CHILE, AND ARGENTINA: 1960-1990 597 (1999).

206. ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK, *Report of the Mission of Lawyers to Argentina* (Apr. 1-7 1979).

207. U.S. DEP’T OF STATE, REPORT TO H. COMM. ON FOREIGN AFFAIRS AND S. COMM. ON FOREIGN RELATIONS, 96TH CONG., COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1979 241 (Comm. Print 1980).

208. See SCHULTZ, *supra* note 123, at 348-49.

change in leadership marked a significant departure from the policies of the Ford administration, which had supported dictatorships that could work as allies in the fight against communism.<sup>209</sup> The public and open work of numerous non-governmental organizations<sup>210</sup> and the international efforts to raise awareness of both the general public and politicians about human rights violations that were occurring in several Latin American countries, including Argentina, were not in vain.<sup>211</sup> The U.S. government and Congress<sup>212</sup> adopted several measures seeking to prevent these abuses.

Following the U.S. Department of State's official acknowledgment that human rights violations were occurring in other nations (with special attention given to Argentina),<sup>213</sup> and after instituting a policy for dealing with human rights violations that differed significantly from that of the Ford administration,<sup>214</sup> the Carter administration promoted an aggressive foreign policy toward Argentina with the specific objective of using diplomatic pressure and conditional assistance to reduce human rights violations.<sup>215</sup> This led to a policy of explicit refusal to give financial and military aid to the Argentinean dictatorship, which arguably had the implicit goal of provoking certain economic hardships in order to force the military government to improve its performance in the human rights field.

As early as 1974, the U.S. Foreign Assistance Act had already stipulated that, except in "extraordinary circumstances," military aid to governments that were involved in "consistent patterns of gross violations of internationally recognized human rights" had to be reduced and eventually extinguished.<sup>216</sup> In 1976,<sup>217</sup> and then more clearly in 1978,<sup>218</sup> the U.S. Congress

209. See generally Cynthia J. Arnson, *Argentina and the U.S. Congress*, in ARGENTINA-UNITED STATES BILATERAL RELATIONS: AN HISTORICAL PERSPECTIVE AND FUTURE CHALLENGES 83-86 (Cynthia J. Arnson ed., 2003); John Dinges, *Green Light-Red Light: Henry Kissinger's Two-Track Approach to Human Rights During the 'Condor Years' in Chile and Argentina*, in ARGENTINA-UNITED STATES BILATERAL RELATIONS: AN HISTORICAL PERSPECTIVE AND FUTURE CHALLENGES 59-76 (Cynthia J. Arnson ed., 2003); Carlos Osorio, *National Security Archive*, in ARGENTINA-UNITED STATES BILATERAL RELATIONS: AN HISTORICAL PERSPECTIVE AND FUTURE CHALLENGES 11-28 (Cynthia J. Arnson ed., 2003).

210. For an overview of the transnational advocacy movement for human rights in Argentina, see MARGARET KECK & KATHRYN SIKKINK, *ACTIVISTS BEYOND BORDERS* (1998).

211. See SCHULTZ, *supra* note 123.

212. With the change of the political composition of the U.S. Congress, in 1974 members of Congress had already started focusing on human rights issues. See CYNTHIA J. ARNSON, *CROSSROADS: CONGRESS, THE PRESIDENT, AND CENTRAL AMERICA, 1976-1993* (1993); ROBERT JOHNSON, *CONGRESS AND THE COLD WAR* (2006).

213. 1976 STATE DEPT. REPORT, *supra* note 200, at 5; 1977 STATE DEPT. REPORT, *supra* note 201, at 106-08.

214. U.S. Dep't of State, Memorandum of Conversation: U.S.-Argentine Relations (Oct. 6, 1976) (on file with authors).

215. Cyrus Vance, *Human Rights and Foreign Policy*, 7 GA. J. INT'L & COMP. L. 223 (1997).

216. Foreign Assistance Act of 1974, Pub. L. No. 93-559, § 46, 88 Stat. 1795, 1815-16 (adding § 502B to the Foreign Assistance Act of 1961).

217. International Security Assistance and Arms Exports Act of 1976, Pub. L. No. 94-329, § 301(a), 90 Stat. 729, 748-50 (amending § 502B of the Foreign Assistance Act of 1961).

218. International Security Assistance Act of 1978, Pub. L. No. 95-384, § 6, 92 Stat. 730, 731-32 (amending § 502B of the Foreign Assistance Act of 1961).

stated that it was mandatory to deny security assistance to any country whose government engages in a consistent pattern of gross violations of internationally recognized human rights. On February 24, 1977, the U.S. Secretary of State, Cyrus Vance, announced to the Subcommittee on Foreign Operations of the Senate Appropriations Committee that the government was going to reduce its aid to Argentina, Ethiopia, and Uruguay on the basis that gross violations of human rights were being committed in these countries.<sup>219</sup> In 1977, the U.S. Congress prohibited any additional military aid to Argentina in the way of donations, credits, guaranteed loans, sales, and export licenses, effective from September 30, 1978 onward.<sup>220</sup>

At this time, the Overseas Private Investment Corporation ("OPIC") likewise decided to adopt a policy of taking into account the human rights record of a country wherever an American corporation planned to invest. At the end of 1978, OPIC had decided to not consider granting insurance coverage to those companies that wanted to invest in Argentina, precisely because of the serious violations of human rights known to be taking place there.<sup>221</sup> By August 1978, the U.S. State Department had withheld an estimated U.S.\$1.25 billion in non-military exports to Argentina based on human rights violations, including eleven Export-Import Bank transactions valued at nearly U.S.\$600 million.<sup>222</sup>

Likewise, when Congress expanded its original Harkin initiative,<sup>223</sup> it also ordered U.S. representatives in multilateral and development banks to vote against the provision of loans for countries known to be violating the fundamental human rights of its citizens.<sup>224</sup> This initiative appears to have been the primary motivation for the U.S. government to take such a strong stance against the violations occurring in Argentina and also explains why the government abstained or voted against the numerous multilateral loans requested by the military junta.<sup>225</sup>

This policy of rejecting multilateral loans for political and legal reasons was explained in the following terms: the U.S. felt it had to use its voice

219. *Foreign Assistance and Related Programs Appropriations for Fiscal Year 1978: Hearing Before the Subcomm. on Foreign Operations of the S. Comm. on Appropriations*, 95th Cong. 9 (1977) (testimony of Cyrus Vance, U.S. Sec'y of State).

220. Act of Aug. 4, 1977, Pub. L. No. 95-92, § 11, 91 Stat. 614, 619-20; see also SCHOULTZ, *supra* note 123, at 260; CONG. RESEARCH SERV., REPORT TO S. COMM. ON FOREIGN RELATIONS, 96TH CONG., HUMAN RIGHTS AND U.S. FOREIGN ASSISTANCE: EXPERIENCES AND ISSUES IN POLICY IMPLEMENTATION (1977-1978) 106 (Comm. Print 1979).

221. SCHOULTZ, *supra* note 123, at 320.

222. Memorandum from Robert Pastor to Zbigniew Brzezinski, U.S. Nat'l Sec. Advisor, Aug. 31, 1978, reprinted in Declassified Documents Reference System (Doc. No. CK3100116847).

223. International Development and Food Assistance Act of 1975, Pub. L. No. 94-161, § 310, 89 Stat. 849, 860. This legislation added Section 116 to the Foreign Assistance Act 1961, prohibiting the economic aid to countries in which gross human rights violations were committed, unless this aid directly benefited the needy people. *Id.*; see also SCHOULTZ, *supra* note 123, at 195.

224. Act of May 31, 1976, Pub. L. No. 94-302, § 211, 90 Stat. 591, 595; Act of Oct. 3, 1977, Pub. L. No. 95-118, § 701, 91 Stat. 1067, 1069-71.

225. SCHOULTZ, *supra* note 123, at 296-98.

and voting power in the six multilateral development banks to which it belonged at the time in order to protect human rights. This policy included a decision to open channels of assistance to those countries whose governments were not involved in consistent patterns of gross violations of human rights.<sup>226</sup> In the case of the Chilean dictatorship, the U.S. government went as far as warning banks that their decision to grant financial support to the Pinochet regime was inconsistent with the foreign policy of the Carter administration, which believed that human rights were a crucial variable to be seriously taken into account before granting aid or loans.<sup>227</sup>

It is true that the Carter administration's human rights policy was not as strong and consistent as it could have been,<sup>228</sup> meaning that it had only a limited impact on the situation in Argentina. It is also true that, even before Ronald Reagan won the 1980 presidential election, U.S. foreign policy had become more conservative and increasingly concerned with commercial and geopolitical interests.<sup>229</sup> However, these facts do not erase the legal and political significance of the U.S. legislative and administrative decisions taken during the years in which human rights violations in Argentina reached their peak.

#### F. *Timing and Relevance of Scrutinizing the Role of Banks*

The question of bank complicity is being raised at a time when both Argentinean society and the field of human rights can benefit from such an investigation, not only because the country's transitional justice experience is ongoing today but also because international law has evolved to a point where it can more effectively tackle difficult questions about complicity. These two factors render the act of scrutinizing bank responsibility both timely and relevant on several levels: recognizing links between the behavior of corporations and human rights violations, which can have a possible deterrent effect on future corporate behavior and encourages transitional justice mechanisms to look at economic factors as essential components of violations; creating a more complete narrative of the violations that occurred; and, if it is determined that banks should be held accountable, pro-

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226. Act of Oct. 3, 1977, Pub. L. No. 95-118, § 701, 91 Stat. 1067, 1069-71; see also *International Development Institutions Authorizations-1977: Hearing on H.R. 5262 Before the Subcomm. on Int'l Development Institutions and Finance of the H. Comm. on Banking, Finance and Urban Affairs*, 95th Cong. 2 (1977).

227. *Reuss: Rights Policy Not Helped by Loans To Chile From Banks*, WASH. POST, Apr. 13, 1978, at A19. The responsibility of the bank that financed the Pinochet government and then opened accounts for him to deposit the looted money has already been the subject of specific legal analysis. See Scott, *supra* note 102, at 1497.

228. Karen DeYoung & Charles A. Krause, *Our Mixed Signals On Human Rights In Argentina; Our Mixed Signal On Human Rights*, WASH. POST, Oct. 29, 1978, at C1.

229. *Human Rights and Mrs. Derian*, N.Y. TIMES, May 31, 1980; Juan de Onis, *U.S. Improving Ties to Latin Rightists*, N.Y. TIMES, Mar. 8, 1981. See William Schmidli, *Institutionalizing Human Rights in United States Foreign Policy: U.S.- Argentine Relations, 1976-1980*, DIPLOMATIC HISTORY (forthcoming 2010).



viding an additional source of funding for reparations to victims and their families.

The lack of scrutiny surrounding Argentinean financial institutions is not unique. Rather, it is consistent with the general historical tendency in international law to fail to hold economic actors accountable for human rights abuses.<sup>230</sup> Examining the responsibility of banks in Argentina could encourage the evolution of sound legal standards around lending, challenging the trend of holding financial actors to be neutral or irrelevant in their proximity to criminal regimes. A thorough examination of the banks' behavior would create recognition of the idea that financial support can be as powerful a legitimating and strengthening tool as other types of assistance to regimes known to violate human rights. This could create precedent to subject other financial institutions to the same kind of scrutiny in the future, which may serve as an overall deterrent effect on corporate behavior.<sup>231</sup>

Transitional justice efforts to date remain incomplete. Since the junta's fall in 1983, substantial steps have been taken to pursue justice for victims of the crimes committed during the dictatorship. These have included one of the first incarnations of the modern-day truth commission, CONADEP, which in 1984 carried out investigations into the nature of the crimes committed by the junta, even though it lacked judicial authority to act on its findings and furthermore looked almost exclusively at enforced disappearances.<sup>232</sup> Even in the face of ongoing intimidation<sup>233</sup> and political pressure from the former leaders,<sup>234</sup> efforts have been made to prosecute human rights offenders, and several initiatives have been taken to provide reparations to victims and their families.<sup>235</sup> For example, a number of laws and decrees have been passed to provide forms of restitution, compensation, and rehabilitation to victims of human rights abuses.<sup>236</sup> These have included

230. For discussion of this in relation to human rights and the field of transitional justice in particular, see Ruben Carranza, *Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?*, INT'L J. TRANSITIONAL JUST. 310, 310-30 (2008).

231. One need only look at current debates around investments in the Sudan and connections to the human rights abuses being carried out in Darfur to see that this topic continues to gather steam in modern discourse around accountability and complicity. See generally Hannibal Travis, *Genocide in Sudan: The Role of Oil Exploration and the Entitlement of the Victims to Reparations*, 25 ARIZ. J. INT'L & COMP. L. 1 (2008).

232. Conadep Report, *supra* note 164.

233. Reports of harassment, violence, and even disappearances of witnesses continue to this day. In the most famous example, in 2007, Julio Lopez, a retired construction worker and victim of the military junta, disappeared just hours before the conviction of former Superintendent Miguel Etchecolatz. Countless witnesses have also reported receiving harassing phone calls—many of which can be traced back to the prisons at which former dictators are being held—or being forced into cars and told to drop their testimonies. See Marie Trigona, *Thirty-one Years After the Coup: Disappearances and Terror Back on the Streets*, TOWARD FREEDOM, Mar. 29, 2007, <http://towardfreedom.com/home/content/view/1008/54/>.

234. See Rebecca Lichtenfeld, *Accountability in Argentina: 20 Years Later Transitional Justice Maintains Momentum*, INT'L CTR. FOR TRANSITIONAL JUST., Aug. 2005, <http://www.ictj.org/images/content/5/2/525.pdf>.

235. GUEMBE, *supra* note 81, at 701-31.

236. GUEMBE, *supra* note 81.

compensation for lost labor time, pensions for victims' families, funding to support the work of NGOs such as the Mothers of the Plaza de Mayo,<sup>237</sup> and the creation of a legal status of "absent by forced disappearance," which has allowed families to take care of processing wills, closing estates, and otherwise settling the remaining affairs of victims in their absence.<sup>238</sup>

Despite these efforts, most cases regarding disappearances, torture, and extrajudicial executions that occurred during the dictatorship either remain unresolved or are still in the process of being addressed in Argentinean courts.<sup>239</sup> Indeed, the quest to end impunity in Argentina continues with renewed fervor today, motivated by a widespread sense that justice has not yet been achieved. It has been invigorated by the 2003 repeal of controversial amnesty laws,<sup>240</sup> which allows for the prosecution of many of the remaining members of the dictatorship. At the time of this writing, hundreds of trials and investigations related to the dictatorship are active in the Argentinean legal system.<sup>241</sup> The Center for Legal and Social Studies describes the current landscape of legal cases against the former dictators:

[There are] 243 sets of criminal proceedings in relation to state terrorism [underway], in which 1129 persons have been declared to be suspects for purposes of pre-trial investigation. Of these, criminal charges have been laid against 419 persons, while 40 are fugitives from justice. The cases of 83 individuals have been declared to lack probable cause; a further 176 suspects are deceased, 12 have been declared unfit to be submitted to trial, and 33 have been convicted.<sup>242</sup>

Economic factors must be added to discussions of human rights abuses. Transitional justice mechanisms have long neglected to take into account

237. See Graciela Lois & Margarita Lacabe, *In Search of Vindication: Reparations for Human Rights Abuses in Argentina*, КО'АГА РОЊЕ'ЋТЉ, May 1999, <http://www.derechos.org/koaga/vii/lois.html>.

238. This terminology improved greatly the previous category of "presumed dead," as it not only invokes acknowledgment of a crime but also confers a legal equivalent of death for civil matters. See Laura Olson, *Mechanisms Complementing Prosecutions*, 84 INT'L COMM. OF THE RED CROSS 185 (2002).

239. In 2003, prior to the repeal of amnesty laws that would allow trials against former junta leaders to resume, Amnesty International claimed that "most 'disappearances' in Argentina have still not been clarified, the fate of the victims has not been determined and the perpetrators remain at liberty." Amnesty Int'l, *Argentina: The Full Stop and Due Obedience Laws and International Law*, AI Index: AMR 13/004/2003, Mar. 31, 2003, available at <http://www.amnesty.org/en/library/asset/AMR13/004/2003/en/ad565c6c-d701-11dd-b0cc-1f0860013475/amr130042003en.pdf> [hereinafter 2003 Amnesty Int'l Report].

240. *Leyes de obediencia debida y punto final – Decláranse insanablemente nulas leyes 23.492 y 23.521*. [Due Obedience and Full Stop Laws – Repealing laws 23.492 and 23.521.] Law No. 25.779, Sept. 2, 2003 [LXIII-D] A.D.L.A. 3843-44. This law repealed the most important of the amnesty laws, the full stop and due obedience laws: Punto Final [Full Stop], Law No. 23.492, Dec. 24, 1986, [XLVII-A] A.D.L.A. 192; Obediencia Debida [Due Obedience], Law No. 23.521, June 8, 1987, [XLVII-B] A.D.L.A. 1548.

241. *Buscan Agilizar los Juicios a Represores*, LA NACIÓN, Feb. 28, 2009, available at [http://www.la.nacion.com.ar/nota.asp?nota\\_id=1104089](http://www.la.nacion.com.ar/nota.asp?nota_id=1104089).

242. Center for Legal and Social Studies (CELS), <http://www.cels.org.ar/wpblogs/ingles> (last visited Nov. 20, 2009).

the economic factors behind a given regime's capacity to repress or abuse the target population—a factor visible in the limited scope of CONADEP's report and in the mandates of almost all truth commissions to date. The failure to address the economic factors that have influenced or helped to maintain a particular dictatorship constitutes a dangerous historical blindness. In other words, to treat only the political factors of a conflict or period of repression and ignore the economic factors is to fuel the risk that the same factors could emerge and thrive again, resulting in the re-emergence or maintenance of the same kind of violent regime in the future. In this way, the Argentinean case provides a conceptual opening for viewing economic factors as an essential part of any holistic assessment of causal factors underlying a given era of human rights violations.

In addition to contributing to human rights and to promoting deterrence, completing Argentina's historical narrative has enduring relevance today for Argentina as it continues to struggle to resolve the crimes of the past. Investigating the banks' contributions to the junta could help to create a comprehensive historical narrative for the period of atrocity, allowing additional factors to emerge in the search for truth about this period, particularly in the sphere of complicity. For example, investigating if and how foreign lenders helped prolong the junta's survival combats the notion that this was purely the wish of a handful of generals carrying out a murderous campaign on their own, and draws out important legal questions about the role that private financial actors played in aiding and prolonging the dictatorship.

As previously discussed, the fact that trials are ongoing offers a unique opportunity for Argentina to set precedent for future transitional justice mechanisms. These trials demonstrate the need to look at civil complicities to determine the truth about a given regime's functioning, as "situations of transition offer unique windows of opportunity to address issues of impunity which are of crucial importance in a society's development."<sup>243</sup> Evidence about collusion or reckless assistance to the junta's leaders could also help provide important information about the systemic and structural nature of the junta's operations as a collective movement, contributing to both the ongoing trials and toward the overall understanding of the patterns of the "system crimes" committed.<sup>244</sup> In addition to serving the punitive goals of justice, another function of having criminal trials after periods of mass atrocity is to help create an understanding of the systems that worked together to make these crimes possible, hopefully serving to discourage similar behavior in the future.

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243. James Cavallaro & Sebastian Albuja, *The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond*, in *TRANSITIONAL JUSTICE FROM BELOW: GRASSROOTS ACTIVISM AND THE STRUGGLE FOR CHANGE* 135 (Kieran McEvoy & Lorna McGregor eds., 2008).

244. *Id.*

Should it be determined that these banks should be held accountable, the banks could also provide for just compensation by making additional resources available for reparations funds for victims. This would not only provide a tangible layer of justice for victims and their families in Argentina, but it would also set an important precedent for future cases in which human rights victims seek damages, alleging that corporate contributions have helped finance human rights violations.

#### FINAL CONSIDERATIONS

It is important to remember that, at the time of the Argentinean dictatorship, the U.S. government recognized that the most “serious” human rights violations, or those that infringe on peremptory norms,<sup>245</sup> should be discouraged through the use of severe restrictions in financial and military aid. In 1978, Patricia Derian, then Assistant Secretary for Human Rights and Humanitarian Affairs of the Department of State, publicly defended this policy, arguing that the human rights situation of any given country must be evaluated when deciding whether to grant it assistance.<sup>246</sup> In her public statement to representatives of the U.S. government at the time, Derian explained the implications that *jus cogens* norms have on foreign policy:

The rights about which we are concerned . . . are recognized in the Charter of the United Nations, the UN Universal Declaration of Human Rights and other international agreements and covenants as being universal and applicable throughout the world. The countries of the Western hemisphere have also acknowledged basic human rights in the Charter of the OAS and are now according additional attention to them in the American Convention of Human Rights, which is now ratified by 12 countries and has recently entered into force . . . . [T]he promotion of internationally recognized human rights is in fulfillment of obligations imposed upon us by the international agreements and covenants described above.<sup>247</sup>

It is thus clear that the legal source of the financial restrictions formalized and imposed by the U.S. government toward Argentina came from an explicit understanding of the primacy of *jus cogens*, which compels both states and private entities<sup>248</sup> to respect these basic legal limits even in civil pro-

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245. ALEXANDER ORAKHELASHVILI, PEREMPTORY NORMS IN INTERNATIONAL LAW (2006).

246. *Arms Trade in the Western Hemisphere: Hearing Before the Subcomm. on Inter-American Affairs of the H. Comm. on International Relations*, 95th Cong. (1978) (statement of Patricia M. Derian, Assistant Secretary of State for Human Rights and Humanitarian Affairs).

247. *Id.*

248. *Paquete Habana*, 175 U.S. 677 (1900); *Ware v. Hylton*, 3 U.S. (3 Dall.) 199 (1796); *Kadic v. Karadzic*, 70 F.3d 232, 246 (2d Cir. 1995).

ceedings for damages.<sup>249</sup> This same principle also affirms that no public authority has the power to exempt private entities from respecting these preemptory, fundamental obligations, since they are inalienable legal rights.

Even the military junta recognized that the U.S. government was applying principles that were protected by the most relevant norms of international law during the first years of the Carter administration. When Jimmy Carter took office, U.S. military aid to Argentina was immediately reduced from U.S.\$48 million to U.S.\$15 million; the U.S. embassy reported that high ranking Argentinean officials were “shaken, disappointed and angered” and had made public statements in their defense against the U.S. position, saying that “no state, whatever its ideology or power, can set itself up as a court of international justice, interfering in the domestic life of other countries.”<sup>250</sup>

In retrospect, it is worth trying to understand why the phenomenon of commercial bank lending to Argentina has been almost completely absent<sup>251</sup> from historical, political, and legal efforts to comprehend and account for what took place during these years of systematic and extensive human rights atrocities in Argentina. The reasons for this delay are multiple and stem in part from the inconsistent evolutionary pace of legal standards for corporate complicity. The delay also reflects the severe constraints experienced by the Argentinean population in its ongoing struggle for truth and justice—a struggle evident in the fact that, some thirty years after the dictatorship, criminal trials against the perpetrators are still ongoing.

Banks played a significant economic and political role in Argentina, both by supporting the macroeconomic ratios of the Argentinean dictatorship and by financing the growing military expenditures meant to ensure what the junta deemed “internal security,” which translated into the regime’s capacity to perpetrate crimes against humanity on a mass scale. The question of what legal steps must be taken to hold the banks legally responsible is one that will require extensive economic and political analysis, a task in which Argentinean courts may soon engage (see postscript). While

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249. *Filartiga v. Peña-Irala*, 630 F.2d 876 (2d Cir. 1980). See also Ramasastry, *supra* note 7, at 91; Ratner, *supra* note 40, at 504.

250. U.S. Dep’t of State, Telegram No. 2053 from U.S. Embassy Buenos Aires, Argentina to U.S. Sec’y of State Cyrus Vance (Mar. 17, 1977) available at <http://foia.state.gov/documents/Argentina/0000A3B9.pdf>; Juan de Onis, *Argentina Says Carter Interferes*, N.Y. TIMES, Mar. 1, 1977.

251. In May 28, 2008, the Argentinean ambassador in the U.S., Hector Timerman, answered a letter from the American representative Carolyn B. Maloney, who was worried about the impact of the 2002-2005 Argentinean default on the global finance and the American economy. Going back to the history of the debt crisis, he raised a compelling question: “Why would somebody lend money to a regime that threw out people alive from airplanes, among them two nuns? Perhaps we should ask ourselves why the victims must pay to bankers and investors who lent money to genocides. Well, it may be that for them it is business as usual.” Letter from Hector Timerman, Argentinean Ambassador to the United States, to Carolyn B. Maloney, U.S. Congresswoman (May 28, 2008) (on file with authors).

counter-factual arguments about history—and thus liability—can help us to understand the complexities of a dictatorship, they cannot replace the technical notion about substantial effect that is required by the causal link to hold an accomplice responsible. Information made available to the public since 1976 about the serious human rights abuses that were being carried out in Argentina, which was strongly corroborated by the conduct of the U.S. government during the Carter administration, the economic characteristics and conditions of Argentina and, therefore, the likely impact of massive loans, suggests that there is a need for a deeper inquiry into the behavior of financial institutions associated with the junta during those years.

This effort to examine the role played by lenders is more than just a timely and relevant exercise. It stands to contribute to Argentina's search for justice and to the evolution of corporate accountability standards globally. The time has come to look into the economic factors that allowed the junta to survive, and to shed light on the connections between bank behavior and human rights violations in Argentina. At the same time, this examination seeks to bolster the evolution of legal standards for corporate behavior, moving the notion of complicity into a legal universe in which lenders can no longer enjoy a unique immunity from accountability for the consequences of their loans.

#### *Postscript*

As this article was being written and prepared for publication, the first of several claims was presented in federal court in Buenos Aires, on behalf of two victims charging the foreign financial institutions with complicity for the crimes committed by the junta against their parents, whose disappearances remain unresolved. The claim was filed March 19, 2009, and invokes many of the norms and both international and U.S. jurisprudence discussed in this paper to assert that banks that lent massive amounts of money to the military regime, enabling it to function economically and supporting its systematic repression, should be held accountable under the theory of corporate complicity. As a preliminary measure, the claim requests that the Argentinean central bank provide the complete list of lenders and the terms of the loans that were granted during the dictatorship. In November 2009, both the federal and provincial courts were still discussing matters of jurisdiction to determine in which court the case would be heard.





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Thirty-first session  
Item 13 of the provisional agenda

STUDY OF THE IMPACT OF FOREIGN ECONOMIC AID  
AND ASSISTANCE ON RESPECT FOR HUMAN RIGHTS IN CHILE

Report prepared by Mr. Antonio Cassese, Rapporteur\*

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\* For technical reasons, the report will be distributed in four volumes.  
Volume I contains the table of contents and the introduction; volume II contains  
chapter I; volume III contains chapters II and III; volume IV contains chapter IV  
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INTRODUCTION

A. Origin of the study

1. On 31 August 1976, the Sub-Commission on Prevention of Discrimination and Protection of Minorities adopted resolution 5 (XXIX), which in part B, paragraph 6, invited the Commission on Human Rights "to consider the adverse consequences for the enjoyment of human rights of the various forms of aid and assistance being given to the Chilean régime."
2. On 16 December 1976, the General Assembly, in resolution 31/164, inter alia, invited the Commission on Human Rights to consider "the consequences of the various forms of foreign aid to the Chilean authorities".
3. The Commission on Human Rights, in paragraph 6 of its resolution 9 (XXXIII) of 9 March 1977, requested the Sub-Commission on Prevention of Discrimination and Protection of Minorities at its thirtieth session "to undertake a study on the consequences of the various forms of aid extended to the Chilean authorities and to present a progress report thereon to the Commission at its thirty-fourth session".
4. At its thirtieth session, the Sub-Commission adopted resolution 11 (XXX) of 31 August 1977, entitled "Study of certain questions relating to the situation of human rights in Chile" in part I of which it decided to undertake a study on "the impact of foreign economic aid and assistance on respect for human rights in Chile", appointed Mr. Antonio Cassese Rapporteur to prepare such a study, and requested the Rapporteur to submit a progress report on his work to the Commission on Human Rights at its thirty-fourth session. By the same resolution, the Secretary-General was requested to give the Rapporteur all the assistance he might require in his work, including relevant information from reliable sources.
5. At its thirty-fourth session, the Commission on Human Rights, which had before it a progress report by the Rapporteur (E/CN.4/1267), adopted resolution 12 (XXXIV), paragraph 13 of which welcomed the decision by the Sub-Commission, in its resolution 11 (XXX), to undertake a study on the consequences of the various forms of aid extended to the Chilean authorities and the subsequent initiation of the study by a specially appointed Rapporteur; invited the Rapporteur to present his study to the Sub-Commission at its thirty-first session; and instructed the Sub-Commission to transmit the study to the General Assembly at its thirty-third session.

B. The question of domestic jurisdiction

1. Introduction

6. In the debates which took place in the Sub-Commission before the adoption of resolution 11 (XXX), the observer for Chile stated that the proposed report on the impact of foreign economic assistance on respect for human rights in Chile constituted unwarranted and unacceptable interference in the internal affairs of his country. 1/ A similar view was also expressed by some members of the Sub-Commission. 2/

7. -- The Government of Chile reiterated its objections to the undertaking of the present report in the reply it sent on 5 December 1977 to the Secretary-General's request for information concerning the present report (see annex II). The same stand was taken in 1978 by the Observer for Chile in the United Nations Commission on Human Rights. 3/

8. On 27 February 1978, in the Commission on Human Rights, the representative of France voiced doubts as to whether the subject of the report was in keeping with Article 2, paragraph 7, of the Charter of the United Nations. 4/ The same doubts had already been expressed by the French Government in the reply it had sent, on 9 January 1977, to the Secretary-General's request for information concerning the matters covered by the present report.

9. With respect to the plea of domestic jurisdiction the Rapporteur will confine himself to pointing out that three United Nations bodies, i.e. the General Assembly, the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities, have already rejected it implicitly. The mere fact of discussing the advisability of undertaking a report on the matter under consideration, and of adopting resolutions thereon, shows that the aforementioned United Nations organs consider that it is proper for them and in full compliance with the United Nations Charter to decide that such a report should be undertaken.

10. Although the above considerations would be sufficient to bar any objection raised by the Chilean Government based on domestic jurisdiction, the Rapporteur deems it appropriate to dwell on the question, in order to spell out why in his opinion the present report is not at odds with the United Nations Charter. Dealing at some length with this matter seems to him apposite for at least three reasons.

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1/ E/CN.4/Sub.2/SR.797, para. 32.

2/ E/CN.4/Sub.2/SR.781, para. 7.

3/ E/CN.4/SR.1454, paras. 23-25; and E/CN.4/SR.1458, para. 33.

4/ E/CN.4/SR.1458, para. 4.

11. First, whenever a State Member of the United Nations objects to action being taken by United Nations bodies, by pointing out that that action would be contrary to the domestic jurisdiction clause of the Charter, those bodies should not dismiss the plea out of hand. They can reject it only after giving it careful consideration and solely if they reach the conclusion that the objection is not in order. For, Article 2, paragraph 7, of the Charter is intended to lay down a basic principle protecting the sovereignty of Member States from illegitimate encroachments on the part of the Organization, and should not, therefore, be treated lightly.

12. ~~Secondly, the tasks entrusted by the Sub-Commission to the Rapporteur are to some extent new. There is in fact only one precedent in this area, namely, the study on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in southern Africa, entrusted by the Sub-Commission to Mr. A.M. Khalifa and carried out by him in 1977 (E/CN.4/Sub.2/383). Both Mr. Khalifa's study and the present report unquestionably reflect a new approach to human rights, an approach which does not content itself with focusing on whether violations of human rights have occurred or are occurring in a certain country, but seeks to widen the area of concern of the United Nations, by concentrating on the roots of those violations and on the general surrounding conditions that might permit or facilitate - or in any event are attendant upon - those violations.~~ Under this approach, human rights are no longer considered per se but in their multiple connexions with social and economic conditions. It is therefore opportune to determine whether studies and reports undertaken in this new perspective by United Nations bodies or persons appointed by them are in keeping with the relevant principles of the Charter.

13. There is a third reason for dealing with this issue at some length. When the progress report submitted by the Rapporteur was discussed by the Commission on Human Rights, the representative of France said that the Rapporteur "should first place the study in the context of the Charter in order to determine which specific principles and articles were involved. Many delegations had often pointed out to the Commission the specific nature of Article 2, paragraph 7, of the Charter ... In fact, efforts should be made to prevent a study covering the whole of Chile's economic life from being felt as a flagrant intrusion in the internal affairs of the country". <sup>5/</sup> The Rapporteur believes that it would be improper for him not to heed that request.

14. On close scrutiny, the objections expressed by the ~~Chilean Government~~ can be summed up as follows: (i) the report constitutes ~~unwarranted interference in~~ the domestic affairs of a sovereign State Member of the United Nations and therefore runs counter to the basic principles of the United Nations Charter; (ii) more specifically, it is illegitimate because it ~~deals with economic and social matters~~ which by definition belong to the domestic jurisdiction of Member States; (iii) it is designed to "fulfil the unconcealed objective of the enemies of Chile, i.e. the overthrow of the present Government" and therefore amounts to "unacceptable interference in the internal affairs" of Chile. The Rapporteur will briefly consider each of these three points separately.

15. As to the first objection, which has general character and purport, the Rapporteur will endeavour to meet it by referring first to the United Nations Charter and, secondly, to the practice of the competent United Nations bodies. In the opinion of the Rapporteur, examination of both the Charter and the subsequent practice point to the same conclusion: that the United Nations is fully competent to deal with alleged violations of human rights occurring in a certain country - and hence to discuss human rights issues concerning that country, pass resolutions on them or undertake studies or reports - whenever there is reliable and convincing evidence of a consistent pattern of gross violations of human rights in that country.

2. The principles of the Charter of the United Nations concerning domestic jurisdiction

16. Article 2, paragraph 7, of the Charter has been the subject of voluminous research. The Rapporteur need not, therefore, dwell too much on the subject. He will only underscore some points that have been neglected and indicate some generally accepted conclusions.

17. Indisputably, protection of the domestic jurisdiction of Member States from unwarranted interference of the Organization constitutes one of the basic tenets of the Charter. But also the promotion of respect for human rights represents one of the principal purposes of the Organizations, so much so that - as was rightly pointed out by the representative of Lebanon in 1951 6/ - the four purposes of the United Nations set forth in Article 1 could really be reduced to two: promotion of respect for, and observance of, human rights and fundamental freedoms, and maintenance of international peace and security.

18. There naturally arises the question of the co-ordination between each of these purposes and the principle of domestic jurisdiction. While this co-ordination is relatively easy as far as the purpose of the maintenance of peace and security is concerned (Article 2, paragraph 7, in fine, itself settles this problem, by giving priority to the need to maintain or restore peace, to the extent that enforcement measures are called for), it appears rather difficult to co-ordinate the principle of respect for human rights with the clause protecting the domestic jurisdiction of Member States.

19. Although the Charter does not give a clear-cut answer to the question whether and to what extent human rights issues are covered by the domestic jurisdiction clause, there are elements that point clearly in a certain direction. It seems appropriate to recall in this connexion an important statement made at the San Francisco Conference by the representative of Uruguay, a statement that is usually passed over in silence. On 14 May 1945, in Committee I of Commission I, which dealt with the preamble and the principles of the Charter, he said:

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6/ See Official Records of the General Assembly, Eighth Session, Ad Hoc Political Committee, pp. 93-94.

"Uruguay desires that these human rights be guaranteed ... but who is to be responsible for that guarantee? Each country is responsible for the maintenance and guarantee of these rights of man within the country. But where one government, lacking in juridical culture, fails to respect these rights of man, who then will stand as a guarantee for these rights of man? ... whoever breaks these rights of man within his own home is thereby rupturing the international respect for the rights of man and is affecting the universal heritage of all. He is affecting the universal conscience which moves us to obtain a universal respect for the rights of man.

"In the face of this our viewpoint we bring up this doctrine of non-intervention. We realize how sad has been the emphasis that it has brought in some circumstances... If in Uruguay a Government were to lose its democratic conscience and begin to violate the rights of man and imprisoning people and shooting down human beings, the conscience of the people of Uruguay would not resent an intervention on the part of the community of nations to correct such a situation. There is a type of intervention which is resented, that is intervention of one State in the affairs of another State. There is another type of intervention which is healthy intervention of the conscience of the community of nations in a situation where the rights of man are being violated....

"If we only emphasize the doctrine of non-intervention, then we would have ... made some diplomatic use of time but we would not have advanced very much toward the liberation of man and the establishment of man's rights." 7/

20. It should be stressed that these views of the representative of Uruguay were supported by other delegates, inter alia those of Belgium 8/ and of Egypt. 9/

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7/ United Nations Conference on International Organization, San Francisco, 1945, Verbatim Minutes of the Technical Committees, UNCIO/Role 1/P, 14 May 1945, p.7 (emphasis added).

8/ Ibid., pp. 13-14.

9/ Ibid., p. 25. Cf. also the statement of the representative of Haiti (ibid., 15 May 1945).

In plenary the Minister of Foreign Affairs of Uruguay stressed on 28 April 1945 the importance that his country attached to respect for human rights, by requesting that admission to the Organization should be made conditional on such respect. He said:

"... In order to be a member of international society, it is not enough in its opinion to present the titles of 'peace-loving nations', but it is also necessary to be a freedom-loving nation. For this reason, restating a thought in which it believes, Uruguay puts forward a formula according to which it would be required that the States aspiring to admission to the community of nations effectively respect the essential liberties inherent in the human being. Without this condition, admission should be refused". (United Nations Conference on International Organization, vol. I, p. 304).

21. It is also worth recalling a passage from the report made by Sub-Committee I/I/A of the San Francisco Conference. This passage, albeit in terms less forceful and sweeping than the Uruguayan statement quoted above, clearly reflects the same trend to regard cases of exceptionally grave violations of human rights as being of international concern. The said Sub-Committee held that, while the protection of human rights is primarily the concern of each State, if "such rights and freedoms were grievously outraged so as to create conditions which threaten peace or to obstruct the application of the principles of the Charter, then they cease to be the sole concern of each State". 10/

22. Despite the importance of this and other similar statements, the view expressed in them was not eventually reflected in the Charter in clear and unambiguous terms. Yet, it seems that, on the basis of a careful examination of the Charter and its travaux préparatoires and according to most authorities, two conclusions can be reached:

(1) While admittedly one cannot consider any issue affecting human rights as removed from the sphere of domestic jurisdiction of Member States, nevertheless glaring and large-scale instances of violations of human rights are to be regarded as issues of international concern. 11/

(2) The competence to determine whether or not a question comes within the purview of the internal affairs of a State belongs to the United Nations bodies. 12/

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10/ United Nations Conference on International Organization, vol. VI, p.705.

11/ Several authors maintain that a correct interpretation of the Charter leads to the conclusion that human rights issues do not fall within the domestic jurisdiction of States. See e.g. G. Sperduti, Il dominio riservato (Milan, 1970), pp. 54 ff. Other scholars stress that this conclusion is corroborated by the United Nations practice, or that it can be reached only in the light of such practice. See inter alia E. Jimenez de Arechaga, Derecho constitucional de las Naciones Unidas (Madrid, 1958), p. 119; Ch. Tomuschat, "Menschenrechtsschutz durch die Vereinten Nationen", Vereinte Nationen, 1976, p. 163; A. Ross, "The provisions concerning domestic jurisdiction in Article 2 (7) of the Charter of the United Nations", Oesterreichische Zeitschrift des Oeffentlichen Rechts, 1950, pp. 562-570.

12/ As was stated by a great authority, who undertook a careful examination of the preparatory work: "The discussions in Committee I/1 clearly show that the supporters of the Sponsoring Governments' amendment did not intend that the omission of a specific reference to an organ authorized to determine the applicability of the domestic jurisdiction clause should have the effect of leaving to the individual State the power of determining with legal finality whether or not a matter was essentially within its domestic jurisdiction. They assumed throughout that the several organs of the United Nations would be competent to determine the extent to which Article 2 (7) was applicable in the consideration of any questions with which they were dealing. The problem was viewed as a particular application of the general problem of the interpretation of the Charter, governed by the principles set forth in the report of Committee IV/2, where it was stated that: 'In the course of the operations from day to day of the various organs of the Organization, it is inevitable that each organ will interpret such parts of the Charter as are applicable to its particular functions. This process is inherent in the functioning of any body which operates under an instrument defining its



3. The practice of United Nations organs in the field of domestic jurisdiction; the competence of the United Nations to deal with gross and massive violations of human rights

23. The subsequent practice of the United Nations bodies fully bears out this interpretation of the Charter. Close consideration of this practice makes it clear that whenever the United Nations has been confronted with large-scale and gross violations of human rights it has considered itself vested with authority to "intervene"; i.e. to discuss the issue, to pass resolutions on it, or to examine the situation (without, however, having the power to make on-the-spot inquiries if the State concerned has not granted its consent).

24. To be more specific, the United Nations practice can be divided into two phases. In the first stage (1946-1966), the United Nations bodies have tended to justify their authority to deal with the aforementioned situations by stressing that gross disregard for human rights is likely to have adverse consequences for international peace, by causing frictions, tensions or conflicts which could prove prejudicial to peace. As was authoritatively stated by a learned American scholar,

"In every case, the competence of the United Nations, in situations involving the charge of violations of human rights, has been based, not on the proposition that observance of those rights has become a legal obligation, but upon the fact that any flagrant, widespread and systematic disregard of human rights tends to impair the friendly relations among nations and to endanger the maintenance of international peace and security". 13/

25. Since 1967 a general practice has evolved in the United Nations to the effect that the Organization is competent to deal with situations revealing "a consistent pattern of gross violations of human rights" (a phrase used for the first time in 1967 in resolution 8 (XXIII) of the Commission on Human Rights). An indisputable proof that the United Nations has authority to act in this area can be

functions and powers. It will be manifested in the functioning of such a body as the General Assembly, the Security Council or the International Court of Justice. Accordingly, it is not necessary to include in the Charter a provision either authorizing or approving the normal operation of this principle". (L. Preuss, "Article 2, para. 7 of the Charter of the UN and matters of domestic jurisdiction", Recueil des Cours de l'Académie de Droit International de La Haye, 1949-I, pp. 596-597.

The same view is taken, inter alia, by A. Ross, "The proviso concerning 'domestic jurisdiction' in Article 2 (7) of the Charter of the United Nations", Oesterreichische Zeitschrift des Oeffentlichen Rechts, 1950, pp. 562-570; M.S. Rajan, United Nations and Domestic Jurisdiction (London, 1962), pp. 83-89; R. Higgins, The Development of International Law through the Political Organs of the United Nations (London, 1963), p. 67; A.A. Cançado Trindade, "The domestic jurisdiction of States in the practice of the United Nations and regional organizations", International and Comparative Law Quarterly, 1976, pp. 719-720.

A contrary view is taken by J.S. Watson, "Autointerpretation, competence, and the continuing validity of Article 2 (7) of the UN Charter", American Journal of International Law, 1977, p. 60 ff.

13/ L. Preuss, op. cit., pp. 641-642.

seen in the adoption by bodies such as the General Assembly, the Economic and Social Council and the Commission on Human Rights of resolutions specifically envisaging the possibility of United Nations action with respect to large-scale violations. Reference may be made to such resolutions as Commission on Human Rights resolution 8 (XXIII) of 1967 and Economic and Social Council resolutions 1235 (XLII) of 1967 and 1503 (XLVIII) of 1970; under the latter resolution the Commission of Human Rights and the Sub-Commission are authorized to consider any "consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms", and to take action thereon, that is to say either to make a thorough study, or to undertake an investigation with the consent of the State concerned. In compliance with these resolutions the competent United Nations bodies have so far discussed the situation of human rights of a few Member States, without there being any objection to their competence to do so.

26. In this connexion, attention must be drawn to the fact that before resolution 1503 (XLVIII) was adopted a few States objected to it, claiming that the procedure it set up for dealing with gross violations ran contrary to the domestic jurisdiction clause of the Charter. To be sure, the objection of some Governments to the proposed procedure was basically motivated by the fact that this procedure could be set in motion by complaints of individuals. Some States claimed that granting such a right to individuals ran contrary to Article 2, paragraph 7, and in addition was at odds with the general principle whereby only States are subjects of international law. Nevertheless, it appears that in a few instances the plea of domestic jurisdiction was also based on the fact that the procedure envisaged could lead to discussion, and to the undertaking of at least a "thorough study", of gross and large-scale violations of human rights.

27. Thus, the representative of the United Republic of Tanzania pointed out in the Economic and Social Council that

"The investigations of situations which appeared to reveal a consistent pattern of gross violations of human rights which had been undertaken without the prior consent of the Governments concerned had related to South Africa and Southern Rhodesia, cases which were exceptions to the principle of non-intervention in the domestic affairs of States". 14/

It must be stressed that the United Nations investigations into the human rights situation of South Africa and Southern Rhodesia did not involve an on-the-spot inquiry, because those countries did not allow the competent United Nations bodies to enter their territory. In the opinion of the Tanzanian representative, except in the case of South Africa and Southern Rhodesia, the prior consent of a Government was required merely to study gross violations of human rights allegedly perpetrated by a certain State. In other words, he took the view that Article 2, paragraph 7, of the Charter barred the United Nations from considering and studying gross violations of human rights purportedly committed by a specific Member State; the cases of South Africa and Southern Rhodesia were to be regarded as exceptions to this principle.

28. The Ukrainian SSR, commenting on the draft resolution prepared by the Commission on Human Rights for the Economic and Social Council and entitled "Procedure for dealing with communications relating to violations of human rights and fundamental freedoms", stated that this draft "runs counter to the provisions of Article 2 of the United Nations Charter, which provides that the United Nations shall not have the right to intervene in matters within the domestic jurisdiction of Member States". 15/ The same view was expressed by the Soviet Union 16/ and by several other States. 17/

29. Yet, once resolution 1503 (XLVIII) had been adopted, those States no longer insisted on their objection and actually co-operated in the implementation of the resolution. In the opinion of the Rapporteur, this shows conclusively, inter alia, that even those States which in 1969 considered United Nations action concerning gross violations to be contrary to Article 2, paragraph 7, of the Charter, have subsequently come to accept and acquiesce in the United Nations competence to look into and pass judgment on those gross violations.

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15/ E/CN.4/1014, p. 17.

16/ This State raised in addition a number of objections more specifically related to the fact that the proposed procedure, by granting individuals the right to petition United Nations bodies, "would actually result in the establishment of permanent machinery intended to take the place of the national bodies having competence to examine" complaints from private individuals (ibid., p. 13).

17/ The representative of Bulgaria pointed out in the Economic and Social Council that a question of principle was involved: the United Nations, as an international organization, had no right to interfere in the internal affairs of States, let alone in private matters which came within national jurisdiction. (E/AC.7/SR.621, p. 167). Romania stated: "The Socialist Republic of Romania does not agree with the concept underlying the procedure for the examination of communications relating to violations of human rights and fundamental freedoms contained in draft resolution IX, submitted by the Commission on Human Rights at its twenty-fifth session, because it is inconsistent with the provisions of Article 2, paragraph 7, of the Charter of the United Nations which state that the United Nations is not authorized to intervene in matters which are essentially within the domestic jurisdiction of any State. In certain situations the application of this procedure might lead to violations of the principles of sovereignty and non-intervention in the domestic affairs of States, under which only States are entitled to decide all human rights matters in respect of their own citizens" (E/CN.4/1014/Add.1, p.5). Poland held that the procedure envisaged in the draft resolution went contrary "to the recognized principle of international law and obviously exceeds the competence of both the Sub-Commission and the Commission. The adoption of this procedure might give rise to conflict with Article 2 of the Charter of the United Nations, which prohibits any undue intervention by the United Nations in matters which are essentially within a State's domestic jurisdiction". (E/CN.4/1014/Add.2, p.4). The same stand was taken by the Byelorussian SSR (E/CN.4/1014/Add.3, p.4) and Czechoslovakia (E/CN.4/1014/Add.4, pp. 1-2).

30. This view is also confirmed by prominent authorities in the field of human rights. Thus, for instance, Professor Ermacora has pointed out that "if it is possible to establish gross violations or a consistent pattern of violation, the United Nations takes competence to act". <sup>18/</sup> The same view has been taken by another outstanding scholar, Professor L. Henkin. <sup>19/</sup>

31. In the case of Chile, various United Nations organs, and first and foremost the General Assembly, have repeatedly maintained that large-scale violations of human rights occur in that country. An Ad Hoc Working Group was set up by the Commission on Human Rights in 1975 to investigate these violations; it has so far submitted a number of reports substantiating allegations concerning the existence of gross violations of human rights. It seems therefore that all the requirements are met for rendering legitimate United Nations action on questions relating to respect for human rights in Chile.

32. As stated above (see para. 9), three United Nations bodies, i.e. the General Assembly, the Commission on Human Rights and the Sub-Commission, have already implicitly rejected the objection that the present report is contrary to article 2, paragraph 7, of the Charter. It stands to reason that the mere fact of discussing the advisability of undertaking such a report, and of adopting resolutions thereon, shows that the aforementioned United Nations organs consider that it is proper for them and in full compliance with the Charter to decide upon the making of a report on the impact of foreign economic assistance on respect for human rights in Chile.

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<sup>18/</sup> F. Ermacora, "Human rights and domestic jurisdiction", Recueil des Cours de l'Académie de droit international de La Haye, 1968, II, pp. 436-437. See also F. Ermacora in: International Law Association, Report of the Fifty-fifth Conference, held at New York, August 21st to August 26th, 1972 (London, 1974), p. 609; and "Procedure to deal with human rights violations: a hopeful start in the United Nations?", Human Rights Journal, 1974, pp. 670 ff.

<sup>19/</sup> He has recently stated:

"The generality of States have supported the view that 'a consistent pattern of gross violations of human rights' is now a violation of international law and obligation if practised by any party to the United Nations Charter and even, perhaps, by non-members. Such violations surely are not a matter of domestic jurisdiction. Whether an alleged infringement is a violation is a question of international law, not one for an accused State to determine finally." (L. Henkin, "Human rights and 'domestic jurisdiction'", in T. Buergenthal, ed., Human Rights, International Law and the Helsinki Accord (Montclair, N.J., Allenheld, Osmun, 1977), pp. 27-28.

4. Domestic jurisdiction and the social and economic policies  
of Member States

33. It is necessary to consider now the second and more specific point made by the Chilean authorities in objecting to the carrying out of the present report. The Chilean Government, in explaining why in its view the undertaking of the report amounts to unwarranted interference in Chilean domestic affairs, points out that the report deals with the economic affairs of Chile and therefore lies outside the competence of United Nations bodies concerned with human rights. In its letter of 5 December 1977 (see annex II) the Chilean Government stated:

"The national budget of Chile, its foreign debt both public and private, the amounts, sources and objectives of the budget and the volume of foreign investment and aid are matters which fall exclusively within its domestic sovereignty and no one can claim that they should be subjected to international investigation by political organs that have no competence, whatever their intentions and purposes may be."

The same point was made by the observer for Chile in the statement he made before the Commission on Human Rights on 27 February 1978. Commenting on the progress report submitted by the present Rapporteur, he said, inter alia, that it was "dangerous, not only for Chile but also for the whole international community, for certain people to consider that they were entitled to investigate sectors that were within the exclusive competence of States, such as establishment of the budget or the use to which foreign investments should be put in the country".<sup>20/</sup>

34. This view, it is submitted, is not correct. Actually, the report is not intended to consider the economic situation of Chile per se, nor is it designed merely to focus on the attitude taken in the field of economic relations by the international community vis-à-vis Chile. The study is not aimed at scrutinizing from a merely economic viewpoint the economic policy decided upon by the Chilean authorities. The study centres instead on human rights. Its gist is consideration of whether and how human rights are protected or violated in Chile. Its distinguishing trait is its intent to draw correlations between foreign economic assistance and respect for human rights in Chile, as well as its emphasis on the link between, and the interreaction of, economic, social and cultural rights, on the one hand, and civil and political rights, on the other. Therefore, in the study, foreign economic assistance is considered not as such or in its merely economic dimension, but only insofar as it interferes with, or furthers respect for, human rights. In other words, the analysis of the economic situation of Chile is part and parcel of the investigation of the human rights situation in Chile; it is a means of better ascertaining whether and to what extent human rights are violated in Chile. The United Nations is therefore fully competent to undertake this analysis or to authorize a Rapporteur to make it.

35. It would be improper to claim that the United Nations is precluded from going into the economic situation of a country even from the viewpoint of the relation between that situation and the situation of human rights in that country, or from the viewpoint of the extent to which that situation has a positive or adverse impact on respect for human rights. In fact, the United Nations, being competent - for the reasons stated above - to deal with gross and massive violations of human rights in specific countries, has consequently authority to consider both these violations per se and their general context, i.e. the general economic and social circumstances that may be at the root of those violations or can constitute their effects.

36. It would be unfounded to claim that this competence of the United Nations can lead to unwarranted interference of the Organization in the domestic sphere of Member States because the Organization - on the pretext of wishing to consider why human rights are violated in a given country - could start intruding in such delicate and typically exclusive matters as domestic economic policy-making, distribution of income, etc. This claim is unjustified and States Members of the United Nations should not fear illegitimate encroachments on the part of the Organization in their domestic affairs. Actually, the United Nations can proceed to examine the social and economic context of human rights violations in a given country only on two conditions: (i) that this examination is directly related to the situation of human rights in that country and proves necessary to clarify the origin, the historical and social motivations or the social and economic consequences of those violations; (ii) that a United Nations body such as the General Assembly has previously made a finding, in a resolution adopted by the prescribed majority, to the effect that a certain State grossly and systematically violates human rights. In the view of the Rapporteur, United Nations bodies are not authorized to look into the economic or social situation of a Member State (or, for that matter, of any State), unless the two aforementioned conditions are fulfilled.

37. The existence of the above conditions constitutes a sufficient safeguard for States that the Organization will not go beyond the powers and the authority which it derives from the Charter as interpreted and clarified by the subsequent practice.

38. The Rapporteur wishes to stress a point which he believes is very important. The report on Chile is part and parcel of the new United Nations strategy on human rights, of the need - so rightly emphasized by the General Assembly in its resolution 32/130 - to examine human rights "globally". Indeed, the resolutions providing for the present report start from the assumption that the United Nations should not confine itself to pinpointing instances of gross violations of human rights but should also concern itself with the general context - national and international - of such violations, in an effort to identify the social, economic and political roots - both national and international - of such violations. 21/

21/ In para. 1 (d) of resolution 32/130 the General Assembly stated that "human rights question should be examined globally, taking into account both the over-all context of the various societies in which they present themselves as well as the need for the promotion of the full dignity of the human person and the development and well-being of the society" (emphasis added).

Another reason behind the report on Chile was spelled out, in general terms, by the General Assembly, in its aforementioned resolution 32/130, where the Assembly stated that "the achievement of lasting progress in the implementation of human rights is dependent upon sound and effective national and international policies of economic and social development, as recognized by the Proclamation of Teheran. The General Assembly rightly emphasized the close link between the promotion of human rights and the national and international economic context."

39. It is worth recalling in this connexion that before resolution 32/130 was adopted by the General Assembly, several States stressed the need to investigate inter alia the causes of gross violations of human rights as well as their international setting. Thus, the representative of Cuba said that during "the new phase which the Third Committee [of the General Assembly] was about to enter, the competent organs of the United Nations responsible for human rights questions should give priority attention to the causes which made the enjoyment of economic, social and cultural rights impossible, and especially the issue connected with the prompt establishment of a new international economic order".<sup>22/</sup>

40. The statement made by the representative of Iran is of particular importance, both because she approached the whole matter of human rights and because she was one of the main sponsors of the draft resolution which was subsequently adopted as resolution 32/130. She stated:

"It was essential to redefine those concepts, broadening them so as to create the conditions of confidence and co-operation required for effective action to promote all human rights throughout the world. For that purpose, it was necessary first of all to avoid treating questions concerning human rights in isolation from all other human problems, in particular economic ones. The internationalization of those questions went hand in hand with the increasingly close interdependence between nations. There could be no real co-operation in the implementation of individual rights and civil and political rights if no such co-operation was forthcoming for the implementation of the rights of peoples and economic, social and cultural rights. Secondly, while it was true that swift action had to be taken in the case of massive and flagrant violations, human rights could not be effectively promoted if people considered only the effects and refused to ponder the underlying causes of the problems involved, causes which should be considered in their true - international as well as national - perspective".<sup>23/</sup>

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<sup>22/</sup> A/C.3/32/SR.43, para. 10.

<sup>23/</sup> A/C.3/32/SR.43, para. 27.

41. The Rapporteur believes that the report on Chile must be viewed in this perspective. The same approach lies behind the aforementioned report submitted in 1977 by Mr. Khalifa on the adverse consequences for the enjoyment of human rights of political, military, economic and other forms of assistance given to the colonial and racist régimes in ~~southern Africa~~.<sup>24/</sup> It may be noted in passing that no one has raised any objection to this report on the grounds that it was contrary to the domestic jurisdiction of a Member State of the United Nations. It is not the intention to say here that the human rights situation in Chile is similar to that obtaining in South Africa. The Rapporteur wishes only to point out that the United Nations decided in 1974 to make a study of the foreign economic assistance to a Member State, and that no objection of principle has been made, neither at that time nor later, to the carrying out of such a study. This precedent should therefore constitute a further reason for rejecting the Chilean objections.

5. Domestic jurisdiction and the motivations behind  
United Nations resolutions

42. In objecting to the competence of the United Nations to undertake the present report, the observer for Chile advanced in 1977 a specific argument. He pointed out that "the draft resolution [which was subsequently adopted as resolution 11 (XXX)] envisaged measures which were designed, whether intentionally or not, to fulfil the unconcealed objective of the enemies of Chile, i.e. the overthrow of the present Government. It therefore constituted unacceptable interference in the internal affairs of his country".<sup>25/</sup> The Rapporteur considers that the attribution of this objective either to the framers of resolution 11 (XXX) or to the majority of the Sub-Commission that adopted it, or even to the Rapporteur himself, is not corroborated by any evidence whatsoever. In particular, it finds no support in the statements made in the Sub-Commission. Therefore, it cannot but be regarded as sheer speculation. Of course, representatives of Member States are free to advance conjectures about what they consider to be the real intention behind, or the main purpose of, resolutions adopted by United Nations bodies or to express their own anticipation of the action that will be taken by the United Nations. In that case, however, their statements will of necessity have a merely political significance, without any bearing on the legal question whether the plea of domestic jurisdiction is rightly relied upon.

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<sup>24/</sup> E/CN.4/Sub.2/385

<sup>25/</sup> E/CN.4/Sub.2/SR.797, para. 32.



C. Scope of the study

43. The terms of reference of this study are laid down in ~~Sub-Commission~~ resolution 11 (XXX), which requested the Rapporteur "to analyse the volume, origins, development and significance of the assistance given to the present régime in Chile and to study whether a quantitative or qualitative change in the aid now being given might contribute to restoring respect for human rights in Chile".

44. In order to identify his exact mandate the Rapporteur considered it necessary to examine the debates that preceded the adoption of Commission on Human Rights resolution 9 (XXXIII) - from which the Sub-Commission derives its authority in this specific area - the discussion which took place in 1977 in the Sub-Commission on the occasion of the adoption of the aforementioned resolution 11 (XXX), and the comments and suggestions made at the thirty-fourth session of the Commission on Human Rights during the consideration of the Rapporteur's progress report (E/CN.4/1267). On the basis of those debates and of the text of Sub-Commission resolution 11 (XXX), the Rapporteur concluded that the report entrusted to him should have the scope and purpose set forth in the following paragraphs.

45. First, the study deals with the impact that foreign economic assistance may have on all human rights, be they civil and political or economic, social and cultural. Naturally, economic, social and cultural rights should receive primary emphasis in the study, because it is on these rights that foreign economic assistance may have a more direct bearing. This was stressed by the Sub-Commission itself. In setting forth the reasons behind the undertaking of the present study, it stated, in the fourth preambular paragraph of resolution 11 (XXX), that it was "deeply concerned at the indications contained in the report [of the Ad Hoc Working Group on Chile] that constant and flagrant violations of human rights in Chile continue to occur and in particular that the economic, social and cultural rights of the vast majority of the Chilean people are grossly disregarded". The report will therefore focus on whether economic assistance granted by States and foreign institutions goes to the needy people. In other words, a main purpose of the study is to see whether such assistance is used to promote employment, to provide better housing and nutrition and to make education accessible to large segments of the population.

46. ~~Despite this special emphasis, the Rapporteur feels, however, that consideration of the possible impact of foreign economic aid on civil and political rights also forms part of his mandate.~~ The Rapporteur strongly believes that the Sub-Commission requested him to look into this area of human rights as well. The link between foreign economic assistance and the promotion, or disregard, of civil and political rights is not direct and manifest but complex and multifaceted. In addition, for the reasons stated below (see para.75 ff.), the Rapporteur has not had direct evidence available, nor has he had the opportunity to verify in loco how this link takes shape in Chile. The analysis on this subject has therefore proven particularly difficult.

47. Secondly, as stated in paragraph 35 above, the study is not intended to consider the economic situation of Chile per se, nor is it meant to pass judgement on whether the assistance given by States or international institutions to Chile is economically viable or effective. The study centres instead on human rights. It is designed to draw correlations between foreign economic assistance and respect for human rights in Chile. Foreign economic assistance will be considered only in so far as it interferes with, or furthers respect for, human rights.

48. Thirdly, the report focuses on the assistance being given to the present Government of Chile and does not attempt a systematic comparison with any prior period. Nevertheless, to the extent that it has proved useful for shedding light on the present situation, or explaining specific features of it, reference to pre-1973 conditions has been regarded as warranted.

49. Fourthly, the study examines the flow of foreign capital to Chile, including commercial loans, private loans, loans from States, loans from international organizations, as well as foreign investments. The question whether foreign investments in Chile should also be dealt with in the report has been answered in the affirmative by the Rapporteur for the following reasons. Sub-Commission resolution 11 (XXX), which sets forth the terms of reference of the Rapporteur, uses broad and flexible terminology to indicate the scope and purpose of the study. In the fifth preambular paragraph, reference is made to "foreign aid, assistance and investments in Chile from governmental, intergovernmental and private sources". In the preambular paragraph of section I of the resolution mention is made of "economic aid and assistance" whereas in operative paragraph 1 of section I reference is made to "the various forms of aid extended to the Chilean authorities" and in operative paragraph 3 of the same section mention is made first of "assistance" and then of "aid" without any qualifying adjectives. In the opinion of the Rapporteur, this use of a variety of terms is indicative of an intention not to confine the scope of the study to one specific category of foreign aid; otherwise the framers of the resolution would have always used a single term with a single meaning. It is therefore apparent from the very text of the resolution that the Sub-Commission intended to give the study the widest possible scope. In addition, the debates that preceded the adoption of the resolution made it clear that the Sub-Commission expected the Rapporteur to consider all contributions to the Chilean economy coming from abroad. The philosophy behind the resolution is to have a study undertaken which will reveal whether the present situation of human rights in Chile draws benefit from, or is instead worsened by, the granting of foreign loans or capital. In other words, the study is designed to ascertain whether the flow of foreign capital into Chile helps to improve the situation of human rights there, or whether it is instead instrumental in causing a deterioration of that situation. In the light of this general goal, it seems to the Rapporteur that a discussion of foreign investments in Chile must perforce come within the province of his study.

50. Fifthly, the provisions of Sub-Commission resolution 11 (XXX) seem to exclude from the scope of the study any economic or commercial relation with Chile that does not take the form of assistance or aid. In the opinion of the Rapporteur, normal bilateral trade should not be regarded as a form of assistance to a government. Consequently, he will not consider normal commercial exchanges in the present report. The Rapporteur wishes to point out that he set forth this

delimitation of the scope of the report in the Commission on Human Rights <sup>26/</sup> following a request for clarification made by a member of the Commission. <sup>27/</sup> No member of the Commission expressed doubts or reservations about the above delimitation, and the Rapporteur therefore considers that the Commission approved it.

51. Sixthly, operative paragraph 1 of section I of Sub-Commission resolution 11 (XXX) requests the Rapporteur to study the consequences of the various forms of aid extended "to the Chilean authorities"; and operative paragraph 3 goes on to provide that he should inquire into the foreign economic assistance given "to the present régime in Chile". It follows that in principle the report should focus only on the assistance granted to the present Government authorities, thus leaving aside the aid given by Governments, agencies or institutions to private bodies operating in Chile without the support, or outside the "umbrella", of the Government.

52. ~~The Rapporteur feels, however, that this narrowing of the scope of the study would leave out of the general picture of the outside aid to Chile an important form of foreign assistance, namely, that which is channelled to private humanitarian institutions operating in Chile to help needy people.~~ This category of foreign economic assistance is relevant to the present report in two respects. Firstly, it is granted by Governments which have decided to withhold economic assistance to the Chilean authorities because of the gross violations of human rights committed by those authorities. This attitude is indicative of the reaction of Governments and foreign institutions to gross disregard of human rights in Chile. The examination of the form of economic assistance in question can therefore enable the Rapporteur to show to what extent Governments and foreign institutions have taken this attitude vis-à-vis Chile. Secondly, this kind of assistance is undoubtedly one of the forms of foreign economic aid which are designed to contribute to the realization of economic, social and cultural rights in Chile. Its consideration and assessment could therefore provide useful suggestions for the action to be taken by the international community vis-à-vis Chile.

53. The Rapporteur believes that, although a literal interpretation of operative paragraphs 1 and 3 of section I of Sub-Commission resolution 11 (XXX) seems to exclude examination of this form of assistance, such examination is warranted by the whole spirit of the resolution. Furthermore, the preambular paragraph of section I of the resolution uses a very broad terminology ("Considering that it is important to study the impact of foreign economic aid and assistance on respect for human rights in Chile"), which no doubt can be interpreted as making allowance for the above form of assistance as well.

54. The Rapporteur is, however, aware that the main focus of his study should be on the assistance provided to the Chilean authorities. He will therefore deal with the assistance channelled through private humanitarian institutions only very briefly.

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<sup>26/</sup> E/CN.4/SR.1458, para.25.

<sup>27/</sup> E/CN.4/SR.1454, para.10.

#### D. Methodology

55. Before starting to explore the impact of foreign economic assistance on respect for human rights in Chile, it is appropriate to deal with three general questions of method.

##### 1. Models of connexions between human rights and foreign economic assistance

56. First, it seems useful, for the purposes of research, to establish a kind of general and abstract model of the possible correlations between foreign economic assistance and respect for human rights in countries where civil, political, economic, social and cultural rights are indisputably violated. The establishing of general patterns, unrelated to the concrete situation of the country under consideration - Chile -, can furnish some general and preliminary points of reference for the specific investigation of how that correlation takes shape in the specific country that we have to consider. Assuming (1) that a country undeniably violates human rights on a large scale and (2) that it is granted foreign economic assistance by other States and by international organizations, the following abstract situations could be visualized.

57. First, there can be a situation characterized by the lack of any direct or indirect relationship between foreign economic assistance and respect for, or disregard of, human rights. It could turn out that foreign economic assistance has no bearing whatsoever on the human rights situation in a given country, in that it neither favours respect for human rights nor proves detrimental to their realization. Clearly, this hypothetical absence of any nexus between foreign economic assistance and human rights is not easy to establish in concreto. Arguably, this situation takes place whenever it can be proved that the cessation of the flow of economic aid from abroad is, or would be, immaterial to respect for human rights in a given country.

58. Secondly, if, by contrast, a correlation between foreign economic assistance and human rights can be established, there could be ex hypothesi two general situations:

(a) ~~Foreign economic assistance does not benefit the needy people. It does not help reduce unemployment; it does not help improve the health services nor does it promote better or more widespread education. It is only used by the government authorities to bolster the State apparatus, to buy weapons and military equipment to be used for internal or external security, and to enhance the conditions of a small social élite (that sustaining the ruling group). In this case, foreign economic assistance is directly detrimental to human rights in that country, in that (i) it does not have beneficial effects for the living conditions of the large majority of the people; (ii) instead, it strengthens the oppressive government by lending it economic support. Foreign economic assistance thus helps to perpetuate disregard for human rights in that country.~~

(b) ~~Foreign economic assistance helps to restore respect for human rights in that country. It serves the following purposes: (i) it enhances the efforts of the government authorities to raise the standard of living of the whole population and proves to be additional to the endeavours of the State authorities to implement social, economic and cultural rights; (ii) in some areas, it~~

improves directly the lot of destitute people, e.g. by helping to provide housing, education, employment, health care etc. to groups of people who otherwise - without such economic assistance - could not better their living conditions; (iii) it directly creates conditions favourable to the restoration of respect for civil and political rights. Thanks inter alia to foreign economic assistance, the authorities abolish previous curtailments of civil and political rights and bring the country back to the rule of law and to respect for the basic principles concerning human dignity agreed upon by the international community.

59. The general and abstract categories outlined above serve only a cognitive purpose. They are conceptual tools that can prove useful for analytical purposes. They are "ideal types" (Idealtypen) - to use the terminology of Max Weber 28/ - namely, logical constructions which do not reflect the reality in all its multiplicity of forms and attitudes but serve to orient the inquiry into the concrete historical phenomena. Of course, these phenomena never correspond in toto to one of the two above categories. "The infinite manifold of the reality" shows a wide spectrum of individual situations, a whole gamut of unique and prismatic conditions which do not fit into the abstract models. 29/ In the actual reality we can find a whole series of diverse situations, each of them showing distinct and unique features but each partaking, to a greater or to a lesser degree, of the characteristics of either abstract model.

60. Thus, for instance, intermediate between the two aforementioned extremes one can visualize a situation that may be described as follows: the inflow of some forms of foreign economic assistance is beneficial to some segments of the population of a given country (e.g. categories of persons with a very low income, unemployed, certain categories of people who could not otherwise afford to receive medical care, etc.). In such a case, foreign economic assistance favours the implementation of some basic human rights of certain categories of persons (e.g. the right to physical and mental health, the right to work, the right to an adequate standard of living, the right to education etc.). At the same time, however, there exist forms of foreign economic assistance which have negative effects. Thus, in some respects, the flow of capital goods can

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28/ See M. Weber, Gesammelte Aufsätze zur Wissenschaftslehre, 2nd ed. (Tübingen, 1951), pp. 191 ff., 396-397. See also A. Schweitzer, "Vom Idealtypus zum Prototyp", Zeitschrift für die gesamte Staatswissenschaft, 1964, p. 13 ff. A concise analysis of the concept of "ideal types" is made by, among others, P. Rossi, Lo storicismo tedesco contemporaneo (Turin, 1956), pp. 328-330, and by K. Jaspers, Max Weber - Politiker, Forscher, Philosoph (Munich, 1958), p. 53. A critical view is taken by W.G. Runciman, A Critique of Max Weber's Philosophy of Social Science (Cambridge, 1972), pp. 35-37.

29/ As was pointed out by H.H. Gerth and C. Wright Mills (Introduction to From M. Weber: Essays in Sociology (London, 1970), p. 60), "the real meat of history would usually fall in between such extreme types [i.e. the extreme and 'pure cases' which "became 'crucial instances' and controlled the level of abstraction that he used in connexion with any particular problem"]; hence Weber would approximate the multiplicity of specific historical situations by bringing various type concepts to bear upon the specific case under focus".

help prop up the repressive system, by making it economically viable: in this way, economic assistance becomes instrumental in maintaining and prolonging in time disregard for civil and political freedoms. Furthermore, it may happen that some categories of foreign economic assistance are used by the recipient authorities in such a way as to consolidate an economic and social policy designed to favour some social categories while disregarding the fundamental economic, social and cultural rights of the vast majority of the population. If this is the case, foreign assistance proves to produce adverse effects on the conditions of the largest part of the recipient State's population.

51. Although the multifarious phenomenology never shows a full identity with the abstract typology, the latter can greatly help in pinpointing the unique features of a given situation: this can be achieved by ideally approaching that situation to the various "ideal types" and thereby seeing to which of them it comes closer ("ideal types" have rightly been termed "bench-mark concepts"). <sup>30/</sup> With particular reference to the issues to be considered in this report, it is submitted that on the basis of the aforementioned twofold categorization one can better identify the various relationships between two basic phenomena (foreign economic assistance; human rights) existing in the context of Chile. That classification should enable us to better indicate to which of the two abstract categories referred to above the concrete situation of Chile is closer.

## 2. Categories of foreign economic assistance.

52. For the purposes of this report, it is useful to identify, in general terms, the main categories of foreign economic assistance. There are, of course, some obvious classifications, such as that based on the forms and modalities of assistance (loans, credits, investments, rescheduling of debts, etc.), or the classification based on the source of the assistance (States, intergovernmental organizations, private companies, etc.). Although these categorizations can be useful also for the purposes of the present study, the Rapporteur believes that it is particularly relevant to the question of whether and to what extent foreign economic assistance is advantageous to human rights to establish a classification based on the possible extent of impact of that assistance on human rights. From this vantage point, the Rapporteur believes that three categories can be identified which will prove useful for this study.

53. A first category (covering the aid directly related to the enjoyment of human rights) includes those forms of economic assistance which are designed to benefit immediately and directly certain social groups. Mention can be made, for instance, of the supply of food to poor segments of the population, of loans for improving the housing conditions of marginal urban communities, of credits for small farmers, of projects for the building of hospitals in underprivileged areas, of allocation of funds for the medical education of students coming from the poor strata of the population, etc.

<sup>30/</sup> R. Bendix, "M. Weber", International Encyclopaedia of the Social Sciences, vol. 15, New York-London, 1972, p. 499.

64. It must be underscored that this form of assistance can benefit not only economic, social or cultural rights but also civil and political rights. Mention can be made of certain cases where foreign Governments, instead of granting economic aid to a Government or to enterprises, provide assistance to rural co-operatives (in the form of loans, of grants of equipment, seeds, etc.) or give assistance for the urbanization (electricity, roads, etc.) of the rural areas where the communities live. This assistance is designed inter alia to help small communities to develop their own values and, more than that, to promote political development through democratic participation, at the communal level, in the decision-making process. In these cases foreign economic assistance can have an impact on civil and political rights in that it promotes the enjoyment of some of these rights, e.g. the election of representatives of the community. More generally, it promotes the participation of the whole community, through their representatives, in the decisions affecting the economic, social and cultural life of the community itself. As instances of this form of economic assistance geared to enhancing both the socio-economic life of rural areas and their democratic development, reference can be made to the well-known experiences of Peru, Bolivia and Ecuador. 31/

65. The economic assistance falling under this first category is, on the face of it, exclusively and immediately geared to the realization of some basic human rights (the right to food, to health, to education, etc.). Though ~~in abstracto it is instrumental in implementing human rights~~, a correct assessment of its real impact on human rights cannot be made unless two factors are taken into account: (i) the magnitude of this form of aid in relation to other categories of foreign economic assistance; (ii) the over-all socio-economic policy adopted by the recipient State (this State could use the foreign assistance to bolster and increase the social schemes it carries out in the same area, or, on the contrary, it could use it only to cut back its own spending, thus replacing national resources and taking advantage of foreign exchange).

66. ~~A second category is the assistance geared to development.~~ It includes such forms of aid as ~~projects for technical assistance in the widest sense (planning schemes, technical training programmes, provision of administrators, teachers, technicians, projects for the improvement and modernization of agricultural techniques and productivity, etc.), loans or grants to help finance infrastructure projects, productive investments in socially relevant areas, etc.~~ 32/ This form of assistance has an indirect potential for benefiting

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31/ Generally, the link between socio-economic progress and civil and political rights has been pointed out in the following terms: "A basic-needs oriented policy implies the participation of the people in making the decisions which affect them. Participation interacts with the two main elements of a basic-needs strategy. For example, education and good health will facilitate participation, and participation in turn will strengthen the claim for the material basic needs" (Employment, Growth and Basic Needs - A One-World Problem (Geneva, ILO, 1976), p. 32).

32/ The Rapporteur is aware that the concept of "development" is very complex and controversial and that there exist many definitions of "development" (see, for example, F. Perroux, L'économie du XX<sup>e</sup> siècle, (Paris, 1961), p. 155 ff.; G. Caire, Liberté syndicale et développement économique (Genève, BIT, 1976), pp. 27-32; D. Morawetz, Twenty-five years of economic development 1950-1975 (Washington, The World Bank, 1977), chap. I). However, for the purposes of the present study, he has chosen a concept of development which is not geared to economic growth but is basic needs oriented (see infra, paras. 60-71).

economic, social and cultural rights, to the extent that the latter may be improved through any economic development induced. To evaluate whether this assistance has any positive impact on the realization of human rights, it is, however, necessary - as for the previous category - to take account of the allocation of national resources made by the recipient State, of the policy it carries out in the social field, etc.

67. A third category is the assistance which is not directly concerned either with human rights or with development. This sort of assistance can take the form of credits or loans not targeted to socially relevant areas, of investments guided by purely commercial criteria, of debt rescheduling, etc. It is mainly aimed at promoting the economic growth of the recipient country, besides of course serving the commercial or financial interests of the donor State, institution or private body. This kind of assistance can turn out to be beneficial to human rights (e.g. by promoting employment, or through the side effects caused by the productive activities that it may enable, further or stimulate). It can, by contrast, prove immaterial - or even detrimental - to the promotion of human rights, if it is used by the authorities of the recipient State in order to implement an economic policy which is not beneficial (or is relatively not beneficial) to the vast majority of the population. Thus, for instance, the recipient State can use it to replace the monetary resources earmarked in the national budget for social expenditures, thereby diverting those resources to other items (national defence and other military expenditures, building of infrastructure or dwellings for privileged strata of the population, etc.).

68. The Rapporteur is aware that some authorities have taken the view that this kind of assistance, in the end, is always beneficial to the whole population of the beneficiary State, in that it promotes economic growth, which in turn results in social advantages accruing to the whole population. There has been a great deal of discussion on this matter both among scholars and in official bodies. It is not, of course, the purpose of the Rapporteur to go into any elaborate analysis of this complicated matter. He will confine himself to quoting a few authorities who have questioned the validity of the aforementioned view.

69. The President of the World Bank, Mr. McNamara, in his last address to the Bank's Board of Governors, said:

"In retrospect, it is clear that too much confidence was based on the belief that rapid economic growth would automatically result in the reduction of poverty - the so-called 'trickle-down theory'. ...

"...

"Economic growth is a necessary condition of development in any society, but in itself it is never a sufficient condition. And the reason is clear. Economic growth cannot assist the poor if it does not reach the poor.

"...



"It always comes down to a question of priorities: more foreign exchange for importing private automobiles; or an extended bus fleet. Elaborate government offices; or squatter settlement upgrading. A new generation of jet fighters for the air force; or a new generation of infants who will live beyond their fifth birthday." 33/

70. The fact that the unparalleled economic growth rates achieved by many developing countries during the 1960s did little or nothing to improve the lot of the majority of their populations, which continued to live in desperate poverty, has led to what the late Senator Hubert Humphrey described as "a veritable intellectual revolt among scholars of development who are turning against the long-held view that growth alone is the answer that will trickle benefits to the poorest majority". 34/

71. Even more important than these views expressed by prominent United States figures, or than the similar views held by scholars, 35/ is the fact that the same stand has been taken by the United Nations General Assembly. In its resolution 2626 (XXV), "International Development Strategy for the Second United Nations Development Decade", adopted on 24 October 1970, the Assembly stated that:

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33/ R.S. McNamara, Address to the Board of Governors (Washington, D.C., 26 September 1977), pp. 9, 11 and 27.

34/ Quoted by J.P. Grant, "Development: the end of trickle down?", Foreign Policy, No. 12, 1973, p. 43.

C. Adelman and C. Taft Morris, in Economic Growth and Social Equity in Developing Countries (Stanford, Calif., 1973), p. 189, state the following:

"An even more disturbing implication of our findings is that development is accompanied by an absolute as well as a relative decline in the average income of the very poor. Indeed, an initial spurt of dualistic growth may cause such a decline for as much as 60 per cent of the population. The absolute position of the poorest 40 per cent apparently continues to worsen as countries move toward less dualistic growth patterns unless major efforts are made to improve and expand human resources.

Thus our findings strongly suggest that there is no automatic, or even likely, trickling down of the benefits of economic growth to the poorest segments of the population in low-income countries. On the contrary, the absolute position of the poor tends to deteriorate as a consequence of economic growth. We have seen in Chapter 4 that this unhappy phenomenon probably has its roots in the complex of structural changes that typically accompany the early and middle stages of economic development."

35/ In addition to the scholars quoted in the foregoing note, one can mention the following: K. M'Baye, "Le droit au développement comme un droit de l'homme", Human Rights Journal, 1972, p. 512; J.P. Grant, op. cit., p. 43 ff.; G. Cairé, op. cit., pp. 27-34. See also J.K. Nyerere, Freedom and Development: A Selection from Writings and Speeches 1968-1973 (London, 1973), p. 58; and Employment, Growth and Basic Needs - A One-World Problem (Geneva, ILO, 1976), p. 15 ff.

"The ultimate objective of development must be to bring about sustained improvement in the well-being of the individual and bestow benefits on all. If undue privileges, extremes of wealth and social injustices persist, then development fails in its essential purpose". 36/

72. Although the Rapporteur shares the latter view, he is aware that the matter is very complex. In this study he neither wishes nor is able to embark upon a discussion of these issues. He believes that, for the purposes of the present study, it is enough to say the following. The forms of foreign economic assistance coming under the various categories under discussion must always be the subject of close scrutiny, to verify in concrete if they are eventually beneficial or detrimental to the human rights of the population.

73. It should be pointed out that the above-mentioned three categories should of course be used cum grano salis. Like the typology of relationship between human rights and foreign economic assistance, set forth in section 1, these categories are merely cognitive instruments. Actual reality is more complex and multifarious than logical classifications. It may therefore occur that in a given case a certain form of economic assistance shows features which prevent it from fitting precisely into one of the categories.

74. Despite this possible shortcoming, the Rapporteur believes that the above categorization can be of some help, and he will therefore endeavour to use it in the course of this study.

### 3. The question of evidence

75. A second general observation of a methodological nature is called for before entering into the merits of the matter to be considered in this report.

76. No one will dispute that the question of the impact of foreign economic assistance on human rights in Chile is both complex and delicate. For one thing, this whole area of problems (i.e. the multifaceted relations between human rights and outside economic aid) has been little studied so far: the novelty of this kind of examination makes it necessary to proceed with extreme caution and to devise new and imaginative tools of research. For another thing, the nexus between the two classes of phenomena that are to be considered is very subtle and multifaceted. In addition, the whole set of questions that require to be looked into are difficult to establish on a actual basis.

36/ Paragraph (7) of the International Development Strategy.

It must be stressed that, according to a United Nations report which appraised the prospects for progress during the first Development Decade, one of the greatest dangers in development policy lies in the tendency to give to the more material aspects of growth an overriding and disproportionate emphasis. The end may be forgotten in preoccupation with the means. Human rights may be submerged and human beings seen only as instruments of production rather than as free entities for whose welfare and cultural advance the increased production is intended" (E/3447/Rev.1, para. 90).

77. It obviously follows that, in order to carry out an exhaustive and fully satisfactory investigation of the impact of foreign economic assistance on human rights in Chile, it would be necessary to rely on "hard" and undisputed evidence. This evidence can only be gathered if one can verify on the spot how foreign economic assistance is utilized in that country. Indisputably, one of the best means of ascertaining whether the flow of foreign money into Chile is beneficial or detrimental to human rights would consist in interviewing the beneficiaries or recipients of foreign economic assistance about the actual use of that assistance. In addition to questioning the people concerned, one could approach the Chilean officials responsible for requesting, obtaining and administering foreign aid, in order to obtain statistics, official information and all other relevant data.

78. Regrettably, as stated elsewhere in this study (see para. 6 ff. and annex II), the Government of Chile has refused to co-operate in the undertaking of the present report. It has explicitly stated that it would in no way furnish assistance useful for the fulfilment of the tasks assigned by the Sub-Commission to the Rapporteur. Implicit in this refusal is the decision not to provide statistical and other official information, much less authorize the Rapporteur to enter Chile to make an on-the-spot investigation. As a consequence of the Chilean Government's refusal to co-operate, the Rapporteur has not been in a position to use the two best kinds of evidence: direct investigation of the situation in Chile; interviewing of the Chilean people concerned.

79. Being in this predicament, the Rapporteur has found himself obliged to rely on other sorts of evidence: those official publications of the Chilean authorities available abroad, Chilean press reports, statements made by the representatives of Chile to the United Nations, documents or statements of other States Members of the United Nations and documents of NGOs. In a few cases he has been able to obtain written testimonials from people living in Chile or people who have been there for a long time and who, in the considered opinion of the Rapporteur, can be regarded as reliable and bona fide witnesses. Furthermore, the Rapporteur has found himself constrained to make great use of the Chilean press, from which he has drawn both official information (statistics, reports on specific facts and similar data) and comments on the Chilean situation.

80. In many instances, the Rapporteur has been confronted with conflicting factual information coming from the Government authorities on the one hand, and from other official sources (such as Chilean State bodies other than the Government) or from the Chilean press, on the other hand. Of course, in these cases, the Rapporteur has not been able to verify directly which data were correct, nor has he been in a position to determine the veracity of the data by speaking with the people concerned (e.g. by inquiring into how the information had been obtained, how the statistics had been drawn up, by what method the figures had been elaborated, etc.).

81. On these occasions, the Rapporteur has chosen the following path: he has sought to draw indirect confirmation of the data produced either by the Government or by other sources from other reports which in some way touched upon the subject. As indirect but reliable proof that the figures given by either party were accurate, comments in the Chilean press have sometimes been used.

82. The non-co-operative attitude of the Chilean Government, with all its consequences for collecting sound evidence, has made it necessary for the Rapporteur to take the following two steps.

83. First, in some instances where he was not able to find factual evidence to prove or disprove the affirmations of the Chilean Government, he has felt obliged to make use of comments in the Chilean press (such as the pro-Government newspaper El Mercurio, the magazine Mensaje, which is issued by Jesuits, the bulletin of the Vicaría de la Solidaridad, entitled Solidaridad, the weekly Hoy, issued by Christian Democrats, or the magazine Ercilla, issued by financial groups which are close to the Government). The Rapporteur has endeavoured, to the best of his ability, to check the accuracy and soundness of these comments. But in some cases he has of course had to rely on the authoritative character of the source and proceed from the assumption that the information or comments it gave were trustworthy. The Rapporteur has also felt it fitting to take account of statements made by trade union leaders living in Chile, the Catholic Episcopate, and similar sources.

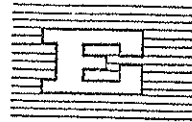
84. On the whole, one can say that on many occasions the Rapporteur, because of the refusal of the Chilean Government to co-operate, has had to use logical inferences, or logical presumptions or circumstantial evidence rather than relying on direct or testimonial evidence.

85. In the second place, the Rapporteur, not having means available for scrutinizing in concreto whether and to what extent specific instances of foreign economic assistance benefit human rights in Chile, has found himself constrained to take a different approach from that which he would have chosen had he been in a position to use other means of inquiry, as well as direct evidence. The approach he has taken is global. It is, in fact, wider than that consisting in directly verifying, on the spot, whether a certain form of foreign economic assistance proves advantageous to human rights or has instead an adverse impact on them. Proceeding under the approach eventually selected, he has endeavoured to look into the whole economic and social situation now obtaining in Chile. In particular, he has considered whether and to what extent the economic policy currently carried out by the Chilean authorities is actually implementing economic, social and cultural rights. The purpose of this investigation is to see whether one can draw a correlation between the improvement or the deterioration of the human rights situation in Chile, on one side, and foreign economic assistance, on the other.

86. It must be underscored, however, that this approach is in line with the view expressed above (para. 65 ff.) that the real impact of foreign economic assistance can be effectively gauged mainly by looking into the general socio-economic context of the recipient State, as well as into the way such assistance is actually used. It is therefore submitted that this approach possesses an autonomous validity and should be applied, in principle, also in cases where the State under examination is ready and willing to co-operate. In such cases this approach could usefully supplement the method consisting in conducting specific and direct investigations into the impact on human rights of individual forms of economic assistance.

87. The Rapporteur has endeavoured, to the best of his ability, to remedy the shortcomings referred to above. He hopes that the Government of Chile may be willing in the future to take a co-operative attitude, thus allowing the undertaking of investigations in loco. He also trusts that all those who have direct access to further accurate and reliable information will communicate it to him as soon as the report can be widely circulated. This may enable him to fill the gaps - which are inevitable, in view of the difficulties with which he has been confronted because of the unco-operative attitude of the Chilean authorities - or to correct any part of the analysis or any assessment that may prove to be unsound.

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Item 13 of the provisional agenda

STUDY OF THE IMPACT OF FOREIGN ECONOMIC AID  
AND ASSISTANCE ON RESPECT FOR HUMAN RIGHTS IN CHILE

Report prepared by Mr. Antonio Cassese, Rapporteur\*

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\* For technical reasons, the report will be distributed in four volumes.  
Volume I contains the table of contents and the introduction; volume II contains  
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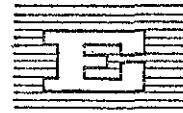
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Chapter I

THE ECONOMIC POLICY OF THE GOVERNMENT OF CHILE  
AND ITS IMPACT ON HUMAN RIGHTS

A. General trends of Chile's present economic policy

88. From September 1973 onwards, the Government of Chile pursued the following economic objectives: (1) to solve the problem of chronic inflation, an endemic ailment of the Chilean economy; (2) to reduce the acute balance-of-payments instability <sup>1/</sup> and (3) "to provide incentives to reactivate the Chilean economy". <sup>2/</sup>

89. To achieve these goals, it adopted a variety of economic policy measures, namely: (1) the restoration to the private sector of most of the State enterprises and of the land previously belonging to the "Agrarian Reform Corporation"; (2) the restoration of competitive markets; <sup>3/</sup> (3) the lifting of price controls on many essential items; (4) the opening of the Chilean market to foreign enterprises, by greatly lowering trade barriers; (5) monetary measures such as devaluation of the peso (to stimulate foreign exchange), tight restriction of credit expansion, decreases in the supply and velocity of money, etc.; (6) a tight monetary policy designed to reduce the State expenditure, not only by a drastic cut in investments (through the transfer of most of the State enterprises to the private sector) but also by cutting to the bone the operating expenses of the various State agencies, including staff wages and salaries; (7) the freezing of wages.

90. The economic policy reflected in the public utterances and statements made by government and other officials is geared primarily to the repayment of the external debt in order to achieve a measure of credit-worthiness in the eyes of the international community. Moreover, it is presented as the product of a purely technical approach with no political overtones. Its stated purpose is to attract capital in the form of aid or investment. <sup>4/</sup> It is proposed to examine some of the above-mentioned measures in greater detail in the next paragraphs.

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<sup>1/</sup> See inter alia the article by P. Baraona Urzua, Minister for Economic Affairs and a former director of the Central Bank, published in the Monthly Bulletin for October 1975 of the Centre for Latin American Monetary Studies, Mexico, quoted in Problèmes économiques, No. 1451, 17 December 1975 (Paris, La documentation française, 1975), pp. 11-12.

<sup>2/</sup> See inter alia the statement made by the President of the Republic on 11 September 1977 (E/CN.4/1266, annex V, p. 7).

<sup>3/</sup> The guidelines of Chilean economic policy have been defined on a number of occasions by officials and by proponents of that policy. Ambassador Jorge Cauas is reported to have said in the United States: "We do not believe in State intervention in the economy; we believe in the free play of market forces". El Mercurio, 17 February 1978.

<sup>4/</sup> This is the tenor of the speech made by Jorge Cauas to 200 businessmen in the United States when he described the policy of protecting national industry as an "ideological approach" and confirmed that "foreign investment is the basis of our political philosophy". El Mercurio, 17 February 1978.

91. Let us first consider the restoration to the private sector of most of the State enterprises and of the land belonging to the Agrarian Reform Corporation (Corporación de la Reforma Agraria - CORA), which had previously been managed or worked by co-operatives, groups or families of agricultural workers. El Mercurio of 24 January 1978 reported that 72 per cent of the area transferred to CORA between 1965 and 1973 had been or was being distributed to agricultural workers. The transfer of ownership to CORA was revoked in the case of 21 per cent of the remainder on the grounds of procedural irregularities and a further 7 per cent was simply returned to its former owners. Of the 72 per cent which is being sold, 80 per cent will go to individual owners and 20 per cent to co-operatives. A large proportion of the land and facilities owned by CORA, including all kinds of buildings and equipment for the processing of agricultural produce, was sold at public auction. <sup>5/</sup> According to Le Monde of 23 June 1978,

"The military Government has just annulled, on 19 June 1978, the main legal provisions authorizing public expropriations under the agrarian reform. By the same decree the Government abolished the prohibition on the formation of agricultural joint stock companies. According to observers, this will enable private groups to re-purchase land expropriated during the 11-year application of the reform initiated by President Eduardo Frei (Christian Democrat) in 1967 and taken over and extended by Salvador Allende's Popular Unity Government." <sup>6/</sup>

92. A similar policy is being applied in the industrial sector. According to statements by the Government itself, out of over 400 enterprises previously under the control of the Development Corporation (Corporación de Fomento - CORFO),

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<sup>5/</sup> El Mercurio of 17 January 1978 reported that 765,520 hectares were to be auctioned together with the sheds, wine-making equipment, the master house and other installations, and the sales are still going on. See also El Mercurio of 13 March 1978 and 23 March 1978.

<sup>6/</sup> Le Monde, 23 June 1978, p. 6. The article goes on to say that:

"According to official statistics, almost 10 million hectares have been expropriated since the reform came into effect. According to government estimates, the reform had cost over \$500 million, and under it land belonging to some 5,000 big landowners had been redistributed among 100,000 peasant families. Although expropriations ceased immediately after the coup d'état of 1973 which overthrew the Allende Government, the military authorities have granted individual ownership titles to 35,000 peasant families living on land already expropriated."

only 16 remain in the hands of the State. <sup>7/</sup> This policy of devolution to the private sector was accompanied by a law offering guarantees to foreign investors which brought Chile into serious conflict with the other countries parties to the Andean Pact.

93. Nor were the banks left out of this policy of transferring economic activities to the private sector: bids were invited for most of them. The clause in decree No. 818 of 1974 which had prohibited the accumulation of bank shares by natural or juridical persons has recently been repealed, with the consequence that the ownership of banks of Chilean or foreign investors is now

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<sup>7/</sup> Those transferred to the private sector include Cemento Polpaico, the second most important cement industry in the country, 51 per cent of whose shares have been acquired by the Swiss firm Holder Bank Financiera Glaris; the firm CORFO-INSA, the leading local manufacturer of tyres, which has been acquired by Goodyear (Le Monde, 18 February 1978); Automotriz Arica, 20 per cent of whose shares have been bought by Citroen, which holds a prior option to buy another 31 per cent (El Mercurio, 5 January 1978); INFORSA, Celulosa Arauco and Celulosa Constitución, for which bids have been invited (El Mercurio, 4 March 1978); and Petroquímica Chilena S.A., for which bids have also been invited and whose sale is now being negotiated with the Diamond Shamrock Corporation of the United States.

A similar process is taking place with regard to mining resources, not excluding copper (whose nationalization had been approved unanimously by a parliament in which the Government of Popular Unity was in the minority). The most important sale is that of the mining company La Disputada de Los Condes, 87 per cent of whose shares have been bought by EXXON Corporation for \$US 106 million (El Mercurio, 26 January 1978).

At an early stage, the landed estates and companies expropriated under previous Administrations (particularly those of Frei and Allende) were restored to their former owners. In October 1975, the Vice President of CORFO stated that 220 undertakings out of 480 under the control of CORFO in September 1973 had been returned to their former owners, 26 were about to be returned, and 56 had been sold privately. On 12 April, CORFO was authorized to sell to foreign investors the holdings, rights and shares in the firms and undertakings belonging to it. ("Le Chili du 11 septembre", Problèmes d'Amérique latine, 21 October 1977 (Paris, La documentation française.))

During that stage, compensation was paid to foreign companies whose property had been expropriated under the previous Administration (Anaconda for the mines of Chuquicamata and El Salvador, on 24 July 1974, Kennecott for its rights in El Teniente, on 25 October 1974). ("Le Chili du 11 septembre", Problèmes d'Amérique latine, 21 October 1977 (Paris, La documentation française.))

Later, bids were invited for the assets of State companies, or they were auctioned off or sold privately.

entirely free of restrictions. 8/ At the same time, the market operations of the Banco del Estado (the Central Bank) are being curtailed so that it will operate as a commercial bank subject to the same restrictions and with the same powers as private banks. 9/

94. Another salient feature of the economic policy pursued by the Chilean authorities is the opening of the market to imported products and reduction of customs tariffs and duties. The sharp cuts in these attracted a flood of imported goods into Chile but, although this had the effect sought by the Government (that of stimulating competition in the domestic market), it had other economic repercussions as well. Addressing 200 businessmen in the United States, Ambassador Cauas explained that "import substitution through the encouragement of national industry was not one of the objectives of the military Government, which was firmly in favour of ending protectionism and of removing nearly all the tariff barriers that were preventing imported goods from entering Chile". 10/ In keeping with this policy line, further cuts are being made in tariffs with a view to arriving at a common tariff of 10 per cent for 4,280 items (excluding passenger cars and lorries) by June 1979. This is reducing the protection not only of the industrialists who use local raw materials and other elements but also of those relying on imported inputs who used to benefit from the differential between the tariff on those inputs and the tariff on the finished product. 11/ "It is obvious that national industry is engaged in a hard struggle with foreign products because of the present low levels of the tariffs which formerly protected Chilean products" stated a leading article in El Mercurio of 17 January 1978.

95. The removal of existing price controls will now be considered. This measure was adopted "in the hope that a free market type of economy will automatically check excessive price increases". 12/ State subsidies for certain essential items for the low-income groups have also been discontinued.

96. According to press comments, the achievement of the aforementioned goal of "automatically checking excessive price increases" is running into a number of obstacles. An article which appeared in El Mercurio of 27 February 1978 remarked that: "Freedom of prices, when compounded with the bad habits of the Chilean consumer and the unscrupulousness of a large number of tradesmen, produces very different results from those sought by a social market economy". The lack of support and of State control combined with the constant depreciation of the currency led to a rise in the price of bread, which is the staple food of the Chilean people, from 11.50 escudos per kilogram before the military coup d'état to 1,420 escudos per kilogram in 1975, - in other words, it had become 21 times more expensive. 13/ Altogether, the consumer price index (CPI) has risen steeply.

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8/ El Mercurio, 13 January 1978.

9/ El Mercurio, 19 January 1978.

10/ El Mercurio, 17 February 1978.

11/ El Mercurio, 17 January 1978.

12/ Statement by Sergio de Castro, Minister of Finance, reported in El Mercurio, 4 February 1978.

13/ Jacques Chonchol, "Un peuple retourné à la misère" (A nation plunged again into poverty), Croissance des jeunes nations, September 1975.

97. Another measure adopted by the Chilean Government was the removal of all controls on movements of capital inside the country and remittances abroad. 14/

98. One of the most striking measures of the Chilean Government has been the slashing of State expenditures for social services. Analysing the central government's budget, that is to say, not including transfers to the decentralized administration, the following magnitude for public spending in social sectors can be inferred:

Table 1  
Public spending in the social sectors a/  
(Millions of US dollars)

Year	Health	Housing	Education
1969	288.5	330.6	439.8
1970	353.4	375.3	522.8
1971	459.2	509.9	n.a.
1976	230.5	106.7	307.3
1977 b/	168.3	89.1	454.3
1978 c/	196.3	91.9	522.7

Sources: Up to 1976, J. Jiménez de la Jara, "Salud: orientaciones y realidades en los últimos tres años", Mensaje, No. 254, November 1976, p. 575 (this source does not provide figures for the years 1972 through 1975). For 1977, Economic and financial survey, Chile News, No. 676. For 1978, Chile News, No. 673.

a/ Up to 1976, in US dollars of 1975.

b/ US dollars of 1977.

c/ According to the national budget for 1978, and a basis of 28 pesos for \$US 1.

~~The table shows that the social spending in health has diminished in 1977 in relation to 1971 by more than 60 per cent. In housing the reduction is even greater and reaches, in the same period, over 80 per cent. Only the expenses in education maintain their traditional level. However, these figures include~~

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14/ The plan submitted by ODEPLAN in April 1978 proposes: "To eliminate the tax and exchange controls through which the Internal Revenue Service and the Central Bank respectively require evidence concerning the sources of the funds invested or exchanged. Investments made by persons and the foreign exchange sold by them to the banking system would be presumed to have been financed by resources obtained regularly." (El Mercurio, 19 April 1978).

only the Ministry of Education's expenses, that is to say, they cover only the spending in primary and secondary education. The public support to universities has experienced a big decrease (see infra, paras. 241-242.) 15/

99. The decrease of social public spending - not compensated equivalently by the private sector - explains the increase in the degree of indigence of a considerable part of the Chilean population. However, this measure can be fully appreciated only by examining the relative composition of the public expenses. An analysis of the comparative budgets of the Chilean public sector for the 1970 decade, leads to the conclusion that the present Government has hypertrophied the national defence expenses.

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15/ According to T. Maliniak ("Le Chili 'normalisé'", Le Monde, 5 January 1978, p. 4):

"The masters of the Chilean economy affirm their good intentions in the social field: has not the share represented by the "social" ministries (education, health, etc.) in the State budget been rising proportionately - from 38 per cent in 1974 to 51.8 per cent in 1977?"

However, in an assessment of the economic behaviour of the last few years, S.T. Mill wrote in Mensaje in September 1977:

"In spite of the official announcement about the relative increase of social spending in the total government expenses, the dramatic reality of hospitals, schools, living and housing conditions in the periphery neighbourhoods, and unemployment in the big urban centers show that, in absolute terms, social spending is insufficient and lower than that in the years prior to the present government" (S.T. Mill, "Cuatro años de gobierno: balance y perspectivas económicas", Mensaje, No. 262, September 1977, p. 461).

In an attempt to quantify these considerations, the economist A. Foxley concluded that in 1976 the public per capita spending in health was 22 per cent lower than in 1970; 40 per cent lower in housing; and 22 per cent lower in education (quoted in Mill, loc. cit., p. 464, note 2).

Table 2

Percentage of public expenditure accounted for by certain Ministries

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Public Works	16.1	15.6	14.1	10.1	13.5	8.5	n.a.	5.9	5.3
Education	20.2	19.4	20.1	18.3	14.2	15.7	"	15.5	17.7
Agriculture	4.7	4.1	5.5	4.6	2.7	1.3	"	1.8	1.8
Health	8.0	8.0	9.4	8.7	6.6	6.5	"	5.9	6.6
Housing	4.3	6.4	5.7	7.2	6.6	3.5	"	3.8	3.1
Defence*	9.9	8.3	9.5	10.3	13.1	19.7	"	19.9	21.9

Sources: 1970-1975 OIT, Programa regional del empleo para América Latina y el Caribe (PREALC), Monografía 5, Junio 1977, "Políticas de estabilización y empleo. El caso de Chile 1973-1975", p. 42, table 6.

1977-1978 Comentarios sobre la situación económica, Taller de Coyuntura, Universidad de Chile, II Sem. 1977, p. 60.

The above table allows us to draw the following ~~conclusions~~.

(a) ~~Since 1975 the budget's item corresponding to the Armed Forces rose substantially, reaching magnitudes unknown in other periods of the country's history. There are indications of a significant volume of military expenses included in 1974, that were covered not by programmed budget items at the beginning of the period but through transfers. Since 1974 the number of recruits has risen considerably (it is estimated that today the Chilean military personnel is 45 per cent higher than in 1973) and a larger financial inducement is offered to join the army.~~

(b) ~~The percentages of rise in military expenses are almost equal to the fall of the social public expenses in the items analysed.~~

100. Two arguments must now be considered which are usually put forward by Chilean authorities to explain why Chile has experienced under the present Government such a serious economic and social situation, especially in 1975. The first argument is that a high "social cost" has been paid in order to heal and consolidate the economy. The second argument is that the 1975 crisis, from which the Government is now gradually recovering, was to a great extent the consequence of a general cyclical crisis that hit all the industrialized Western countries. In the following paragraphs these two arguments will be considered in detail.

101. The Chilean authorities have acknowledged on several occasions that the application of the present policy has a high "social cost". However, this cost would be justified by the necessity of setting up the basis of a future solid and sustained economic development. They have also indicated that this "social cost" is shared by the whole of the country's population, proportionally to the personal income of different social sectors. It may therefore be useful to consider the evolution of the gross investment in fixed capital, which constitutes the best indicator of the country's future economic potential. The following conclusions can be drawn from this analysis.

102. The productive investment, public and private, which has never been particularly high in Chile, has been extraordinarily reduced during the application of the Military Government's policy. This seems to prejudice the possibility of increasing employment and production significantly in the short and medium term.

103. The following table can provide a useful insight:

Table 3  
Gross investment in fixed capital

	Millions of US dollars	As percentage of GNP
1970	1 347	15.0
1971	1 383	14.1
1972	1 171	11.6
1973	1 137	12.7
1974	1 296	13.2
1975	945	11.3
1976	913	9.8
1977	1 065	10.6

Source: ODEPLAN (Oficina de Planificación Nacional), quoted in Chile Democrático, "Algunos antecedentes relacionados con los derechos económicos y sociales en el Chile de hoy", Rome, 1978, p. 11.

104. It is submitted that an annual gross investment rate inferior to 12 per cent of the gross national product (GNP) cannot, even in exceptional conditions of capital's marginal efficiency, provide the conditions necessary for an economy in process of development. Therefore, the argument of today's high "social cost" for tomorrow's abundance seems to be contradicted by the reality. Conversely, it can be submitted that in recent years Chile's national economy has experienced an accentuated process of decapitalization. 16/

16/ According to W. Goodfellow ("Chile's chronic economic crisis; 1976 and beyond", International Policy Report (Center for International Policy, Washington, D.C.), vol. II, No. 2, September 1976, p. 19):

" a very serious impediment to any economic recovery is the low level of capital investment over the past three years. IMF statistics indicate that in 1975 government investment fell in real terms by nearly 60 per cent with respect to 1974 levels. Commenting on the 1976 budget, the OAS CEPICIES report states: 'Capital expenditures again decline, by 21 per cent ... Their real value is only comparable with that of 1965'. The OAS concludes: ' ... in light of the low accumulation of physical capital in recent years, it is possible that some recovery in production will require major replacement of equipment'. ... The Junta has been depending on the private sector to increase capital investment. However, due to the depressed state of the economy and the lack of investor confidence, local investment has been disappointing. Moreover, extremely high interest rates have made speculative financial activity far more attractive than productive investment."



~~105. In these conditions, it can be maintained that the mass of resources which have flowed into Chile have not in general been utilized in such a way as to generate a greater economic potential. <sup>17/</sup>~~

106. The second argument advanced by the Chilean authorities, namely, that referring to the cyclical crisis of 1975, will now be examined.

107. Undoubtedly, the Chilean economy experienced a serious crisis in 1975. The contraction in the income of the majority of Chileans, and the form assumed by the subsequent cuts in public expenditure, reduced the domestic market considerably. This became the decisive factor in the emergence of the acute crisis in the Chilean economy, which was initially associated with the reduction in wages that began at the end of 1973 and is still largely in effect. The decline in economic activity was most pronounced in the course of 1975 when public expenditure was cut back even more sharply, the number of officials in the public administration was reduced considerably, and, most important of all, wages dropped to their lowest levels in real terms while the unemployment rate was the highest recorded since the Great Depression of the 1930s. According to the statistics of the National Planning Office (ODEPLAN) for 1975, the gross national product at market prices decreased by 16.6 per cent, or 18.4 per cent in per capita terms. ODEPLAN statistics, broken down by branches of activity of the gross national product, show that in that year construction activities declined by 31 per cent, manufacturing industry by 27.4 per cent, wholesale and retail trade by 15.2 per cent, transport, warehousing and communications by 10 per cent, public administration by 6.6 per cent and mining and quarrying by 5 per cent.

108. ~~According to the Chilean authorities, the 1975 crisis was closely linked to the cyclical crisis that affected the majority of the Western industrialized countries over the years 1974-1975. In the opinion of the Government this factor can explain why that crisis occurred in Chile in 1975.~~

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<sup>17/</sup> It may be useful to reproduce the following table, taken from a report of Chile Democrático entitled "Algunos antecedentes relacionados con los derechos económicos y sociales en el Chile de hoy", Rome, 1978, p. 2:

Table 4  
Index of industrial production (1968 = 100)  
(Figures for January-October)

1970 . . . 103.3	1974 . . . 112.8
1971 . . . 115.1	1975 . . . 80.7
1972 . . . 121.2	1976 . . . 82.8
1973 . . . 115.1	1977 . . . 92.4

109. However, it appears from several sources available to the Rapporteur that there is no evidence to the effect that intervention of external factors can explain in toto the magnitude of the Chilean crisis, as compared with the rest of the Latin American countries. 18/

18/ The following table shows the evolution of the per capita domestic products at the parity rate of exchange in 1975, which was the year when the effects of the international crisis of the industrialized Western countries were most severely felt in the Latin American countries as a whole.

Table 5  
Growth rate of the per capita domestic product  
at the parity rate of exchange, 1975  
(Percentages)

Argentina	-2.7	Honduras	-3.5
Bolivia	4.2	Mexico	0.5
Brazil	1.2	Nicaragua	-2.2
Colombia	0.5	Panama	0.4
Costa Rica	-0.1	Paraguay	4.9
Chile	-16.1	Peru	1.0
Ecuador	4.7	Dominican Republic	2.8
El Salvador	0.5	Uruguay	2.6
Guatemala	-0.6	Venezuela	3.5
Haiti	0.9	Latin America <u>a/</u>	-0.3

Source: Economic Commission for Latin America, Notes, No. 229, December 1976.

a/ Excluding Cuba and the English-speaking countries of the Caribbean.

110. Moreover, there seem to be several factors pointing in the opposite direction, that is, indicating that the country had more favourable conditions than those of its neighbours for facing the crisis. <sup>19/</sup> Without neglecting the influence of the external crisis on the Chilean situation, it seems that the magnitude of the economic regression and its social implications can be explained by the decisions adopted by the Government.

<sup>19/</sup> Actually, exports in 1974 represented the highest point in Chilean history: \$US 2,152.5 million compared with \$US 1,247.5 million in 1973 and \$US 847.4 million in 1972. The fall in the total exports in 1975 - due mainly to the fall in the price of copper, principal export product of the Chilean economy - tended to recover in the following years. In 1976, exports reached \$US 2,069 million and in 1977, \$US 2,171 million.

The rise in the price of oil, which affected the economy of Chile more than that of any other country in Latin America (apparently because of the revision of the import contracts at lower prices agreed by the previous government) was compensated during that year with ad hoc resources coming from the International Monetary Fund.

Furthermore, the so-called "non traditional" exports had expanded steadily during the period 1974-1977. This would show, in terms of external markets, the new possibilities opened for the Chilean economy and thus a better basis to face the international crisis.

Table 6

Export goods

(Millions of US dollars)

	1972	1973	1974	1975	1976	1977
Copper	658	1.026	1.654	890	1.247	1.151
Other "traditional"	112	151	297	297	365	
"Non traditional"	66	71	202	365	471	613 <sup>a/</sup>
TOTAL	836	1.248	2.153	1.552	2.083	2.171

Sources: Central Bank of Chile, Estadísticas Chilenas, No. 622, 12 December 1977; ibid., No. 590, 2 May 1977.

<sup>a/</sup> Estimate.

111. It must be stressed that the variations that took place in the indices of economic activity in later years cannot be analysed without bearing in mind the sharp decline in 1975, which has no parallel in any other Latin American country during the last 30 years.

112. It appears from the official statistics that the country is still far from recovering the levels of economic activity achieved before 1973. 20/

20/ In 1977, ODEPLAN estimates of the gross national product at market prices put it at 24,233,000 pesos in 1965 terms, which is less than the figure achieved by the country in 1971. In per capita terms, the estimates indicate that the level was lower than in 1966, 11 years before.

Table 7  
Gross national product at market prices  
(Index: 1971 = 100)

1966	91.18	1972	97.31
1967	90.42	1973	94.63
1968	91.95	1974	96.93
1969	95.01	1975	79.31
1970	96.55	1976	81.99
1971	100.00	1977 <u>a/</u>	87.73

Source: Central Bank of Chile, Boletín Mensual, March 1978, p. 536.

a/ Estimate, on the basis of an annual growth of 7 per cent.

Manufacturing production in the first ten months of 1977, according to INE statistics, was 23.7 per cent less than the average recorded during the same period in 1972, and 7.6 per cent than the index for 1968. The reduction was still greater in the construction sector. The origin of the gross national product by branches of activity shows that the share of construction in 1977 was 643, according to ODEPLAN statistics expressed in thousands of 1965 pesos, whereas in 1974 it had been 1,109. This is a decline of 42 per cent in those three years. Meanwhile agriculture, during the season corresponding to the 1977/78 crop year, underwent a sharp decline in activity. Sowings of the 14 basic annual crops were reduced by 7.1 per cent according to INE data, and estimates made by the newspaper El Mercurio (21 February 1978), based on a preliminary survey by INE itself, which showed a drop of only 5.7 per cent in sowings, indicate that the harvest is likely to be 11.8 to 21.8 per cent less.

B. General effects of the Government's economic policy on the Chilean population

113. It appears from available sources that the Chilean authorities have to a great extent achieved two of the main economic targets they had set: reduction of inflation and improvement of the balance of payments. As for inflation, the following figures are given by the American Public Health Association.<sup>21/</sup> It must

Table 8

1970	1971	1972	1973	1974	1975	1976
34.9	22.1	163.4	508.1 <sup>a/</sup>	375.9	340.7	174.3

Source: "Report on the State of Public Finance", Ministry of Finance, November 1976.

a/ It must be pointed out that official statistics published by the Instituto Nacional de Estadística show the following accumulative changes in the price indexes during the year 1973:

Table 9

	<u>Consumer Price Index</u>	<u>Wholesale Price Index</u>
January	10.3	11.5
February	14.9	15.4
March	22.0	24.4
April	34.4	28.1
May	60.5	52.0
June	85.6	65.3
July	114.0	84.4
August	150.5	103.7
September	192.8	140.1
October	449.2	715.9
November	480.5	1 070.5
December	508.1	1 147.1

These figures show that up until August 1973 the consumer prices increased by 150.5 per cent and the wholesale prices by 103.7 per cent. After the military take-over prices increased to 508.1 per cent and 1,147.1 per cent respectively.

<sup>21/</sup> G. Solimano and the American Public Health Association Task Force on Latin American Health Workers, Health and Nutrition in Chile, (Washington, D.C., 27 September 1977), p.7.

be added that, according to Chilean Government sources, the rate of inflation in 1977 has been further reduced to 63.5 per cent and will be no more than 30 per cent in 1978.<sup>22/</sup>

114. As for the balance of payments, the Government has maintained that in 1977 it had a surplus of \$18 million.<sup>23/</sup> It appears from other sources that in 1977 there was a deficit of \$7 million, while in 1978 there has been a surplus of \$256 million.<sup>24/</sup> Thus, whichever of the conflicting figures is more accurate, there is indisputably an improvement in the balance of payments, although this is largely due to the steady increase in capital inflow coming from foreign private sources.<sup>25/</sup>

<sup>22/</sup> Official figures produced by the Chilean Embassy in Paris and reported in Le Monde Diplomatique, June 1978, p.7.

<sup>23/</sup> See Le Monde Diplomatique, June 1978, p.7.

<sup>24/</sup> See table 10 in foot-note 25 below.

<sup>25/</sup> This is shown in the following tables:

Table 10  
Balance of payments  
(Millions of dollars at each year's value)

	1977	1978
Inflow of autonomous capital	1 361	1 650
Amortization of external debt	- 850	- 851
Trade balance	- 153	- 158
Services balance	- 359	- 426
Total	- 7	+ 256

Sources: Hoy, 12 April 1978; from Central Bank (Projection for 1978 made on 23 March 1978).

The net balance for the movement of autonomous capital has been increasing steadily since 1974, implying a capital inflow which must be already nearly \$US 2,000 million at current values. An additional feature is that, from 1975 onwards, funds from private sources have been playing an increasingly important part in this balance. In 1974, the net balance represented an inflow of \$US 259.6 million from official sources and an outflow of \$US 31.6 million in the balance with the private sector. In 1975, the net private balance was \$US 276.9 million and the official balance only \$US 21.8 million.

Table 11  
Evolution of the balance on the autonomous capital account  
(Millions of dollars at each year's value)

1974 ...	228.0	1976 ...	318.0
1975 ...	298.7	1977 ...	511.0
		1978 (estimate)	799.0

Source: Central Bank of Chile, Boletín Mensual, March 1978, p.506.

115. To fully understand the general economic background against which these improvements should be seen, it has to be borne in mind that since 1973 the low rate of domestic investment and saving (which can be easily explained) 26/ has prompted the Government to have increasing recourse to external debt, "in order to ensure a rate of growth estimated, for 1978, at about 8 per cent". 27/

116. Actually, the external debt has greatly increased in recent years. According to statistics of the Central Bank of Chile, 28/ while the general foreign debt was \$4,774 million in 1974, it was \$5,263 million in 1975, \$5,195 million in 1976

26/ T. Maliniak, in "Le Chili 'normalisé'", Le Monde, 5 January 1978, p.4, states that:

"In the face of a depressed home market and the uncertainties generated by foreign competition, investment is rather like a game of chance. Loans, on the other hand, are a safe and quick way of making money, since monthly interest rates in Santiago are currently fluctuating around 7.5 per cent, a situation which is driving businessman crazy. Even though inflation has now been reduced to 2.5 per cent per month, is not the lender still assured of a comfortable rate of interest equivalent to 60 per cent per year? The high interest rates discourage investment. In these circumstances it is hardly surprising that in recent months the economic columns in Chile have been studded with news of business failures, from the scandal of the bankrupt financieras (finance companies) to the collapse of the Osorno y Unión bank.

27/ Ibid.

28/ The following table is taken from: Central Bank of Chile, Deuda externa de Chile 1977 (Santiago, 1978), cuadro No.13:

Table 12

Over-all external debt of Chile

Nominal and real value series 1960-1977  
(millions of dollars, percentages)

Year	I Over-all external debt	II Gross reserves	III Over-all external debt, discounting gross reserves (I - II)	IV Real over-all external debt (column III adjusted by US MPI (1976 = 100))	V Index of real over-all debt (1960=100)	VI Annual variation in the real over-all external debt (percentage)
1960	746	119	627	1 235	100.0	-
1961	1 010	104	906	1 792	145.1	+ 45.1
1962	1 255	106	1 149	2 265	183.4	+ 26.4
1963	1 469	114	1 355	2 680	217.0	+ 18.3
1964	1 635	131	1 504	2 968	240.3	+ 10.8
1965	1 781	182	1 599	3 046	246.6	+ 2.6
1966	1 852	234	1 618	3 030	245.3	- 0.5

and \$5,434 in 1977.<sup>29/</sup> A press dispatch of EFE dated 2 June 1978 stated that, according to the Central Bank of Chile, in 1978 it was again \$5,434 million.

Table 12 (contd.)

	I	II	III	IV	V	VI
1967	1 908	200	1 708	3 170	256.7	+ 4.6
1968	2 201	288	1 913	3 455	279.8	+ 9.0
1969	2 689	433	2 256	3 886	314.6	+ 12.5
1970	3 123	505	2 618	4 408	356.9	+ 13.4
1971	3 196	290	2 906	4 707	381.1	+ 6.8
1972	3 602	271	3 331	5 065	410.1	+ 7.6
1973	4 048	401	3 647	4 807	389.2	- 5.1
1974	4 774	535	4 239	4 620	374.1	- 3.9
1975	5 263	427	4 836	5 058	409.6	+ 9.5
1976	5 195	816	4 379	4 379	354.6	- 13.4
1977	5 434	871	4 563	4 309	348.9	- 1.6

Column I: Over-all foreign debt. This column shows the net outstanding external payments balance as at 31 December of the years indicated, made up of: (a) the conventional foreign debt, i.e. the debt of the public sector and the debt of the private sector guaranteed by public funds, (b) the debt to IMF, (c) the direct foreign debt of the private sector (deferred cover), (d) financial credits to the private sector under Decree 1272 (articles 14, 15 and 16) and short-term lines of credit to the monetary system (Central Bank, commercial banks and Bank of the State).

Column II: Gross reserves of the monetary system. This column shows all the assets of the monetary system (Central Bank and commercial banks) as at 31 December for each year. In this series the value of gold delivered to the international reserves has been corrected on the basis of the average closing purchase price on the London market in December of each year. Reciprocal credit agreements are also taken at net values.

Column III: Over-all external debt, discounting gross reserves. This column indicates Chile's net indebtedness to foreign creditors (column I minus column II).



Column IV: Real over-all external debt. This corresponds to column III adjusted on the basis of the United States monthly price index (base December 1976) and enables annual comparisons to be made of the external debt in real terms.

Column V: Index of the real over-all external debt. The index of variation (base 1960 = 100) for the series shown in column IV.

Column VI: Annual variation in the real over-all external debt. This column shows the annual variation in Chile's indebtedness. It is derived from columns IV and V.

29/ The same official publication of the Central Bank provides the following figures in its table No.11:

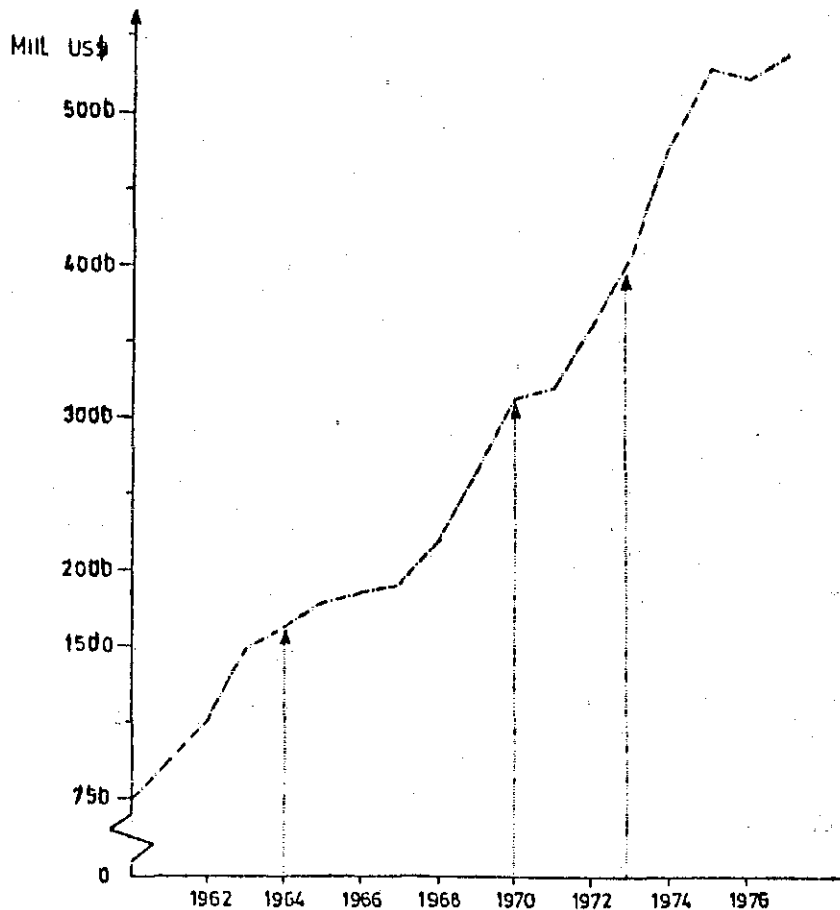
Table 13  
Over-all external debt of Chile  
Net balances as at 31 December for the years 1975, 1976 and 1977  
(millions of dollars)

	1975	1976	1977
I. CONVENTIONAL EXTERNAL DEBT	<u>3.787</u>	<u>3.654</u>	<u>3.673</u>
II. OTHER EXTERNAL LIABILITIES	<u>1.476</u>	<u>1.541</u>	<u>1.761</u>
1. International Monetary Fund	434	513	412
2. Direct private sector suppliers (deferred payment)	141	172	180
3. Financial credits to the private sector under Decree 1272 (articles 14, 15 and 16)	500	600	800
4. Short-term lines of credit to the commercial banks, Bank of the State and Central Bank	401	256	369
TOTAL OF OVER-ALL FOREIGN DEBT (I + II)	<u>5.263</u>	<u>5.195</u>	<u>5.434</u>

- NOTES:
- (a) Items I and II.1 are based on computed data.
  - (b) Items II.2, 3 and 4 are estimated and provisional data.
  - (c) An estimate of the amount of the transactions of the public sector and the private sector guaranteed by public funds, already included in the conventional external debt, has been deducted from the figures against "Financial credits Decree 1272".
  - (d) The item "Over-all external debt" does not include foreign investment under Decree-law No.600.

117. The increase in the foreign debt is clearly shown in the following table: 30/

Table 14  
Foreign debt



Source: Banco Central de Chile, Boletín Mensual,  
No. 594-595, 1977.

30/ It seems appropriate to quote at this juncture a statement made in the Sub-Commission on Prevention of Discrimination and Protection of Minorities in 1977 by the observer for Chile. Speaking of the external debt of the previous Government, he said the following:

"For a long time ... it has been falsely put about that the Allende Government was economically strangled and refused all aid between the period 1970-1973, in contrast with the situation allegedly existing now with regard to the Chilean Government. A study based on official figures from the international credit agencies ... shows clearly that the former Government received more international assistance than its predecessors, so much so that Chile's foreign debt during the previous administration was 31 per cent higher than in 1970, when the Government of Popular Unity assumed power.

"The following table shows the disbursements of the Inter-American

118. It should be pointed out that private borrowing increasingly accounted

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Development Bank in Chile: between 1964 and 1970, during the Frei Government, the Inter-American Bank made loans to Chile amounting to an average of \$24,746,000 a year. Between 1971 and 1973, during the Allende Government, the Inter-American Bank granted the Chilean Government loans amounting to an annual average of \$26,395,000. The source of this information is nothing less than a statement by the Inter-American Development Bank, Finance Department, treasury and financing division, dated 20 September 1974.

"Let us now look at the disbursements made by the World Bank to Chile. There was an annual average payment of \$14,600,000 between 1964 and 1970 to the Frei Government. Between 1971 and 1973, the Allende Government was granted annual average loans of \$15,400,000.

"The following table shows the increase in Chile's external debt during the years of the previous Government. In December 1970, at the beginning of the Popular Unity administration, Chile's external debt amounted to \$2,623 million. In December 1971, it was \$2,697 million. In December 1972, \$3,125 million, and in December 1973, at the end of the Popular Unity administration, \$3,455 million. Consequently, the increase between 1970 and 1973, the period of the Popular Unity administration, was \$823 million.

"It is interesting at this point to look at the breakdown of the \$823 million by which Chile's external debt had increased between December 1970 and December 1973. In 1970, the debt to multinational organizations was \$349 million. In 1973 it was \$468.4 million. In 1970 its debt to creditor countries was \$2,043 million, and in 1973, \$2,349.1 million, or an increase of \$306.1 million. In 1970 its debt to the countries of the "West" was \$2,029 million. In 1973, it was \$2,309.1 million. In other words, the Western countries extended loans of \$280.1 million to the Popular Unity régime.

"Our foreign debt to the countries of the socialist countries in 1970 was \$14 million. In 1973 it was \$40 million. That is to say, the whole socialist area contributed loans of \$26 million to the Popular Unity régime throughout the three years of its administration. In 1970, the debt for public issues amounted to \$20 million; in 1973 it was \$28.2 million. The total long-term debt in 1970 was \$2,412 million; in 1973 it was \$2,865.7 million, or an increase of \$453.7 million. The short-term debt (banking system) in 1970 was \$78 million; in 1973 it was \$478 million, an increase, as can be seen, of \$400 million in short-term indebtedness. The Government which took over from the previous régime has since been paying off these obligations, with the consequent burden on the entire population of Chile.

"To sum up, the external debt, which in 1970 was \$2,632 million, was \$3,454.7 million in 1973. This is an increase of \$822.7 million, equivalent to 31.25 per cent of the total external debt incurred by Chile up to 1970.

for external debt.<sup>31/</sup> \* .....

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"I have given these figures so that people will not keep on making the serious mistake of accusing various countries and institutions of having economically 'strangled' the Popular Unity Government, while also advancing the false argument about the 'generosity' with which the Government that came after Popular Unity has been treated." (E/CN.4/Sub.2/398).

<sup>31/</sup> According to the aforementioned publication of the Central Bank of Chile:

"An analysis of the structure of the debt and of the types of credit giving rise to it reveals an increase in transactions by foreign private banks and financial institutions from about 6.9 per cent (\$US 260.7 million) in December 1975 to 17.6 per cent (\$US 646.3 million) in December 1977. This is mainly due to the influence of syndicate transactions, which created in 1977 an indebtedness of \$US 179 million, although the total value of these transactions reached the level of \$US 352 millions. The share of credits in respect of multinational and governmental agencies and suppliers in the net conventional external debt has remained fairly constant during the past three years. There has been a decrease, on the other hand, in the share of debts incurred under the head of nationalizations and renegotiations.

"The United States remains Chile's principal creditor, accounting for 46.5 per cent (\$US 1,708.3 million) of the total amount in December 1977, a very similar percentage to that for 1975 and 1976. It is followed in the order of creditor countries by France and Germany with 6.6 per cent and 6.2 per cent respectively. It is necessary to bear in mind, however, that in the case of syndicate transactions involving banks of different countries the total transaction is shown in relation to the country of origin of the co-ordinating bank ... .

"By the addition of the sums owed to the International Monetary Fund, the external debt of the private sector, financial credits to the private sector under articles 14, 15 and 16 (Decree-law No.1272) and short-term lines of credit to the monetary system to the total conventional foreign debt, we obtain the broader concept known as the over-all external debt. At the end of 1977 the debt thus defined amounted to \$US 5,434 million, \$US 239 million more than in 1976 and \$US 171 million more than in 1975, all these figures being US dollar values for the year concerned." (Central Bank of Chile, Boletín Mensual, No.594-595, 1977, p.3).

119. It must be stressed that Chile pays very high interest rates for the money it borrows from abroad. According to a report:

"Servicing the foreign debt alone cost Chile about \$US 1,000 million in 1976, \$US 342 million of this being interest payments. Total transfers for servicing the external debt amounted to about 40 per cent of the total value of exports, whereas in the past the figure never exceeded 25 per cent."<sup>32/</sup>

120. The ratio of debt service to exports has been very high. According to a report:

"In 1977, while Chile's exports stagnated, the country still had to meet foreign debt payments of nearly 1.2 billion dollars. This left Chile with a ratio of debt service to exports of 54.2 per cent, an increase of 45 per cent since 1973, certainly one of the highest debt service ratios in the world. In other words, for every \$1 of export earnings in 1977 Chile must use 55 ¢ simply to pay off old debts."<sup>33/</sup>

121. It appears from several sources that, although Chile's economic situation has improved on the whole in 1978, the majority of people are not enjoying a higher income. For instance, the rise in the per capita GNP to \$US 1,050 (although it is still not back to the 1974 level of \$US 1,070)<sup>34/</sup> has not improved the situation of people whose only source of income is their wage or salary, since the distribution of the profits from productive activities has been reversed and the share accruing to them is much smaller.<sup>35/</sup>

122. In fact, major consequences of the economic policy carried out by the Government have been the reduction of the income level of the majority of the population and the decrease of the purchasing power of the wage earners.

123. As stated above, the Chilean economy experienced in 1975 an acute crisis, whose effects are still present in several activities. As a consequence, the per capita national income was reduced to lower levels than any during those of the past decade. The 1976-1978 improvement means reaching a return to the levels of 1970.

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<sup>32/</sup> M. Dias-David, V. Millán and A. Vial, Asistencia financiera externa a la Junta militar de Chile, 1973-1977 (Stockholm 1978), p.13.

<sup>33/</sup> I. Letelier and M. Moffitt, "Human rights, economic aid and private banks: the case of Chile", study published in the United States Congressional Record, 95th Congress, second Session, vol.124, No.54, 4 May 1978 (hereinafter cited as "Letelier and Moffitt (1)", pp.28-29.

<sup>34/</sup> El Mercurio, 16 February 1978.

<sup>35/</sup> This redistribution forms part of the Government's plans. Ambassador Cauas has stated that "a reduction in wages was inevitable over the short-term and medium-term" (El Mercurio, 17 February 1978).

Table 15

Per capita domestic income  
(1977 US dollars)

1962 .....	695	1969 .....	868
1963 .....	713	1970 .....	867
1964 .....	740	1971 .....	900
1965 .....	767	1972 .....	897
1966 .....	833	1973 .....	854
1967 .....	815	1974 .....	850
1968 .....	831	1975 .....	688
		1976 .....	707

Source: Economic and financial survey, Chile News, vol.14, No.700, 12 June 1978, p.5.

124. The social consequences of this situation, in itself very serious (it does not seem to have an equal in Latin America), are even more troublesome than is shown in the above figures. In fact, the reduction of the income level (in absolute terms) is not equal for the different categories of income. The wage-earner's share of the national income went down from 64 per cent in 1972 (51 per cent in 1969) to approximately 30 per cent in 1975 <sup>36/</sup> - a level which, however, went up to 44.4 per cent in 1977.<sup>37/</sup>

<sup>36/</sup> The same pattern of income distribution is reflected in the following table:

Table 16

National income distribution  
(Percentages)

	1965	1969	1970	1971	1972	1973	1974 <sup>a/</sup>
Share of wages and social contributions	47.8	48.6	52.3	61.7	62.3	41.6	36.3
Share of rent from property and business profits	52.2	51.4	47.7	38.3	37.7	58.4	63.7

Source: D. Labbé and A. Montes, "L'inflation au Chili (1973-1976) et les problèmes de la croissance économique" (Inflation in Chile and problems of economic growth), Problèmes d'Amérique latine, XLVI (Notes et études documentaires, Nos.4443-4444-4445, 12 December 1977), Paris, La documentation française. Based on a table prepared by ODEPLAN, National Accounts of Chile.

<sup>a/</sup> Estimate.

125. The same conclusion can be reached by comparing the average wage and salary index and the average price index, provided that the necessary statistical adjustments are made to avoid the changes in the indicators introduced by the current administration.<sup>38/</sup>

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According to M. Moffitt (Challenge, The Magazine of Economic Affairs, University of Chicago Press, Chicago, September-October 1977):

"By slashing government spending, abandoning most price controls, returning expropriated lands to the landlords, banning traditional unionism and reducing the size of the public sector, the Junta has facilitated a massive redistribution of actual and potential income from workers and the poor to business and large landowners. A 1976 International Monetary Fund study showed that in 1972, waged and salaried workers received 63 per cent of total income, with 37 per cent going to the propertied sector in the form of profits, dividends and rent. By 1974, income shares had literally reversed: 62 per cent accrued to the propertied sectors and 38 per cent to labour".

<sup>37/</sup> T. Maliniak states, in "Le Chili 'normalisé'" (Le Monde, 5 January 1978, p.4):

"An unpublished bulletin of the Vicariate of Solidarity (attached to the Archbishopric) states that the share represented by wage-earners in the national income fell from 61.7 per cent in 1971 to 44.4 per cent in 1977."

<sup>38/</sup> As early as in October 1973 the general adjustment to inflation of wages and salaries which corresponded and which was going to be similar to the increase of the consumer price index (CPI), was not given. Later, in January 1974, a nominal general adjustment to inflation of wages and salaries much lower than the increase in prices was given. In this way, a substantial reduction in real terms of wages and salaries was implemented.

To justify the magnitude of these reductions, the normal statistics used in Chile for calculating the modifications of the CPI, as a base to establish the adjustments of wages and salaries, were changed. During the last month of 1973, the Government decided not to use any longer the estimations made by the Instituto Nacional de Estadísticas (National Institute of Statistics). It appears that the series used by the Universidad de Chile's Department of Economics were employed without any adjustment. This meant that when the CPI was said to have increased by 508.1 per cent, its real increase was much higher. The wholesale price index (WPI), which was calculated as normally, increased by 1,147.1 per cent that year, rising 100 per cent more than the percentage given for the consumer prices. The next year - 1974 - the situation was the same; while the CPI increased 375.9 per cent, the WPI rose 570.6 per cent. So much so that the newspaper El Mercurio (10 January 1978) recognized in its editorial that "university studies and ... specialized international organizations placed the 1973 inflation in rates near 1,000 per cent."

126. The average indicators, although important, conceal the situation of the lower income sectors. Several authors have carried out research to examine the relationship between the value (at market prices) of a basic basket of essential goods and the income for the corresponding sectors for which the basket is defined. José Aldunate, a Jesuit priest, has done thorough calculations in this respect analysing the real value of the minimum wages during the last few years. He has differentiated the concept of minimum necessary wage (that necessary to keep the family's essential consumption) from that of minimum effective wage, which shows the actual evolution of minimum wages, corrected according to the consumer price index (assuming that this index is representative of the prices movement).<sup>39/</sup> Starting from that basis, Aldunate has produced the following figures:

Table 17  
Evolution of the real value of the working class  
family income (four dependents)

1970	1972	1974	1976	1977
100	157.5	121.2	79	90.2

Source: Mensaje, No.265, December 1977, p.744.

The above table shows the income decrease since 1972. In 1976 the real value of the minimum wage was just over half the value it had in 1972. Towards the end of 1977, it had not reached the level of 1970.<sup>40/</sup>

127. The magnitude of the problem becomes clearer when we see that the minimum necessary wage "is scarcely enough to get a basket of 19 essential goods, leaving aside other goods equally essential".<sup>41/</sup> Among the other essential items are clothing, education, housing, health, etc. Besides, as the author emphasizes, during the period in which free trade unionism was in force, workers' income, as a

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<sup>39/</sup> J. Aldunate, S.J. "Como vive nuestro pueblo trabajador? Los salarios reales - Septiembre 1977", Mensaje, No.265, December 1977.

<sup>40/</sup> Y. Maliniak, in "Le Chili 'normalisé'" (Le Monde, 5 January 1978, p.4), mentions the survey made in Mensaje and quoted above, observing the following:

"According to a recent survey made by the magazine Mensaje, the purchasing power of the low wages paid in Chile has fallen by approximately 50 per cent since 1972. There has, however, been a perceptible improvement over the past two years, and it is true that the level attained in 1972 exceeded the real possibilities of the Chilean economy. The present level is, nevertheless, some 10 per cent lower than that of 1970, which is considered to be the last valid year of reference."

<sup>41/</sup> Aldunate, loc.cit., p.745.



result of the free collective bargaining, was above the minimum wage. These advantages have disappeared completely since collective bargaining was abolished for trade unions. As a consequence the deterioration - when compared to those years - is much greater than it appears from the above figures.<sup>42/</sup>

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<sup>42/</sup> An article that appeared recently in the Corriere della Sera described the situation as follows:

"... the market has been thrown open to imports, tariff barriers have been lowered, State expenditure has been slashed, all subsidies have been abolished and prices have been freed. The results were not slow in materializing. In 1977 the trade account showed a surplus, the fiscal deficit was reduced to a minimum and inflation dropped from 500 to 63.7 per cent. The shop windows, which were empty in Allende's time, are now full of imported goods, French clothes, and whisky. Mercedes Benz cars have arrived from Germany and motor-cycles and highly sophisticated stereophonic equipment from Japan. In the affluent residential areas, the people are happy, but 300 metres away, in the working-class district of Puente Alto, they are anything but content. There are no motor-cycles there or even shoes, and the children go about barefoot."

The article goes on to quote a Christian Democrat trade union leader: "A study carried out by the periodical Mensaje shows that over the last four years the workers have 'lost' a round billion lire of the gross national product" and explains how this huge figure is arrived at:

"The purchasing power of wages was cut and 25 per cent of the workers were dismissed without any compensation whatsoever. Out of 4.5 million workers, at least 1 million earn as little as \$US 75 per month, and a skilled worker or employee earns \$US 95 to 125. According to figures in Ercilla, a pro-Government periodical, the cost of pasta, Coca Cola and cheese is the same in Santiago and in New York, but bread, eggs, sugar, ham and soap are more expensive in Chile." (G.G. Foá, "Cile: una Republica fondata sulla fame", Corriere della Sera, 27 February 1978, p.3.)

After the publication of this article, El Mercurio of 3 March 1978 reported that by February of this year the CPI had risen by 2.4 per cent, an increase accounted for mainly by higher food prices (1.2 per cent, comprising increases of 24 per cent for meat, 17.5 per cent for ham, 9.6 per cent for potatoes, 11.35 per cent for sugar, 15 per cent for rice and 36.2 per cent for carrots, although the price of eggs dropped by 7.5 per cent and that of wine by 0.6 per cent). The same article announced that wages were to be increased by 8 per cent as a result of adding together the increase in the CPI of 2.4 per cent in February, 1.8 per cent in January, the 1.98 per cent carried forward from December 1977 and the 1.2 per cent increase estimated for the first half of March.

128. The reduction of the purchasing power of wage earners is clearly shown in the following table:

Table 18

	Purchasing power of the wage and salary index <u>a/</u>	Purchasing power of aggregate wages <u>b/</u>	
		According to the consumer price index (CPI)	According to the wholesale price index (WPI)
January 1973	100.0	100.0	100.0
October 1973	40.1	45.3	30.8
January 1974	85.6	38.8	15.9
April 1974	69.8	63	27.3
July 1974	83.4	75	28.4
October 1974	76.6	59.5	23.3
January 1975	76.4	78.9	22.9
April 1975	59.6	53.8	18.3
July 1975	66.5	52.1	16.7
October 1975	62.5	70.4	23.1
December 1975	68.9	36.4	14.7
April 1976	58.5	41.5	16.8

a/ Index of wages and salaries (SUTOPA, Economic Analysis, April-June 1975; and Central Bank, Boletín Mensual) calculated for the CPI.

b/ Aggregate wages were calculated on the basis of social contributions (INE, Statistical Synthesis, 1975, p.2; and Central Bank, ibid., p.1184).

129. Reference to the decline of the purchasing power of wages is also made in a report published in 1977 by a delegation of the British National Union of Mineworkers which visited Chile in April-May 1977. The report states that:

"According to an economic study, given to us by the [Chilean] Miners Federation, the minimum required to simply feed a family of five people was 1,727.64 pesos per month (as at April this year with 47 pesos to £1). In this same month the minimum was 1,190 pesos, i.e. 68.9 per cent of what was needed to subsist. In other words, the minimum wage in

April 1977 was sufficient to feed a family for only 21 days in the month. This sum was calculated on the basis of 17 basic foodstuffs, it did not take into account the cost of rent, education, health, transport, etc."<sup>43/</sup>

130. As a further illustration of this state of affairs, and to show the situation in another wage-earning sector, it is significant to refer to a study carried out by the Asociación Nacional de Empleados Fiscales (ANEF), in which the method used in 1956 to calculate the minimum living wage in Chile, i.e. by means of a survey, was applied to the present situation. The study showed that, if that same system is applied, the minimum living wage of employees should be \$5,402. This is more than the earnings of a civil servant in category 19 (the highest grade to which an employee in the civil service can aspire after 30 years of service). In May last, such an employee earned \$4,466 gross, or hardly \$3,620 net. Thus an employee who entered the civil service in 1948 earning what at that time was a living wage, now, after 30 years of service, earns less, in real terms, than he did then.

131. In the case of most workers, their wages are far from sufficient to cover their basic needs. The surveys made by the Confederation of Private Employees (Confederación de Empleados Particulares de Chile - CEPCH) have shown that a private employee with 10 years of service and three dependents does not earn enough to cover even the most basic expenditure. In January of this year, the wages of a worker in the situation just described were only enough to cover 59.6 per cent of his minimum needs. This situation has now become stabilized: in June 1976 wages covered 50.5 per cent of requirements, in December of the same year 50 per cent and in July 1977 60.9 per cent, despite the fact that the surveys by CEPCH found that minimum expenditure on food did not include "... consumption of coffee, lard, pasta, maté, lemons, jam, fish, shell fish, cheese, ham, beans, chickpeas, lentils, biscuits, flour, wine, spirits or soft drinks, etc. Nor was expenditure on schools,

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<sup>43/</sup> Report of the National Union of Mineworkers Delegation, "Trade union and human rights in Chile and Bolivia", London, 1977, p.18.

The report also states that:

"The average daily wage in the mining area we visited is 29 pesos per day. The miner we spoke to calculated that even with a family allowance of 70 pesos per month and a rent and fuel allowance of 219 pesos per month, the average family of eight children exhausted their income with two sacks of flour and two pounds of sugar. He further calculated that what he earned on one days' overtime, three and a half years ago now takes 13 days. Wages cannot be supplemented by working holidays. With stocks of unsold coal at over 50 per cent of total production the miners are forced to take 'holidays'". (Ibid., pp.18-19.)

textbooks or school equipment included and no allowance was made for haircuts, cigarettes, magazines or recreation."<sup>44/</sup> Consequently, the real deficit is far greater.<sup>45/</sup>

132. Those workers whose income is even smaller are, of course, in an even worse situation. An extreme case is that of the workers in the so-called Minimum Employment Plan (PEM), who are not included in unemployment statistics, and whose monthly earnings at the end of last year were 700 pesos, or less than \$US 0.85 a day. In 1978, under the official policy announced, their meagre earnings will be increased in line with the changes in the consumer price index, but they will remain the same in real terms, and as they dropped by 22.7 per cent in 1977, this loss will never be made up.<sup>46/</sup>

<sup>44/</sup> El Mercurio, 3 July 1977.

<sup>45/</sup> As shown by the following table:

Table 19

Monthly deficit for a private employee with  
10 years of service and three dependents

(In current pesos)

	June 1976	December 1976	July 1977	January 1978
Income	1 225	1 854	3 011	3 880
<u>Expenditure</u>	<u>2 424</u>	<u>3 711</u>	<u>4 949</u>	<u>6 514</u>
Deficit	1 199	1 856	1 937	2 634
Deficit as a proportion of expenditure	49.5%	50%	39.1%	40.4%

Sources: 1976-1977, El Mercurio, 7 August 1977.

1978, Federación Minera de Santiago de Chile, Boletín sindical minero, February-March 1978.

<sup>46/</sup> This is shown by the following table:

Table 20

Wages under the Minimum Employment Plan  
(In December 1977 pesos)

Average	1 107.1	1977 October	745.4
Average, first half of 1977	950.2	November	715.4
1977 July	830.4	December	700.0
August	799.3	Average, second half of 1977	760.5
September	773.0	Average, 1977	855.3

Source: Department of Economic Affairs, University of Chile, Publication No.52, p.82.

133. Twenty-three trade union organizations issued a statement on 1 May, which, in referring to the appalling situation of the PEM workers said that: "As we do not consider them as unemployed, they must be regarded as slaves".47/

134. In glaring contrast with this situation are the facilities given for the import of luxury or non-essential goods to satisfy the consumption requirements of a small minority. As Cardinal Villot, Secretary of State of the Holy See, pointed out in a letter addressed on 14 October 1977 to the President of the "Semanas Sociales de Chile": "To say that the economy exists for man, means that it must be directed towards the production of goods to satisfy authentic human needs rather than diverted towards artificial or luxury consumption".48/

135. To sum up, the real income for those living in Chile from a wage or salary, has lost purchasing power, and thus the standard of living of these sectors, which are the majority of the country's active population, has gone down.

136. It should be added that, although the wage earner's sector is the most affected by the policy implemented by the present Government, the situation of other strata of the population is also a cause for concern. The fall in the economic activity has led also to the proportional fall in sales. Thousands of tradesmen, transport workers, artisans and other self-employed entrepreneurs, have seen their incomes cut off.49/

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47/ "Pilares de la democracia; planteamientos y demandas de los trabajadores en este 1° de mayo", Solidaridad, No.42, 25 April-9 May 1978 (Separada, No.16, May 1978), p.12.

48/ "Una economía para el hombre", Mensaje, No.266, January-February 1978, p.12.

49/ As shown in the following table:

Table 21  
Industrial Sales index (1969 = 100)

1970	1971	1972	1973	1974	1975	1976	1977
99.9	114.0	116.7	106.1	107.7	85.9	91.9	100.9

Source: Central Bank of Chile, Boletín Mensual, March 1978, p.544.

137.--Among the consequences of the economic policy implemented by the Chilean authorities, one should also mention the increase in bankruptcies of Chilean industries, or a contraction of their productivity, and the consequent dismissal of workers. These phenomena have been caused by the lowering of trade barriers and the consequent high degree of competition from foreign companies.

138. In fact, the facilities given for the import of substitutive products have greatly affected a number of national economic activities. Arguing that Chile must produce only those products which, according to the economic policy, present "comparative advantages", the economic scheme of the Chilean Government leaves the national products made by many sectors in a very bad situation in the internal market. It should be noted that only those economic activities which can subsist in competition with the foreign products almost without protection present "comparative advantages". This policy leads to the reduction of the country's industry and its concentration around certain export sectors linked to specific primary goods. Within this context, the internal market, already small for several national activities, is reduced even more as it is absorbed to a great extent by imported production,<sup>50/</sup> and this leads to the reduction or paralysis of many activities. A survey made in October 1977 by the Sociedad de Fomento Fabril among a group of 348 large and medium enterprises revealed that the degree of utilization of their producing capacity was very low. The survey showed that 77 per cent of the sample could increase production by an average of 47 per cent without having to invest in machinery or equipment. For this reason many specialized workers are obliged to leave small enterprises, with real danger of losing their skills due to the difficulty of finding a job with similar functions.

139. The President of the Asociación de Industriales Metalúrgicos (ASIMET) (Metal Industry Association) has written in this connexion that "the defenceless situation in which the Chilean industry is being placed and the aggressive, massive and unmerciful competition of the highly industrialized countries against our weak economy are endangering the existence of the sector through the progressive and unnecessary destruction of the industrial assets which the country has built up during the last 50 years. This weakness will bring greater dependence and will increase the gap which already exists with the rich industrialized countries."<sup>51/</sup>

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<sup>50/</sup> A report by the Manufacturers' Development Corporation (Sociedad de Fomento Fabril - SOFOFA) states that "While our economy is being rapidly opened up to foreign goods, there has been a delay in the application of measures that would make it possible for producers in Chile to face such competition on an equal footing" (El Mercurio, 21 January 1978).

On 6 December 1977 the Corporation issued a press release stating that: "The confidence of private industry in the economic strategy has suffered a rude shock" and adding that "with the new tariff levels, a large proportion of the [industrial] sector will find it impossible to survive". (José Zalaquett, "Chile durante el período octubre 1977-enero 1978" (Chile during the period October 1977 to January 1978)).

<sup>51/</sup> Ercilla, 21 December 1977.

140. In the last few months alone there have been a large number of bankruptcies involving large concerns, with obvious repercussions on employment. In many of these cases the obligation to pay workers an indemnity on dismissal has not been complied with.<sup>52/</sup>

141. In the mining sector, there has been a recession as a result of the world market situation, which has forced such major companies as the Cía. de Aceros del Pacífico, which owns 95 per cent of the iron mines in exploitation, to request permission to dismantle the mines and gradually to lay off staff. As many as 1,200 persons, including the workers' families, may be affected.<sup>53/</sup> The matter has been reported by the head of the Confederation of Iron Workers' Union (Confederación de Sindicatos del Hierro), who states that the workers are already being dismissed at

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<sup>52/</sup> Qué Pasa, 30 November 1977. In October 1977, the textile concern Burger went bankrupt, throwing 850 people out of work, and the F and H Company (electrochemicals), which manufactured batteries, announced that it would be closing its plant at Iquique in February 1978 because of the increase in the number of imported batteries on the market (100 workers were given notice). (Hoy, 7 December 1977).

The bankruptcy of the Cia. Sudamericana de Fosfatos (COSAF) can also be regarded as a consequence of the economic policy of the Government. A declaration made by Alberto Gutiérrez Rivas and Pedro Contreras Torres, the heads respectively of the professional and industrial workers unions, states that the industry's problems began when the Banco del Estado bought only 28,000 tons out of the 90,000 tons of fertilizer produced, because of a change of policy in that area. In view of the large orders placed by the Bank, COSAF had committed itself to buy raw materials abroad. At the same time, the Banco del Estado began to import fertilizers (El Mercurio, 24 January 1978). Notice of the termination of their contracts was given to 340 workers (El Mercurio, 27 January 1978). Other sources indicate that as many as 400 workers may be affected (Hoy, 7 December 1977).

Leaders of the Electronic Workers Union have reported that out of 15 electronics firms active in 1974, only three are left as a result of the system of customs tariffs, and that those three will also have to close as soon as the 10 per cent tariff comes into force (El Mercurio, 29 March 1978).

<sup>53/</sup> El Mercurio, 24 January 1978.

the rate of 10 a day.<sup>54/</sup> While Exxon is buying shares in the Disputada mining company, the small mining companies are having to absorb an increase of 1,700 per cent in mining licence fees, with the consequence that they are running the risk of losing their concessions.<sup>55/</sup> The official policy line in that respect is described by El Mercurio in a leading article of 16 March 1978, in these terms:

"An important factor in determining the future growth of the mining industry is the break-up of mine holdings and their redistribution to more dynamic sectors which are anxious to work the mines. The intelligent and automatic way of achieving this object is to raise the cost of the licences high enough to produce the desired result. ... It should not be forgotten that one option available in such cases is expropriation, which, as the agrarian reform demonstrated, lends itself to arbitrary action and leads to a sharp drop in production and ultimately political control over the people."

Experts on the subject consider that the groups hardest hit are the small mine operators:

"Those most seriously affected would be the small prospectors whose work is exposed to greater risks since the results of their exploration may be negative. As the small mine operators use more primitive techniques, the cost of licences represents a high proportion of the over-all costs of exploration, which is not true of the large mines ...".<sup>56/</sup>

142. As is clear from the comments cited above, these measures lead to a de facto expropriation of the weakest to clear the way for the economically more powerful groups which can invest enough to take over all the mines that have to be abandoned. It should not be forgotten that the Exxon Corporation has pledged itself to invest as much as \$US 1,100 million.<sup>57/</sup> The major sources of foreign capital, which have no commitment to the low-income groups in Chile, will do whatever is necessary to obtain maximum returns on their investment without being stopped by moral scruples about the protection of the Chilean people.<sup>58/</sup>

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<sup>54/</sup> El Mercurio, 22 January 1978. The mining company of Pudahuel, which owns the "Africans" copper mine in the Commune of Pudahuel, has filed a petition for bankruptcy and asked for permission to dismiss 240 workers collectively. The request has been refused. (Hoy, 25-26 February 1978).

<sup>55/</sup> El Mercurio, 21 March 1978.

<sup>56/</sup> El Mercurio, 12 April 1978.

<sup>57/</sup> El Mercurio, 26 January 1978.

<sup>58/</sup> Goodyear, which bought up the Empresa de Neumáticos CORFO, has given notice to 601 workers. The Government had previously authorized the dismissal of 81 workers and the unions had been informed that the company had undertaken to keep on 2,000 workers and to honour the collective agreements in force up to 31 January 1978. (El Mercurio, 21 March 1978). But the new dismissals would reduce the number of persons holding a contract of employment with the company to 1,400. The repeal of decree-law No.266 of 1960 is part of the same policy of eliminating all protection for the national production sectors. That decree had granted the fisheries industry a number of privileges in return for its undertaking to recapitalize at least 15 per cent of profits for 10 years, by ploughing them back into the same company or using them to develop other fisheries activities. (El Mercurio, 27 March 1978).



143. ~~Another consequence of the economic policy of the Government is the extreme poverty of some segments of the population.~~ After a year of government, the military authorities published an official study about the "extreme poverty" in Chile <sup>59/</sup> made by ODEPLAN (oficina de Planificación Nacional) and the Catholic University's Instituto de Economía, Santiago, Chile. Under the concept of "extreme poverty", which does not need further explanation, the study includes more than two million people, which means approximately 21 per cent of the country's total population. More than 40 per cent of these were between the ages of 6 and 16 years.

144. When the study was published, the Government announced urgent measures to fight this social drama, placing the main focus on increasing the level of productive employment and real wages. Three years later, the Chilean Government's Under-Secretary for Economy, Colonel Sergio Pérez, declared:

"The country's economy, taken as a whole, is again healthy. We have problems with the profile of the income distribution in Chile. It is necessary to start from the basis ... that there are 25 persons out of every 100 who are in extreme poverty. There are different types of poverty: relative poverty and absolute poverty. The 25 persons referred to do not have the necessary means for food, clothing or housing. And even less do they have access to other social aspects, such as education and nutrition ...".<sup>60/</sup>

145. From studies carried out in Santiago's shanty towns it appears that the deterioration of income levels and unemployment have increased the number of people living in extreme poverty or at its border. Thus, for instance, a report by Patricio Frías, of the Facultad Latinoamericana de Ciencias Sociales (FLACSO), published in Mensaje in January 1978, says:

"What is special about the present situation is that newly unemployed people and those looking for a job for the first time represent sectors that have never before faced such a situation, with all the emotional and psychological disturbances, it entails - changes in status, deterioration of family life, impoverishment etc."<sup>61/</sup>

This author has gathered several opinions among people working in shanty towns:

"People who have never had to work are now looking for any kind of work but that is not a solution, because even if they find a "pololo" (occasional job), the pay is so miserable that it does not cover food, water and electricity, rent, medication, or even the bus fare. Basic needs are not being fulfilled in this sector ... Now, priority is given to the children; adults eat when there is anything left ... adults just drink tea ... There are people who prefer to sleep so that they will not feel hungry. There are a lot of people who do not eat during the day; they eat once a day, sometimes once in the whole week-end, the rest of the time they just drink tea and eat some bread"<sup>62/</sup>

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<sup>59/</sup> El Mercurio, 10 October 1974.

<sup>60/</sup> El Mercurio, 15 July 1977 (emphasis added).

<sup>61/</sup> P. Frías F.; "La difícil brisqueda de la sobrevivencia", Mensaje, January-February 1978, pp.43-44.

<sup>62/</sup> Ibid., p.44.

146. The same author states that:

"in camps or towns ('campamentos' o 'villas') these manifestations of unemployment and low levels of income present the most grave and extreme features. Hunger, malnutrition, family disintegration, insecurity even when working at the 'pololos', deviant conduct etc. are some of the elements shaping this reality which, together with the precarious living conditions in terms of housing, low cultural and skill levels, make the problem more acute and its eventual solution more difficult".<sup>63/</sup>

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<sup>63/</sup> Ibid. The fact that sectors which had never before been affected by extreme poverty tend today to live at its limit is confirmed by a study about the qualifications of those employed in the Minimum Employment Programme (PEM) carried out by the municipality of Las Condes, which is one of the most elegant neighbourhoods in the Chilean capital. The conclusions are as follows: 15 per cent of the 928 persons employed did not have basic education, 65 per cent had complete or incomplete basic education, 17 per cent had medium education, 1 per cent had technical education and 2 per cent had university education. In short, in that area, professional people with university degrees are being employed in cleaning the streets, ornamenting the parks and public places, etc., at a minimum income, which does not include any type of bonus.

It appears significant that these results obtained in the municipality of Las Condes have been characterized as "illustrative" by the authorities. (El Mercurio, 23 November 1977).

C. Specific effects on particular human rights

1. Right to work

147. According to the Chilean authorities, in 1977 unemployment in Chile was 12 per cent. <sup>64/</sup> More details are given by those authorities on Greater Santiago. In a document sent to the United Nations, the Government states:

"In Greater Santiago, the centre of the country where the problem is most serious due to the concentration of inhabitants and industry, unemployment is currently slightly below 12 per cent; but at the same time, the same sources as provide these figures point out that employment in Greater Santiago, excluding minimal employment, has risen by 125,000 jobs in 12 months, equivalent to some 1.4 per cent of the occupational capacity. That figure does not result in a proportionate reduction of the unemployment index, even though the percentage is much higher than the vegetative increase of the population (1.9 per cent). As in other countries attaining a certain stage of development, what is happening is that we are witnessing two fundamental facts: the first is that women are being incorporated to a significant degree in all ranks of the work force, and the second is the appearance of a steadily increasing number of people doing two jobs to raise their standard of living." <sup>65/</sup>

148. To give a clear picture of the rate of unemployment in Chile and of its fluctuations, it seems apposite to reproduce here a table contained in a document submitted to the Rapporteur, and based on official sources:

Table 22

Percentage of unemployed in the total labour force  
(Figures in column 1 based on data from the National Statistical Institute; figures in column 2 based on data from the University of Chile)

(1)			(2)		
		%			%
1973	August-September	4.1	1973	June	3.1
	October-December	5.5		December	7.0
1974	October-December	9.7	1974	March	9.2
				June	10.3
				September	9.4
				December	9.7
1975	January-March	12.4	1975	March	13.3
	April-June	14.8		June	16.1
	July-September	16.4		September	16.7
	October-December	16.5		December	18.7
1976	January-March	17.6	1976	March	19.8
	April-June	19.1		June	18.0
	July-September	17.8		September	15.7
	October-December	13.6		December	13.6
1977	January-March	15.8	1977	March	13.9
	April-June	14.8		June	13.0

<sup>64/</sup> A/C.3/32/6, p.67.

<sup>65/</sup> E/CN.4/1247/Add.1, p.70.

149. The figures given in this table are at variance with those produced by the Chilean authorities. Once again, the Rapporteur has to underline that he is not in a position to verify which statistics are correct, those quoted by the Government or those quoted either by other Chilean official bodies or by the Chilean press. 65/

150. Yet, it is apparent from the above table that, although the present rate of unemployment is not exactly the same as that mentioned by the Government (12 per cent), it is, at least according to the statistics of the University of Chile, close to it (13 per cent). Furthermore, one can infer from the above table that there was a steady increase in unemployment between 1973 and early 1976, and that subsequently the rate of unemployment has been steadily declining. Therefore, the Government is correct in saying that recently unemployment has been decreasing.

151. This conclusion, however, must be viewed against a more general background. It can be correctly appreciated only in the light of several other factors, to which reference will be made in the following paragraphs. The present rate of unemployment of 13 per cent (or, according to the Government, of 12 per cent) should be evaluated in the light of the following four facts.

152. First, it should be borne in mind that under the previous Government Chile had achieved some of its lowest ever unemployment rates: 3.8 in 1971, 3.6 in 1972 and 7.0 in 1973. 67/ The present unemployment rate cannot be perceived in all its magnitude if the unemployment rates obtaining in the years immediately preceding the September 1973 military take-over are not taken into account.

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66/ A less detailed table is provided by a document submitted in 1977 by "Chile Democrático", Rome, to the WHO (annex, table I):

Table 23

Unemployment rates, Chile, 1970-1976

(Percentages)

	1970	1971	1972	1973	1974	1975	1976
Unemployment	8.3	3.8	3.6	7.0	9.7	18.7	13.6

Source: Ministry of the Treasury, "Report on the state of the Public Treasury", November 1976.

67/ According to a report of the American Public Health Association (Health and Nutrition in Chile by G. Solimano, M.D. and the American Public Health Association Task Force on Latin American Health Workers, 27 September 1977, p.7), the rate of unemployment was 8.3 in 1970, 3.8 in 1971, 3.6 in 1972, 7.0 in 1973, 9.7 in 1974, 18.7 in 1975 and 13.6 in 1976.

153. Secondly, it should be borne in mind that since September 1973, more than 1 million Chileans have taken refuge abroad, primarily as a result of the repression of civil and political rights. <sup>68/</sup> Most of those who left were workers, employees, teachers, professors or researchers. Others were students or other young people. All these persons must be taken into the general picture of present unemployment in Chile, for several reasons: first, by taking refuge abroad they have left jobs which may have been taken up by potential unemployed; second, by being abroad, they cannot cause problems of unemployment; third, they are often unemployed abroad and may therefore be included, in some respects, in the over-all number of employed Chileans. In short, the absence from Chile of such a high number of working people has proved advantageous to the present Chilean authorities in this respect, in that it has made their task of solving all the unemployment problems relatively less difficult.

154. Thirdly, account must be taken of the fact that the present figures of unemployment do not of course include all those who work under the Programme of Minimum Employment (PEM). Yet, as will be pointed out in more detail below (see paras. 173-176), it is only from a formal or legalistic viewpoint that those benefiting from this programme can be excluded from the real computation of unemployment. Actually, the earnings of workers employed under the PEM are far below the minimum level: in May last, when the minimum wage attained 2,160 pesos, their earnings amounted to barely 826 pesos a month. Moreover, these workers do not receive any allowances from any other quarter; they cannot rely on social security benefits and have no job security. The large number of people involved in the PEM shows that very many workers are unable to find a steady job. A monthly average of as many as 179,587 persons benefited under the PEM in the last quarter of 1977, according to ODEPLAN statistics. This figure represents roughly 6 per cent of the national labour force.

155. Fourthly, it must be underscored that a relatively high percentage of the employed work in sectors characterized by a low productivity and income and by a high occupational instability. At present the levels of "concealed unemployment" must be considered high, as is shown by the relevant statistics. For example, the proportion of so-called "own account" workers is growing. In September 1977, they comprised 19.1 per cent of the work force of Greater Santiago, according to the employment and unemployment surveys carried out by the Economics Department of the University of Chile. <sup>69/</sup> A significant and rapidly increasing percentage of these "own account" workers "consists of persons engaged in activities typical of a period of unemployment ...: pedlars, car-park attendants, gardeners, shoeblacks, workers doing all kinds of repairs in the home, etc." <sup>70/</sup> This same

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<sup>68/</sup> These figures are quoted by Amnesty International. The same figures are quoted by B. Leighton and others, eds., Quaderni di Chile America per l'Italia, No. 17-18, October-December 1977, pp.9-10.

The observer for Chile raised objections to the Amnesty International figures in a statement made on 27 February 1978 in the Commission on Human Rights (E/CN.4/SR.1458, para. 31).

<sup>69/</sup> A. Leon, "Desocupación: ¿Que indican las cifras?", Mensaje, No.267, March-April 1978, p.129.

<sup>70/</sup> Ibid., p.129.

phenomenon is also apparent in the fact that one third of all new jobs created in the 12 months between September 1976 and September 1977 were in the personal services and household sector, in other words of a basically domestic nature. 71/

156. After a detailed survey on unemployment in Greater Santiago, the author of an article published in Mensaje reaches the following conclusion:

"There has been a sharp increase in the number employed in 'miscellaneous occupations', amounting to about 3 per cent of the total rise in employment during the period. This category normally includes a wide range of jobs of a temporary nature undertaken for the most part by independent workers with few qualifications. It probably also includes persons regarded as having entered the labour force through provision of services ("pololos") which are difficult to classify more specifically.

"To summarize the position with regard to the rise in employment recorded during the past 18 months in Greater Santiago, virtually two thirds of the total (about 100,000 persons) may be said to be engaged in the provision of services - mainly commercial and personal services - a characteristic feature of which is their low productivity and monetary return and the high occupational instability of the workers concerned. The reduction in unemployment (in many cases only apparent) in this category is furthermore one of the factors contributing to a progressively increasing concentration in the distribution of income." 72/

157. Some of the above-mentioned considerations have already been expressed by people directly concerned. Thus, for instance, in a letter of 29 April 1977 to the President of the Republic, a group of Chilean trade union leaders have stated:

"Many Chileans have no work today; according to the Department of Economics of the University of Chile, out of every 100 workers in Santiago, 14 have no work. This figure is also valid, and equally important, for the country as a whole, and it is not only the persons considered in these statistics who have employment problems.

"Some Chileans have gone to other countries to seek work; others are working in the Minimum Employment Programme, which represents categorical official recognition of the problem of unemployment.

"If we added these Chileans to the number of unemployed, instead of 14 we should have about 25 out of every 100 workers who have no chance to work. There are still more if we consider that the working days are shorter than normal or if we take into account the stoppages for collective holidays." 73/

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71/ Ibid. pp.128-129.

72/ Ibid., p. 129.

73/ A/32/227, annex LII, p.296 (emphasis added).

158. And the trade union organizations, in their First of May Manifesto, expressed the view that "real unemployment in this Chile of 1978 is not less than 30 per cent". 74/

159. It is against this general background that the real situation of unemployment in Chile can be evaluated. This background also explains why so much concern has been expressed in Chile over the effective implementation of the right to work.

160. Thus, in a note sent to the Ministry of the Economy in November 1977, a group of workers said:

"Lack of work is destroying thousands of Chileans morally, and there is not even the slightest glimmer of hope; on the contrary, Chile's industry is being ruined by an absurd tariff policy which is resulting in more and more bankruptcies, more and more people out of work." 75/

161. A group of trade union leaders, in a letter of 24 April 1977 addressed to the President of the Republic, stated:

"We, the members of the Chilean trade union organizations, demand the creation of new sources of work, and call for the revision of the tariff policy which has benefited only the well-off and has left many without work. It is urgently necessary for the Government to develop an investment plan in view of the historical failure of private enterprise; in order that these decisions might be taken, we call for a revision of economic policy, in which the workers should be allowed to participate and be taken into consideration.

"It is the duty of the State to give, or at least guarantee, work to all the citizens of the country. Today dogmas must be renounced and the investments which the country needs must be made, both in the sectors of production proper and in the basic services sector. Work should be granted to everyone. This is the only means of achieving a level of development in which we Chileans can live together with dignity." 76/

162. The Permanent Committee of the Episcopal Conference of Chile, in a statement issued on 25 March 1977, said the following:

"We have heard, from the President of the Republic and the Minister for Economic Affairs, words of hope and the announcement of an impending upturn. We must emphasize, however, that the problem is still distressing and urgent.

"It is urgent because for many families, especially those who are unemployed or earning a minimum wage, the extremely precarious and difficult conditions in which they are living are becoming almost intolerable. We understand that the economic reconstruction of the country calls for great sacrifices from everyone; nevertheless, the peasants, workers and settlers appear to be bearing an excessive and disproportionate burden." 77/

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74/ "Pilares de la democracia; planteamientos y demandas de los trabajadores en este 1º de mayo", Solidaridad, No.42, 25 April-9 May 1976, p.11 (Separada, No. 16, May 1978).

75/ "Imperio del más fuerte", Solidaridad, No. 37, 7-20 February 1978, p.10.

76/ A/32/227, pp. 296-297.

77/ Ibid., p. 156.

163. The problem is so serious that recently, on the occasion of his meeting with the United States financial community, Ambassador Cauas acknowledged the Chilean Government's concern about the persistent unemployment. 78/

164. Even an official act, the "Plan for the Promotion of Employment and Efficiency in Social Action", underscored the magnitude of the problem. According to El Mercurio, in the introduction to the Plan it is stated that the rate of unemployment remains at abnormally high levels. The newspaper goes on to say:

"It is mentioned later [in the Plan] that the problem of unemployment is the matter of greatest concern to the population, according to the surveys, which give a figure of 82 per cent under this heading. Unemployment takes on greater seriousness when it continues for a long period and may eventually become a potential source of social and political unrest." 79/

165. It may now be useful to describe briefly those areas which appear to be particularly affected by unemployment. 80/

78/ El Mercurio, 17 February 1978.

79/ El Mercurio, 19 April 1978.

80/ The Economics Department of the University of Chile reports that in December 1977 the unemployment rate in Greater Santiago was 13.2 per cent of the total labour force. This figure is better than the December 1976 rate (13.6 per cent), but worse than the September 1977 rate (12.8 per cent) (El Mercurio, 24 February 1978).

An article commenting on the data provided in the report by the Economics Department of the University of Chile, published in the monthly economic report of El Mercurio, March 1978, states that unemployment has stabilized at about 13 per cent of the labour force but reports, as a positive element, the decline in job-seeking on the part of the inactive population; this group is described as in a status of "quasi-casual unemployment". (El Mercurio, Monthly economic report, March 1978: "Employment is growing and the unemployment rate remains unchanged".)

The same newspaper comments on the report entitled "Employment situation" by the economist Alvaro Vial in these terms: "there has been no very significant decrease in the unemployment rate, mainly because of the sharp increase in the labour force during the period in question". This phenomenon would appear to have occurred in the last few years, the commentary goes on to say, since the total for Greater Santiago in September increased by 15.6 per cent in 1976 and 6.2 per cent in 1977 -- extremely high figures which are well above historic figures and which, according to Vial, are attributable to the fact that "it has been empirically observed that, as real wages increase, the percentage of hours worked, as well as the number of persons actively seeking work, also increases". (El Mercurio, Monthly economic report, March 1978: "Avance generalizado y recuperación" (General progress and recovery)).

If the data given in the earlier paragraph are compared with this last statement, the inevitable conclusion to be drawn is that the inactive population's loss of interest in working is due to the decline in wage levels and working conditions. For his part, Mr. Vial finds grounds for concluding that the situation is now better than it was in the period 1965-1972, since he states that at that time the average annual growth in the labour force was slower, whereas at present it is growing very fast in Greater Santiago, and this would explain why the unemployment rates remain stable. He disregards the steep rise in the population of Santiago due to the internal migration flows resulting from the lack of work in the rural areas.



166. The sector most seriously affected by unemployment in Greater Santiago <sup>81/</sup> is the manufacturing sector. <sup>82/</sup> Some of those who have lost their jobs in the

<sup>81/</sup> The following table shows the evolution of unemployment (unemployed and people looking for a job for the first time) in the so-called Greater Santiago, assumed as representative of the urban sector of the economy, which covers about the third of the country's working force:

Table 24

Unemployment in Greater Santiago

<u>Year</u>	<u>Month</u>	<u>Percentage</u>
1972	December	3.6
1973	June	3.1
	December	7.9
1974	June	10.3
	December	9.7
1975	June	16.1
	December	18.7
1976	June	18.0
	December	15.6
1977	June	13.0
	December	n.a.

Source: Departamento de Economía de la Universidad de Chile, published in "Economic and Financial Survey", Carta Semanal, Santiago de Chile, 18 July 1977.

<sup>82/</sup> It must be added that no reference is usually made to unemployment in the mining and agricultural sectors. Several authors have estimated it as even higher. Mr. Alvaro Bardon, President of the Central Bank of Chile, declared that total unemployment, including "the unemployed among the working force plus the inactives wishing to work" was 20.6 per cent in September 1977, i.e., more than 50 per cent higher than the official figure. The newspaper El Mercurio, quoting Mr. Bardon, published the following table (14 October 1977):

Total unemployment

December 1975	September 1976	June 1977
31%	24%	20.9%

manufacturing sector have turned to humbler work, as is apparent from the increase in employment in the personal service and household sector, which employed 15.5 per cent of the active population of Greater Santiago in 1975, 16.6 per cent in 1976, and 17.1 per cent in 1977. <sup>83/</sup> This is evidence of a retrograde development in labour relations: workers and employees are being forced into situations of dependency of a semi-feudal type, as exemplified by domestic service.

167. In the building industry, 38 per cent of the workers are unemployed; 45 per cent of engineering workers and about 38 per cent of textile workers have lost their jobs. <sup>84/</sup>

168. The position of the mine workers is no less serious. At the Carmen mine, following many dismissals, jobs were being cut down further and the mine will probably be completely paralysed; at the Cerro Imán mine, 700 workers (out of a total of 800) were having to take "collective vacations", and a similar situation was expected at El Romeral. All of these mines are run by the Santa Fe Mining Company, which is owned by the Cia. de Acero del Pacífico (Pacific Steel Company) (CAP). <sup>85/</sup> Similarly, the Africana copper mine of the Pudahuel Mining Company has closed its doors and collectively dismissed 355 workers (having earlier gradually laid off about 70 workers) on the grounds that the mine's reserves were exhausted. <sup>86/</sup> Other reasons for mass dismissals of workers are the transfer of enterprises to the private sector, restrictions on services of all kinds and staff cuts in State agencies.

169. The Deputy Minister of Finance announced in February 1978 that, as from June, all services, agencies and enterprises in the public sector would have to draw up a list of 2.5 per cent of their staff and request the resignation, within ten days, of the officials named on the list. <sup>87/</sup> In addition to planning the dismissal of service personnel, the public administration has also abolished 52,200 posts in 11 ministries. Those which are abolishing substantial numbers of posts are the Ministries of Health (17,307 posts), Public Works (4,937 posts), Transport (14,709 posts), Agriculture (4,535 posts) and Education (3,760 posts).

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<sup>83/</sup> El Mercurio, Monthly economic report, March 1978: "Employment is growing and the unemployment rate remains unchanged."

<sup>84/</sup> Corriere de la Sera, 27 February 1978.

<sup>85/</sup> Hoy, 24 January 1978.

<sup>86/</sup> "Cerro la Africana: despedidos 355 trabajadores", Solidaridad, No. 38, 21 February/13 March 1978, p.6.

<sup>87/</sup> El Mercurio, 25 February 1978.

170. The state of affairs in the rural sector, which on 31 December 1976 accounted for 29.78 per cent of the unionized labour force in Chile, is perhaps even more serious. 88/ Among those affected by this situation are not only the persons who had benefited from land distribution and the former members of rural co-operatives but also rural workers, both settled and seasonal, whose sources of work are declining as a result of the breakdown of the labour system and the failure to organize a new, productive system. The rural worker is losing not only his work but also his dwelling and his traditional environment, for he is being obliged to migrate to the city and swell the crowded ranks of those eking out a precarious existence in the poverty-stricken areas of the urban centres. 89/

171. It appears from a report that the situation of trade union leaders or trade union members is particularly serious. According to this report:

"When unemployed the union member loses his right to health and other benefits, which are related to his employment. Unemployed union members with good training and experience are often the least likely to find good jobs because of their former links with unions. Therefore, many former union leaders are left not only without a job but also without benefits and without much possibility of obtaining a good job under the present régime." 90/

172. There are also reports and testimonies from which it is apparent that many medical doctors have been denied their right to work (in that they were not registered with the Medical Association: affiliation is a legal requirement for the practice of medicine in Chile), for the sole reason that they had been detained, although they had been subsequently released because no charge could be held against them. 91/

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88/ Ibid., 21 March 1978.

89/ "Tuvimos que partir ...", Solidaridad, No. 37, 7/20 February 1978, p.15. A leader of the Reformed Sector Confederation, referring to the training seminars organized for peasants by the Government and the problems facing them, has said: "The seminars are nice, we learn something, but of what use are they to us, given all these problems?" (El Mercurio, 13 March 1978).

90/ Written testimony (signed before a notary) by two United States citizens, submitted to the Rapporteur by the American Friends Service Committee, Philadelphia, 1978.

91/ El Mercurio, 30 March 1976, 27 April 1976.

173. It is fitting to dwell at this juncture on the Minimum Employment Programme (PEM), to see whether and to what extent it can alleviate the plight of Chilean unemployed. A short description of the PEM was given by the Ad Hoc Working Group which, in its report to the General Assembly at its thirty-second session, said:

"The current status of the Government's Plan del Empleo Mínimo (PEM) (Minimum Employment Programme), which was initiated to provide employment for the unemployed, was described recently in a statement by the Minister of the Interior on the social action policy of the Government: in April 1976, 139,000 persons (125,000 men and 14,000 women) were working for PEM; by February 1977, the number of workers had risen to 217,000. The PEM project is supplemented by food programmes - some under the auspices of the United States Agency for International Development (AID) - training courses, publicity to stimulate public interest in submission of new projects, and various public works and community service projects". 92/

174. A general assessment of this programme has been given by Mr. J. Zalaquett, a prominent Chilean lawyer, in a hearing before the Subcommittee on International Organizations of the United States House of Representatives. On 5 May 1976 he said the following:

"This program has been announced by the government as a matter to alleviate some of the problem of unemployment which probably surpasses 20 percent. But in this program, unemployed persons receive no more than about \$30 a month without any social security benefits - without any job security; nor with the possibility to associate themselves with other workers through trade unions.

Personally, I can state that many public corporations of the state, and I have word of at least one private corporation, would prefer to fire their employees and then ask that the government send them persons on the program of minimal employment, which is extraordinarily more economical. As is even the case of those of us who work in the vineyards of the Lord, one bishop was using this very system so as to finish his cathedral.

Frankly, I think this is a quasi-slavery type of system." 93/

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92/ A/32/227, para.226.

93/ Chile: the Status of Human Rights and its Relationship to United States Economic Assistance Programmes, Hearings before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, Ninety-fourth Congress, second session (Washington, D.C., U.S. Government Printing Office, 1976), p. 75.

175. A description of the situation of PEM workers is contained in a report submitted by some foreigners who have been living in Chile:

"The Chilean Government has stated, regarding the Minimum Employment Plan, 'Any person who wishes may join it, without any exception whatsoever'. Many persons with the Minimum Employment Plan have told us personally that in fact PEM often limits employment to a three-month period and that only one person per family may be accepted. Contrary to what some have stated, we have been told by people on PEM that they are not presently receiving any supplemental food. Also we have received very clear indications that in some places PEM workers take the places of workers who have been discharged. Some PEM workers paid about 30 dollars per month are given jobs with hospitals and other institutions where regular workers with benefits and a much more adequate salary have been discharged. 94/

176. When offering 500 posts in the PEM, the municipality of Santiago tells the persons concerned to report to the nearest police station. It also informs them that PEM personnel receive a fortnightly allowance of 413 pesos, dental care and hospitalization for themselves and their families and a monthly quantity of food, consisting mainly of milk, wheat flour, polents and oil, according to the number of dependents. 95/ On the basis of these data, the monthly wage would be equivalent to approximately \$US 26 or 27, plus the foodstuffs mentioned, the quantity of which varies and which seem to be more a welfare payment in kind than a remuneration. These workers have no claim to any social services, protection or rights (other than dental care and hospitalization), with the result that they form a group of socially disadvantaged persons who give their work in return for a remuneration that is degrading not only because of its amount but because it looks more like charity than like a wage.

177. A few months ago the authorities announced an economic plan with the title "Plan for the Promotion of Employment and Efficiency in Social Action". This plan, which was approved by the military Government, aims, among other things, at the abolition of the compulsory minimum wage and, in the earlier stages, will allow people of under 23 and over 65 years of age to be hired at less than the minimum wage. Furthermore it will not allow the minimum wage to be adjusted over and above the increases recorded in the price index. It also proposes to rescind the law on job security, to facilitate the formalities for ending labour contracts, to reduce the indemnity for dismissal from one month for every year of service to one week for each year, that is, by 75 per cent. It further proposes that family allowances should not be paid when income is above a certain ceiling, which is provisionally set at 10,000 pesos. An end would be put to the Minimum Employment Programme, and to the subsidy paid for the hiring of new workers. Employers' social security contributions would also be terminated and benefits would be financed from the public budget.

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94/ Written testimony (signed before a notary) by two United States citizens, submitted to the Rapporteur by the American Friends Service Committee, Philadelphia, 1978, p. 10.

95/ El Mercurio, 24 February 1978.

178. Twenty-three trade union organizations have attacked these proposals, pointing out that "the right to a minimum wage has legal and constitutional status in Chile and, being unquestionably a primary human right, cannot be abolished". 96/ They add that the new plan contains "the astonishing news that the money which theoretically should generate new jobs will be obtained from the savings made by entrepreneurs through the abolition of the fundamental rights of workers, such as the right to a minimum wage and to a share in company profits, the almost complete abolition of the indemnity in cases of illegal dismissal, and non-payment by employers of social security contributions, which will be paid by the Treasury instead - in other words, by the taxpayers in general". 97/

179. What is the value of the minimum wage which it is now proposed to do away with? In May 1978 it amounted to 2,160 pesos. This figure should be compared with the basic requirements of a worker and his family. The National Federation of Trade Unions in the Metallurgical and Metal-Working Industry (FENSIMET), in a memorandum addressed to the Association of Metallurgical Producers, points out that the majority of enterprises in the sector pay the minimum of 2,160 pesos even to workers who have 15 to 20 years of service, and says that a family of five people requires 4,156.50 pesos simply to eat. This means that the minimum income barely covers 50 per cent of the most elementary items of food. 98/ Similar declarations have been made by the leaders of the Textile Federation. The Federation has stated that the number of textile workers has dropped from 120,000 to 60,000. It has also pointed out that 80 per cent of those still working earn the minimum of 2,160 pesos, although, they state, a family of four people cannot keep itself in food with less than 5,000 pesos.

180. The "Plan for the Promotion of Employment and Efficiency in Social Action" is based on the idea that if the employer's costs are reduced in various ways there will automatically be a rise in the level of employment. However, this is not borne out by the experience of recent years. Since 1973, there has been a sharp decline in wages but it has not led to an increase in employment. On the contrary, unemployment is at an exceptionally high level. The reduction in wages has restricted the domestic market and contributed to the decline in economic activity. The trade union declaration of 1 May 1978 states:

"Our organizations do not believe that the hypothetical savings made with the money of the workers will be used by employers to create new sources of work. In the present economic recession, the money will be used to solve financial problems and possibly even to stave off bankruptcy. Any employers who are not in such desperate straits will invest it in short-term financial transactions or imports, because this has been the trend of investment in Chile over the last few years. Let us remember, too, that since 1975 a bonus has been paid for the hiring of new hands, and that this has meant a saving of 50 per cent in social security costs for the employer, although it has not of course had a positive effect, since unemployment rates have remained far above the historical rates of unemployment". 99/

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96/ "Pilares de la democracia: planteamientos y demandas de los trabajadores en este 1º de mayo", Solidaridad, No.42, 25 April-9 May 1978, p.14 (Separada, No. 16, May 1978).

97/ Ibid., p. 13.

98/ See "Trabajadores del metal: dura subsistencia", Solidaridad, No. 42, 25 April-9 May 1978, p.6.

99/ "Pilares de la democracia: planteamientos y demandas de los trabajadores en este 1º de mayo", Solidaridad, No. 42, 25 April-9 May 1978, p. 13 (Separada, No. 16, May 1978).

2. Right to adequate food.

181. According to the Chilean authorities, "nutrition is the area in which perhaps the most significant and noteworthy advances have been made". <sup>100/</sup> As we shall see infra, the Government stresses in particular the results it has achieved in child nutrition and in the distribution of milk. The Rapporteur has however found reports and other evidence which tend to point to the conclusion that in this area also the Chilean authorities have not adequately taken into account the basic rights of the vast majority of the population. In particular, it appears from these data that the undernourishment of poor people is a widespread phenomenon.

182. The undernourishment of poor strata is a consequence of the reduction in the buying power of wage-earners. This reduction has resulted in the impossibility of spending for food the amount of money that would be necessary for the daily intake of 2,362 calories and 46 grams of protein per person recommended by the World Health Organization (WHO) and the Food and Agriculture Organization of the United Nations (FAO).

183. It has been pointed out that

"Studies conducted in 1968-69 showed that the poorest families spent 54 per cent of their income on food. In June 1975, the Junta's Ministry of Health reported in the newspaper El Mercurio that low income families were spending more than 70 per cent of their income on food. A dramatic report, 'Cuánto gastamos en comer?' ('How much do we spend on food?') was published by Ercilla in August 1975. It was estimated that those earning 300 pesos a month (white collar employees with a family of four) spend 87 per cent of their income on food. Such a diet provides approximately 1,200 calories and 40 grams of protein per capita per day. (The FAO/WHO recommendations are 2,362 calories and 46 grams of protein.)" <sup>101/</sup>

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<sup>100/</sup> "Observations of the Government of Chile on the report of the Ad Hoc Working Group appointed by the Commission on Human Rights to investigate the situation of human rights in Chile", A/C.3/32/6, p. 65.

<sup>101/</sup> G. Solimano and the American Public Health Association Task Force on Latin American Health Workers, Health and Nutrition in Chile, report prepared for the Congressional Conference on United States Foreign Policy towards Latin America (Southern Zone) with respect to Human Rights (Washington, D.C., 27 September 1977), pp. 10-11.

184. According to a study made by the Confederation of Private Employees of Chile (Confederación de Empleados Particulares de Chile - CEPCH), in July 1977 the income of a private employee with 10 years of service and three dependants was 3,011.36 pesos (about \$US 100). His minimum family expenditure was as follows:

Food:	2,277
Clothing and household:	800
Rent:	1,100
Miscellaneous:	772
Totals:	<u>4,949</u>

This means that more than 70 per cent of his income has to be spent on food, while his wages cover only 39.1 per cent of his basic needs. If these figures are compared with those given earlier in connexion with the minimum wage (1,300 pesos) and with the earnings of PEM employees, as well as with the wages of certain workers and the continuing high unemployment figures, the clear inference to be drawn is that a large proportion of the population is undernourished. 102/

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102/ Michael Moffitt, in the study referred to earlier, states:

"In 1969, according to a study sponsored by the Catholic Church in Chile, a worker making the legal minimum wage could purchase a 'people's basket' of basic food items with a little more than half his income. Today, spending his entire income, he receives only 80 per cent of the items. According to the New York Times (8 December 1976), the same study found that nearly 12,000 children out of a sample of 19,000 were chronically undernourished. (M. Moffitt, "Chicago Economics in Chile", Challenge (Chicago), September-October 1977).

According to a news item in El Mercurio, an average cut of meat costs about 80 pesos per kg. in January (23 February 1978), a dozen eggs about 27 pesos in March (16 March 1978) and bread approximately 11.50 pesos per kg. (9 April 1978). This means that an average family, consuming 1 kg. of meat, 1 dozen eggs and 4 kg. of bread in a week (the minimum requirements of staple foodstuffs for four persons), would spend on these items alone about 650 pesos a month, equivalent to half the basic wage and to more than 20 per cent of the salary of a private-sector employee (3,000 pesos).



185. As mentioned above, the Chilean authorities consistently underscore their achievements in the area of child nutrition and in particular in the distribution of milk. In a statement made in 1977 in the United Nations

The following table is reproduced in a document of "Chile Democrático", Rome, submitted in 1977 to WHO (annex, table III):

Table 25

Changes in prices of basic foods: Chile, 1973-1976

Products	Units	Prices in escudos <sup>a/</sup>			
		1973 (Sept.)	1974 (Dec.)	1975 (Dec.)	1976 (Sept.)
Milk	1 litre	5.5	200	1,000	-b/
Eggs	1 doz.	132.0	900	3,840	16,100
Fish	1 kg.	17.0	626	2,700	22,000
Bread	1 kg.	11.0	464	2,170	-b/
Sugar	1 kg.	17.0	1,200	3,520	6,750
Noodles	1 kg.	37.0	680	4,400	9,680
Rice	1 kg.	16.0	942	4,740	-b/
Potatoes	1 kg.	20.0	140	1,330	700
Oil	1 kg.	36.0	1,840	5,680	23,800

Sources: 1973: José Aldunate, Mensaje, No. 231, December 1974.  
1974: INE, quoted in Ercilla, No. 2,112, 21 January 1976.  
1975: Ibid.  
1976: Ercilla, No. 2,153, 3-9 November 1976.

a/ The monetary symbol changed in 1975 from escudos to pesos  
One peso is equal to 1,000 escudos.

b/ Without information in the source for these products in 1976.

Sub-Commission on Prevention of Discrimination and Protection of Minorities, the observer for Chile said that his Government "has succeeded in increasing the protein content of milk, as well as increasing the quantity of milk now distributed to children under five years. During the past year, the quantity of milk given to children in that group has risen from 8 to 14 million kg." 103/

186. In the "observations" referred to above, the Government of Chile pointed out that:

"according to the publications prepared each year by the National Health Service, the distribution of milk has been the following:

<u>Year</u>	<u>Millions of kilograms</u>
1971	21.1
1972	20.5
1973	21.5
1974	25.6
1975	29.7
1976	30.4
1977	32.5 (estimated)

In addition to this increase in quantity, the fat content of the milk was increased from 12 per cent to 26 per cent." 104/

187. The evidence that the Rapporteur has gathered indicates that, contrary to what is claimed by the Chilean authorities, child malnutrition is widespread in Chile.

188. In a recent interview, the Chilean Minister of Health declared:

"In Chile, 221,000 children are living in extreme poverty, which implies undernourishment; 16 of every hundred finish a secondary education; 80 per cent of them have an intellectual quotient lower than 90. Those children are not a source of power but a dragging weight. From a military point of view they are useless." 105/

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103/ E/CN.4/Sub.2/398, p.8.

104/ A/C.3/32/6, p.66.

105/ E. Matthei, "Escasez de dolares y pesos", Ercilla, No. 2187, 29 June-5 July 1977.

189. According to Dr. F. Monckenberg, the Executive Co-ordinator of the National Council for Food and Nutrition, it is thought that there are 7,000 children suffering from severe malnutrition in Chile, but there are no official figures or statistics on the subject. <sup>106/</sup> He also stated, in July 1977, that 17 per cent of all children under six were undernourished, this figure being based on 800,000 children examined by the National Health Service. <sup>107/</sup> Malnutrition in children less than a year old has reached such serious dimensions that, according to the same letter from Dr. Monckenberg published in Mensaje, 1,662 beds have had to be set aside in a number of hospitals to treat malnutrition as a disease. <sup>108/</sup> This is all the more significant in view of the fact that there are only about 4,500 hospital beds for paediatric cases in the whole country.

190. A report by the American Public Health Association, dated 10 November 1977, states:

"During the past four years there has been an increase in the extent of malnutrition:

"(1) According to the surveillance system of 800,000 children under 5 years of age, the incidence of malnutrition in 1972 was 12 per cent. Using these same criteria, the present government reported an incidence of 17.8 per cent in 1976. In absolute figures this means that approximately 40,000 more children are suffering from malnutrition.

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<sup>106/</sup> "Una gota de agua en el desierto", Solidaridad, No. 35, 10-23 January 1978, p.4.

<sup>107/</sup> F. Monckenberg, "Programa de nutrición", Mensaje, No. 260, July 1977, p. 377.

In an article published in the same review Mensaje, the Jesuit J. Aldunate, quoting information obtained by the Continued Survey of the State of Nutrition (ECEN), states that in the provinces of Aconcagua, Valparaiso, O'Higgins and Colchagua, 14 per cent of children under six were undernourished in the towns and 31 per cent in the rural areas. In the provinces of Antofagasta, Atacama and Coquimbo, the corresponding rates reached 22 per cent and 40 per cent respectively (J. Aldunate, "El hambre en Chile", Mensaje, No. 253, October 1976, p. 510).

<sup>108/</sup> Monckenberg, loc. cit.

"(2) Despite the present government's claims of great progress, malnutrition among the 29,000 children in Santiago served by Church-sponsored lunch programs in 1976, was reckoned at 61.5 per cent. In up to a quarter of those examined at some centres, the degree of malnutrition was judged severe." 109/

109/ American Public Health Association, Task Force on Latin American Health Workers, Statement of 10 November 1977 submitted to the Ad Hoc Working Group on human rights in Chile, p.2.

A publication of Vicaría de la Solidaridad entitled Un año de labor gives the following tables:

Table 26

Percentage of undernourishment found in children examined in lunch canteens - January-December 1976

Number of children examined	28,600
Number of children found to be undernourished	15,599
Percentage of undernourishment	61.5%

Source: Vicaría de la Solidaridad, Un año de labor (January 1977).

Table 27

Prevalence of undernourishment in children attending canteens and distribution of undernourished children according to degree of undernourishment, January-December 1976

Polyclinic	Percentage of children examined who are undernourished	Undernourished children		
		1st degree	2nd degree	3rd degree
		(percentages)		
San Roque	40.5	68.6	26.9	4.5
Santo Cura de Ars	68.4	53.2	29.1	17.7
El Carmen	60.5	36.9	26.1	37.0
Hogar de Cristo	62.0	47.8	25.4	26.8

Source: Vicaría de la Solidaridad, Un año de labor (January 1977).

191. In an effort to meet the needs of child nutrition, the Government has established nutritional recuperation centres. The American Public Health Association has given the following assessment of these centres:

"For many years in different countries this has proven to be a late, expensive and limited 'illusion' of a permanent solution, reaching only some of the most serious cases of malnutrition. These children soon return to the environment of poverty and deprivation which produced their condition in the first place. According to official figures, at the present time, 9 centers exist with a capacity for approximately 600 children. Given the magnitude of the problem described above, this is only a meaningless effort.

"In summary, the significance of programs of nutritional recuperation conducted by the present government is questionable in the face of overwhelming social and economic deterioration. Thus, the success of those programs cannot be objectively evaluated." 110/

192. As to the distribution of milk, the statistics produced by the Chilean authorities and quoted above (para. 186) show that there has been an increase. The Rapporteur wishes to stress, however, that other data, conflicting with those produced by the Chilean authorities, have been quoted by the United Nations Ad Hoc Working Group on Chile, on the basis of reliable information. The Group has pointed out that "under the Allende Government the quantity of milk distributed to the poor rose to some 39 million kilograms annually, excluding the milk provided on the school feeding programme" 111/, whereas on 11 March 1977 the Chilean Minister of the Interior stated that under the "Supplementary Food Programme" 32 million kilograms of milk or protein mixtures had been distributed during the year to children under six years of age, mothers and pregnant women at a cost of 1,120 million pesos. 112/

193. The Chilean Government has objected that the figure relating to the Allende Government "is completely false, as proved by the official publications of the Ministry of Health during that period". 113/

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110/ Ibid., p. 3.

111/ A/32/227, para. 279, note 86, quoting the American Journal of Public Health, vol. 67, No. 1 (January 1977), p. 33.

112/ Ibid.; for the full text of the Minister's statement, ibid., pp. 272 et seq.

113/ A/C.3/32/6, p. 66.

194. The Rapporteur wishes to stress that, while he - for the aforementioned restrictions (see supra, Chapter I) on his ability to collect unimpeachable evidence or to verify the accuracy of the evidence produced by some sources - cannot determine whether this objection is well-founded, it appears from reports submitted to him that other sources seem to bear out the data quoted by the Ad Hoc Working Group. Thus, according to an official statement of the previous President of Chile, in 1972 42,593,624 kilograms of powdered milk were distributed in 1972 114/ while, according to an official document, (in 1976 30,352,000 kilograms of such milk were given out):115/

3. Right to health

195. The decrease in the public spending for health is clearly shown in the following tables:

Table 28

Budgetary expenditures on health  
(thousands of constant 1969 pesos\*)

1970	1,135
1971	1,617
1972	1,933
1973	1,806
1974	1,453
1975	1,072
1976	851

\*Deflated by corrected consumer price index.  
In 1976 a rate of inflation of 115 per cent is assumed, to compensate for the divergence in data between the source for this table and those for previous tables.

Source: Center for international policy, Washington, D.C., International policy report, vol.II, No.2, September 1976, p.16. The original source is ODEPLAN, 4 December 1975.

114/ S. Allende, "Tercer Mensaje Presidencial al Congreso Pleno", 21 May 1973.

115/ Servicio Nacional de Salud, Sub-Departamento de Estadística, "Anuario", 1977, Atenciones y Recursos.

Table 29

Per capita health expenditures

1970	-	\$38	
1971	-	\$48	
1976	-	\$22	
1977	-	\$13	(estimated)

Source: American Public Health Association, Task Force on Latin American Health Workers, Report on the Current State of Health Care and Nutrition in Chile, July 1977, p.III, 3.  
(Original source: 1970-76. Annual Accounts of the President of the Chilean Medical College, Dr. Ernesto Medina; El Mercurio, 16 April 1977; El Mercurio, March 1977).

Table 30

Annual amounts spent on health

(expressed as percentages of the national budget)

1970	-	6 per cent
1972	-	7.2 per cent
1976	-	4 per cent
1977	-	2.5 per cent (estimated)

Source: See source of the foregoing table, ibid., p.III,3.  
(Original source: 1970-76. Annual Accounts of the President of the Chilean Medical College, Dr. Ernesto Medina; El Mercurio, 16 April 1977; El Mercurio, March 1977)

196. A general picture of the present health situation in Chile is given in a report prepared by Mr. Giorgio Solimano, M.D., in co-operation with the American Public Health Association Task Force on Latin American Health Workers and submitted to the "Congressional Conference on United States Foreign Policy towards Latin America (Southern zone) with respect to Human Rights" in September 1977:

"Since the Junta's seizure of power in 1973 the situation has been reversed in terms of every point mentioned. The new system can be characterized as follows:

"The Junta has transformed the National Health Service into a National Health System with policies which favour privatization of every aspect of health care. This includes financing through fee-for-service instead of a social security system. As a result of these changes and the economic policies of the Junta, vast segments of the population can no longer afford health care. In addition, the administration of the new system is in the hands of military personnel with little experience in health.

"Budgetary resources allocated to health have been slashed in comparison with the preceding years. The proportion of the national budget allocated to health shrank from 7.2 per cent in 1972 to 4 per cent in 1976 to 2.5 per cent in 1977 ... These cuts have not only closed down facilities, but have also meant loss of employment for a large segment of the health labour force.

"Community participation in health care decision making was abruptly halted. Many community health workers were killed or jailed. The Neighborhood Health Councils were disbanded, many clinics closed, and those which remain open have had their hours curtailed.

"Priority programmes have been uniformly cut back. For example, the free milk programme has been reduced. Budget cuts have meant that the programmes which do remain reach fewer and fewer people. The curtailment of community participation and the privatization of health care have further diminished the impact of such programmes.

"Under Allende there was an explosive demand for health care. The demand for care is now low. This, however, is not because of a recent improvement in health status. A decline in the use of services should be read as an indicator that the majority of the Chilean people can no longer afford essential health services." 116/

197. The general conditions of health in Chile have been the subject of very critical statements on the part of prominent doctors. Dr. E. Medina, President of the Chilean Medical Association said in April 1977 the following:

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116/ Health and Nutrition in Chile, by G. Solimano, M.D., and the American Public Health Association Task Force on Latin American Health Workers, Washington, D.C., 27 September 1977, pp.4-6.



"In 1976 Chile's total expenditure on public health barely amounted to 4 per cent of the country's product. Bearing in mind that the proportion of the Chilean product earmarked for health expenditure has in the past exceeded 6 per cent and that most countries spend higher percentages than this, it cannot seriously be maintained that the amount spent on health meets the requirements ...". 117/

He also stated that:

"The level of poverty at which the hospitals (including the big ones) are working, is just unbelievable. In children's hospitals, for instance, there are enormous deprivations. Linen supply is lacking: in some hospitals diapers are changed every 12 hours. There are problems with personnel (entirely insufficient) and with the pharmacy. They have some basic things, but are lacking in some other essential ones. There is a serious shortage of antibiotics ... Some of these deficiencies have a price in lives". 118/

198. The Chilean Medical Association reiterated these views a few months later. 119/ Drs. Eduardo Rojas and Sergio Reyes, Vice Presidents of that organism, stated:

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117/ El Mercurio, 16 April 1977.

118/ Ercilla, 6 April 1977.

119/ These opinions of the Chilean Medical Association were repeated in articles published in the Santiago newspapers in April.

"We have repeatedly drawn attention to the precarious conditions, as regards personnel, supplies and equipment etc., in which health activities are being carried out ...

"This obvious deterioration at all levels is more noticeable in the peripheral surgeries and emergency services. Moreover, due to the 'financial ceiling' [limit of financing which may not be exceeded], the impossibility of engaging doctors with less than five years' professional experience, the lack of incentives and generally inadequate working conditions, these problems are becoming rapidly more acute.

"... We are amazed and concerned to see that a large number of doctors trained by the University of Chile are not engaged, but are obliged to emigrate to more receptive countries which, without having to pay for their very expensive training (\$30,000 each) benefit from their knowledge and industry, and from their eagerness and zeal to study and progress.

"We wish to stress that if the facts denounced have not yet had a more alarming and significant impact in the health sector, this is due solely to the great ability, self-denial, sense of mission and sacrifice of the entire personnel ... but with the passage of time, hope is dwindling and, a play to frustration, the best and most experienced of officials are being lost". (El Mercurio, 2 April 1978).

"Health is a service and as such the State has to pay for it and give to the S.N.S. the necessary elements for that mission. Nevertheless, only the negative factors of the market economy are applied to this sector and not the positive ones ... In some cases the hospital directors are not the most suitable, since the official career was suspended four years ago ... Medical attention in some hospitals, as those of the Fifth Region, is given under unacceptable hygienic, efficiency, comfort and security conditions for the patients ... In remote rural zones, non-medically trained or unprepared personnel - from the Minimum Employment Programme - not only perform administrative functions but also act as nurses' aids ..." 120/

199. With regard to medicaments, the Government's free market policy tends to aggravate even further the problems that the population has to contend with. Mr. Roland Bown Fernandez, General Manager of Laboratorios Chile, has stated that pressure is being exerted for the enactment of a decree authorizing any international laboratory to use the designation "National formula" (Formulario nacional). This is the designation on all medicaments produced by Laboratorios Chile - a State concern - which resemble those sold on the international market but are much cheaper because they do not bear the trade names of the big international laboratories. They enjoy a high standing with the public because they are cheap and of comparable quality. Mr. Bown Fernandez states that "The purpose of the multinational pharmaceutical firms is not to adopt the National Formula system but to use it to manufacture the most profitable products and to sell them at a higher price by taking advantage of public confidence." 121/ Mr. Eduardo Luz Mena, Secretary for Health, has since explained that the measure reflects the wish to bring free competition into the field of health as well and is not the result of pressure on the Government. As it does not involve any risk for the people's health but is a purely economic matter, the idea has been accepted. He added that he was not sure how the prices of medicaments would react but that free competition was bound to benefit the consumer. He demanded particulars of the changes made, and Mr. Ronald Bown hastened to state that "it is in any case unthinkable that pressure should have been exerted on our health authorities". 122/

200. The dispensarios around the central area have also been transferred to the private sector. They used to provide free medical attention for SNS beneficiarios (workers covered by the Social Insurance Service, persons injured at work, schoolchildren, workers and pensioners in the SNS, firemen and indigent persons) but now come under the National Private Corporation for Social Development ("Corporación Nacional Privada de Desarrollo Social"). 123/ The executive director

120/ Hoy, 23 November 1977 (emphasis added).

121/ El Mercurio, 14 April 1978.

122/ El Mercurio, 15 April 1978.

123/ El Mercurio, 22 February 1978.

of a number of dispensaries has stated that "the system adopted by the Corporation hinges on the application of business standards to the management of the dispensaries". In answer to complaints made by patients that they had to pay 15 pesos for each consultation and 40 pesos for an injection when, as SNS beneficiaries, they should be given free care, he replied "The true cost of an injection is 27 pesos. The dispensaries make money by establishing a special tariff for private patients, for whom the cost of a consultation is 250 pesos. A beneficiary should receive medical care free of charge, but as this leads to abuses we have instituted a system of voluntary donations. We also have a team of social workers who investigate the circumstances of persons who state they are unable to pay to see whether they are indigent ...". 124/

201. It seems to the Rapporteur that the adoption of business standards for social services may solve financial and administrative problems, but that it is not compatible with the nature of such services, and deprives the less privileged sectors of any protection of their right to health.

202. Figures produced by the National Health Service ("Servicio Nacional de Salud") about venereal diseases registered in Santiago during the last few years show a considerable increase.

Table 31

Number of venereal cases reported to SNS in Santiago

	1974	1975	1976
<u>Primary and secondary syphilis:</u>			
Number of cases	671	928	1,253
Rate for every 100,000 inhabitants	17.2	23.8	32.13
<u>Precocious dormant syphilis</u> (up to two years of evolution):			
Number of cases	1,359	1,237	1,420
Rate for 100,000 inhabitants	34.0	31.7	36.41
<u>Late dormant syphilis</u> (more than three years):			
Number of cases	804	609	464
Rate for 100,000 inhabitants	20.0	15.6	11.89
<u>Acute gonorrhoea:</u>			
Number of cases	2,930	4,710	4,922
Rate for 100,000 inhabitants	69.0	113.6	145.62

Source: Hoy, 1 June 1977.

The number of cases of primary and secondary syphilis and gonorrhoea increased almost by 100 per cent between 1974 and 1976. This reflects the worsening of the standard of living and corroborates the reports coming from ecclesiastics and other private sources about a substantial increase in prostitution due to the economic misery of most sectors of the population.

203. The same happens with other infectious diseases. For example, the number of cases of hepatitis in the metropolitan area was 859 in 1976, whereas, until August 1977, there were already more than 1,700 cases. 125/ Typhoid increased alarmingly as well.

204. R. Urzúa S. wrote in the magazine Mensaje:

"Although one of the Constitutional Acts published in September 1976 insured us the right to live in a non-contaminated environment, this appears more and more contaminated in the last few years. The relationship between this and some infectious diseases does not need further evidence, and as an example we can produce the typhoid figures which are strictly determined by contaminated water. The non-investment in sanitary works (drinking-water, sewerage), is to be blamed as being responsible for this contamination."126/ The same author produces the following table:

Table 32

Number of reported cases of typhoid

Year	Number of cases
1969	5,358
1970	5,344
1971	4,784
1972	4,527
1973	3,688
1974	4,655
1975	6,110
1976	7,800
1977	10,000 x

Source: Mensaje, No. 260, July 1977, p.309.

x = Projection base in 5,000 cases until May 1977.

This table, besides showing the remarkable decrease of the disease during the period 1971-1973, shows that in recent years the number of cases of typhoid has increased by more than 170 per cent.

125/ El Mercurio, 27 August 1977.

126/ R. Urzúa S., "Salud: Impacto de la Recision y deterioro de sus naves", Mensaje, No. 260, July 1977, p.309.

205. This state of affairs has been described by the Vice-President of the Medical College, Dr. Eduardo Rojas, as "critical". "There is a direct connexion," he said, "between what is happening and the increase in diseases. Up to 1976, the corresponding indexes were declining, but then they levelled out, and in some cases took an upward turn. We believe that the problem is only just beginning and that it will get worse, unless there is a change in health policy." 127/

206. Hunger has greatly affected the children's intellectual capacity. A study done by Dr. Fernando Monckenberg, President of the "Consejo Nacional para la Alimentación del Niño" (COMPAN), published by El Mercurio, 128/ confirms this situation. According to this study, 22 per cent of the shanty-town's ("marginales") children present a normal Intelligence Quotient (I.Q.), 36 per cent have a subnormal I.Q. and 42 per cent have a deficient I.Q. Among "middle class" children, 98 per cent have a normal I.Q., 2 per cent are subnormal and 0 per cent are deficient.

207. Various reports of the Chilean Government have stressed the decline in infant mortality rates. The following table has been quoted by the Government in its Note Verbale of 12 August 1977 to the United Nations Secretary-General: 129/

Table 33

Infant mortality per 1,000 births

1971	77.3
1972	78.0
1973	71.5
1974	69.4
1975	60.8
1976	55.4

The latest figures given by ODEPLAN indicate a drop to 54.7 per cent in 1977. 130/ Thus the decline in the mortality rate has continued, although lately it has shown signs of slowing down.

127/ Hoy, 23 November 1977.

128/ El Mercurio, 5 June 1977.

129/ A/32/227, p.221.

130/ El Mercurio, 3 May 1978.

208. It seems to the Rapporteur that several factors can help explain the aforementioned decline in infant mortality. First, it must be pointed out that this decline was most pronounced in 1975. This fact leads to the conclusion that a downward trend cannot be linked to an improvement in the social and economic conditions of the population in that same year, since that was the year when living standards dropped most sharply. Figures for 1971-1976 likewise support the view that there is no connexion with an increase in public health expenditure, since up to and including 1976 this indicator showed a steady decline. Suffice it to point out that in 1971, in terms of millions of 1975 dollars, it was 459.2, and in 1976, in currency of equal value, 230.5, according to the consolidated balance sheet of the public sector.

209. It seems that the decrease in infant mortality must be primarily related to the drastic reduction in the birth rate which has occurred over the last five years. Chilean families affected by the poverty and malnutrition prevailing in lower and middle classes during this period, have been endeavouring to reduce the number of children to be born and to be fed. Mainly for this reason, women are eager to adopt contraceptive methods, and frequently seek abortion. Moreover, reliable information from international agencies shows that in the last few years some 25,000 sterilizations of women have been practised in Chile each year until 1975, and that 12 per cent of the fertile population had already been "protected" by this method at that time. It is also apparent that the possibility exists of doubling the figures of annual sterilization in the coming years. 131/

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131/ Reference can be made to the records of the "Latin American Voluntary Sterilization Campaign (VSC): Coordination Meeting", Session of 27 September 1976, New York. Dr. Benjamin Viel, representative of the International Planned Parenthood Federation (IPPF), gave the following information: "The 'Asociación Chilena de Protección de la Familia' has been active in VSC in Chile for some time, even though official government policy in this field is not clear. IPPF has provided nine laparoscopes, 32 tubal ligation kits and 24 vasectomy kits. Dr. Viel says that 220,000 family planning acceptors were recorded for 1975 with 7,500 of these being tubal ligations. He estimates that altogether some 25,000 VSC cases are being done in Chile each year, if the private sector is included, and that 12 per cent of the fertile population has already been protected by VSC. He feels the number of sterilizations in country each year would be doubled if they had more money and more equipment. IPPF currently provides them only \$US 700,000 per year. He feels that sterilization is in great demand among women over 25 years of age in Chile" (Summary Notes, 27 September 1976, Chile, pp.1-2).

210. That the decrease in infant mortality is closely linked to the decrease in the birth rate is proved by a comparison between these two sets of phenomena <sup>132/</sup>. It is apparent from it that from 1973 to 1977 there were 33,650 fewer births, although of course the drop in natality was not identical with the drop in infant mortality.

211. More generally, the view can be shared that the decrease in infant mortality is part of a general historical trend which started long before the present Government took over. As was noted in the magazine Mensaje, "the decline in the infant mortality rate as well as in the birth rate had already begun some years earlier in Chile. It is plausible to consider that the sharp decline in these two indicators in the last two years is part of the historic trend which is influenced by an accumulation of numerous social, economic and cultural changes under different governments. Many of these changes directly affect - with some time-lag - the infant mortality rate and have contributed to the latest drops." <sup>133/</sup>

<sup>132/</sup> As shown in the following table:

Table 34

Year	Births		Infant mortality
	Number	Rate	Rate
1968	273,296	30.3	83.5
1972	277,891	28.6	71.1
1973	276,650	27.9	65.2
1974	267,977	26.6	63.3
1975	256,543	25.0	55.4
1976	247,722	23.7	54.0
1977	243,000*	22.8	47.0

Source: "Indicadores Bio-demográficos Chile, 1968-1977", Ministerio de Salud, Depto. de Planificación.

\* Projection.

<sup>133/</sup> F.M.S., "La mortalidad infantil y sus últimos descensos", Mensaje, no. 254, November 1975, p.581.

212. It must finally be stressed that, despite the aforementioned deterioration in the health sector, many recently qualified doctors have been unable to find work in the country. Of the 260 doctors who graduated, a bare 75 were engaged by the National Health Service, despite the fact that in Chile there is only one doctor for every 1,600 inhabitants, whereas the circumstances would warrant one for every 800 inhabitants. 134/

213. Dr. Ernesto Medina, President of the Chilean Medical Association, has stated that "professionals are still leaving the country at the rate of 150 doctors a year". He has also spoken of the deep anxiety felt by doctors who have recently graduated but have been unable to find employment with the National Health Service ("Servicio Nacional de Salud" - SNS), pointing out that "the situation will get worse year by year since the constant increase in the number of medical graduates, which will be nearly 700 in two years' time, makes it impossible for them all to be engaged by public institutions in view of present policy in that respect and facilities outside the [national health] system have not yet been developed sufficiently to absorb them". 135/

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134/ Que Pasa, 11 May 1978.

According to the American Public Health Association (Report of July 1977, cit., p.III, 2), "While 550 MD's were graduated in December 1976, the National Health Service will offer positions to only 194 of them. In other words, only 35 per cent of the new professionals will find a job there. As further evidence of the artificial scarcity of health care resources, 7,698 staff personnel have been forced to retire or were flatly expelled from the National Health Service (Reference: El Mercurio, 16 April 1977)".

135/ El Mercurio, 18 March 1978.

According to the American Public Health Association (Report of July 1977, cit., p. III, 2), "Of some dispute are the estimates of the number of doctors leaving Chile. Recently the President of the Chilean Medical Association reported that only 5 per cent of the national body of physicians emigrated in the period between 1960 and 1970. In 1975, the Association reported that fully 12.3 per cent of its members had left the country (on either a temporary or permanent basis); and an additional 11.2 per cent were inactive at that time. Physicians who do leave give as their major reasons the lack of incentive to work in Chile and the low salary rate they can claim (especially the young doctors) (Reference: Medina, E., "Los Médicos Chilenos y las necesidades de formación," School of Public Health, University of Chile, Document 14,0093, 19 July 1976)."



#### 4. Right to housing\*

214. In 1977 the Government of Chile, in the document "Experience in the eradication of poverty", etc., presented the problem of housing in the following terms:

"The most novel aspect of the housing program is the change in emphasis, abandoning the support through state subsidies to middle and upper strata in the population and now going to support for the groups in the lowest income brackets.

In 1969 the families with the least income were 21.7% of the population and received only 11.1% of state subsidies for housing whereas groups in higher income brackets, 5.8% of the population, were getting 12.8% of the subsidies.

The Government started a Program for Housing for Social Requirements to correct this situation and directed at the groups in the lowest income brackets.

The program calls for small housing units but equipped with drinking water, piping, sewerage outlets and electricity.

This is a transition program and its goal is to eliminate all unsanitary housing in a period of ten years.

To a family this housing is an intermediate step between homes with no sanitation services and the definitive, larger house.

These will be achieved by means of a single national system. It will require prior savings and subsequently the payment of dividends with interest subsidized by the State. Studies are currently being made to replace the subsidy paid to interest by a subsidy paid directly to those who have fulfilled the prior savings requirement. This direct subsidy will decrease as the family income increases." 136/

215. In 1970, Chile had a population of 9,780,000, of whom about 72 per cent, or two-thirds, lived in urban areas. As of December 1976, there were 2,221,605 techos (literally "roofs", meaning any type of habitable dwelling) in Chile for a population requiring 2,280,300 dwellings. In other words, 58,695 families have no techo, but live under allegada conditions. 137/ Of the existing dwellings, about 23 per cent are makeshift and 76.9 per cent are adequate, from which it may be inferred that some 513,000 families are living under unsatisfactory or insalubrious conditions. 138/

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136/ Op.cit., p.4.

137/ Term used in Chile to describe persons living in a house belonging to another family, which allows them to share the dwelling.

138/ El Mercurio, 19 February 1978.

216. According to a recent official report of the Ministry of Housing, 139/ the country's reality can be summarized as follows:

- Absolute lack of housing for 58,700 families.
- Houses classified as of extreme poverty (i.e. unfit for habitation) for 512,865 families.

It is apparent from these figures that around 20 per cent of the population lack adequate housing.

217. In addition to the lack of adequate housing, another serious problem has arisen. Within the consumer price indices, the cost of housing has risen as much as that of other basic needs, or even more. The "Banque Francaise et Italienne pour l'Amérique du Sud (Sudameris)" gives the following comparative indices for the period 1967-1975:

Table 35  
Consumer price index for Santiago 140/  
(December 1974 = 100)

Years	Housing	
	Index	Change
Average		
1967	0.9648	19.7
1968	1.2012	24.5
1969	1.5145	26.1
1970	1.9049	25.8
1971	2.2172	16.4
1972	2.8297	27.6
1973	8.9631	217.0
1974	56.93	534.8
1974:		
November	88.19	12.2
December	100.00	13.4
1975:		
September	413.35	18.7
October	436.76	5.7
November	461.64	5.7

Source: Banco Central de Chile.

139/ El Cronista, 1 August 1977, and Hoy, No. 34, January 1978.

140/ Banque Francaise et Italienne pour l'Amérique du Sud (Sudameris). Etudes Economiques (Economic studies), No. 3, March 1976. Situation économique du Chili (Economic situation in Chile).

This excessive increase in the cost of housing has been accompanied, since the present Government took power, by the loss of their dwellings by thousands of rural workers previously settled in agrarian co-operatives, and by miners dismissed from mines where housing is normally a perquisite of wages as part of the contract of employment. <sup>141/</sup>

218. As pointed out above, around 20 per cent of the Chilean population lack adequate housing. If the estimates for the normal growth of family groups and the replacement due to deterioration are added, it appears that 1,262,735 houses should be built in the decade 1978-1987. Nevertheless, the construction figures for the period 1970-77 are as follows:

Table 36

Public Sector		Private Sector	
No. of Houses (thousands)	Surface (thousands m <sup>2</sup> )	No. of Houses (thousands)	Surface (thousands m <sup>2</sup> )
1970	5 914		1 688 600
1971	76 979		833 000
1972	20 312		1 100 500
1973	20 877		1 098 800
1974	3 297		1 384 400
1975	3 758		1 050 600
1976	24 022		868 000

Source: "Boletín Banco Central de Chile", March 1978, p. 550.

219. According to figures published by the "Instituto Nacional de Estadísticas y Censos", housing construction started by the public sector decreased between 1976 and 1977, comparing the first ten months of each year, by 10.1 per cent, while the number of dwellings dropped by 22.6 per cent in the same period. This situation compares unfavourably not only with the basic needs of the Chilean

<sup>141/</sup> "Cerro la Africana: despedidos 355 Trabajadores", Solidaridad, No. 38, 21 February/13 March 1978, p. 6.

people, but also with the historic average of housing construction during the period preceding the present Government. <sup>142/</sup> There is a growing housing shortage, which amounted to 571,600 dwellings at the end of last year. Due to the low building levels; the housing shortage has increased by nearly 200,000 units in the space of four years. <sup>143/</sup>

<sup>142/</sup> A table for the years 1969-1975 is provided by Dr. M. Ipinza in "Medicine and Health in Chile under the last three Governments", Chile Committee for Human Rights, London, November 1977, p. 12, Table 20:

Table 37

Initiation of new houses by the public sector in selected councils. Chile: 1969-75

Year	Number
1969	11 316
1970	3 552
1971	55 134
1972	15 426
1973	14 333
1974	2 950
1975	3 105

Sources: (1969-1970) "Instituto nacional de estadísticas" (INE) Sinopsis 1971-1972, Bol. no. 7-12, XLIII, 1971-1972.

(1971-1975) "Instituto nacional de estadísticas", (INE), Compendio estadístico, 1977.

<sup>143/</sup>

Table 38

Increase in the housing shortage  
(In numbers of dwelling units)

1973 .....	389 872	1976 .....	506 615
1974 .....	432 114	1977 .....	571 560 <sup>a/</sup>
1975 .....	478 556		

Sources: INE and Ministry of Housing.

<sup>a/</sup> According to the latest figures issued by the Ministry of Housing.

220. In short, following the official figures and according to the Governments projects, the housing problem could be solved in Chile only by the second half of the next century, if several optimum conditions are present. <sup>144/</sup> In the meantime, living conditions of a high percentage of the population are greatly deteriorating, making other social phenomena even more acute. We need not go deeply into these phenomena, because they are widely known: increase in prostitution, particularly children's prostitution; precocious delinquency; destruction of the family nucleus; alcoholism; vagrancy, etc.

221. The situation described above, if it is compared with the basic needs of the Chilean population as well as with the historical average in the housing construction under the previous governments, appears manifestly negative. Housing is no exception to the general economic situation from which the Chilean population is currently suffering.

5. ~~Right to education~~

(a) General

222. The reduction in Government support of education is clearly demonstrated by the following table:

Table 39

<u>Current budgetary expenditures on education</u> (in thousands of constant 1969 pesos <sup>*/</sup> )	
1970	2 676
1971	4 365
1972	4 116
1975	2 586
1974	3 229
1975	2 429
1976	1 920

Source: Centre for International Policy, Washington D.C., International Policy Report, Vol. 2, no. 2, September 1976, p. 16. The original source is ODEPLAN, Chilean National Planning Office, 4 December 1975.

<sup>\*/</sup> Deflated by corrected consumer price index. In 1976 a rate of inflation of 115 per cent is assumed, to compensate for the divergence in data between the source for this table and those for previous tables.

223. These cuts in the education budget have had repercussions at all levels of instruction. By official order, the Ministry of Education in 1978 abolished 3,760 posts. 145/ The University has had to finance the salaries of its teaching staff out of its own resources, 146/ and a good many of its research and training activities have been discontinued. Staff salaries in all sectors of education have suffered substantial cuts, similar to those in other sectors. According to many sources, the schools are in a deplorable state and, despite the co-operation of parents, do not satisfy the minimum standards of hygiene, nor do they fulfil the requirements of teaching establishments. 147/

224. Besides the cutting off of public expenditures for this area, another striking feature of education in Chile is that the philosophy of the market place, of self-sufficiency and self-financing is being increasingly applied to all levels of education, especially to high schools and universities. It has been noted that

"The prevailing finance policy in gradually transferring to the students the burden which up to a few years ago the State shouldered for the most part ..... This policy, which has been applied to the universities is not, however, an isolated phenomenon. It is part of the overall economic system in which one of the premises is that all agencies, services and enterprises should be self-financing and should charge the real cost of the services they provide." 148/

225. As has been pointed out by various sources, 149/ all this tends to create an élitist atmosphere: only those with some wealth are able to gain an education. Economic mechanisms ( fees, tuition, personal expenses, costs of books,

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145/ El Mercurio, 3 March 1978.

146/ M. Fleet, "Academic Freedom and University Autonomy in Chile", in Latin American Studies Association, Newsletter, vol. VIII, no. 2, June 1977, pp.29-30.

147/ Among other things, it can be mentioned that teachers have to pay for the telephone out of their own meagre salaries, as the budget funds for schools do not even suffice for that (El Mercurio, 10 March 1978).

148/ Solidaridad, No. 21, 15 June 1977, p. 18.

149/ See inter alia, the written testimonial cit. p. 8.

charges for classes preparing one for college entrance tests, etc.) and social mechanisms ("insulting remarks about minority groups, pressure of dress etc") 150/ effectively prevent many poor students (or minority students) from attending university. 151/

226. The tendency to the privatization of education, due to the criteria applied, presents a serious danger of lowering educational standards. Indeed, it rests on the principle that in every private school, the owners can teach how and what they like. This principle has been proclaimed by the superintendent of education, Captain Eduardo Cabezon, in the following terms: "The concept of 'freedom of education' implies that any person can open an educational establishment and teach in it what he likes and how he likes, provided he does not offend against morals, good habits, public order and national security". 152/

150/ Ibid., p. 8.

151/ It seems fitting to reproduce a table concerning the number of students registered in Chile in some years, by level of education (from Dr. M. Ipinza, "Medicine and Health in Chile under the last three Governments", Chile Committee for Human Rights, London, November 1977, p. 12, table 21). Unfortunately this table does not provide figures for all the years from 1969 to 1976.

Table 40

Students registered by level of education,  
Chile: 1969-76

Level	1969	1972	1975	1976
Pre-school	56 276	77 999	93 195	100 802
Primary	2 003 748	310 307*	2 332 720	2 260 248
Secondary	302 905	463 292*	452 456	465 935
University	70 072	125 993**	143 996	123 681

Sources: "Instituto nacional de estadísticas" (INE), "Compendio estadístico" 1974, 1976 and 1977.

Notes: \* Includes education of adults.

\*\* Information about Federico Santa Maria Technical University was not available.

152/ El Mercurio, 17 March 1978.

(b) Primary education

227. In the aforementioned document on the general economic and social situation, the Government of Chile describes the Government efforts and achievements as follows:

"The programs devoted to pre-basic and basic education levels have become especially important for reasons of both redistribution of income and social "returns".

The Chart of Extreme Poverty showed that there was a converse relationship between the pre-basic education establishments and the poverty levels of children's groups.

For this reason the Government, fully conscious of the need to break the circle of poverty from its very outset by means of adequate nutrition, stimulus to and formation of habits, has initiated a program that will give pre-basic education to maximum number of children between the ages of two and six with special emphasis on the lower income groups. To this purpose, a Program of Kindergartens has been implemented, as well as one of Centers for Full Care of Minors, both of which give, in addition to everything connected with education, assistance in nutritional programs (breakfasts and lunches to complete daily nutritional requirement), programs for health and education of the family group.

This system is totally free and tries to reach the entire population. It is given a high priority among all the weapons used to combat under-development.

In Basic Education great efforts are made to cut down on school drop-out rates, in part explained by backwardness and difficulties children experienced in learning when beginning their primary education, due to prior sociogenical damage. It is hoped that the Kindergarten and Full Care Centres system will change the minors' ambience and avoid the damages so that they come to basic education in better conditions and thereby keep drop-out rates and the doubling of courses to a minimum.

Another important program to cut drop-out rates at the basic level is the program for the improvement of school buildings in low-income areas, especially rural ones. Also in this way, a gap in our educational system is being filled, in the precise area where a greater and more deliberate effort by the State was needed.

Basic education is also free and the Government grants a larger allowance per student in the lower-income areas". 153/

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153/ "Experience in the eradication of poverty" etc, cit., p. 2.



228. Furthermore, in its abovementioned "Observations" on the 1977 Report of the Ad Hoc Working Group on Chile, the Government made the following points:

"The Economic Commission for Latin America (ECLA) shows in a recent report how in the last five years in Chile there has been a significant increase in the percentage of enrolled pupils in relation to the school-age population, for all age groups (7-13 years, 14-19 years and 20-24 years). It also shows how the number of teachers per 10,000 school-age population has increased by more than 25 per cent. ...

"... The Government has placed special emphasis on pre-elementary education in low-income areas as a means of better preparing the child for elementary education and reducing "repeating" and dropping-out among the lowest income groups. In 1973 there were 123 kindergartens with a total attendance of 10,085 children. At the end of the first half of 1977 there were 386 kindergartens with 36,028 children". 154/

229. The Rapporteur, however, has found that other sources give in many respects a different picture of the situation of pre-elementary and elementary education. It appears from these sources that (1) in many instances the figures given do not coincide with those produced by the Government authorities (and, on this score, the Rapporteur cannot but reiterate, once again, that due to the non-co-operative attitude of the Chilean Government, he is not in a position to verify which figures are accurate); and (2) even on the assumption that pre-elementary and primary education do not involve any financial burden whatsoever for poor families, and that kindergarten and elementary schools are attended to the extent indicated by the Government, the school system has greatly deteriorated as a consequence of the cutting of public expenditure, so much so that school services have considerably worsened.

230. Thus, for example, according to the pro-Government newspaper El Mercurio:

"According to figures for last year, there are in Chile 1,500,000 children between 0 and 5 years of age. The administrative body ("Junta") of kindergartens takes care of 7 per cent of all children under five years, at its three levels, and reaches 39,753 children in crèches, middle and transitional level. The Ministry of Education covers 10 per cent of children of pre-school age, i.e. children between 5 and 6 years ... and private education covers 3 per cent of children. The remaining 80 per cent are cared for neither by nurseries ("parvularios") nor kindergartens." 155/

231. Osvaldo Saldías, writing in the periodical Mensaje, reported in December 1976 that between 1973 and 1975 enrolment at the primary and secondary levels of education had dropped by 0.2 per cent and between 1974 and 1975 by

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154/ A/C.3/32/6, p. 61.

155/ El Mercurio, 15 March 1978 (emphasis added).

0.8 per cent; in the period 1965-73, the year-to-year rate of growth had been 6.1 per cent. The school attendance rate fell from 92.4 per cent in 1973 to 39.5 per cent in 1975; by contrast, between 1965 and 1973 it had risen from 73.3 per cent to 92.4 per cent. Saldías pointed out that the biggest fall in school attendance had occurred in secondary education, involving students between the ages of 15 and 16, where the rate declined from 52.3 per cent in 1973 to 49.3 per cent in 1975. 156/

232. Rear-Admiral Luis Hiemann Nuñez, Minister for Education, in his message at the beginning of the school year 1978, described the education scene in his country in the following terms: "Although the statistics show that more than 90 per cent of the population enters primary school, for numerous reasons a great many students drop out after a few years. Many repeat classes without making progress, and go out into life having attained a standard of education which can scarcely be called literate. So impoverished is the educational system that, at present rates of graduation, only 58 per cent of those enrolled in the first year of primary school manage to reach the eighth class". 157/

233. At present, if it is assumed - even in the absence of general statistics on the subject - that the beginning of the school year may cost parents between 3,000 and 5,000 pesos, as stated by El Mercurio in its article of 28 February 1978 (including expenses for school uniform and equipment) and if this figure is compared with the income of various population groups, including those in the middle-income bracket, the conclusion seems warranted that in actual practice only a few can afford to pay for their children's education.

(c) Secondary education

234. In a statement made on 27 February 1978 in the Commission on Human Rights the Observer for Chile said:

"The school fees in State secondary schools in Chile were fixed on the basis of the family income, almost 50 per cent of the pupils paying no school fees and receiving free books and supplies". 158/

235. However, it is apparent from several sources that the adverse effects of the policy carried out by the Chilean authorities are particularly manifest in secondary and university education.

236. Thus, according to the Dean of the University of Chile's Faculty of Education, Prof. Rafael Hernandez S., secondary education in Chile is in a stage "difficult to make worse in spite of any experience to be attempted with it". Hernandez says that the present situation is characterized by a deficiency of graduate teachers, particularly in scientific subjects, but also in some

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156/ O. Saldías, "Selectividad en la educación chilena", Mensaje, no. 255, December 1976, pp. 639-640.

157/ El Mercurio, 6 March 1978. El Mercurio, for its part, voices concern in an editorial about the abnormally high number of children who repeat classes (some 300,000 children, in the last few years, in primary schools). (El Mercurio, 21 March 1978).

158/ E/CN.4/SR.1458, para. 28.

aesthetic and labour disciplines; by the lack of efficient training for the teaching staff; and by the lack of libraries, laboratories and other elements. 159/

237. According to one source, secondary schools involve fees and expenses that poor families cannot afford:

"Required grade school and high school uniforms are expensive. It would take the entire monthly salary of a person on the minimum employment plan (\$30) to buy three or four pairs of shoes. School supplies are more expensive than in the United States. El Mercurio the largest newspaper in the country, reported that a fee for the Center for Parents and Sponsors is optional, but in the local schools in the poblaciones, the parents were told, 'Your child cannot be registered until this fee is paid'. Parents were also required to pay a registration fee and to contribute to buy classroom flags for the eleventh or the eighteenth of September celebrations. If the family does not contribute, they fear reprisals against the children. School emblems required for high-school uniform sweaters and coats, and bus transportation, are additional expenses which increase the difficulties of schooling for poor families..... Technically, there are some families who would not pay tuition according to government scales based on income levels, but we have not found them. In our experience in the poblaciones we saw no cases where zero tuition is being applied. The scale is so low that it seems to be only a face-saving device for the government. Families which would have a low enough income to qualify for zero tuition would almost certainly be disqualified from schooling for a variety of other reasons - no money for shoes or clothing, no money for bus fares, no money for lunches, inability to fulfil the prerequisites, inability to pay for the preparation courses for college entrance exams. According to the figures published in El Mercurio, a widow who is receiving a pension of less than \$US 40 per month will still be required to pay about four dollars a month for her daughter's high school tuition. And living expenses are high. Often a pair of blue jeans costs as much as a man on minimum employment earns in a month. Also, a value added (sales) tax of 20 per cent is paid on almost everything, including food and clothing". 160/

238. According to the same source, the situation of families of the "disappeared" is particularly serious.

"Even when it is possible for a family to apply for reduced tuition, families which have "disappeared" members are reluctant to apply for fear of the stigma which might be attached to them. There is also a fear of reprisals against their children". 161/

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159/ El Mercurio, 12 October 1977.

160/ Written testimonial, cit., pp. 5-6.

161/ Written testimonial cit., p. 7.

239. Moreover, under the military Government, the steadily increasing trend in secondary school's registration was broken. Between 1965 and 1973 the yearly rate of growth was 6.2 per cent. Already, in 1974, it fell by just over 8 per cent, on the science and humanities side, as well as in the field of technical and vocational training. In the former case, the number of students declined from 315,834 to 290,408, and in the latter case, from 179,280 to 155,288, according to official statistics.

240. This steady decline in the number of secondary school pupils calls for increased selectivity in education. This trend will undoubtedly be reinforced if the compulsory payment for enrolment in fiscal secondary schools is introduced. 162/

(d) University education

241. Superior education, particularly university education, has experienced in recent years a backward movement. The reason behind this retrogression lies in the cuts in public spending on university budgets. In fact, the Rectors appointed by the Military Government, have endeavoured to self-finance these institutions. This - among other things - has meant high registration fees for the students, dismissal of lecturers, closing down of laboratories or institutes considered inefficient, etc.

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162/ An attempt was already made to implement this measure in the current school year, but it produced such an outcry that it had to be abandoned. However, there are plans to implement it in 1979.

At the same time, steps are being taken to transfer State industrial and agricultural schools to a National Private Social Development Corporation. In the health sector, a similar measure led to complaints when a system of "voluntary payments" was introduced which, in a good many cases, as university students have discovered, have become compulsory. According to a study carried out at the end of 1977 at the Maipú Clinic, in the Province of Santiago, by a multi-disciplinary team from the University of Chile headed by Dr. Hernán Urzúa, Professor of Public Administration, "this charge discourages money-lenders and prompts complaints from a few more people" (Hoy, 1 March 1978).

Table 41  
Public support to the universities  
(in millions of pesos, 1976)

<u>Current spending</u>				
University	1974	1975	1976	Decrease 1974-1976
U. de Chile	1 350	778.5	681.8	50 %
Técnica del Estado	282.8	193.4	197.7	30 %
Federico Sta. María	84.4	50.2	64.6	23 %
de Concepción	284.8	160.0	144.3	42 %
Católica de Chile	302.1	184.6	218.4	28 %
Católica de Valparaíso	97.7	64.3	66.1	32 %
del Norte	106.6	65.2	93.1	87 %
Austral de Chile	84.4	51.1	52.9	63 %
Total	2 557.3	1 547.3	1 518.9	41 %

Source: El Mercurio, 16 April 1977 (from "Ministerio de Hacienda").

242. As a whole, public support in current spending for Chilean universities diminished by 41 per cent between 1974 and 1976. In terms of investment, however, the decrease is much higher.

Table 42  
Public Support to the Universities  
(in millions of pesos, 1976)

<u>Capital Transfers</u>				
University	1974	1975	1976	Decrease 1974-1976
U. de Chile	74.0	24.6	12.3	83 %
Técnica del Estado	43.0	10.0	5.1	88 %
Federico Sta. María	7.4	0.3	1.7	77 %
de Concepción	13.3	6.9	3.5	74 %
Católica de Chile	32.6	39.9	20.8	36 %
Católica de Valparaíso	13.3	4.4	2.4	82 %
del Norte	7.4	3.7	2.6	65 %
Austral de Chile	10.4	19.0	9.1	12 %
Total	201.4	108.8	58.0	71 %

Source: El Mercurio, 16 April 1977 (from "Ministerio de Hacienda").

243. Teaching activity and university research have been severely affected by cuts in the university budgets. An immediate consequence of the reduced budget was the reduction in staff, in which not only administrative reasons but also political considerations played a part. For example, 300 teachers and administrators have been dismissed between December 1975 and March 1976 from the University of Chile for resisting political persecution and the cut in University funds. <sup>163/</sup> Low payments for lecturers and the lack of means for

<sup>163/</sup> M. Fleet, Academic Freedom and University Autonomy in Chile cit., p. 28.

undertaking research have led to a drain among the scientists which even the government's authorities have qualified as grave. 164/ This exodus affects not only the scientific personnel but also other professional areas. Particularly serious is the situation among doctors and engineers. In 1967, for instance, 5.7 per cent of the total number of active medical doctors stayed out of the country; in 1975 the figure went up to 13 per cent, according to the Chilean National College. One third of the total number of engineers - 10,000 - have emigrated. 165/ As to the scientists, 28 per cent of the 414 members of the Chilean Society of Biology left the country in 1975. Sixty out of a total of 123 academics from the Department of Mathematics at the University of Chile also left. 166/

244. A significant feature of the new trends in university education in Chile is the high level of matriculation fees, whereas under the previous government, university education was practically free.

245. This new measure has been justified by the Chilean authorities as follows:

"In Chile matriculation fees have been charged for university education (public and private) for more than 10 years. The only change is in the amount to be paid by pupils from high-income families. For them, matriculation fees at the University of Chile have been increased to US 100 per term, and the savings are being used for pre-elementary education in poverty areas .....

... What has been done is to charge a higher matriculation fee to university students from higher-income families, in order to divert those funds to pre-elementary and elementary schools in areas of extreme poverty". 167/

164/ El Mercurio, 19 February 1976 and 30 March 1977. It must be pointed out that this drain had already begun at the end of 1973. According to a sample survey carried out by Conicyt, under the title "Characteristics of the exodus of scientists and technologists", the percentages of research workers in the areas indicated, who gave up their jobs between 1 December 1973 and 11 October 1974, were as follows:

- "A. Engineering and technology ..... 42 per cent
  - B. Exact sciences and mathematics ..... 15.1 per cent
- (To this figure must be added the 8.72 per cent of research workers absent on unpaid leave).
- C. Medical sciences ..... 12.8 per cent
  - D. Agricultural sciences ..... 21.6 per cent
- (Plus 8.75 per cent of absentees)
- E. Social sciences ..... 28.6 per cent".

165/ Ercilla, 10 February 1976.

166/ See the letter of Prof. Luis Izquierdo, in the revue Nature of 31 January 1975, and the declarations by Prof. Carr, Dean of the Faculty of Science of the University of Chile, in Ercilla, 10 February 1976, No. 2114.

167/ A/C.3/32/6, p. 61.

246. The Rapporteur - for the reasons repeatedly stated - is not in a position to verify whether university fees are actually used to help finance primary education. As none of the sources available to him gives evidence contrary to what is stated by the Chilean authorities, he assumes that those statements are correct.

247. It appears, however, from several sources, that both the primary and the university education have worsened, mainly because of the serious slashes in education expenditures. It seems therefore that the aforementioned measure of the Chilean authorities is not sufficient to meet the needs of primary education. In addition, as will be shown in the next paragraphs, the university fee decided upon by the Government actually results in limiting the access to university education to the poor strata. 168/

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168/ In view of the importance of the issue, it may prove useful to give a short description of the tuition system introduced by the present Government.

According to the Ad Hoc Working Group,

"At the beginning of 1977 the Ministry of Education announced that the Chilean universities would impose a system of 'differentiated matriculation' in accordance with the socio-economic situation of the students, as part of the Government's self-financing policy for social services. The system calls for four categories of payments for the first term of 1977:

Matriculation A	1,900 pesos (full tuition)
Matriculation B	1,300 pesos
Matriculation C	700 pesos
Matriculation D	0

(In addition, there is a compulsory fee of 600 pesos to be paid by all students at the beginning of the academic year).

A system of government subsidy based upon ability to pay gave no cause for concern, but what did create widespread public reaction was the fact that the percentage of the student body in each fee group was fixed a priori. It was established that 55 per cent of the students would be in matriculation group A, paying the entire fee of 1,900 pesos, 13 per cent in group B, paying 1,300 pesos, 16 per cent in group C, paying 700 pesos, and 16 per cent in group D, paying no tuition fee. These pre-set percentages are reported to bear no relation to the economic levels within the student body.

"It is reported that the increased cost of university education reached a crisis point at the end of May 1977, when the first term's tuition had to be paid. Of the 54,394 students who matriculated at the University of Chile, 40,385 requested some type of grant. The administration authorized the benefits of 'differentiated matriculation' to only 21,926 students; thus, requests for financial assistance from 18,459 students were denied. The Group has no information concerning the standards applied in denying this financial aid". (A/32/227, paras. 217-218).

This policy was continued in 1977, when there was a considerable increase in the number of matriculations. All university students (without exception)



248. In general, it appears from several sources that the matriculation fee - called "solidarity quota" ("cuota de solidaridad") - actually makes difficult or impedes the access of ample sectors of students to university. It is symptomatic that 74 per cent of the students at the University of Chile have asked for an exemption of this payment, because they could not face it. The authorities, however, are prepared to exempt only 8 per cent of the students from this payment.

must pay a matriculation fee of 1,000 pesos. The other charges may be paid straightaway or in instalments, according to the family income. These differentiated charges are payable monthly, in instalments ranging from 100 to 1,500 pesos, from March to July 1978.

Persons with very low incomes, as proved by satisfactory evidence, will be exempt. (El Mercurio, 29 January 1978). At the State Technical University, the matriculation fee amounts to 1,300 pesos. In addition, students have to pay the differentiated charge, in accordance with the following scale:

3,700 for students producing evidence of family income in excess of 5,000 pesos

2,700 for students producing evidence of family income between 3,701 and 5,000 pesos

1,800 for students producing evidence of family income between 2,501 and 3,700 pesos

900 for students producing evidence of family income between 1,301 and 2,500 pesos.

Students whose families have an income of less than 1,300 pesos are exempt from payment. (El Mercurio, 1 March 1978). Arrangements have been made for payment to be made through letters of credit on which 21 per cent interest plus bank interest (around 6 per cent monthly) is charged. Thus a student had to pay 849 pesos for a debt of 700 pesos incurred the previous semester. ("La Universidad: un derecho que se debe comprar", Solidaridad, No. 39, 14/26 March 1978, p. 8).

249. In fact, the cuts in public support for the country's universities, along with the drastic increase in registration fees for students, have meant the actual marginalization from the universities for thousands of them. <sup>169/</sup> In analysing

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<sup>169/</sup> M. Fleet, *op. cit.*, p. 30, gives the following general picture of the access of students to university education in Chile:

"Regarding student-body size, critics charge that a substantial reduction has taken place, initially because of the political purifications and later due to the rising cost of university education. Government supporters allege, in contrast, that overall numbers remain about the same. The latter claim appears closer to the truth, although the levelling-off marks a sharp departure from the growth rates of previous years, and thus a substantial "net" reduction in the size of the student population. Official student enrolments in Chilean universities for 1975 are given in a Ministry of Education study of per capita instruction costs. It lists the number of students in the various fields of study at each university (including regional campuses and centers). The total for the second semester for 1976 was 138,202. This figure is considerably higher than the approximately 80,000 enrolled in 1970, and roughly equal to the number enrolled in 1973. The University of Chile, which had an enrolment of about 65,000 in 1973, fell to 60,000 by 1975, and to about 50,000 in 1976. These figures are consistent with reports indicating continuing reductions in the number of students taking entrance examinations at the University since 1974, in the proportion of those taking the exam who are subsequently accepted, and in the number of openings for first-year students.

The overall student population's relatively static character under the military government contrasts sharply with trends prior to the coup. During the late 1960's and early 1970's, enrolments increased substantially from year to year, reflecting general population growth, the dramatic increase in the number of secondary school graduates, and an effort to open the university to those traditionally denied access. Taking note of these trends and factors, a UNESCO report on Chilean higher education projected a student population of over 200,000 by 1975, and of 279,000 by 1976. Freezing at or pulling back to 1973 levels thus represents a large net reduction of the student population. The introduction of substantial tuition charges appears to be one reason for this reduction. Tuition for the year varies from about 1,000 pesos (at 16 to the dollar) at the University of Chile to over 2,200 pesos at the smaller private universities. These amounts are between two and four times the monthly minimum wage, and represent a substantial burden for lower-income individuals. In this connection, the government offers student loans (whereby one borrows to cover tuition and other expenses, and repays the amount within 5 years of beginning professional employment), which it considers more than adequate to meet existing needs. It is difficult to pass judgment on the matter, although the government's own figures, and reports of sharp drops in applications and enrolments in areas (e.g., technical education) normally attracting lower-income students, cast some doubt on official claims that the system is working adequately".

this situation, Solidaridad wrote "Constitutional Act No. 3 establishes freedom of learning and the right to education. As regards higher education, the Act declares: 'It is the duty of the State to promote higher educational development according to the country's requirements and possibilities, to contribute to its financing and to guarantee access to it according to the capacity and suitability of the applicants'. Although the State is not required to finance the whole cost of higher education but only to 'contribute to its financing', it must guarantee that 'the capacity and suitability of the applicants' will be the only constraints upon access. In practice, this principle is a dead letter. Every day, access to higher education for the sons of the low- and middle-income sectors is more prohibitory. Socio-economic inequalities are ultimately determining who - among the most able people - can apply for a professional degree. Only those able to pay the so-called 'real costs' can do it. In short: if you want a degree, buy it". 170/

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170/ Solidaridad, No. 23, 20 July 1977 (emphasis added).

The repercussions of the Government's measures go beyond the educational statistics. A recent report from the "Centro de Control Venereo" (Venereal Control Centre) of Talcahuano - one of the country's important military ports - reveals that the "sex commerce has increased due to several reasons, but the most important one is the economic reason. It is practised by non-occupied women as well as university student girls. One said that 'at home they don't know about it. I am in the third year of University but my parents are unable to pay for my studies. I do it occasionally; only when I need money. It is true. This is a problem affecting many other girls like me'. (Hoy, No. 4, June 1977).

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Item 13 of the provisional agenda

STUDY OF THE IMPACT OF FOREIGN ECONOMIC AID AND  
ASSISTANCE ON RESPECT FOR HUMAN RIGHTS IN CHILE

Report prepared by Mr. Antonio Cassese, Rapporteur \*/

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\*/ For technical reasons, the report will be distributed in four volumes. Volume I contains the table of contents and the introduction; volume II contains chapter I; volume III contains chapters II and III; volume IV contains chapter IV and the annexes.

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CHAPTER II

NATURE AND IMPACT OF FOREIGN ECONOMIC ASSISTANCE TO CHILE

A. General overview

250. The goal of attracting foreign loans, credits and investment capital has played a key role in the formulation of Chilean economic and other policies since the military take-over in 1973. With what is reported to be Latin America's highest per capita debt (see *supra*, paras.116-118) and its second-highest ratio of debt servicing payments to export receipts <sup>1/</sup> in 1976, Chile's need for external financial support has been a constant and central policy preoccupation. The growth both of the debt and of the debt servicing ratio can be seen in the following table:

Table 43

Growth of over-all external debt and debt service ratio

	Over-all external debt (Millions of US dollars)	Debt service ratio (Percentages)
1972	3 602	11.6
1973	4 048	11.5
1974	4 774	11.7
1975	5 263	32.7
1976	5 195	33.0
1977	5 595 <sup>a/</sup>	54.2 <sup>b/</sup>

Sources: For over-all external debt, Economic and Financial Survey: Estadísticas Chilenas, vol. XII, No. 610 (19 September 1977), p.1; for debt service ratio, Inter-American Development Bank, Annual Report, 1977 (Washington, D.C., IDB, 1978), p.90.

a/ It will be noted that this figure differs from the one given in table 12 (*supra*, para.116), namely, 5 434.

b/ For the source of this figure, see *supra*, para.120.

251. The high priority attached by the new Government to foreign investment was clearly stated in the preamble to its "Foreign Investment Statute" of 11 July 1974:

"4. That, in accordance with the said economic policy [of the Government of Chile], it has been deemed essential to draw up a comprehensive set of provisions designed to bring about a genuine promotion of foreign investment and encourage its development in the country on a permanent basis." <sup>2/</sup>

<sup>1/</sup> Inter-American Development Bank, Annual Report, 1977 (Washington, D.C., IDB, 1978), p.90; see also *supra*, paras.119-120.

<sup>2/</sup> Foreign Investment Statute, Republic of Chile, 11 July 1974, translation published by Ministry of Foreign Affairs, Chile, p.2.

A United States Department of Commerce analysis of Chile in 1977 observes:

"There is a dearth of domestic savings .... Recognizing the importance of foreign investment to the future growth of the economy, Chile withdrew from the ANCOM (Andean Pact) so that it could, among other things, be unfettered by ANCOM's restrictions against foreign investors". 3/

In view, particularly, of the severe running down of State investment, which over the previous thirty years had played a central role in the Chilean economy, the new military government has counted heavily on foreign investment to supplement chronically weak domestic private investment. In the first four years following September 1973, however, the new foreign investments realized were probably worth no more than about \$60 million, and well under 2 per cent of gross domestic investment. 4/ Further major concessions were granted to foreign investors in the revision of the foreign investment statute on 11 March 1977, in an attempt to improve what for the Government has been the highly disappointing response of foreign investors to date. While foreign investor presence is still relatively minor, the strong indirect influence which is created by the Government's strong desire to attract foreign investors, and the likelihood that it will have greater success in future, means that this area is nevertheless one of considerable importance to the position of human rights in Chile.

252. In the quest for foreign loans, the new military Government enjoyed a positive response almost immediately. Medium and long-term loans to Chile more than doubled between 1973 and 1974. The development of such economic assistance is shown in the following table:

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3/ "Marketing in Chile", Overseas Business Reports, June 1977, Domestic and International Business Administration, United States Department of Commerce, p.22.

4/ "Inversión extranjera", El Mercurio, international edition, 10 January 1975; "Informe Económico Mensual", No. 12, August 1976, supplement to El Mercurio, p.14; International Monetary Fund, "Chile - Staff Report for the 1977 Article XIV Consultation", report prepared by the staff representatives for the 1977 Article XIV consultation with Chile, 24 June 1977, p.14; World Bank, report based on the findings of an economic mission to Chile in October/November 1975 (the mission was composed of Messrs. Guy C. Jeffermann and Fred Levy; the report was discussed with the Chilean authorities in December 1975), p.37. [A copy of the report was submitted to the Rapporteur by one of the non-governmental organizations which responded to his request for information.]

Table 44

Volume of foreign loans

	Loan agreements <sup>a/</sup> (Millions of US dollars)	Index (1971 = 100)
1971	333.7	100.0
1972	411.3	123.2
1973	347.1	104.0
1974	861.6	258.2
1975	706.6	211.7
1976	615.2	184.3
1977	859.7	257.6

Sources: Figures for 1971-1976: World Bank, computer print-out of public debt data, 19 October 1977; figures for 1977: Central Bank of Chile, computer print-out of itemized public debt credit data, 1978, and IMF figures from paras. 308 ff. of the present report.

a/ Medium- and long-term loan agreements, including those of IMF.

253. On the official side, the United States was particularly important in bringing about the great increase in new lending. It provided over \$300 million directly in bilateral assistance, and was important in supporting new multilateral financing. 5/ This policy was changed, however, as a result of Congressional pressure and the concern of the Carter administration over the human rights situation in Chile. A number of other governments also restricted or cut off lending over the human rights issue 6/ and such opposition has in more recent years been increasingly important within multilateral lending institutions. IMF financial support also fell off sharply, although this had more to do with Chile's failure to meet the Fund's highly stringent performance criteria than with any concern for human rights.

5/ See infra, paras.264 ff.

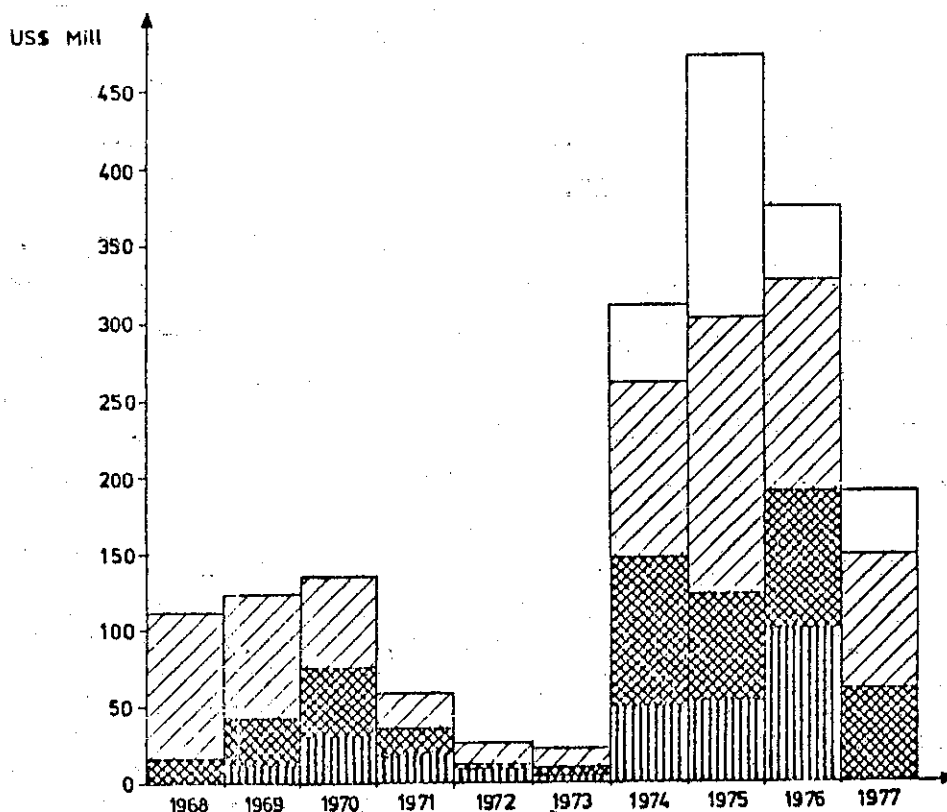
6/ See infra, paras.404-420.







254. The evolution of foreign public economic assistance to Chile is shown in the following table:

Table 45

Economic aid to Chile  
(World Bank, Inter-American Development Bank, United States Government, International Monetary Fund - 1968-1977)



-  Government of the United States (no figures for 1968 or 1977)
-  Inter-American Development Bank
-  World Bank
-  International Monetary Fund (oil facility only)

Source: M. Dias-David, V. Millán and A. Vial, "Asistencia financiera externa a la Junta Militar de Chile, 1973-1977", Institute of Latin American Studies, Stockholm, 1978 (report submitted to the Rapporteur), p. 20.

255. Recently, while the total amount of new loan agreements has remained relatively high, the source of funds has shifted radically from official to private sources, as can be seen in the following table:

Table 46

Shift in source of funds

	Value of loans (Millions of US dollars)		Proportion of total (Percentages)	
	Official	Private	Official	Private
1971	226.1	107.7	67.7	32.3
1972	228.9	182.4	55.7	44.3
1973	273.9	73.2	78.9	21.1
1974	559.4	302.2	64.9	35.1
1975	490.0	216.7	69.3	30.7
1976	351.6	263.6	57.2	42.8
1977	125.0	734.8	14.5	85.5

Sources and definitions: As for table 44.

Loans from official sources, after more than doubling between 1973 and 1974, fell off increasingly rapidly thereafter, and accounted for less than a sixth of the total by 1977. Private loans more than quadrupled in value between 1973 and 1974, and after a period of caution rose to over five sixths of the total by 1977.

256. It must be stressed that while at first the main source of financial assistance to Chile came from the big increase in suppliers' credits, the massive increase in private bank lending brought lending from that source to just over four fifths of all lending to Chile, both public and private, in 1977:

Table 47

Sources of lending  
(Millions of US dollars)

	Suppliers' credits	Private banks	All public and private lending
1971	<del>79.1</del>	<del>3.7</del>	333.7
1972	92.0	90.4	411.3
1973	60.8	9.4	347.1
1974	271.5	29.9	861.6
1975	178.3	38.4	706.6
1976	147.6	115.5 <sup>a/</sup>	615.2
1977	<del>39.3</del>	<del>693.4</del>	859.7

Sources: Figures for 1971-1976: World Bank, computer print-out of public debt data, 19 October 1977; figures for 1977: Central Bank of Chile, computer print-out of itemized public debt credit data, 1978, and IMF figures from paras.308 ff. of the present report.

a/ Medium- and long-term loan agreements, including those of IMF.

The figure of \$115.5 million appearing in the table above for private bank lending in 1976 - a figure, as indicated, provided by the World Bank - appears, according to all evidence, to be a gross underestimation, and probably does not include private syndicated loans. In a table summarizing lending activities on international financial markets during the period 1974-1977 (up to November of the latter year), EuroMoney (November 1977, p.92) lists Chile as having received \$200 million in 1976. A study made by I. Beterrier and H. Morrill ("Human Rights, Economic Aid and Private Banks", Transnational Institute, Washington, D.C., 1978, p.14) puts total Chilean external borrowing from private sources in 1976 at \$520.2 million (which probably includes suppliers' credits) and provides a list of selected private multinational bank loans to Chile which includes for 1976 the following:

Table 48

Selected private multinational bank loans to Chilean Government  
(Millions of US dollars)

<del>1976</del>	Amount	Government agency	Leader of bank group
May	125	Central Bank	Bankers Trust Co. (US)
June	5	Central Bank	First Wisconsin (US)
October	25	ECA (agriculture)	Libra Bank (UK)
December	21	Central Bank	Sudamerikanisch (Federal Republic of Germany)

This gives a "selected" total of \$176 million for that year, similar to the total figure indicated by Euromoney. Apart from the World Bank's oversights, the figures it provides reflect only medium- and long-term loans to public entities or guaranteed by the Chilean Government (World Bank, computer print-out of public debt data, 19 October 1977); according to the World Bank's definition, medium-term loans are those with maturities of one year and over (World Bank, Annual Report 1977, p.102). Unfortunately, given the fact that information about operations by private banks is still confidential (and not totally known even to governments), the best that can be obtained in the way of information is relatively informed guesses. Private banking sources have confirmed that a reasonable estimate of the real figure for private bank loans to Chile in 1976 can be obtained by adding the \$200 million figure for Eurocurrency credits to the \$115.5 million indicated in the World Bank print-out, giving a total of \$315.5 million. While the World Bank figure has been used for consistency in this section, the revised figure is used in the section on private bank loans (see infra, paras.378 ff.)

257. A major feature of the fresh developments in foreign economic assistance to Chile is that, while official sources have increasingly put human rights criteria at the centre of their lending policies, the overwhelming majority of foreign economic assistance to Chile now comes from private commercial sources with little apparent concern for such criteria. As was explained in June 1977 by the prestigious financial journal Euromoney, in a major article entitled "How Chile reappeared on the tombstones":

"Both countries [Chile and Argentina] have arguably staged an economic turnaround which appears to have impressed the international banking fraternity. Although the Carter tirade against those countries infringing Human Rights gave a somewhat sticky start to the development of the two countries as a much needed sink-hole for excess banking liquidity, it is plain that doubts over the wisdom of lending to countries that contravene Human Rights are fast being dismissed." 7/

258. This private support to the military authorities in Chile inter alia helped make it possible for the Chilean Government to reject outright United States aid which was made conditional on human rights. 8/

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7/ Charles Meynell, "How Chile reappeared on the tombstones", Euromoney, June 1977, p.101.

8/ See infra, para.274.

B. Economic assistance from States1. Overview

259. The over-all pattern of bilateral assistance from States since September 1973 is described in the following table:

Table 49

Bilateral aid, 1974-1977

(Millions of US dollars)

	1974	1975	1976	1977	Total	Percentage of total
Argentina	50.0	-	40.0	-	90.0	6.5
Belgium	5.7	-	-	-	5.7	0.4
Brazil	116.9	27.2	52.0	12	208.1	14.9
Canada	11.6	3.0	-	-	14.6	1.0
Denmark	4.0	1.4	-	-	5.4	0.4
France	52.2	34.0	-	-	86.2	6.2
German Democratic Republic	9.4	-	-	-	9.4	0.7
Germany, Federal Republic of	56.5	32.2	-	-	88.7	6.4
Italy	11.4	4.6	-	-	16.0	1.2
Japan	7.1	5.6	-	-	12.7	0.9
Netherlands	4.3	2.9	-	-	7.2	0.5
Norway	1.9	-	-	-	1.9	0.1
Spain	21.2	12.4	-	10	43.6	3.1
Sweden	5.2	2.3	-	-	7.5	0.5
Switzerland	7.7	2.6	1.6	-	11.9	0.9
United Kingdom	60.3	18.9	-	-	79.2	5.7
United States of America	302.1	301.9	16.0	18	638.0	45.7
USSR	69.0	-	-	-	69.0	4.9
<u>Total</u>	796.5	449.0	109.6	40	<u>1 395.1</u>	100.0

Source: See tables 50 and 54.

It should be noted that this table does not include any figures on assistance provided through government support for private trade and investment and it has proved impossible to obtain complete statistics on this subject. Only the United States contribution is fully known and, excluding direct loans to foreign firms, commitments were as follows:

Table 50

United States export credit guarantee programme to Chile, 1974-1977  
(Millions of US dollars)

1974	1975	1976 (estimated)	1977 (estimated)
53.9	33.75	24.0	24.0

Source: Adapted from Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, 94th Congress, second session (Washington, D.C., U.S. Government Printing Office, 1976), p.119.

The total of \$135.65 is a significant contribution, but cannot be taken as being in any way representative of other countries.

260. Of the 1974 total, 71 per cent is attributable to rescheduling agreements, while virtually all the rest is made up of governmental aid from Brazil, Argentina and the United States of America. In 1975, rescheduling was even more prominent, accounting for 74 per cent of the total. The decline in flows related to debt rescheduling is due to the Chilean decision not to seek renegotiation in 1976 or 1977. This is partly due to technical factors in that many of the payments due in 1976 would not have been eligible for normal rescheduling. It can be assumed, however, that this decline also related to the fact that the Chileans were subject to considerable human rights pressure in 1975 and were anxious to avoid another similar experience.

261. In many countries, bilateral aid programmes were halted after 1973. In most cases the cutting-off of government economic assistance to the Chilean authorities was decided upon and carried out as a result of an explicit concern over the human rights situation in Chile. 9/

262. Several countries which showed particular concern over the reported gross violations of human rights in Chile decided to channel funds to private institutions in Chile or to non-governmental organizations, with a view to providing, through them, assistance to relatives of political detainees or of missing persons. Financial assistance was also provided, through the same or similar private institutions, for the purpose of helping to alleviate the plight of Chileans living in their country or exiled for political reasons. 10/

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9/ See infra, paras.404-420.

10/ See infra, paras.292-299.

2. Regular assistance programmes

263. Government-to-government assistance to Chile since 1973 - excluding rescheduling and guarantee programmes 11/ - is described in the following table:

Table 51

Normal government assistance, 1974-1977

(Thousands of US dollars)

	1974	1975	1976	1977
Argentina	50 000	-	40 000	-
Brazil	96 905	27 273	52 000	12 000
Germany, Federal Republic of	-	8 597	-	-
Spain	-	-	-	10 000
Canada	5 113	-	-	-
Switzerland	-	-	1 575	-
United States of America	79 139	83 245	16 029	18 001
<u>Total</u>	231 157	119 115	109 604	40 001

Sources: Central Bank of Chile, computer print-out of itemized public debt credit data, 1978; World Bank, computer print-out of itemized loans, October 1977.

264. ~~The United States has been a major supplier of aid to the present Chilean Government, and thus deserves special attention. After September 1973, normal aid alone rose enormously, from \$4 million in financial year 1974 to \$139.1 million in financial year 1975 and \$85.2 million in financial year 1976, and in these years constituted a major input, at a time when other countries were cutting ties and the private sector was wary. Many persons were worried that the United States appeared to be giving support to an openly undemocratic régime, and this, coupled with a growing concern over human rights violations, led to the parallel development of policies designed to restrict aid to the military Government and to ensure that any aid granted should be conditioned in such a way as to make its human rights impact more beneficial. The following table provides detailed figures on the United States aid programme.~~

11/ A picture of the over-all assistance to Chile can be found supra, in para.259, table 49.

Table 52

United States aid programme  
(Millions of US dollars)

	1974	1975	1976	1977	1978
AID loans	-	20.0	14.0	-	-
AID grants	0.4	0.65	1.9	0.65	-
Public Law 480, Title I	-	57.8	49.1	-	-
Public Law 480, Title II	3.2	9.0	14.7	18.00	6.8
Peace Corps	0.4	0.5	0.5	0.6	-
Housing Investment Guarantee Programme (HIGP)	-	30.0	25.0	-	-
Exim Bank	-	21.15	-	-	-
<u>Total</u>	4.0	139.1	105.2	19.25	6.8

Source: Contemporary Archive on Latin America, Report on foreign economic assistance to Chile, London, May 1978, p.D.2, 7 (based on US AID Chile LA/SA:3/78, p.4). The reason for the discrepancy between the figures given above and other figures given for United States aid is that the table relates to the financial year, which, until the end of financial year 1976, ran from 1 July to 30 June. The financial year was then changed and now runs from 1 October to 30 September. The figures for the transitional quarter (i.e. 1 July to 30 September 1976) have been included in those for 1977.

265. United States aid has a complex composition. The main programme is run by the Agency for International Development (AID), which operates mainly through grants and loans for development projects. Public Law 480 provides for two programmes for food aid, one of which is run as a loan programme while under the other, aid is given in grant form. Technical assistance is provided through the Peace Corps programme by volunteers. The Housing Investment Guarantee Programme (HIGP) is run by AID, and provides security for private United States lenders to housing institutions in developing countries. The Export Import Bank (Exim Bank), among its other activities, provides loans to be used for the purchase of United States exports. <sup>12/</sup> Loans granted under Public Law 480, the Housing Investment Guarantee Programme and Exim Bank operations are usually disbursed within one year of the date of the loan agreement. <sup>13/</sup> In the period 1974-1976, these channels accounted for a much higher proportion of the aid than the regular project loans, and this has led to the accusation that the United States Government was concentrating on a rapid disbursement of loans with the primary aim of helping to solve the military Government's balance-of-payments problems, at a time when no one else was particularly keen to offer assistance, rather than of attempting to maximize the benefits to those most in need. <sup>14/</sup>

<sup>12/</sup> Center for Policy Studies, "Human rights and the United States foreign assistance program, financial year 1978: part I, Latin America", Washington, D.C., 1977, pp.8-9.

<sup>13/</sup> Ibid., p.45.

<sup>14/</sup> Ibid.



266. Concern in Congress over human rights violations has led to the placing of limits on economic aid. A ceiling of \$25 million was set for financial year 1975, but this was taken as applying only to AID loans and grants, and in fact a total of nearly \$140 million was granted for that year in other forms of aid. A further ceiling of \$90 million was established late in financial year 1976, when it was realized that sums approaching this total had already been authorized. 15/ The purpose of the restriction was mainly to prohibit further allocations, and its application included specifically both loans under Public Law 480, Title I, and HIGP loans. 16/

267. Parallel to the concern prompting restrictions on aid to Chile, a more general concern over human rights prompted the passing of the Harkin Amendment which was incorporated as section 116 of the Foreign Assistance Act. The amendment states that aid should not be given to countries engaging in a consistent pattern of gross violations of human rights, unless such assistance can be shown to be of direct benefit to the needy. While the idea of diverting development aid to the poorer sectors of society has become widely popular over recent years, the focus of attention on Chile has meant that there has been a particularly detailed scrutiny of its application in this case. The Harkin Amendment came into force in financial year 1976, and the Chile aid programme was the subject of congressional hearings held by the Committee on International Relations in April and May 1976. 17/

268. Among the most significant sums are those granted under Public Law 480, Title I, assistance programme. Disbursements under Public Law 480 are of two types, roughly 75 per cent going to the Title I programme and 25 per cent to the Title II programme. 18/ Under Title I, a country receives food on credit, which can then be sold within the country on the internal market. In financial year 1975 Title I aid provided 20 per cent of Chile's total wheat consumption, thus allowing the Government to make considerable savings in scarce foreign exchange. 19/ Although it has been claimed by an AID official that "concessional sales of wheat helped reduce hardship and hunger among the Chilean population", the same official admitted that this form of aid had also been granted with the purpose of "easing the pressure on foreign exchange and the balance of payments". 20/ In 1975, the inflation rate was 340 per cent, 21/ and, with an unemployment level of approximately 20 per cent and the numbers of destitute growing rapidly, it would seem that wheat sold commercially on the internal market did not represent a transfer of wealth to Chile's poor.

15/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings before the Subcommittee on International Organizations of the Committee on International Relations, United States House of Representatives, 94th Congress, second session (Washington, D.C., U.S. Government Printing Office, 1976), p.1.

16/ US AID Chile LA/SA:3/78, cit., p.4.

17/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings, cit.

18/ Center for Policy Studies, op.cit., p.8.

19/ Center for Policy Studies, op.cit., p.45.

20/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings, cit., p.15.

21/ US AID, cit., p.2.

269. Aid granted under Title II of Public Law 480 is distributed through non-governmental agencies. Food is given to school age and pre-school children, pregnant women and nursing mothers. In August 1975, a programme was agreed on for the provision of nutritional assistance to 40,000 workers participating in the Government's Minimum Employment Programme. 22/

270. Under the Housing Investment Guarantee Programme, Chile received loans totalling \$55 million during the period 1975-1977, while the rest of Latin America received only \$4 million during that period. The loans thus granted were intended to provide help in the completion of projects for co-operative housing, through which many people had already bought land and started building. Lawyers Semmel and Meeker, representing the National Council of Churches, say that in order to participate in the project, down payments of between \$250 and \$500 were required, at a time when the poorest 30 per cent of the population were earning less than \$92 per month. 23/ The United States General Accounting Office said that "Chile's poorest people were not expected to participate because they could not afford to buy the houses being constructed in this programme". 24/ It would seem that the main impact of these loans was to provide the Government with foreign exchange to help solve its over-all budgetary problems.

271. As part of its operations, the Export Import Bank can issue loans to foreign countries, and in November 1974 a loan to Chile of \$21.15 million was announced. This loan was granted to the national electricity company, CHILECTRA, to help finance purchases of United States goods for a power plant, the total cost of which was estimated at \$67 million. The main suppliers of the goods were to be the General Electric Company and Babcock and Wilcox, and the bank issued a separate export credit guarantee to these firms. 25/ The emphasis here was clearly on the promotion of United States exports. While the expansion of the industrial infrastructure in this way may bring about generalized benefits in the long term, it is submitted that the main short-term impact of the loan on Chile was to provide the military Government with general financial support.

272. Under its main programme, AID has provided two large loans to the present Chilean Government. These were a loan of \$15 million for the development of agricultural co-operatives, granted in financial year 1975, and a \$14 million loan to be spent on an agricultural project for providing credit to small farmers. The \$14 million loan, to which the Chilean Government is to add \$15 million in counterpart funds, is to be channelled largely through INDAP, a semi-governmental agricultural development agency, and partly through local private banks, and it is to be given where possible to co-operatives and farmers' organizations. The private bank lending will take place at commercial rates. INDAP has been praised for the "adoption of a rate of interest that should prevent further decapitalization" and for a "major revamping of its personnel". 26/

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22/ US AID, cit., p.5.

23/ Center for International Policy, "Political and Economic Update on Chile, May 1977-August 1977", Washington, D.C., 1977, p.13.

24/ Ibid.

25/ Journal of Commerce, 1 November 1974.

26/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings, cit., p.103.

273. Smaller grants and loans have also been given, such as \$5 million for a nutrition planning project, \$295,000 for rural sanitation and \$50,000 for the training of public officials working in rural development. 27/

274. In financial year 1977, a ceiling of \$27.5 million was imposed, with the understanding that a further \$27.5 million would be granted if substantial improvements took place in the realm of human rights. In that year there were no allocations under either Title I of Public Law 480, the HIGP or the Exim Bank loan programme, implying that the Administration had accepted the points made about the impact of these forms of aid. However, aid granted under Title II of Public Law 480 was substantially increased. In June 1977 the Administration deferred approval of loans totalling \$11 million, pending further information on human rights developments, 28/ and the Chilean Government withdrew its application in protest. 29/ In October 1976 the Chilean Government had already stated that it did not wish to be included in the 1978 allocation, in protest at what it saw as interference in Chile's internal affairs. 30/ Some small agreements under the Public Law 480, Title II, programme therefore represent the only aid given to Chile in 1977. Thus the attempt to reorient the aid programme in order to bring about a more beneficial human rights impact resulted in the United States adopting a position close to that of the countries mentioned earlier, the main programme being cut off but some funds being channelled through non-governmental agencies.

275. In 1978 the United States somewhat changed its policy. According to press reports, on 24 April 1978 the United States Department of Agriculture approved the granting, through the Commodity Credit Corporation (a private corporation run by the Agriculture Department), of \$38 million in commercial export credits to farmers and ranchers in Chile. The credits will enable Chilean farmers to purchase \$35 million of surplus wheat from American farmers and will permit Chilean ranchers to import \$3 million worth of breeding cattle over the next three years. It is worth stressing that, according to a United States newspaper:

"State Department officials confirmed yesterday that approval of the credits was delayed for some time, but they denied that the credits reflect a departure from the Administration's emphasis on human rights. Officials emphasized that the credits were for private parties rather than the Chilean government, and were intended primarily to aid American farmers. They also stated that the credits reflected approval of what was described as 'encouraging political developments' within Chile's military government. One State Department official cited the recent amnesty for many political prisoners in Chile and the government's decision to turn over to United States authorities Michael Vernon Townley, the 35-year-old American who has been charged with conspiracy in the murder of former Chilean Ambassador Orlando Letelier in 1976. However,

27/ Ibid., p.93.

28/ Washington Post, 29 June 1977.

29/ El Mercurio, 2 July 1977, p.1.

30/ See E/CN.4/Sub.2/398, p.11.

Sen. Edward M. Kennedy, D.-Mass., assailed the credit extension yesterday as one of several examples of 'back door' economic and military support for the government of Augusto Pinochet. 'While encouraged by some recent events in Chile, we cannot afford to close our eyes to the serious human rights problems which remain in that country', Kennedy said in a speech on the Senate floor." 31/

276. Bilateral economic aid from West European Governments was severely affected by the military take-over in Chile, and most Governments have cut off government-to-government aid entirely. In the great majority of cases, this decision was taken out of an explicit concern over the human rights situation. It was clearly felt that the possible benefits to be gained from maintaining aid programmes were outweighed by the value of a public repudiation of the human rights violations which were taking place (see infra, paras.404-420). In the British Parliament Mr. Callaghan, then Foreign Secretary, said:

"Chile has a strong tradition of democratic government and our policy towards the military Junta will be governed by our desire to see democracy restored and human rights put into perspective there." 32/

Similarly, Egon Bahr, the West German Minister of Economic Co-operation, declared:

"We are confirmed democrats and if something anti-democratic occurs in prolonged fashion, such as something against humanity, against our convictions, then we are free to decide to offer no more aid." 33/

277. In its reply to the request for information sent by the Rapporteur, the Government of Japan, on 10 February 1978, submitted the following table concerning its economic assistance to Chile:

Table 53

Japan's economic assistance to Chile <sup>a/</sup>  
(Millions of US dollars)

Year	(1) Governmental grant and assistance		(2) Governmental loan	(3) Total governmental development assistance ((1) + (2))
	Financial grant	Technical co-operation		
1974	0	0.3	7.81	8.11
1975	0	0.87	0.37	1.24
1976	0	1.28	0	1.28

Source: Government of Japan.

<sup>a/</sup> It may be noted that the figures in this table differ slightly from those given in table 49 (supra, para.259).

31/ Washington Star, 5 May 1978.

32/ The Times (London), 28 March 1974.

33/ Miami Herald, 9 November 1974.

278. A source which has used a computer print-out issued in 1978 by the World Bank 34/ states that apart from the United States, Brazil and Argentina have been the most significant lenders to Chile. Argentina has granted loans to a value of \$90 million. Of this amount \$70 million has been directed to general financing and \$807,000 has been for defence expenditures. The Brazilian total is \$188,178,000, and has been spread more widely. For \$75 million, the purposes have not been specified, but \$41 million has gone to defence administration, \$6.6 million to mining and \$1.35 million to transport. 35/ According to a report,

"In general, the aid between South American countries has been much geared to the general acquisition of goods from the donor country rather than devoted to specific development projects in the way that European and North American programmes are. Its main impact, therefore, has been to provide overall financial support to the Junta." 36/

279. The socialist countries have in general cut off, not only aid but all diplomatic relations. The emphasis in their attitude has been, not so much on finding alternative forms of channelling aid to Chile, as on activities in their own countries in the reception of refugees and on bringing pressure to bear on the Chilean Government over human rights violations. The one notable exception has been the People's Republic of China, which has maintained a bilateral aid programme. China authorized a credit of \$62 million for the former government in 1972, to be used for the purchase of goods from China and to be repaid in kind. Only \$5 million of this sum had been taken up by July 1976, when it had been due to expire, 37/ and in April 1977 it was announced that a further credit had been extended for \$62 million to be used to encourage technical co-operation in the construction of complete factories and the maintenance of equipment. It was later suggested that this money would go towards the construction of a ball-bearing factory. The possibility has been mentioned of a further \$50 million loan, but this does not yet appear to have been finalized. 38/ Thus, in the case of China, it would appear clear that human rights criteria have no application at present.

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34/ World Bank, computer print-out of itemized loans, October 1977.

35/ Contemporary Archive on Latin America, Report, cit., p.D.2,14.

36/ Ibid.

37/ Latin America Economic Report, vol.IV, No.29, 23 July 1976, p.115.

38/ El Mercurio, international edition, 17-23 April 1977, p.1.

### 3. Debt rescheduling

280. As stated Chile has one of the largest external debts in the world. In 1974, faced with the prospect of 41 per cent of the debt maturing over the succeeding four years, Chile was anxious to renegotiate payments and gain a postponement in order to secure a spreading of the burden. The major creditors are the countries of Western Europe together with Japan, Canada and the United States of America; the share of each country at the end of 1976 is indicated in the following table:

Table 54

Chile's external debt, 31 December 1976

(Millions of US dollars)

Belgium	31.9
Brazil	274.5
Canada	21.1
Denmark	9.5
France	275.6
German Democratic Republic	11.8
Germany, Federal Republic of	243.3
Italy	85.9
Japan	176.3
Netherlands	34.4
Norway	5.3
Spain	168.9
Sweden	17.1
Switzerland	31.1
United Kingdom	181.6
United States of America	1,729.2
USSR	77.2

Source: Economic and Financial Survey, vol. XII,  
No. 610, Santiago, 19 September 1977, p. 3.

281. The importance of rescheduling in terms of bilateral governmental assistance can be gauged from the following table of the amounts rescheduled in 1974 and 1975.

Table 55  
Amounts rescheduled, 1974 and 1975  
 (Millions of US dollars)

	<u>1974</u>	<u>1975</u>
Belgium	5.7	2.5
Brazil	20.0	-
Canada	6.5	3.0
Denmark	4.0	1.4
France	52.2	34.0
German Democratic Republic	9.4	-
Germany, Federal Republic of	56.5	23.6
Italy	11.4	4.6
Japan	7.1	5.6
Netherlands	4.3	2.9
Norway	1.9	-
Spain	21.2	12.4
Sweden	5.2	2.3
Switzerland	7.7	2.6
United Kingdom	60.3	18.9
United States of America	223.0	218.7
USSR	69.0	-
<u>Total:</u>	<u>565.4</u>	<u>332.7</u>

Sources: Figures for 1974: International Monetary Fund, Chile - Economic Developments, 7 March 1975 (SM/75/47), p. 120; figures for 1975: Contemporary Archive on Latin America, Report, cit., Sect. D.2, reference 24. The 1975 figures are drawn from the World Bank itemized-loan computer print-out, October 1977. Data from this source are given in several different currencies and the figures in the table were calculated using conversion rates for 4 September 1975 taken from the Mexican newspaper El Universal. The following are the details of the conversion, with the dates on which the reschedulings were agreed:

Date of rescheduling 1975	Amount rescheduled	Equivalent in thousands of US dollars
November	Canadian dollars 2 399 000	2 326.01 <sup>*/</sup>
October	Deutschmarks 60 928 000	23 561.43
December	Netherlands guilders 7 800 000	2 947.64
December	Swiss francs 7 101 000	2 643.69
December	Pounds sterling 9 000 000	18 951.16

<sup>\*/</sup> This figure does not correspond to that for Canada in the table because a further \$US 703 000 was subsequently added to it.

282. Negotiations concerning rescheduling traditionally take place within the Club of Paris, an informal grouping of the main creditor countries, whose representatives meet in France to view repayment problems for several developing countries. In 1974 the members of the Club met in February and March, and agreed to reschedule 80 per cent of the principal and interest due on both loans and long-term credits in the two-year period from 1 January 1973 to 31 December 1974. <sup>39/</sup> This decision represented a special concession to Chile, since it included loans not normally eligible for rescheduling. <sup>40/</sup> The total benefit to Chile was finally in the amount of \$565.4 million, of which \$223 million was due to the United States, by far the largest creditor.

283. Attempts to raise human rights questions met with little success, as was clear in a letter from Canada's Finance Minister, John Turner, to the United Church of Canada on 2 July 1974:

"Canada joined other countries in drawing to the attention of the Chilean delegation the need for action to establish the conditions necessary for the creation of international confidence in Chile's economic prospects. It was agreed that the question of the respect of human rights was within the purview of other international fora". <sup>41/</sup>

284. In 1975, the renegotiations met with more opposition. In February the British Government announced that it would not be attending the Club of Paris meeting which had been called to consider a further rescheduling. Dennis Healey, the Chancellor of the Exchequer, stated:

"Our attitude to any further requests for rescheduling - and we hope of our fellow creditors - will take into account Chilean policy on human rights." <sup>42/</sup>

Belgium, Denmark, Italy, Netherlands, Norway and Sweden also declared their unwillingness to attend, and in March France cancelled the meeting. However, a meeting of seven of the major creditors was finally held in May 1975, and it was agreed to refinance 70 per cent of the commercial credits due that year; payments would begin in 1978, and the remaining 30 per cent would be paid in instalments of 10 per cent in 1975, 1976 and 1977. <sup>43/</sup> It is not clear how many governments finally agreed to this arrangement, since it was left open to all of them to conclude bilateral renegotiations. Nevertheless, World Bank figures indicate that Chile gained at least \$332.7 million in that year.

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<sup>39/</sup> International Monetary Fund, Report on Chile's Debt Renegotiation (SM/74/82), 15 April 1974.

<sup>40/</sup> Center for International Policy, "Chile's chronic economic crisis: 1976 and beyond", International Policy Report, vol. II, No. 2, September 1976, p. 6.

<sup>41/</sup> Letter from John Turner, 2 July 1974.

<sup>42/</sup> Miami Herald, 1 March 1975.

<sup>43/</sup> Inquiry of Canadian Finance Minister by Mr. Rodriguez, 17 May 1976.



285. In 1976 and 1977 the Chilean Government declared that it would not seek rescheduling and it has taken on the full burden of the repayments due in those years. The total for 1977 was \$1,234 million, and the figure for 1978 is expected to be \$1,200 million. 44/ This has meant a commitment of up to 40 per cent of Chile's foreign earnings, and would not have been possible without the enormous loans raised in the private sector. In June 1977 there was a report that a new agreement was being sought with the USSR, although this has not received final confirmation. 45/ No information has come to light on other bilateral agreements.

#### 4. Governmental support to private trade and investment

286. The remaining aspect of assistance from States that requires examination is that of programmes to promote trade and investment with developing countries. Most countries operate a system of loans and/or insurance for home exporters and investors. Aid to exporters is generally given in the form of securing the loans taken out by the exporter to cover himself prior to payment by his recipient, although direct loans are also sometimes made to foreign companies and governments wanting to make purchases. Investment support is offered through guarantees of loans, direct loans and investment, against risks such as inconvertibility, expropriation and war, which a private insurance company might be less willing to assume. In the United Kingdom and Canada, the two services are administered by a single agency, the Export Development Corporation and the Export Credit Guarantee Department respectively, whereas in the United States they are divided into two separate institutions, the Overseas Private Investment Corporation and the Export Import Bank. There is also considerable variation among countries providing such services in how far they are oriented towards the developing world as opposed to promoting the interests of the countries' own exporters. The United States Overseas Private Investment Corporation and the programmes operated by the United Kingdom and the Federal Republic of Germany are all said to give prominence to development criteria, in contrast to France and Japan, where the interests of the home countries' export trade are paramount. 46/ In the Overseas Private Investment Corporation, for instance, investment proposals are examined for evidence that the employment capital ratio in the proposed venture is 25 per cent higher than it would be in a comparable venture in the United States, and that the wages paid by the firm are higher than the average for the country in question. 47/

287. The Overseas Private Investment Corporation ceased its operations in Chile during the last of the Allende Government because of disagreement over the terms of compensation for the nationalization of major industries. The review of compensation arrangements was one of the demands made by the International Monetary Fund and reiterated at the Club of Paris talks, and agreements have now been

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44/ "Deuda Externa: Pagados 1,238 Millones de Dólares", El Mercurio, international edition, 25-31 December 1977, p. 1.

45/ Heraldo, 22 June 1977.

46/ The Overseas Private Development Corporation: A Critical Analysis, prepared for the Committee on Foreign Affairs by the Foreign Affairs Division, Congressional Research Service, Library of Congress, 4 September 1973, p. 25.

47/ Ibid., p. 154.

negotiated to OPIC's satisfaction. A new general agreement has also been discussed, through which OPIC would gain the right to assume the assets of a company for the United States Government if it has had to settle a claim for that company, and disputes will be settled internationally rather than within the Chilean courts. 48/ Both these clauses are in direct contradiction with parts of the Andean Code which was signed in 1969 in an attempt to protect the economic sovereignty of the developing countries. The fact that Chile was prepared to negotiate such a treaty with OPIC was a factor in Chile's leaving the Andean Pact early in 1977. There are now 22 applications for insurance in Chile, but the agreement has not yet been finalized. The suspicion that this is due to congressional opposition on human rights grounds is confirmed by the remark of one OPIC official that "issuing contracts in Chile would run us in Congress". If contracts are taken up, however, the development orientation which is already present could readily be extended to cover labour rights in the companies concerned. 49/

288. Between 1974 and 1977, the United States Export Import Bank issued guarantees to a value of \$83.65 million, and the Commodity Credit Corporation, which provides price support for sales of United States agricultural exports, granted a further \$52 million in financial year 1975, bringing the total to \$135.65 million. 50/ As mentioned above (supra, para. 275), on 24 April 1978 the Commodity Credit Corporation approved \$38 million in commercial credits to Chilean farmers and ranchers, who will thus be able to purchase \$35 million of surplus wheat from American farmers and import \$3 million worth of breeding cattle over the next three years.

289. Exim Bank dealings are subject to the Harkin Amendment, but no information has come to light about any specific attempts to investigate their impact on the needy or to ensure that future credits go to exports which will benefit them. 51/

290. The Canadian agency, the Export Development Corporation, offered security to \$Can. 2 million in private banks loans in January 1974, to facilitate the purchase of military aircraft capable of carrying troops to and from makeshift landing strips, 52/ and in March 1978 gave a joint credit, with the Bank of Montreal, of

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48/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings, cit., pp. 38-39.

49/ "OPIC: Insuring the Status Quo", International Policy Report, (Center for International Policy, Washington, D.C.), vol. III, No. 2, September 1977, p. 6.

50/ Chile: the Status of Human Rights and its Relationship to US Economic Assistance Programs, Hearings, cit., p. 119.

51/ The question of human rights has been raised with regard to dealings by Exim Bank in South Africa, and the House of Representatives Banking Committee approved in April 1978 a proposal to bar all credit guarantees to that country, although an extra provision was due for consideration which would allow credits which help basic human needs (Financial Times, 28 April 1978, p. 6).

52/ Export Development Corporation, Financing Agreements and Guarantees, 1 January 1974-31 December 1974, p. 15, note b.

\$Can. 14.7 million for the Chilean firm Compañía Manufacturera de Papeles y Cartones. 53/ In October 1976, Chile was one of the recipients named in a group of 10 agreements signed with a total value of \$Can. 103 million, 54/ and in January 1978 agreements with nine countries, including Chile, were announced with a total value of \$Can. 1,003 million. 55/ The act establishing the Export Development Corporation in 1969 states that guarantees should not be given to an insurance contract that does not "contribute to the economic growth and development of the country in which it is made". 56/

291. It is extremely difficult to obtain full statistics on dealings of this sort in order to gauge the quantitative impact, since much of the information is held to be confidential by governments in order to protect the interests of their exporters. According to one source, 57/ many countries are operating restricted cover to Chile, including the United Kingdom, the Netherlands, Belgium and Norway.

#### 5. Assistance channelled through humanitarian institutions

292. As stated earlier, in addition to the economic assistance provided to the Chilean authorities, and in most of the cases in lieu of that assistance, some States grant economic aid to humanitarian institutions, both private and public, to be used for the benefit of indigent or needy people living in Chile. Many States also (or exclusively) accord financial, legal and humanitarian assistance to Chileans who have expatriated for political reasons. The latter category of assistance does not fall within the province of the present report, and will not therefore be dealt with here. Regrettably, scant information is available on the former category of assistance.

293. Among the governments which have attempted to channel funds in a way that will have a beneficial effect on human rights, the Netherlands Government appears to be the only one which has acted on the basis of explicit human rights criteria. Mr. J.P. Pronk, former Minister for Development Co-operation, has described their orientation as follows:

"Development aid means working for fairer social structures - a matter of fundamental importance as regards human rights; it also means giving direct aid to the victims of violations of human rights, among them political prisoners and refugees." 58/

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53/ Chile Economic News, March 1978, p. 3.

54/ EDC News Release, 27 October 1976.

55/ Ibid., 18 January 1978.

56/ Article 34 (2) (a), Export Development Act, 1969.

57/ Contemporary Archive on Latin America, Report, cit., p. D.2, 21.

58/ J.P. Pronk, "Human rights and development aid" Review of the International Commission of Jurists, June 1977, p. 36.

In its reply to the request of the Secretary-General of the United Nations for information relating to General Assembly resolution 31/124, the Netherlands Government stated:

"Aid is provided only in respect of certain small welfare projects, directly benefiting the poorest section of the population.

This aid is channelled through non-governmental organizations. For instance: material as well as spiritual support is provided to the ecumenical relief organization Vicaría de la Solidaridad - successor to the Comité para la Paz.

Funds have been made available also to the Netherlands Foundation for Legal Aid to Chileans, which was established in 1976 as a result of private initiative." 59/

"Vicaría de la Solidaridad" is a church organization which has been active not only in providing legal aid to political prisoners but also in alleviating the worst effects of the economic crisis. Soup kitchens for children have been set up under its auspices, as have medical clinics and workshops for the unemployed. This is certainly a case where there can be no doubt that aid is reaching the poorest sectors of society.

294. In replying to the same request of the Secretary-General for information, the United Kingdom Government listed among the measures taken "to help the victims of repression" the following:

"Suspension of British aid to Chile, except for funds provided for humanitarian purposes through non-official channels ... Financial donations to the United Nations High Commissioner for Refugees and the International Committee of the Red Cross for their work in Chile." 60/

295. In Canada, the Canadian International Development Agency has given a number of small grants through religious and other voluntary bodies for urban and rural education projects and small workshops for the unemployed. 61/

296. As for the United States, mention has already been made of the food assistance programme provided for in Public Law 480, Title II, which is administered and supervised by non-profit-making, voluntary agencies. According to an authoritative source, 62/ this form of United States assistance is the only one which can ensure

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59/ A/32/234, p. 12.

60/ A/32/234, p. 18.

61/ Canadian International Development Agency, Agency Report, revised to 31 March 1976, p. 32.

62/ L.C. Meeker, statement made on 29 April 1976 before the United States House of Representatives Subcommittee on International Organizations, Hearings, cit., pp. 7 and 11.

that the aid being given reaches those in need and does not serve to shore up the present Government. In August 1975, a programme was agreed on for the provision of nutritional assistance to 40,000 workers participating in the government's Minimum Employment Programme. <sup>63/</sup> According to a report of the Washington-based "Center for International Policy":

"Unlike the Title I program, the Title II aid does seem to reach many of the neediest people since it is given away, rather than sold. However, the program totalled only \$4.6 million in financial year 1975 and \$8 million in financial year 1976, which is hardly adequate to reach more than a limited number of those facing dietary deficiencies." <sup>64/</sup>

297. Another example of this assistance by the United States may be mentioned. The Inter-American Foundation has reportedly used official United States funds to promote humanitarian activities in Chile through the "Co-operative Committee for Peace", a humanitarian institution created in Chile in October 1973 by the Catholic Church, the Lutheran Church, the Methodist Church and other Christian denominations, together with the Jewish community. This Committee provided, inter alia, assistance to political prisoners and their families, as well as legal and other aid to dismissed workers. It was dissolved by the Chilean authorities in early 1976. In a hearing held on 5 May 1976 before the United States House of Representatives Subcommittee on International Organizations, Mr. Zalaquett, a Chilean exile who carried out legal and humanitarian work in Chile before leaving for the United States of America, said the following:

"The Inter-American Foundation, according to my understanding, received funding from the Congress and has supported the Committee for Peace more or less in the sum of \$600,000, which is approximately 20 per cent of what we have spent over the course of 2½ years." <sup>65/</sup>

298. It should be added that several governments have made donations in cash to the International Committee of the Red Cross (ICRC), to help finance the programme of

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<sup>63/</sup> US AID Chile LA/SA:3/78, p.5.

<sup>64/</sup> "Research Study on Chile: An Analysis of Human Rights Violations and U.S. Security Assistance and Economic Aid Programs", Washington, D.C., July 1977, p. 26.

<sup>65/</sup> Hearings, cit., p. 72.

assistance to prisoners' families which has been carried out by the ICRC in Chile since 1973. <sup>66/</sup> Contributions received by the ICRC between 1 January and 31 December 1976 were as follows:

Table 56

Contributions received by the ICRC, 1976

(Amounts in Swiss francs)

Canada	127 545.00
Denmark	41 093.08
Finland	64 600.00
Sweden	283 750.00
United States of America	484 000.00
Total:	<u>1 000 988.08</u>

Source: E/CN.4/1232/Add.2, annex. For governments' contributions in 1975, see CICR, "Rapport d'activité 1975", Geneva, pp. 9-10 and 28-29; for the contributions made in 1977, see "Rapport provisoire d'activité du CICR (1er janvier - 30 juin 1977)", pp. 35-36 and 43.

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<sup>66/</sup> According to the annual report of the ICRC for 1976,

"The ICRC delegation also continued a substantial programme of assistance to prisoners' families and distributed staple foods. This aid proved of great value, since the financial situation of the great majority of the families affected by the detention of one or more members is still very precarious.

During the first half of the year, ICRC thus assisted more than 1,790 families, or approximately 9,000 persons. During the second half of the year, the programme was maintained at almost the same level. The number of families assisted was 1,425, or approximately 7,200 persons, and this enabled the amounts distributed per family to be increased slightly. The number of distribution centres located throughout the country and administered by the local sections of the Chilean Red Cross or by the Churches was reduced gradually, for organizational reasons, from 43 at the beginning of the year to 28 at the end of the year.

Relief supplies worth 980,000 Swiss francs were distributed to prisoners' families in 1976.

In addition, goods (blankets, clothing, powdered milk, medicines) worth approximately 317,000 Swiss francs were handed over by ICRC to various private organizations and institutions, including Caritas Chile, the Salesian Congregation, the 'Vicaría de la Solidaridad' and the Chilean Red Cross." (E/CN.4/1232/Add.2, p. 3).

299. The use of non-governmental organizations to channel aid in a situation where direct dealings with the government are, for one reason or another, undesirable, is becoming increasingly recognized. The drawback is that these smaller groups are not capable of handling programmes on the same scale as official bodies. Furthermore, although, as stated earlier, detailed data on the form of economic assistance under consideration are lacking, the Rapporteur assumes - on the basis of various indirect sources - that its volume is minimal. By the same token, he believes that this assistance is really beneficial to needy people, although - by its very nature and because of its scant quantity - it cannot adequately improve their lot.

C. Economic assistance from intergovernmental organizations

1. Overview

300. Economic assistance from intergovernmental organizations, traditionally a major source in Chile's external borrowing, increased dramatically after September 1973, both absolutely (it rose more than ten times in value between 1973 and 1974) and as a proportion of total assistance. From 1975 onwards, however, an increasingly sharp downward trend ensued, with the share of total economic assistance declining from just over half in 1975 to a mere tenth in 1977. These over-all trends, and the distribution by organization, can be seen in the following table:

Table 57

Amounts approved for Chile, 1971-1977  
(Millions of US dollars)

	1971	1972	1973	1974	1975	1976	1977
IMF	44.6	44.6		136.2	266.4	140.6	
WORLD BANK				13.5	20.0	33.0	60.0
IDB	12.0	2.1	5.2	97.3	70.7	70.0	24.5
United Nations agencies	3.4	6.1	4.2	0.4	3.4	4.0	4.0
Andean Development Corporation		5.0	13.7	4.4	11.9	7.9	
TOTAL	60.0	61.8	23.1	251.8	372.4	255.5	88.5
As a percentage of total assistance from all sources	17.8	15.0	6.7	29.2	52.7	41.5	10.3

Sources: See tables 59-64 and 66, below.

301. Two very different kinds of criteria are involved in this assistance, with a differing relevance to and impact on human rights. The first kind is concerned with over-all economic policies, and is the prime concern of IMF. Concerning its division of labour with the World Bank (IBRD), a study published by the Fund notes:

"It was agreed that the Fund has primary responsibility for exchange rates and restrictive systems, for adjustment of temporary balance of payments disequilibria, and for evaluating and assisting members to work out stabilization programmes as a sound basis for economic advance." <sup>67/</sup>

<sup>67/</sup> The International Monetary Fund 1945-1965: Twenty Years of International Monetary Co-operation, vol. I, Chronicle by J. Keith Horsefield (Washington, D.C., IMF, 1969), pp. 603-604, cited in Cheryl Payer, The Debt Trap: The IMF and the Third World, Harmondsworth, 1974, p. 216.



As will be seen later, IMF was prominent in the formulation of the Chilean military Government's severe austerity measures and its liberalization of import restrictions and other economic controls. The very large financial assistance agreed with the Fund - just over three fifths of the total provided by intergovernmental organizations between 1974 and 1976 - was specifically intended to help support such policies, and some of the amounts were very stiffly conditioned on their implementation. The Fund's leverage extends far beyond the extent of its own considerable resources, as its economic prescriptions and judgements are more or less accepted by and strongly influence a wide range of other funding organizations. A recent World Bank staff report on Chile notes, in relation to the austerity and liberalization measures introduced since 1973:

"These measures are consistent with the recommendations made repeatedly by the Bank and other international institutions over the past decade." 68/

At least in terms of their direct impact on the enjoyment of economic, social and cultural rights, such policies have undoubtedly had a negative effect (see supra, chapter I). It would, therefore, seem of major importance to explore ways in which this situation can be improved. It is particularly striking that IMF withdrew its support, at least in part because it felt that even stronger measures were needed, and it was particularly critical of the extent to which wages were readjusted upwards to help compensate for Chile's massive inflation.

302. The second kind of approach to assistance - that of the development banks and the United Nations specialized agencies other than IMF - is centred mainly on developmental and social criteria. Both the World Bank and the Inter-American Development Bank (IDB) include in their Articles of Agreement the declared objective of promoting social development, while United Nations agencies are, of course, directly guided by the social and human rights principles of the United Nations. 69/

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68/ World Bank, staff report on Chile, 1975, cit., p. iii.

69/ While excluding considerations of political and civil rights, World Bank President Robert McNamara has on numerous occasions stressed the Bank's concern with economic, social and cultural rights:

"Among the most fundamental of human rights are the rights to minimum acceptable levels of nutrition, health and education. Hundreds of millions of people in developing countries, through no fault of their own, are denied these rights today. The Bank, perhaps more than any other institution in the world, is helping large numbers of these people to move out of absolute poverty toward a more decent life. What we are not capable of is action directly related to civil rights. Such action is prohibited by our charter; it would require information and competence which we lack, and there is no agreement among our member governments on acceptable standards of civil rights in a wide variety of political circumstances found in developing countries."

("McNamara on the largest issue: World Economy", New York Times, 2 April 1978.)

303. Despite this concern, the proportion of assistance provided by the World Bank and IDB for projects directly geared to improvement in the sphere of such economic, social and cultural rights as the rights to health, food and housing, was little more than one fourth of their total contributions between 1974 and 1977:

Table 58

Assistance directed towards promotion of economic, social and cultural rights, 1974-1977  
(Millions of US dollars)

	Human rights-related	Other	Total	Human rights-related as a percentage of total
IBRD	35.0 <sup>a/</sup>	91.5	126.5	28
IDB	70.7	189.8	260.5	27

Source: See tables 61 and 64 below. Total amounts calculated from data provided by the banks' annual reports for the years concerned.

a/ Sum of \$US 20 million agriculture loan for small farmers and an estimated 3/5 human rights component in the \$US 25 million loan for agriculture and agro-industries.

304. ~~Thus the overwhelming majority of lending to Chile by these organizations is concentrated on general economic projects with no immediate relation to human rights. These projects are oriented towards economic growth which, the Chilean authorities promise, will ultimately provide benefits for the poor also. It can be noted, in general, that, as has been seen (supra, para. 69), this position has been subjected to considerable criticism by, among others, World Bank President McNamara (although, in considering such "economic growth" projects, in its project reports and elsewhere, the World Bank actually devotes only very marginal consideration to the ways in which this growth might be made to "trickle down" to the poor more effectively).~~

305. More specifically, it must be emphasized that the projects under consideration do not benefit the vast majority of the Chilean people because of the economic policy implemented by the Chilean authorities (drastic cutting of public expenditures, redistribution of income, etc.). 70/ As a result of this policy the inflow of foreign exchange primarily serves to pay the foreign debt and to replace the Chilean financial resources earmarked for public services and eventually used for other purposes. Consequently, it does not have direct beneficial effects for the promotion of the economic, social and cultural rights of Chileans.

70/ See chap. I, supra.

306. As table 57 illustrates, World Bank and IDB lending to Chile has shown dramatic fluctuations during the 1970s. The high degree of correlation between this lending and the evolution of United States policy in relation to Chile has led to widespread controversy concerning the criteria and independence of the two banks. A United States Congressional Report, "The United States and Multilateral Development Banks", concluded:

"While the banks (the multilateral development banks such as the World Bank and IDB) are not direct instruments of American policy, they nevertheless have pursued policies generally compatible with those of the United States ... The World Bank's view of Chile's creditworthiness and its decision not to accept any major new proposals for that country have undoubtedly taken into account the unresolved nationalisation of US-owned companies by the Chilean government. In the Inter-American Development Bank, no provisions exist prohibiting loans to expropriating countries, yet the IDB has been reluctant to bring such loans to the Board. Several proposals for loans to Chile have been pending for some time, but have not received action since 1971." <sup>71/</sup>

While the World Bank explains its reluctance to lend to Chile during 1971 by saying that "the Bank was becoming increasingly concerned with Chile's economic policies and the ability of the country to use development funds effectively", <sup>72/</sup> no such concerns have been expressed in relation to the effective use of development funds by the Government authorities of Chile, and both IBRD and IDB have put up their level of lending to Chile since 1973 to unprecedented levels, without recommending the policy changes needed to make sure that development aid reaches the needy.

~~307. This over-all negative correlation between support for Chile and the respect there for economic, social and cultural rights is highly disturbing, particularly given the strong suggestion that political criteria were involved.~~ It should nevertheless be noted that more recently, a growing concern for human rights seems to be tending to alter this situation.

## 2. International Monetary Fund

308. It is common knowledge that the policy of the IMF is to push for strong austerity measures, including public spending cuts, strict wage control and restriction of the money supply.

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<sup>71/</sup> Foreign Affairs Division, Congressional Research Service, Library of Congress, prepared for the Committee on Foreign Affairs, The United States and the Multilateral Development Banks, Washington, D.C., 1974, pp. 132-133. On the relationship between United States foreign policy on human rights and international financial institutions, see G.D. Loescher, "U.S. Human Rights Policy and International Financial Institutions", The World Today, Dec. 1977, pp. 453 ff.

<sup>72/</sup> World Bank, "Chile and the World Bank", Washington, D.C., March 1977, p. 2.

309. Because of the Allende Government's rejection of such a policy, the IMF granted it only two semi-automatic amounts, under the Compensatory Financing Facility designed to offset fluctuations in commodity prices. The situation changed radically after 1973, the IMF responding very favourably to and helping considerably to shape the military Government's global economic policies. IMF financial assistance was very considerably increased, including the negotiation of two large stand-by arrangements. In the Fund's eyes, however, austerity measures were not being taken far enough, and particular criticism was levelled at the failure to adopt more restrictive policies on wages. Consequently, only the first quarter of the second stand-by arrangement was drawn, and Chile's refusal to implement the Fund's draconian prescriptions has meant that no further arrangement has been negotiated since.

310. After 1973, the IMF became a very important direct source of financial assistance to Chile. Agreements for financial assistance from the Fund to Chile since then have been as follows:

Table 59  
Financial assistance by IMF to Chile, 1974-1976

Date	Amount (millions of special drawing rights)	Method
29 Jan. 1974	79.0	Stand-by arrangement
9 Sept. 1974	41.5	Oil facility
21 Jan. 1975	77.0	Oil facility
19 Mar. 1975	79.0	Stand-by arrangement
22 Oct. 1975	79.79	Oil facility
24 Mar. 1976	45.43	Oil facility
4 June 1976	79.0	Compensatory financing facility
Total agreed	480.72	

Sources: The following have been used:

(1) IMF, EBS/75/77, "Chile - Request for Stand-By Arrangement" from the Secretary to Members of the Executive Board, 3 March 1975, report prepared by the Western Hemisphere Department, 28 February 1975 (two attachments: "Chile Stand-By Arrangement" and Letter of Intent, from Eduardo Cano, President of the Central Bank of Chile, and Jorge Cauas, Minister of Finance, to Mr. Witteveen, Managing Director, IMF, 7 February 1975), pp. 1-3;

(2) IMF, EBS/75/366, "Chile - Purchase Under the Oil Facility" from the Secretary to Members of the Executive Board, 15 October 1975, report prepared by the Western Hemisphere Department, 14 October 1975, pp. 1-2;

(3) IMF, "Chile - Staff Report for the 1977 Article XIV Consultation", report prepared by the staff representatives for the 1977 Article XIV consultation with Chile, 24 June 1977, p. 18;

(4) "Fondo Monetario Concedió Crédito por US\$ 98,750,000", El Mercurio, international edition, 20 March 1975; "Préstamo del FMI por 95 millones de Dólares", El Mercurio, international edition, 23 October 1975, p. 1; "Fondo Monetario Otorgó a Chile US\$ 52 millones", El Mercurio, international edition, 25 March 1976, p. 1; "FMI Concedió Préstamo a Chile por 90 millones de Dólares", El Mercurio, international edition, 5 June 1976, p. 1.

311. Of the total public debt outstanding to multilateral organizations at 31 December 1977, just over half - \$412 million out of \$811 million - was to the IMF. <sup>73/</sup> IMF support has also been important in securing financial assistance from other sources.

(a) Stand-by arrangements

312. Negotiations over the agreement and drawings on stand-by arrangements have been the main vehicle for IMF influence over the economic policies being pursued in Chile. Such arrangements are intended to help members having problems with payments due on their international accounts, by making available in steps over the course of a year an agreed amount of foreign exchange. Drawings are normally automatic on amounts up to the member's "gold tranche", normally equal to 25 per cent of the member's quota paid to the Fund. As drawings are made beyond the gold tranche on successive "credit tranches", each equal to 25 per cent of quota, increasingly stringent requirements are placed by the Fund - after consultation with the member - on the economic policies to be pursued and the economic "performance criteria" which must be met in relation to these policies. The terms of the arrangement are set out in a "letter of intent" from the relevant authorities of the member country, and in a Fund document setting out the actual arrangement. Drawings under the arrangement may be refused by the Fund if its terms are not met. <sup>74/</sup> The normal period for repayment is three years, although this can be extended.

313. The IMF's judgement and leverage on the economic policies of members, as exercised through the stand-by arrangement, has a weight far greater than the sums directly involved. In his book on the matter, IMF General Counsel Joseph Gold stated:

"The Fund's approval of a stand-by arrangement has come to be regarded as the leading international judgement on the soundness of a member's policies." <sup>75/</sup>

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<sup>73/</sup> Central Bank of Chile, "Movimiento y Saldo de los Créditos Año 1977", 1978 (computer print-out).

<sup>74/</sup> J. Gold, The Stand-By Arrangements of the International Monetary Fund (IMF, Washington, D.C., 1970).

<sup>75/</sup> J. Gold, op.cit., p. 37.

IMF influence over the decision-making of private banks is evidenced in the statement by Dr. Irving Friedman, Senior Vice President and Senior Adviser for International Operations for Citibank, N.A., that

"The IMF can play a major role in assisting the private banks in their lending to developing countries as a certifier of country behaviour. Private institutions will still have to make their own judgements ... in most cases, stricter than the IMF. The private banks will, however, be greatly helped by knowing that the IMF judgements on use of its resources reflect a favourable judgement on country performance and outlook made by an expert geopolitical group." (I.S. Friedman, The Emerging Role of Private Banks in the Developing World, New York, 1977, p. 82).

In a study of the World Bank commissioned by Britain's Overseas Development Institute, Teresa Hayter reports that:

"A Latin American Government hoping to receive aid on the basis of 'good performance' in economic matters will usually have to come to an agreement with the IMF. In some countries the World Bank and the AID rely on the IMF for an assessment of the government's performance, and merely add their weight to that of the IMF by making their support conditional on the country concerned reaching agreement with the IMF. ... The IMF tends to be main negotiator ...". 76/

314. Chile's 1974 stand-by arrangement and evaluation by IMF were important to the Club of Paris debt renegotiation of the same year. The IMF plays a key role in the process of debt renegotiation, and was described by Qué Pasa - in relation to Chile's 1974 stand-by arrangement - as the Club of Paris's "consultant body". 77/ The Fund's own account of the 1974 renegotiation proceedings 78/ shows that the IMF had a very central role, and that particularly important was the reaching of the 1974 stand-by arrangement. In 1975, France reportedly postponed the Club of Paris meeting so as to permit stand-by negotiations to be completed with the Fund first, and El Mercurio's front-page story on the agreement of the stand-by arrangement began:

"Chile today succeeded in clearing the path for the renegotiation of its massive external debt, by receiving a stand-by credit from the International Monetary Fund ..." 79/

In the case of the projected third stand-by arrangement with Chile's military government, an internal IMF document is reported by Vicaría de la Solidaridad as estimating that Chilean agreement on the Fund's terms was the "sine qua non" for the renewal of direct credits for \$80 million and indirect credits for a further

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76/ T. Hayter, Aid to Imperialism, Harmondsworth, 1971, pp. 26-27. The Fund states in a special pamphlet on its role in Latin America:

"A stand-by arrangement is an indication that the Fund regards the country's policies as appropriate and sustainable. The Fund's support of a member's stabilisation efforts has often helped improve its prospects of a long-term financial assistance from abroad as well as of additional short-term funds." (IMF, The International Monetary Fund and Latin America, Washington, D.C., p. 15.)

77/ "Impacto en Sesión Abierta", Qué Pasa, No. 146, 8 February 1974, p. 10.

78/ IMF, SM/74/82, "Report on Chile's Debt Renegotiation" from the Acting Secretary to Members of the Executive Board, 15 April 1974. Report prepared by the Western Hemisphere Department and the Exchange and Trade Relations Department, 12 April 1974.

79/ "Fondo Monetario Concedió Crédito por US\$ 98,750,000", El Mercurio, international edition, 20 March 1975.

\$150 million. <sup>80/</sup> Especially where, as in the Chilean case, the Government is in a weak international financial position and places major emphasis in its economic strategy on attracting foreign capital, agreement with the Fund can become a virtual economic necessity.

315. The first stand-by arrangement, for SDR 79.0 million, was agreed by the IMF on 29 January 1974 and covered the gold and first credit tranches. According to the Chilean weekly magazine Qué Pasa, then extremely close to the Government:

"The loan signifies the crystallization of negotiations initiated in Nairobi last September by General Eduardo Cano, President of the Central Bank and as such holding the title of Governor for Chile in the Fund.

"It is necessary to recall that this initiative resulted in the visit of an IMF mission, which for four months participated in an active way with the Chilean experts who drew up the economic programme of the Government." <sup>81/</sup>

The programme which emerged included:

"The pursuit of realistic price policies ... Investment was to be stepped up ... an effective control of aggregate demand through adequate income, fiscal, and credit policies, ... (and) to liberalise gradually the exchange and trade system." <sup>82/</sup>

316. Evaluating Chile's success in implementing the programme, a February 1975 IMF report praises progress in removing price controls, devaluing the escudo, and servicing external debt obligations, but goes on:

"Notwithstanding these achievements, Chile did not adhere to the agreed financial programme in many critical areas. Massive increases in consumer prices following the price liberalization led to an initial increase in wages and salaries considerably in excess of what had been contemplated. This, in turn, gave renewed impetus to inflation which was followed by new rounds of wage adjustments." <sup>83/</sup>

This, according to the Fund, resulted in the breaking of credit, demand and price ceilings set out in the performance criteria of the arrangement. Price increases, however, are seen as part of necessary "corrective price adjustments", <sup>84/</sup> whereas increases in nominal wages are criticized as part of "excess aggregate demand", <sup>85/</sup> the latter also being contributed to - according to the IMF - by "delays in adjusting prices" in the public sector, which therefore had to draw on bank credit. <sup>86/</sup>

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<sup>80/</sup> "FMI analiza Situación Económica Chilena", Solidaridad (Santiago de Chile), No. 65, 31 May 1976, p. 1.

<sup>81/</sup> "Impacto en Sesión Abierta", Qué Pasa, No. 146, 8 February 1974, p. 10.

<sup>82/</sup> IMF, EBS/75/77 etc., cat, pp. 2 and 4.

<sup>83/</sup> Ibid., p. 4.

<sup>84/</sup> Ibid., passim.

<sup>85/</sup> Ibid., p. 4.

<sup>86/</sup> Ibid.

317. On 19 March 1975, a second stand-by arrangement was agreed for a further SDR 79 million, covering Chile's second and third credit tranches and thus being subject to much stricter policy conditioning by the Fund. The new recipe was a mixture of, on the one hand, a continued liberalization of price, foreign exchange and import controls, and on the other hand, a stepping up of domestic austerity measures:

"... demand management will need to be considerably tightened. The Government will need to strictly limit wage increases to those required by law and to implement vigorously the tax reform, the new revenue measures, and austerity in spending. In addition, legal reserve requirements will have to be adjusted as needed." 87/

318. In April and May 1975, two rounds of increasingly severe austerity measures were introduced, conforming to the objectives previously agreed on with the Fund. The general impact of this programme is set out in a report prepared by a World Bank team which visited Chile in October/November 1975:

"7. The costs of this adjustment have been very high, and the Chilean economy in 1975 is suffering its worst depression since the 1930s. Real gross domestic product has declined 12 to 15 per cent. Taking into account the deterioration in terms of trade, the gross national income has fallen some 16-19 per cent, in real terms, from 1974. Unemployment in Greater Santiago was estimated at 16.6 per cent in September." 88/

One particular element in the policy adjustments made, with a direct negative impact on living standards, is noted approvingly in an October 1975 IMF document as having contributed to the anti-inflation drive:

"The principal reasons for this deceleration (in the rate of credit expansion) are ... (4) a marked decline in private sector financing requirements following the change in the base used to compute the September wage adjustment from one linked to the price increase of the preceding quarter, lagged by two months, to one determined by the inflation in the preceding two months and the month in course." 89/

According to the calculations made by a London-based private organization, the wage readjustment would have been 51.9 per cent under the old system, compared with 24 per cent under the new one. 90/

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87/ Ibid., p. 24 ("Staff Recommendations").

88/ World Bank Report based on the finding of an economic mission to Chile in October/November 1975 (the mission was composed of Messrs. Guy Pfeffermann and Fred Levy; the report was discussed with the Chilean authorities in December 1975), p. 11.

89/ IMF, EBS/75/366, cit., p. 7.

90/ Contemporary Archive on Latin America (CALA), Report, cit., p. D36.8.



319. The 1975 stand-by arrangement is reported to have been agreed only against the "stubborn resistance" of the Swedish member of the IMF Executive Board. <sup>91/</sup> The representatives from the United Kingdom, Belgium, Netherlands, Denmark, Federal Republic of Germany, Mexico and Italy were likewise reported as taking a "cautious attitude". <sup>92/</sup> The Rapporteur has found no solid evidence on the specific motives or justification offered for these positions.

320. It was seemingly, however, opposition of a different sort from within the IMF which resulted in Chile's failure to draw more than the first fourth of the amount covered by its second stand-by arrangement, and its further failure to negotiate a third such arrangement in 1976. According to a well-informed article in the Chilean weekly Ercilla, and drawing heavily on official Chilean sources:

"In 1975 the IMF mission returned to negotiate another stand-by [arrangement] and this was achieved for the third and fourth tranches. This implied strong economic demands which were not fulfilled. Because of this, only a quarter was drawn of the amount which the IMF would have loaned had the demands been fulfilled." <sup>93/</sup>

The key criticism appears to have been what the Fund saw as inadequate measures to eliminate "excess demand". A confidential IMF report on Chile, dated 25 May 1976, is quoted by the Washington Center for International Policy as saying:

"While price and exchange rate changes continue to make important contributions to the adjustment process in 1975, domestic demand management remained a source of major imbalances despite efforts at fiscal restraint." <sup>94/</sup>

This account of the Fund's position continues:

"In particular, the Fund strongly advised the junta to modify its wage indexing policy, which adjusts wages quarterly based on the previous three months' rate of inflation. The IMF team that visited Chile this spring argued that wage indexing builds inflation into the economy." <sup>95/</sup>

As late as June 1977, the Fund continued to deplore that "the present automatic wage adjustment formula inevitably hampers the authorities in their effort to reduce inflation", while approving the over-all policies being pursued. <sup>96/</sup>

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<sup>91/</sup> "Fondo Monetario Concedió Crédito por US\$ 98,750,000", El Mercurio, international edition, 20 March 1975, p. 1.

<sup>92/</sup> Ibid.

<sup>93/</sup> "Balanza de Pagos: Equilibrio con Problemas", Ercilla, 17 March 1976, p. 23.

<sup>94/</sup> Center for International Policy (Washington, D.C.), "Chile's chronic economic crisis: 1976 and beyond", International Policy Report, vol. II, No. 2, September 1976, p. 12.

<sup>95/</sup> Ibid.

<sup>96/</sup> IMF, "Chile - Staff Report for the 1977 Article XIV Consultation", report prepared by the staff representatives for the 1977 Article XIV Consultation with Chile, 24 June 1977, p. 15.

(b) Compensatory financing facility

321. This facility is designed to provide financial support for balance-of-payments difficulties caused by sharp, uncontrollable changes in export prices - in Chile's case, for the sharp changes which have occurred in the price of copper, Chile's main export. Drawings from the facility are loosely conditioned on co-operating with the IMF in seeking solutions to the country's balance-of-payments problems, and the facility thus probably serves mildly to reinforce Fund influence on general economic policies.

322. The Allende Government had found it possible to make two drawings on the facility, of SDR 39.5 million each, on 14 December 1971 and 22 December 1972, making a total of SDR 79 million. 97/ It is probable that it was as a renewal of these drawings that IMF agreement was given on 4 June 1976 for SDR 79 million under the facility. 98/

According to a report in the Washington Post,

"Representatives of Britain and the Scandinavian countries disassociated themselves from approval of the loan and sources close to the Fund indicated that Chile's chances of obtaining further support from it are virtually nil." 99/

While this report goes on to state that "Chile, in proportion to its quota, has been allowed larger sums than any other country", it does not directly adduce any reason for the reported opposition.

(c) Oil facility

323. The oil facility is basically similar to the compensatory financing facility, and is designed to cover balance of payments difficulties arising from the tremendous increase in petroleum prices after 1973. Chile has been one of the main beneficiaries from this facility, which has accounted for a large portion of total IMF assistance to Chile under the present Government. As with the compensatory financing facility, although probably more so owing to the larger sums and more frequent drawings involved, the impact of this type of IMF operation was probably to reinforce Fund pressure for the sort of austerity and "liberalization" measures outlined above, and to provide foreign exchange resources to the Government. The internal Fund evaluation document mentioned earlier, which recommended the facility approved on 22 October 1975, clearly links the evaluation and approval of the general economic programme to its recommendation for approval of the drawing. 100/

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97/ IMF, EBS/75/77, etc., cit.; "Chile to get 39.5 million in SDRs", Financial Times, 22 December 1972; Bolsa Review vol. 6, No. 61 (January 1972).

98/ "FMI Concedió Préstamo a Chile por 90 millones de Dólares", El Mercurio, international edition, 5 June 1976, p. 1; "IMF gives Chile New Loan despite Record Borrowing", by L.H. Dinguid (staff writer), Washington Post, 5 June 1976.

99/ Washington Post, 5 June 1976, cit.

100/ IMF, EBS/75/366, cit.

324. Under the first oil facility established by the IMF in 1974, Chile drew 100 per cent of its allotment of SDR 118.5 million. Under the second such facility established by the IMF in 1975, Chile made two drawings totalling SDR 125.22 million. 101/

325. On 22 October 1975, in voting on the first Chilean drawing on the second oil facility, the Scandinavian representative from Sweden, Per Asbrink, abstained. 102/ It is likely that the same was done for the second drawing, approved on 24 March 1976, as the Norwegian Department of Trade reported in April 1976:

"Considering the relation between Chile and IMF, the Nordic countries have voted against application [from Chile] for drawing under the ordinary scheme, and has desisted from voting in connexion with the decision concerning drawing from the oil facility fund. The Norwegian deposit to this fund is not allowed to be drawn from by Chile." 103/

No further drawings on any oil facility have been made by Chile.

(d) Special Drawing Account

326. Chile is a participant in the Special Drawing Account, which is based on automatic allocation of SDRs to participants in proportion to their IMF quotas. Its aim is to promote international liquidity and thus trade, but it provides an unconditional reserve asset with no direct policy implications. 104/ As of 31 May 1977, Chile's holdings stood at SDR 54.4 million, equal to 99.5 per cent of its net cumulative allocation. 105/

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101/ IMF, EBS/75/77, cit., p. 1; Irving S. Friedman, The Emerging Role of Private Banks in the Developing World (New York, 1977); IMF, SM/75/47, "Chile - Recent Economic Developments", from the secretary to members of the Executive Board, 7 March 1975, report prepared by a staff mission, 3 March 1975.

102/ "Préstamo del FMI por 95 millones de Dólares", El Mercurio, international edition, 23 October 1975, p. 1.

103/ Cited in "Chileaksjonen i Norge", submission prepared by Einar Sandved (Oslo, 20 May 1978), p. 14.

104/ IMF, "The International Monetary Fund and Latin America", cit., pp. 18-20.

105/ IMF, "Chile - staff report for the 1977 Article XIV Consultation", cit., p. 13.

3. The World Bank

327. The International Bank for Reconstruction and Development (the World Bank) sees its current role as essentially to help finance "productive projects which will lead to economic growth in its less developed member countries". 106/ Its Articles of Agreement include among the Bank's purposes "assisting in raising ... the standard of living and conditions of labour in their [members'] territories". 107/ As has been pointed out (paras. 302-306), the Bank has moved increasingly towards a direct concern for social criteria, and a specific concern for economic, social and cultural rights. Its impact on such rights can be considered at two levels: that of its over-all lending and economic evaluation policies, and that of its support for specific projects.

328. The evolution of the Bank's policy towards Chile is shown in the following table:

Table 60

World Bank loans approved for Chile, 1969-1977  
(Millions of US dollars)

1969	1970	1971	1972	1973	1974	1975	1976	1977
11.6	19.3	0	0	0	13.5	20.0	33.0	60.0

Sources: World Bank, "Background paper: Chile and the World Bank", Washington, D.C., March 1977; World Bank, Annual Report 1977; Chile: the Status of Human Rights and its Relationship to U.S. Economic Assistance Programs, Hearings, cit., p. 118.

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106/ World Bank, "Questions and Answers", March 1976, p. 7.

107/ Articles of Agreement of the IBRD, Washington, D.C., February 1975, p. 1.

~~The Bank's lending to Chile has increased steadily since September 1973.~~ 108/

108/ In justification of its refusal to approve assistance to Chile during the Allende administration, the Bank states:

"The report of the [Bank] economic mission that returned October 15, 1971, stated clearly that Chile's economic policies would prevent the effective utilization of Bank lending even if the country were somehow deemed capable of servicing its debt. The mission found that the Government had succeeded in reaching the objectives of raising output and employment and increasing workers' real wages but that this had been accompanied by a reduction in investment, the creation of severe inflationary pressures and a sharp decline in foreign exchange reserves." (World Bank, "Background paper", cit., p. 2).

Chile had a number of projects requiring external financial assistance for which preliminary work was completed early in 1971 in line with World Bank requirements. The Bank acknowledges that three of them, one in the power sector, another for livestock development, and a third for fruit and vineyard processing, were considered capable of being implemented with World Bank assistance. In the case of the first of these, it was the Allende Government's refusal to put up electricity prices - a measure which it felt would put it beyond the reach of poorer Chileans - which the Bank gave as a specific justification for its refusal to approve the loan (ibid., p. 2). The other two were denied support on the basis that:

"At the same time that the nationalization issue was being raised, the Bank was becoming increasingly concerned with Chile's economic policies and the ability of the country to use development funds effectively" (ibid., p. 2).

Criteria related to global economic policies clearly did play some part. Yet the explanation presented above has been widely criticized as hiding an important part of the story. Although the Bank claims "political impartiality", and explains that "under its Articles, the Bank cannot be guided in its decisions by political considerations; they must be based on economic criteria alone" (World Bank, "Questions and Answers", cit., p. 7), a report prepared for the Committee on Foreign Affairs of the United States House of Representatives by the United States Congressional Research Service observes cautiously, in summarizing its account of these developments:

"Given the dominant position of the United States in the World Bank together with evidence now made public regarding United States opposition to Allende's Government, it does not seem unreasonable to suppose that the United States might encourage the World Bank management to limit lending to Chile and that the World Bank might at least be receptive to United States views."  
("The United States and the Multilateral Development Banks", prepared for the Committee on Foreign Affairs by the Foreign Affairs Division, Congressional Research Service, Library of Congress, Washington, D.C., 1974, pp. 51-62).

329. The Bank's evaluation of the economic policies pursued by the Chilean military Government has been extremely positive. In a staff report based on the findings of a World Bank economic mission to Chile in November 1975, the World Bank states in relation to Chile's "shock-treatment" policy:

"The Chilean Government has made the hard austerity decisions required, given its precarious balance of payments and international reserve positions, and has met its international debt service obligations, while at the same time introducing certain fundamental reforms that lay the basis for resuming economic growth. It has gone a long way towards rationalizing the structure of prices, regularizing and rationalizing the public sector budgetary process, and opening the domestic economy to the opportunities and competition of the world economy. It has implemented a major reform of the tax system and instituted significant steps towards the modernization of the financial system. These measures are consistent with the recommendations made repeatedly by the Bank and other international institutions over the past decade." 109/

~~The laudatory approach of staff reports to the economic policies of the Chilean Government has been criticized by, among others, the Scandinavian representative at the Bank's Board Meeting held on 21 December 1976.~~

"Again we are sorry to note that the staff appraisal of the Chilean economy appears to put undue emphasis on what may be regarded as the more positive aspects of economic development in Chile and that the appraisal in its point of focus differs from other information that has recently come to our attention." 110/

330. The increasing lending by the Bank to Chile after 1973, as well as its backing for the extremely controversial economic policies followed by the new Government seem to be at odds with the basic approach of the Bank. As indicated in section 1 above, the IBRD has for some time been promoting the idea that economic development is a concept which cannot be dissociated from social development, and that the latter is not a necessary consequence of the former, as the old "trickle down" theory pretends. However, this approach appears to be absent from the Bank's evaluation of Chile's economic performance since the military Government took power, and in spite of the severely regressive policies applied by that Government in terms of economic, social and cultural rights which are basic to any consideration of social development, the Bank has given those policies an essentially unqualified support.

331. As can be seen in the following table, some \$35 million, representing just over one fourth of total World Bank assistance to Chile in the period 1974-1977, were channelled into projects designed directly to benefit the needy. The bulk of the Bank's lending related to general economic development projects, which came under increasing attack as more governments started adopting human rights-related criteria in decisions on allocations of development aid.

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109/ World Bank, report based on the finding of an economic mission to Chile in October/November 1975, cit., p. iii, para. 8.

110/ "Comments on Lending to Chile", statement by Einar Magnussen, Board Meeting, 21 December 1976.

Table 61

World Bank projects in Chile, approved between 1974 and 1977

Commitment date	Bank funding (Millions of US dollars)	Purpose of project
I. <u>Projects designed directly to benefit economic, social and cultural rights</u>		
May 1975	20.0	To finance purchase of fertilizers, seeds, pesticides by credit for 22 million small farmers. <u>a/</u>
December 1976 (financial year 1977)	25.0	Improvements in agriculture (fruits, vineyards, beef, sheep and dairy products) and 80 agro-industries. To benefit 500 medium-scale and 4,300 small-holder farmers, most of them beneficiaries of the Agrarian Reform. <u>b/</u>
II. <u>Other projects</u>		
February 1974	1.6	Highways (supplement).
February 1974	6.7	Electrical power (supplement).
April 1974	5.25	Preinvestment studies in sectors such as mining, manufacturing, etc.
February 1976	33.0	To support investment undertaken by Chilean copper industry. This will increase foreign exchange earnings to more than \$100 million by 1980.
December 1976 (financial year 1977)	35.0	A loan to ENDESA "to restore reliable electric service".

Source: Contemporary Archive on Latin America, Report, cit., p. D.3c,5.

a/ In a letter of 24 November 1976 to the United Nations, the IBRD pointed out that this loan "was made to help provide short- and medium-term credit to about 22,000 small farmers who are among the poorest 40 per cent of the population. Some 13,000 of them are agrarian reform beneficiaries. The Bank loan is used to finance the purchase of fertilizers, seeds, pesticides, agricultural equipment, spare parts and other on-farm investments. It was designed and is being implemented within the context of agrarian reform, price policies and institutional reorganizations to stimulate agricultural production. One of the relevant measures is the provision of land titles to beneficiaries of the agrarian reform, as certainty of tenure is essential for farmers to make additional investments required for long-term growth". (E/CN.4/1232, annex 1, p. 9.)

b/ World Bank, Annual Report, 1977.

332. It is fitting to stress that both categories of projects have aroused criticisms inside the Bank. Indeed, some States have taken the view that even those projects which on the face of them were designed directly to benefit human rights should not be approved because of the gross disregard of human rights in Chile. Thus, for instance, according to official information, "together with the Governments of other Nordic countries, the Norwegian Government has voted against loans to Chile from the World Bank". 111/ And the Italian Government has stated that:-

"As to economic and financial co-operation within the competent multilateral organizations in regard to loans granted to Chile (World Bank and Inter-American Development Bank), Italy's position has always been negative; in particular, Italy voted against the grant of a loan to Chile in January 1974 and in May 1975 (\$20 million for an agricultural reorganization programme), and it abstained from voting on the decision concerning three other loans to Chile in February (\$33 million) and December 1976 (\$25 million and \$35 million)." 112/

In 1976, at the Board meeting itself, the World Bank Governor representing the Scandinavian countries, Mr. Einar Magnussen, explained those countries' strong opposition to granting the two December 1976 loans, in the following words:

"You, Mr. Chairman, have had the full support of the Nordic countries when you have emphasized the importance of social justice and income equality for the development process. If full attention is not paid to these aspects, I believe it will be difficult to strengthen, or indeed even to maintain, general support for development aid in the countries that I represent.

In our judgment, the policies so far pursued by the present Government of Chile do not, to any satisfactory extent, further a higher degree of equality and social justice to the Chilean people. With decreasing economic activity, high inflation and declining real wages the inevitable result is unemployment, malnutrition and widespread social disruption. The major share of the burden has been borne by the unemployed and the poorest people ...

We regard it as necessary to base the decisions on these matters on an overall judgment of the economic, social and development policies of the Chilean Government. We fail to see that it is meaningful to separate some economic indicators and make a judgment on the basis of these, without due regard for the total economic-social environment ...

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111/ Reply of Norway to the Rapporteur's request for information,  
25 November 1977.

112/ Reply of Italy to the Rapporteur's request for information,  
17 March 1978.



Again we are sorry to note that the staff appraisal of the Chilean economy appears to put undue emphasis on what may be regarded as the more positive aspects of economic development in Chile and that the appraisal in its point of focus differs from other information that has recently come to our attention. In our judgment, we have not received information that warrants new conclusions since the Board last discussed a loan to Chile." 113/

333. The first of the "general development" projects - and the first proposed project for Chile to meet with substantial opposition - was one for the copper industry. As the Bank's appraisal report explains,

"This report appraises a Copper Sector Project in Chile for a proposed Bank loan of US\$ 33 million equivalent, consisting of several sub-projects which are directed primarily toward maintaining the country's copper output, and copper generated foreign exchange earnings, reducing operating costs and - as a by-product of these objectives - marginally increasing Chile's proportion of processed copper. In addition to the specific sub-projects, the loan would include some important technical assistance aimed at strengthening the managements of the two enterprises which are to carry out the sub-projects." 114/

In the "economic justification for the project", the Report acknowledges that the project "will provide very little additional direct employment". 115/ Inasmuch as the project is to help bring technical improvements to the Government-controlled copper industry, without generating new employment, its direct impact on human rights is nil. The Bank neither considered the conditions of work of copper workers in its appraisal of the project, nor conditioned the loan to any socially-related matter. As critics of the loan said, it only helped the Government of Chile obtain foreign exchange advantages, and thus be less vulnerable to the external pressures which urge it to improve its human rights record.

334. When the copper loan was put forward to the Bank's Board, it passed only after very substantial opposition, which in itself is something very rare in the Bank's history. As reported by the Washington Post:

"... 41 per cent of the Bank's members, including most of Western Europe, abstained or voted against ...

~~It was the Bank's only non-unanimous decision of the year, and one of the few in its history. Many member nations opposed to the loan echoed Great Britain, which abstained because of the Chilean Government's position on human rights' ..."~~ 116/

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113/ "Comments on lending to Chile", statement by Einar Magnussen, cit.

114/ World Bank, "Chile, Copper Sector Project: Summary and Conclusions", 7 January 1976, p. 1.

115/ World Bank, "Chile, Copper Sector Project", cit., p. 28.

116/ "World Bank Faces Chile Loan Dispute", Washington Post, 17 December 1974.

335. In December 1976, only two weeks before President Carter's inauguration, the Bank approved two loans, representing \$60 million, for Chile. Once again, the loans aroused enormous controversies, and the vote was divided. The Scandinavian countries opposed it, the Federal Republic of Germany broke ranks with the rest of the European Economic Community by voting in favour, while the other EEC nations abstained. The United States and all Latin American countries voted in favour of the loans. The Bank Governor for Egypt (representing most of the oil-producing and some other Arab countries), who had abstained in the February vote, opted this time for approval. 117/

336. Of the two loans, one, of \$35 million for the electric power system, is similar to that for copper in being directed primarily to economic development rather than to specifically social objectives. 118/

337. The other loan, that of \$25 million for agricultural purposes, is much more socially oriented and could be expected to bring some direct benefits in the sphere of the economic, social and cultural rights of those affected. The livestock, fruits, vineyards and agro-industry credit project is justified in the Bank's appraisal report as being of a high priority

"because it would reduce constraints imposed on the Chilean agricultural sector by the lack of foreign exchange for investments. Removal of this constraint should increase output which would lead to higher exports,

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117/ "World Bank Votes Loans to Chile", New York Times, 22 December 1976.

118/ In a letter dated 16 November 1977, the IBRD replied to the Rapporteur's request for information stating the following about the above loan:

"[This loan] was the World Bank's sixth to the Empresa Nacional de Electricidad S.A. (ENDESA). To tackle the most serious operating problems of ENDESA, the loan provides financing primarily for small generation, transmission and distribution works and for the purchase of equipment and spare parts needed to enable ENDESA to operate more efficiently its power network. The value of restoring reliable electric service to the Chilean economy is high. Most of Chile's industry (including a large portion of the mining sector and most agro-industries) relies, to an increasing extent, on public service electricity supply. The largely electrified railroad system also depends largely on publicly supplied power. ENDESA has been a pioneer in Latin America in providing electricity to lower income groups. Its tariff rates for small residential users, for example, are lower than those charged to larger commercial and residential consumers. Moreover, ENDESA is placing greater emphasis on rural electrification and its rural electrification plan envisages providing electric service to an additional 100,000 rural families (600,000 persons) by 1982. This will increase the percentage of rural inhabitants in Chile having access to electricity from the present 35 per cent to about 50 per cent."

increased domestic consumption, foreign exchange savings through import substitution, increased employment and improvement in the incomes in the poor classes in Chile." 119/

Direct beneficiaries under the project would be (a) some 4,300 small farmers, of whom 2,500 are estimated to own up to 5 hectares; (b) an estimated 500 medium-size farmers; and (c) about 80 agro-industrial enterprises. New employment generated by the project on farms and in agro-industries is estimated by the Bank at around 4,100 jobs.

338. As 20 per cent of the project funds for farm development are specifically earmarked for "minifundistas" (the poorest category of small farmers), and a minimum of \$10 million for this category of farmers is an explicit condition of the loan, that aspect of the project could potentially have a positive impact on the human rights of that section of the rural population in Chile. It is furthermore stated in the Bank's report that "the remaining funds would be extended primarily to the beneficiaries of land reform". As this sector also falls into the lower 30 per cent income group of Chile's population, this aspect of the project appears to aim at benefiting the poor. However, the Bank's appraisal report, in its evaluation of the land reform process, fails to notice the well documented and widely publicized fact that those lands, previously expropriated, which have not been returned by the military Government to their previous owners, have been assigned in a most arbitrary and politically discriminatory way. Peasants accused, rightly or wrongly, of having participated in land occupations under previous governments are automatically eliminated (according to Decree Law 208) as potential beneficiaries in the assignment of land titles. 120/ The Bank might usefully have sought the elimination of such practices in negotiating the project agreement with the Chilean Government.

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119/ World Bank, "Appraisal Report for Livestock, Fruits, Vineyards and Agro-Industry Credit Project", annex 2, Land Reform, November 1976, p. 21. In its letter of 16 November 1977 to the Rapporteur, the IBRD said the following about this loan:

"The aim of ... [this] project is to increase the earnings and improve the living conditions for 500 medium-size and 4,300 small farmers and their families (a total of some 28,000 people). Another 24,600 people are expected to benefit from the project through the creation of new employment possibilities for some 4,100 rural workers at either participating farms and ranches or agro-industries.

Most of the livestock, fruits, vineyards and agro-industry projects' beneficiaries fall into Chile's lowest 30 per cent income group. The majority of the farmers and ranchers expected to participate in the program are either land reform beneficiaries - farming 12 basic hectares of land or less - who were landless rural workers until they received land under the Government's on-going titling programme, or "minifundistas" owning 5 basic hectares of land or less. In order to reach the poorest small farmers, a minimum of 20 per cent of the project's funds are specifically earmarked for participating "minifundistas"."

120/ World Bank, "Appraisal Report for Livestock ...", cit.; Report of the Ad Hoc Working Group to the Commission on Human Rights (E/CN.4/1266), paras. 146-148.

339. At a more general policy level related to the agricultural loan, the appraisal report notes that the number of farm families who would benefit from the agrarian reform declined, in official estimates, from 61,000 in September 1974 to only 43,000 at the time of the report. 121/ There is no consideration of ways in which the Bank might discourage this gradual dismantling of the agrarian reform programme. This is most unfortunate as these policies - leading to a concentration of land and income, the under-utilization of resources and underemployment - are not likely to allow an effective use of development funds, and certainly do not contribute to the implementation of the human rights of Chile's rural poor.

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121/ In fact, the original official target was 90,000 families: El Mercurio, international edition, 21-28 April 1974.

4. Other United Nations agencies

340. Economic assistance to Chile from United Nations agencies has aimed at promoting a wide variety of social and developmental objectives. It has consisted of a large number of generally quite small grants and loans, mostly providing technical assistance for the projects or programmes concerned. Virtually all of this assistance is funded through the United Nations Development Programme, <sup>122/</sup> and administered by the relevant United Nations specialized agency. The yearly amounts of UNDP and other United Nations economic assistance are shown in the following table:

Table 62

Volume of UNDP and other United Nations assistance to Chile  
(Millions of US dollars)

	1971	1972	1973	1974	1975	1976 (estimated)	1977 (estimated)
UNDP	3.4	3.9	3.7	.4	3.2	4.0	4.0
Other UN	-	2.2	.5	-	.2	-	-

Source: Chile: the status of Human Rights and its relationship to U.S. Economic Assistance Programs, Hearings before the Subcommittee on International Organizations of the Committee on International Relations, House of Representatives, 94th Congress, cit., appendix 6, p.118.

~~As can be seen from the table, the aggregate amounts involved are quite small in relation to other sources of foreign economic assistance to Chile.~~

341. The United Nations Development Programme is financed by voluntary contributions from a large number of countries, the principal donors being the United States, Sweden, Denmark, the Netherlands, the Federal Republic of Germany, the United Kingdom, Canada, Norway and Japan. <sup>123/</sup> Its assistance is based on country programmes, which are explained by the UNDP as follows:

<sup>122/</sup> On UNDP, see: Lattré, "Le Programme des Nations Unies pour le développement" Les investissements et le développement économique des Pays du Tiers-Monde (Colloque juridique international, 22-24 Mai 1967), Paris, 1968, pp.268-275; Berthoud, "The United Nations Development Programme: Framework and Procedures", Journal of World Trade Law, 1970, pp.155-191; Zarkovich, Le Programme des Nations Unies pour le développement, Paris, 1970; Daillier, "La réforme du Programme des Nations Unies pour le Développement", Annuaire français de droit international, 1971, pp.483-512; Mushkat, "The Principles underlying the Development Machinery of the United Nations Family" in Verfassung und Recht in Uebersee, 1972, pp.175-185; S. Marchisio, La cooperazione per lo sviluppo del diritto delle Nazioni Unite, Napoli, 1977, pp. 159-198.

<sup>123/</sup> "Fondos no reembolsables de la ONU Asistencia Técnica por US\$ 65 millones", El Mercurio, international edition, 20 October 1976.

"Country Programmes are drawn up on the basis of the level of technical assistance, known as the Indicative Planning Figure (IPF), that UNDP expects to make available to each country over a five-year period. Each country prepares its own programme in consultation with the UNDP and other United Nations agencies that implement UNDP-supported development projects. A country programme specifies the priority development assistance needs of the country concerned and provides the framework within which development projects are prepared and carried out." 124/

342. Two country programmes have been in operation during the period under review. The first covered the years from 1972 to 1976, inclusive, and according to UNDP figures, \$19.2 million in assistance was provided. 125/ A second programme, covering the years from 1977 to 1981, was approved in 1977 for a total of some \$22 million. 126/ UNDP notes:

"The change of government experienced in Chile during the first cycle of Country Programming (1972-1976) and the radical modifications of the national development process initiated by the new government caused a reorientation of certain projects." 127/

No specification of what was involved in this reorientation is given, but it does not appear to have fundamentally affected the nature of the projects and programmes supported.

343. Some States have recently pointed out in the Governing Council of UNDP that in their view the assistance being given to Chile was not consistent with the resolutions adopted by other United Nations bodies criticizing Chile for its human rights situation. Thus, in a letter sent to the Rapporteur on 25 November 1977, to comply with his request for information, the Government of Norway recalled that:

"At the twenty-third session of the Governing Council of UNDP, held in January 1977, the Norwegian representatives and those of the other Nordic Governments in a joint statement made clear that the land programme to Chile did not enjoy their support because of the failure of Chilean authorities to concur with past United Nations resolutions to improve the human rights condition in Chile."

344. In the next paragraphs the Rapporteur will give or reproduce detailed information received by some United Nations agencies. A general and tentative assessment will be made in the last three paragraphs of this section.

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124/ "UNDP Technical Co-operation in Chile", background brief, UNDP, New York, 1976-1977, p.1.

125/ Ibid., p.2.

126/ "Aprobó Organismo de la ONU: US\$ 22 Millones para Programa de Desarrollo en Chile", El Mercurio, international edition, 10 February 1977.

127/ "UNDP Technical Co-operation in Chile", cit.; "Aprobó Organismo de la ONU" cit.; Cables, Inter-Press Service, 15 November 1977; Chile Committee for Human Rights, "United Nations Development Programme - Aid to Chile," London, 12 August 1977.

345. In its answer of 23 November 1977 to the Rapporteur's request for information, the International Labour Organisation (ILO) has provided the following information:

- "a. The ILO's technical co-operation to Chile is provided within the context of the basic agreement signed by the Government of Chile and the United Nations Development Programme on 15 January 1957.
- b. At present the ILO has under execution the second phase of Hotel, Restaurants and Industrial Catering Personnel Training project (CHI/76/014), approved under the 1977/81 UNDP programming cycle. This project is the continuation of project CHI/74/019 approved under the 1972/76 UNDP programming cycle. Co-operation is provided to the National Institute for Professional Training (INACAP) which established in 1977 a Hotel School for the training of hotel personnel at the intermediate and higher levels as well as hotel training instructors; this school was established by INACAP in agreement with the representative organizations concerned in the economic sector namely the National Tourism Directorate, the Ministry of Economy, and Hotelera Nacional S.A., which is affiliated to the Production Development Corporation for which UNDP's assistance had been requested and for which the ILO was designated as executing agency.
- c. With UNDP financing the ILO has also provided assistance to the Experimental Centre for Vocational Training (CHI/74/021) in the form of an ILO expert on applied sciences, and equipment to the value of approximately 50,000 dollars has been provided since 1972.
- d. Again with UNDP financing and through the activities of the regional projects in Latin America and the Caribbean, assistance has been given in the fields of employment, vocational training and labour administration and within the context of assistance provided by the ILO to the Conference of Ministers of Labour of the Andean Group countries (while Chile was a member).
- e. Under the ILO's regular budget technical assistance funds administered by its Regional Office for Latin America in Lima, the ILO is now providing assistance to the University of Chile for the introduction and organization of post-graduate courses in the Department of Industrial Relations and for a seminar for the Department's staff; it is foreseen that in the beginning of 1978 similar assistance will be provided for the preparation of a post-graduate course on Labour Relations and Human Resources Planning and for a fellowship provided by the ILO's International Institute for Labour Studies."

346. In replying to the Rapporteur's request for information, the World Health Organization (WHO) transmitted on 30 November 1977 an extract from WHO's Proposed Programme Budget for 1978 and 1979 (Official Records No. 236) related to the Organization's collaboration with Chile. The following data are relevant to the present report:

(1) Child care

"PAHO/WHO, UNICEF and UNFPA have provided valuable assistance in maternal and child care programmes."

(2) Nutrition

"With the assistance of PAHO/WHO, UNICEF and the Ford Foundation, a continuing survey of the nutritional status of the population has been organized to measure the progress of programmes and direct them where they are most needed. A ministerial commission has been established for planning, programming and implementing nutrition policy. Among the most important measures now being enforced are promotion of breast-feeding; feeding of children under two years of age with whole powdered milk and children of two to five years of age with high-protein foods; compulsory enrichment of the protein-content of baby foods sold in stores; feeding of protein mixtures to pregnant and nursing women; and development of industrial plants to produce protein foods. PAHO/WHO is co-operating in these activities."

(3) Dental care

"Owing to the high incidence of dental diseases, the Government is giving serious consideration to oral hygiene programmes, extension of fluoridation of drinking-water, dental education, and promotion of dental care. PAHO/WHO is cooperating in these activities by a regional programme of assistance to the country's dental schools, and by the establishment of a centre of oral pathology."

(4) Disease prevention and control

"The Ministry of Health places great emphasis on immunization programmes, with the aim of maintaining the low incidence of acute communicable diseases. It has received substantial technical assistance from PAHO/WHO...

... Bovine tuberculosis and brucellosis cause substantial economic losses and diminish available protein. Hydatidosis is the most widespread animal disease affecting humans. Anthrax is also a problem. Rabies on the other hand, which was rampant throughout the country a few years ago, is restricted now to two foci, and its incidence in animals and humans has substantially declined; a programme is under way, with the technical assistance of PAHO/WHO, to stamp it out permanently. The Ministry of Agriculture has drawn up plans for programmes to control zoonoses that primarily affect cattle."

(5) Medical education

"Basic diagnostic equipment for medical students is costly, generally imported, and beyond the financial reach of most students. PAHO/WHO is cooperating by providing a system of financing which will bring that equipment within reach of all students. Since the programme was very well received when initiated on an experimental basis, it is hoped that it will be permanently incorporated into the services provided by PAHO/WHO in medical education."



...

As is the case in most Latin American countries, a great many students of the health sciences cannot afford textbooks because of their high price. PAHO/WHO is helping by publishing selected textbooks at cost, a programme which at present benefits medical and nursing students.

In order to encourage better utilization of the library resources in the country, strengthen medical libraries, and establish programmes for the dissemination of scientific information in the health sciences, an agreement has been concluded between the University of Chile, the Medical College, and the Ministry of Health to create a nationwide medical information and documentation network. PAHO's Regional Library of Medicine is participating in this programme."

347. In its reply to the Rapporteur's request for information, the United Nations Educational, Scientific and Cultural Organization (UNESCO) gave on 29 November 1977 the following information on the UNESCO programmes carried out in Chile since 1973:

"I. REGULAR PROGRAMME

The Regional Office for Education in Latin America, established in 1963, is at Santiago.

At the request of the authorities, experts from the Regional Office have worked in the following fields: information and statistics, innovations in the curriculum, project evaluation, educational technology, planning, occupational training, educational research, adult education and education/population relations.

The project on the access of women to medium-level technical careers, in progress since 1967, was completed in April 1974 (1 expert 48 m/h, 4 fellowships, 1 consultant and equipment).

Assignment of a consultant in connexion with the Andean subregional meeting of government experts on science policy to determine priority sectors for cooperative projects in the field of research and related scientific services (1975).

Assignment of a consultant in connexion with MAB programmes in the Andean subregion (1976); preparation of project MAB 3.

One contract: Special Patterns and Regional Structures in Chile; \$1,000 (1976).

One contract: "The Family in Latin America: Construction of a Typology, the Case of Chile"; \$5,000 (1977).

One contract: "Text on Ecological Zoology": \$4,000 (1977).

Development of adult education; assistance to the national tele-education programme; \$5,000 (1977-1978).

Participation Programmes

	<u>Requests approved</u>	<u>Amount</u>
1973-1974	4	\$18,850
1975-1976	8	\$32,000
1977-1978	6	\$29,500

"II. UNDP

(a) Country programming

In the first programming cycle (1972-1976), only one project had been implemented up to the end of December 1975:

Training of Educational Administrators, CHI/68/529 (\$871,844).

In the second programming cycle (1977-1981) approved by the Governing Council in January 1977:

Human Resources Planning, CHI/76/001 (\$400,000), project document in preparation;

Improvement of Education (\$450,000), pipeline;

Special Educational Programmes for Minors with Learning Problems (\$400,000), pipeline;

Scientific and Technological Exchange, CHI/77/004 (\$7,030), in progress; Study and Development of Scientific Projects and Policies (\$200,000), pipeline;

Strengthening of Programmes of Post-Graduate Studies in Exact Sciences (\$450,000), pipeline;

Study of Chilean Flora and Fauna (\$300,000), pipeline.

(b) Regional projects

The activities of the Latin American Social Science Faculty (FLACSO) were decentralized at the end of 1975 and only its Institute of Social Research (ICIS) remains at Santiago. Support project RLA/68/517, now RLA/75/095, is no longer based at Santiago.

RLA/74/018. Project concerning arid zones (1 consultant 4 m/h), completed in 1976;

RLA/71/307. Regional Employment Programme for Latin America and the Caribbean (OREALC). ILO project with one UNESCO expert (January 1974-January 1977);

RLA/76/014. Andean University and Production Sector, 1977-1978; sub-contract with the University of Chile (\$10,000);

RLA/74/024. Education and Development in Latin America and the Caribbean, 1975-1979; Chile Participates in the project (\$703,971);

RLA/76/006. Regional Programme for Post-Graduate Training in Biological Sciences, 1975-1978; project based in Chile (\$940,000).

III. ~~IBRD/UNESCO~~

Agricultural education project (\$508,000) backed by the loan of \$7 million granted by IBRD; 1975-August 1976 (2 experts)."

348. In its reply of 13 January 1978 to the Rapporteur's request for information, the Food and Agriculture Organization (FAO) has limited itself to pointing out that "FAO programmes in Chile consist almost entirely of UNDP-financed projects approved by the UNDP Governing Council and falling within the programming periods 1972-1976 and 1976-1981."

349. In its reply of 14 November 1977 to the Rapporteur's request for information, the International Civil Aviation Organization (ICAO) has noted that:

"The only technical assistance project executed by ICAO in Chile is a UNDP/ICAO project for the improvement of air navigation services provided for Civil Aviation. This project, which started in 1969 and will terminate in 1978, is aimed at improving the safety of Civil Aviation services, and does not therefore appear relevant to the [present] study."

350. In its reply to the Rapporteur's request for information, the International Telecommunication Union (ITU) stated on 9 November 1977 the following:

"The assistance provided to Chile through the ITU has been designed for the improvement and development of telecommunications. This assistance has been financed by the UNDP as follows:

1973	-	\$ 32,000
1974	-	\$260,000
1975	-	\$295,000
1976	-	\$126,000
1977	-	\$ 60,000

Also in the field of telecommunications the Empresa Nacional de Telecomunicaciones (ENTEL) has benefited from financial assistance through the Interamerican Development Bank (IDB). This assistance has amounted to \$35 million and has been employed for the extension of the microwave radio backbone south from Santiago and the installation of a satellite earth station in the south of the country.

In April 1977 the "Fundación Chile" was created having as objectives, inter alia, to assist the telecommunication sector and conduct applied research in the telecommunication field. This Institute will be financed by a contribution of \$25 million over a period of ten years by the International Telegraph and Telephone Company (ITT) and a further \$25 million from the Chilean Government."

No explanation is given for the striking increase in the assistance in the year 1974, and for its gradual decrease after 1975.

351. In its reply to the Rapporteur's request for information, the Universal Postal Union (UPU) stated on 25 November 1977 the following:

"1. Up to now, the present Government of Chile has not included postal services among the sectors to receive technical assistance under the UNDP country programme.

2. Aid supplied

From 14 February to 31 March 1976, the Chilean Postal Administration benefited from the services of a UPU consultant-specialist, with costs paid by UPU, in the following fields:

Analysis of the structures and operating rules of the postal service;

Preparation of postal development plans;

Postal training: survey of the situation, evaluation of needs and means of meeting them, preparation of training plans.

RLA/71/877. Symposium on Personnel Management in Postal Administrations, Bogotá, 18 February-1 March 1974: 1 fellowship.

RLA/72/066. Course on modern postal management techniques, Buenos Aires, 26 October-6 December 1977: 1 fellowship.

FS/UPU 1977. One fellowship for general training: five months.

3. Aid planned

Chile is one of the countries which is to benefit from the following regional projects scheduled to begin in 1978:

RLA/77/009: 'Regional courses in high-level postal specialization', Buenos Aires (8-week courses).

RIA/77/011: 'Improvement, development and integration of postal services', the main purpose of the project being to improve postal communications in the countries of the region, at the regional, subregional and local levels."

As for the possible impact on human rights of the assistance provided by UPU, the Union pointed out the following:

"UPU considers that the improvement of postal services is bound to promote the observance of human rights and that technical assistance in this field cannot in any case be misapplied for purposes contrary to such rights".

352. Most of the aforementioned projects are clearly designed to have a direct and positive impact on the social, economic or cultural rights of those affected. Some of them appear to aim particularly at assisting individuals from the more needy sectors of Chilean society. For a correct assessment of the real impact of these projects, however, two facts should be borne in mind: (a) the paucity of this form of assistance, in relation to other sources of foreign economic assistance to Chile (see supra. para. 340); (b) the general socio-economic context in which this assistance is actually utilized in Chile, a context that renders it of relatively scant relevance to the effective promotion of human rights in Chile (see supra., chapter I).

353. In a number of cases, such as finance for administrative reform, agricultural technology and industrial banks, the possible impact on human rights is not apparent, and the Rapporteur lacks adequate evidence from which to reach any definite conclusion. On the whole, he suspects that this category of assistance would be found to have considerably less direct positive impact on human rights, including much less of a tendency to benefit the needy in particular.

354. In the remainder of cases, no directly positive human rights impact appears to exist or be intended beyond possible longer-terms benefits from any economic development promoted. Such cases include assistance for the telecommunication sector, for uranium prospecting and for a mineral and metallurgical centre, and a fellowship in oceanography.

##### 5. Inter-American Development Bank

355. The Inter-American Development Bank (IDB) was created in 1959, when the Latin American countries wanted a regional bank to promote activities which would increase regional economic interaction and improve access to sources of external capital. However, social considerations were not foreign to the project, and in the Agreement establishing the Bank it is explicitly stated that:

"The purpose of the Bank shall be to contribute to the acceleration of the process of economic and social development of the regional developing member countries, individually and collectively." 128/

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128/ Inter-American Development Bank, "Agreement Establishing the Inter-American Development Bank", Washington, D.C., 1977, p.1. On the subject of the Bank, see: W.G. Friedmann, G. Kalmanoff, R.F. Meagher, International Financial Aid, New York and London, 1966, pp. 113-124; Kruse-Roenaker, Die Interamerikanische Entwicklungsbank, Hamburg, 1968; Dell, The Inter-American Development Bank: A Study in Development Financing, New York, 1972.

As a document prepared by the United States Congressional Research Service puts it,

"The single most important reason for Latin American interest in creating a regional development bank was the deep dissatisfaction with the operating style and requirements of the World Bank... the desire to have an institution specializing in Latin American development, which would place greater emphasis on innovative social and economic programming than had occurred in the IBRD, with its more orthodox and conventional banking approach." 129/

356. Emphasis was initially put on social projects and on modernization of industry and agriculture. But as time passed, IDB increased its lending for economic infrastructure, and given the reverse process taking place at the World Bank both institutions have come to relatively similar lending patterns at present. The change of orientation of many Latin American governments during the last decade or so is probably among the factors behind the Inter-American Development Bank's moving away from social development projects in lending priorities towards more conventional "bankable" projects.

357. The IDB increased its economic assistance to Chile very substantially after 1973. In 1974, IDB granted its largest ever volume of loans to Chile, amounting in all to \$97.3 million; this represented, in a single year, more than five times the combined volume of loans that that institution granted to Chile during the three years of the previous Government. The fluctuations in total allocations to Chile can be seen in the following Table:

Table 65  
Loan agreements

Year	Millions of US dollars
1970	45.6
1971	12.0
1972	2.1
1973	5.2
1974	97.3
1975	70.9
1976	70.0
1977	24.5

Source: Inter-American Development Bank, Annual Report, 1974, 1975, 1976, 1977, Washington, D.C., 1975-1978.

129/ Library of Congress, Congressional Research Service, Foreign Affairs Division, for the Committee on Foreign Affairs, "The United States and the Multilateral Development Banks", Washington D.C., 1974, pp.18-19.

358. Apart from the United States' influence in IDB's lending policy - an influence that was particularly great, as far as Chile is concerned, in the 1973-1976 period - an important element explaining the radical changes in lending to Chile is the shift in outlook of Latin American governments since the middle 1960s. When the Carter administration drastically changed United States policy in relation to Chile, it was thanks to Latin American votes that a \$24.5 million loan for the construction of bridges was approved in December 1977. As El Mercurio reported, "the operation was approved in spite of the fact that the United States and Venezuela (34.6 per cent and 7.5 per cent of the votes), pronounced themselves against it. West Germany (2.5 per cent) abstained." 130/

~~359. As indicated in the previous paragraph, there has recently been a shift in the attitude of the United States and other countries in the IDB vis-a-vis Chile. These countries are increasingly taking a negative attitude towards Chile because of its human rights record.~~

360. When the loan referred to above (para. 358) was approved, the United States representative, according to El Mercurio, did not explain the reasons for his negative vote. It must, however, be recalled that a United States Congressional resolution against governments systematically violating the human rights of their people requires the casting of a negative vote in relation to any IDB project where it cannot be demonstrated that the money would benefit the neediest people. 131/

361. Furthermore, in its reply to the Rapporteur's request for information, the Government of Italy stated on 17 March that:

"In the Inter-American Development Bank also, which Italy formally joined only in May 1977, the position adopted with regard to the grant of two loans to Chile, considered by the Board of Executive Directors in October 1977, was as follows: abstention on an integrated technical assistance programme which also includes Bolivia and Peru, and a vote against the grant of a loan of \$20 million exclusively to Chile."

It is apparent from the context of the Italian reply that this attitude was taken by Italy because of the human rights situation in Chile.

362. As indicated in section 1 above both IDB and the World Bank have dedicated roughly a quarter of their lending to Chile since 1973 to projects directly related to promoting the economic, social and cultural rights of Chile's poor. The following table provides a full list of the projects for which IDB funding has been agreed since 1974, classified according to this consideration.

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130/ El Mercurio, international edition, 4-10 December 1977.

131/ In its 1977 Annual Report, however, IDB asserts that the "Replacement of Road Bridges" loan is geared "to improve the transportation for low-income sectors" (Inter-American Development Bank, Annual Report, 1977, IDB, Washington, D.C., 1978).

Table 64  
IDB loans to Chile, 1974-1978

Commitment date	Bank funding (Millions of US dollars)	Purpose of project
I. <u>Projects directly related to human rights</u>		
May 1975	25.2	Housing programme to improve conditions of marginal urban communities in Santiago and Concepción.
July 1976	38.0	Irrigation in La Digua and Maule Norte to benefit low-income peasant families.
December 1976	7.5	Potable water for 150 rural communities.
March 1978	14.0	Rural health programme.
II. <u>Other projects</u>		
May 1974	75.3	Expansion of hydroelectric plant in Laja river basin.
May 1974	22.0	To help finance the present Government's agricultural recovery programme.
March 1975	10.0	To spur industrial development.
July 1975	35.5	Telecommunications expansion programme.
October 1975	0.23	Technical co-operation.
September 1976	1.5	Export financing for non-traditional exports.
August 1976	21.0	Credits for industrial development.
December 1977	24.5	Construction of bridges.

Source: Inter-American Development Bank, Annual Reports, 1974 to 1977, cit.;  
"Chile: Rural Health", IDB News, vol. 5, No. 2, April 1978.



363. Since 1973, Chile has received a number of loans for social infrastructure projects which were aimed at having a direct, positive impact on the poor: a \$25.2 million loan to help finance a housing programme to improve the conditions of marginal urban communities in Santiago and Concepción was approved in May 1975; a \$38 million loan for irrigation work in La Digua and Maule Norte to benefit low-income peasant families was approved in August 1976; a \$7.5 million loan for potable water in rural communities was agreed in December 1976; and as recently as April 1978, the latest project to be financed by IDB in Chile is a rural health programme for which IDB will contribute a loan of \$14 million.

364. These kinds of projects considered per se, namely, without reference to the general socio-economic context in which they are actually carried out, should have a direct, positive impact on the economic, social and cultural rights of sectors of Chilean society which are among the most affected by the policies of the military Government, as the following brief account of the last project mentioned illustrates.

365. The objective of this programme, as stated in the IDB project report, is "to improve the health services of the neediest populations in the rural sectors of the country", 132/ and as publicly announced,

"The Programme embodies the construction and equipping of seven rural health centres, with from 20 to 90 beds each, providing full medical services; 13 outpatient clinics, and 195 rural health posts staffed by auxiliaries providing elementary care and assistance to rural communities!"133/

The rural health centres are expected to serve a current population of about 184,000 people, and the outpatient clinics, based in towns of fewer than 5,000 persons, should certainly improve the quantity and quality of preventive and curative services provided to people living far away from the main urban centres, where most of the health facilities are located.

366. However, given the Chilean Government's health policy, this programme's potential impact is likely to be considerably curtailed. This is probably the reason why both Venezuela and the United States voted against this loan at the relevant meeting of IDB's Board of Directors, and why a group of European countries including the Federal Republic of Germany, Sweden, Italy, Belgium, the Netherlands, Denmark, Finland and the United Kingdom, abstained. 134/ Between 1971 and 1976, the national health budget was slashed by 50 per cent, from US\$ 459.2 million to US\$ 230.5 million, while the population increased by one million. As a consequence, not just the quantity but also the quality of the health services provided has dramatically declined: staff shortages are critical, medicines have been severely cut, etc. 135/

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132/ International Development Bank, Project Report.

133/ "Chile: Rural Health", IDB News, vol.5, No. 2, April 1978.

134/ See "Préstamos del BID para Chile", El Mercurio, International edition, 3 March 1978.

135/ See chapter I, supra.

367. In these circumstances, it is regrettable that the matching funds requested from the Chilean Government in this health programme are equivalent to only \$12.3 million, that is, not even 50 per cent of the over-all costs of the programme. The impact of the project in terms of improving health facilities for the needy could probably have been increased by demanding a higher contribution from the Chilean Government towards it. In this sense, IDB could have used its financial leverage to stimulate a sounder allocation of resources in terms of Chile's economic and social development, as its Articles of Agreement demand. Out-patient clinics, for instance, are not likely to have the desired effect in improving the health service in rural areas, if medical visits to the clinics have to be reduced because of the drastic contraction of resources allocated to health, as the following table illustrates:

Table 65

Medical visits in out-patient clinics of the national health service

Provinces	Total visits		Difference	
	1973	1975	Number	Percentage
Nuble, Concepción, Arauco and Bío-Bío	1,198,628	1,136,603	- 62,025	- 5.2
Malleco and Cautín	454,296	369,622	- 84,674	- 18.6
Valdivia, Osorno, Llanquihue, Chiloé, Aysen	737,985	596,525	- 141,460	- 19.2

Source: "Instituto Nacional de Estadística", Estadísticas de Salud, vol. 1; "Ministerio de Salud, Unidad de Planificación," Algunas Actividades y Recursos del Sector Salud, 1975, September 1976.

Similarly, unless modifications in Chilean economic policies are demanded, in order at least to restore past levels of State investment for social infrastructure and social services, international assistance in such areas will be just a palliative, partially replacing resources previously provided by the Government, and not really contributing to increased social and economic development.

368. Besides adequate nutrition, basic sanitation (which includes the provision of potable water and sewage systems to the rural and urban poor) is one of the most essential needs in terms of improving health levels in developing countries. The \$7.5 million approved in December 1976 for potable water in 150 rural communities would thus, on the face of it, seem to be likely to bring particular benefit to the needy. However, in this case again it is to be feared that owing to the Chilean Government's policies, the impact of this assistance on the levels of health of the middle- and low-income groups in that country will be severely reduced. Mr. Hugo León Puelma, the Chilean Minister for Public Works, explained in an interview with El Mercurio in 1978 that within the Government's plan for economic recuperation,

"and as I said to the Press when I was appointed, the success of my performance as a Minister was going to be measured by what I did not do. Obviously, this is an antithesis, since the Minister for Public Works is there to make things; but the critical situation that we were facing from a financial point of view was such, that at that moment success had to be measured in terms of not making things." 136/

In Mr. León Puelma's terms, the Chilean Government was certainly successful, as can be gauged from the figures of total investment in social infrastructure by the Ministry of Public Works (including finished, unfinished and programmed works), from 1974 to 1976. 137/

369. The economic infrastructure has suffered a similar fate. Investment in this sector by the Ministry of Public Works fell from \$257 million in 1974 to \$132 million in 1975 and only \$20 million in 1976, which is not sufficient to ensure minimal levels of maintenance of the existing infrastructure, let alone improvements. Mr. León Puelma acknowledged, for instance, that:

"in the Camino Longitudinal [the Pan-American Highway] - which runs some 3,300 kilometres between Africa and Quellón - there are 1,400 km destroyed and the rest is fast getting destroyed because of lack of conservation and obsolescence." 138/

~~370. In these circumstances, external economic assistance such as the IDB loan for \$24.5 million approved in December 1977 for the construction of bridges, is clearly replacing and not supplementing the Chilean Government's responsibilities.~~

371. In addition to social and economic infrastructure projects, IDB finances projects in industry and agriculture. As in the case of the World Bank, some of these projects are designed directly to enhance the productive activities of the needy. Thus, the \$38 million loan granted by IDB in August 1976 for irrigation and farm development in La Digua and Maule Norte, including credit to farmers, would, according to IDB, benefit "about 2,500 low-income farm families and co-operatives in the region and ... contribute to increased farm productivity". 139/

136/ "Informe Económico", No. 31, El Mercurio, March 1978, p.13.

137/ Investment in social infrastructure by Ministry of Public Works

Year	Total investment (Millions of US dollars)
1974	60.9
1975	43.7
1976	11.5

Source: "Informe Económico", No. 31, El Mercurio, March 1978, p.12.

138/ "Informe Económico", No. 31, cit., pp. 12-14.

139/ Inter-American Development Bank, Annual Report, 1976, cit., p.55.

372. Other loans could, in principle, indirectly benefit the economic, social and cultural rights of Chile's underprivileged. An example is the \$10 million loan for industrial development, granted in March 1974, designed "to help CORFO [Chile's national development corporation] carry out an industrial rehabilitation programme through credits to medium and large-scale industrial enterprises". 140/ Given the Chilean Government's labour policies (see supra, chapter I, paras. 147 ff.), and the failure of the Bank to include any sort of conditions attached to the loan relating to labour conditions, it seems reasonable to regard with some scepticism the ability of this kind of loan to contribute to the improvement of the human rights situation in Chile.

373. The \$10 million industrial development loan was IDB's alternative proposal to Chile's request for a US\$ 40 million loan. IDB then stated that "once a satisfactory degree of progress had been made on the first stage, an additional loan for partial financing of a second stage of the programme could be requested". 141/ Chile presented a loan application corresponding to this second part of the programme in April 1977, requesting approximately US\$ 35 million for a Global Industrial and Tourist Credit Programme. A mission of IDB visited Chile in June 1977 to study the proposed operations and evaluate the results of the first stage of the programme already financed. It concluded in principle that "the total amount of credit which CORFO could mobilize would be equivalent to US\$ 36 million of which approximately US\$ 20 million would be in foreign exchange for fixed capital", 142/ and suggested that the latter sum would be the most appropriate IDB contribution to the programme. Although the Chilean Government announced in October 1977 143/ that the loan was to be granted in April 1978, this did not materialize, and as yet the loan has not been approved. Given the characteristics of the programme, it would be surprising if the United States approved it, in view of the Congressional mandate to approve only those loans where it can be demonstrated that the funds would benefit the needy. In chapter 5 (programme execution), point 5.03 (eligible beneficiaries), of the programme appraisal, it is stated clearly that "All medium and large private enterprises in the industrial sector and the tourism sector will be eligible to receive credit under the program". However section 6 of the programme appraisal (justification of the programme) states that "by helping manufacturing industry to recover, the program would also be of direct assistance in the generation of jobs", although on this matter the report is not as precise as in others - "a rough estimate indicates that the program could generate as many as 1,600 additional job jobs". 144/ No specific conditioning on levels of minimum additional employment is included among the conditions to sub-lenders, and besides the one mention of employment, no other social consideration is included in the project report of IDB's staff.

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140/ Inter-American Development Bank, Annual Report, 1975, cit., p.62.

141/ Inter-American Development Bank, "Project Report: Global Industrial and Tourist Credit Programme", Washington, D.C., ---

142/ Ibid.

143/ "Crédito para Turismo dará el BID a Chile", El Mercurio, international edition, 5 October 1977, p.6.

144/ Ibid. (emphasis added).

6. Andean Development Corporation

374. The Andean Development Corporation (CAF) is a multilateral financial institution formed by the member countries of the Andean Pact. Before withdrawing from the Pact, Chile received the following total amounts from CAF:

Table 66

<u>Loans from CAF</u>	
(Millions of US dollars)	
1972	5,000
1973	13,660
1974	4,410
1975	11,940
1976	6,188
TOTAL	<u>41,198</u>

Source: "Retiro del Pacto Andino", El Mercurio, international edition, 31 October - 6 November 1976, p.1 (based on figures of the Chilean Central Bank).

CAF was formed to help finance the co-ordinated industrial development plans being developed within the framework of the Andean Pact, and the 23 loans of which the totals in table 66 are composed were all for governmental or private productive enterprises, rather than for infrastructural projects or social services. Any benefits to economic, social and cultural rights in Chile would, as in other such assistance, be essentially incidental. It is nevertheless worth noting that the kind of economic development contemplated through the assistance of CAF was at variance with the policies of Chile's new military Government. Chile's withdrawal from the Pact was officially explained as follows:

"Chile withdrew today from the Andean Pact, which it helped to create in 1969, after not having been able to make its own financial plans and economic policies compatible with those of the other five members of the subregional organization." 145/

In August 1977, Chile officially announced its retirement from CAF, and the Chilean Central Bank bought CAF's full portfolio of Chilean loans. 146/

145/ "Chile se hace cargo de deudas por 15 millones de dólares", El Mercurio, international edition, 14 - 20 August 1977, pp. 72-73. On Chile's attitude towards the Andean Pact see, more generally, F. Orrego Vicuña, "Esta Chile dentro del Proceso de Integración?", Derecho Financiero (Bogotá), vol. II, No. 1, primer semestre 1976, pp. 105 - 112.

146/ "Chile formalizó retiro de la CAF", El Mercurio, international edition, 7 - 13 August 1977, and El Mercurio, international edition, 14 - 20 August 1977, cit. supra.

D. Economic assistance from private entities

1. Overview

375. The most striking feature of private economic assistance to Chile is that it suddenly increased in 1976 and soon reached a tremendous volume. It is reasonable to assume that this massive inflow of private financial resources was primarily due to the decision of many governments and intergovernmental agencies to eliminate or reduce economic assistance to the Chilean authorities because of the gross violations of human rights occurring in Chile. Thus, resort to foreign private financing has turned out to be a means of circumventing the human rights-oriented policy of some foreign public institutions.

376. It must be stressed that the greatest amount of foreign economic support has been granted by private multinational banks in the form of loans. The whole situation is graphically described in a report prepared by the Washington-based "Transnational Institute". It is stated there that:

"In 1976, when the U.S. Congress put a \$27.5 million ceiling on future assistance to Chile, private bank loans to Chile increased more than 500 per cent over the previous year to \$520 million. Total private loans skyrocketed again to \$858 million in 1977. In 1978, borrowing from private foreign sources will reach nearly \$1 billion.

U.S. private banks have provided \$927 million of the approximately \$1.5 billion of Chile's total private borrowing since 1973. By 1978, private creditors will account for over 90 per cent of Chile's total borrowing." 147/

377. In most cases, economic assistance from private entities - including in this category loans, investments and suppliers' credits - ~~has not proved to be beneficial in terms of its contribution to the restoration of respect for human rights in Chile.~~ Given the fact that the basic motivation of the commercial sources for all three of these forms of economic assistance is the maximization of profit, the impact of such assistance on basic human rights such as those relating to education, health, nutrition, housing and employment does not normally constitute an element of concern to these sources. 148/

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147/ I. Letelier and M. Moffitt, "Human rights, economic aid and private banks: the case of Chile", study published in the U.S. Congressional Record, 95th Congress, second session, vol.124, No.54, 4 May 1978, p.4 (hereafter cited as Letelier-Moffitt (1)). See also the more detailed study, with the same title, by the same authors (Washington D.C., April 1978), pp.19-20 (hereafter cited as Letelier-Moffitt (2)).

148/ This account omits, as being outside its terms of reference, economic assistance by charitable bodies, specifically earmarked for objectives such as the legal defence of political prisoners, children's soup kitchens and the like, and distributed by non-governmental charitable organizations such as the Chilean Red Cross, the Vicaría de la Solidaridad, FASIC, etc.; the benefits to human rights brought about by such assistance have received universal recognition.

2. Private loans

378. As stated above (paras. 375-376), private multinational banks have become the most important source of financial backing for the Chilean Government since 1976, as can be seen in the following tables:

Table 67

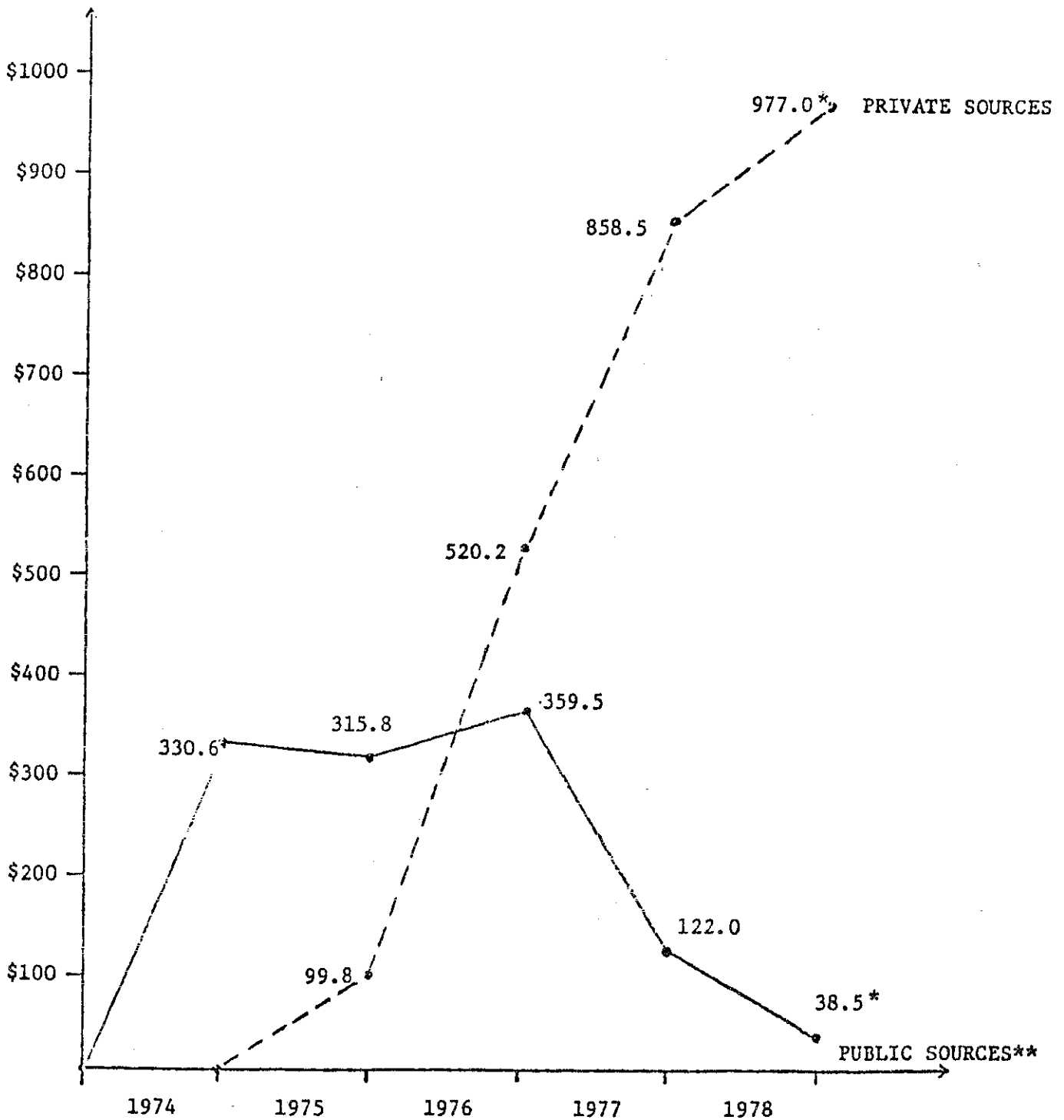
Relative importance of private bank loans, 1974 - 1977  
(millions of US dollars)

	1974	1975	1976	1977
Bilateral Government assistance	796.5	449.0	109.6	40.0
Multilateral Development assistance	115.6	106.2	114.9	89.5
International Monetary Fund	36.2	266.4	140.6	---
Supplier credits	271.5	178.3	147.6	39.3
Private bank loans	29.9	91.8	315.5	695.4
TOTAL .....	861.6	760.0	815.2	859.7
Private bank loans as a percentage of the Total	35	12	39	81

Source: As already mentioned (para. 256) there is no public account providing a complete and reliable set of statistics concerning loans by private banks. The Rapporteur has tried to keep as closely as possible to the figures provided in a computer print-out by the World Bank, including figures outstanding as of 31 December 1976. However, this print-out contains some obvious insufficiencies. It indicates, for instance, a total of only \$38.4 million in private bank credits to Chile in 1975, thus failing to include the \$53.4 million in bonds placed through Salomon Brothers (United States) in April 1975. Adding the two figures gives a total of \$91.8 million which is quite close to the estimate of \$99.8 million provided by Isabel Letelier and Michael Moffitt in their study. The bonds figure has been added also to the Total column. In 1976, as explained above (para. 256), to the \$115.5 million indicated in the World Bank print-out has been added the \$200 million in Eurocurrency credits for Chile in that year, as publicized by Euromoney, giving a figure of \$315.5 million. Letelier-Moffitt estimated the figure to be \$520.2 million. Again, the \$200 million has also been added to the figure for total credits given by the World Bank print-out (US\$ 615.2 million). For 1977, all figures come from a computer print-out from the Chilean Central Bank, and have been left untouched.

Table 68

Chile's foreign borrowing, 1974-1978  
(Millions of US dollars)



Source: I. Letelier and M. Moffitt, "Human rights, economic aid and private banks - the case of Chile" (Washington, D.C., April 1978), p. 14.

\* Projected.

\*\* Public Sources include only United States bilateral aid, multilateral development assistance, and drawings on the resources of the IMF. Does not include non-U.S. bilateral assistance.



Table 69

Selected private multinational bank loans to Chilean Government since 1974  
(Millions of US dollars)

Date	Amount	Government agency	Leader of bank group
April, 1975	53.4(bonds)	CORFO (development corporation)	Salomon Brothers (US)
May, 1976	125.0	Central Bank	Bankers Trust Co. (US)
June, 1976	5.0	Central Bank	First Wisconsin (US)
October, 1976	25.0	ECA (agriculture)	Libra Bank (UK)
December, 1976	21.0	Central Bank	Sudamerikanisch (Federal Republic of Germany)
January, 1977	10.0	CORFO	Morgan Guaranty Trust (US)
February, 1977	10.0	Min. Obras Publicas (Transportation)	Banque Nationale de Paris (France)
March, 1977	41.0	CORFO	Various sources
March, 1977	10.0	CORFO	Morgan Guaranty Trust (US)
March, 1977	10.0	CORFO	Bank of Nova Scotia (Canada)
April, 1977	55.0	CAP (steel)	Bankers Trust Co. (US)
April, 1977	21.0	Central Bank	Deutschbank (Federal Republic of Germany)
April, 1977	30.0	ECA	Citibank (US)
May, 1977	10.0	CORFO	Bank of Nova Scotia (Canada)
May, 1977	2.0	NA	Manufacturers Hanover Trust (US)
June, 1977	75.0	Central Bank	First Chicago (US)
June, 1977	42.0	ENAP	Various sources
June, 1977	12.0	D.G. Metro	Banque Nationale de Paris (France)
June, 1977	100.0	CODELCO (copper)	Chemical Bank (US)
July, 1977	5.0	CORFO	Marine Midland (US)
August, 1977	5.0	LAN Chile (airline)	Bank of America (US)
September, 1977	2.5.	CAP	First Inter-American Corporation (US)
September, 1977	42.0	ENAP (petroleum)	Citicorp (US)
December, 1977	12.0	Disputado de las Condes (copper)	Anthony Gibbs Bank (UK)
January, 1978	125.0	Central Bank	Wells Fargo Bank (US)

Table 69 (continued)

Date	Amount	Government agency	Leader of bank group
February, 1978	24.5	Paper and Paperboard Manufacturing Company (CMPC)	Libra Bank (US) <u>a/</u>
February, 1978	15.0	CMPC and Export Development Corporation	Bank of Montreal <u>b/</u>
February, 1978	14.7	CMPC and Export Development Corporation	Bank of Montreal <u>c/</u>
March, 1978	15.0	LAN Chile	First National City Bank, Nassau, Bahamas <u>d/</u>
March, 1978	4.0	LAN Chile	American Banking Corporation <u>e/</u>
March, 1978	20.0 (approx.)	Central Bank	Bank of Tokyo <u>f/</u>
March, 1978	90.0	CORFO	Various European and United States banks <u>g/</u>
April, 1978	210.0	Central Bank	Lending Bank: Morgan Guaranty Trust, New York; Administering Banks: Chase Manhattan (US), Citicorp. International (US), Dresdner Bank (FRG), Bank of Tokyo (Japan) <u>h/</u>

Source: From Letelier-Moffitt (2), op. cit., p. 20 (up to January 1978) and El Mercurio.

a/ El Mercurio, 15 February 1978.

b/ Ibid.

c/ Ibid.

d/ El Mercurio, 4 March 1978.

e/ Ibid.

f/ El Mercurio, 7 April 1978.

g/ El Mercurio, 22 May 1978.

h/ El Mercurio, 7 April 1978.

Note: Loans made in currencies other than US dollars were converted to dollars at the exchange rates prevailing at the time of transaction.

379. With the support of private multinational banks the present Chilean Government has been able largely to side-step financial pressures from the international community to force it to respect the human rights of the Chilean people. In an article basically welcoming Chile as a new market for profitable banking operations, Euromoney wrote in October 1977:

"The country's tough economic programmes have met with the international banking community's approval, even if the absence of human rights has incurred the wrath of President Carter. The constraint on borrowing - apart from Mr. Carter - is the existing level of debt." 149/

Thanks to the help of the private multinational banks, the Chilean authorities have been able to avoid an embarrassing process of renegotiation of the external debt both in 1976 and in 1977, when some sort of conditioning of loans in relation to human rights issues at the Club of Paris seemed unavoidable. This is likely to happen again in 1978. The Chilean authorities were also able, for instance, to reject a US \$27.5 million economic assistance programme offered by the United States because it was conditioned on the improvement of Chile's record on human rights. "If we don't get our money from the World Bank we will get it from somewhere else, even though we may have to pay a bit more for it", said Mr. Sergio de Castro, Chilean Finance Minister, at a luncheon with influential bankers in London, following the successful placing of a US \$75 million Eurocurrency loan on the London market. 150/ It is in this context that a recent loan for \$210 million, granted on 7 April 1978 by a consortium of 49 United States, European, Japanese and Middle Eastern banks, was described by Chilean Central Bank officials as an operation which was "the most important and far-reaching realized by Chile, at least in the last decade". 151/

380. It is clearly an issue of grave concern that policies which are supported by a majority of the international community are being made ineffective by the lending policies of a small number of private multinational banks controlling huge financial resources. This phenomenon is worthy of closer attention.

381. Most private bank loans reaching Chile are generated in the Eurocurrency market, a booming financial market which, in spite of representing "money in exile" estimated as amounting to nothing less than US \$250 billion in 1977, is not subject to any bank regulatory agency, either national or international, with either the authority or the responsibility to oversee it. The Eurocurrency market consists of dollars, yens, Deutschmarks and other currencies which are on deposit with a bank outside the country which issued them. About four fifths of this pool of expatriate money consists of dollars. It originated from a variety of sources (United States balance of payments deficits, dollar reserves of non-United States central banks and, certainly, "book-keepers' pens" in many countries) early in the post-World War II period, growing steadily to reach approximately \$30 billion in 1969. However, it was the influx of billions of dollars in deposits from the oil exporting countries following the October 1973 war, which led to the explosive growth this market has been experiencing since that time. As the United States Treasury, among other sources, is now predicting

149/ Euromoney, October 1977.

150/ "Isolated Chile's Drive for Foreign Investment", Financial Times, 9 July 1977.

151/ El Mercurio, 2-8 April 1978, p.1.

that OPEC surpluses will remain at approximately \$40 billion per year perhaps for as long as the next 10 or 15 years, and a very important proportion of these surpluses is recycled through the Euro-market, everything indicates that this fast-growing giant capital market will continue expanding its influence in the world economic order. Private corporations were the principal users of the Eurocurrency market in the 1960s, but by the early 1970s, when many industrial countries were moving into an economic slump, the big multinational banks had to look for new clients, and started making finance available to developing countries. With the dramatic rise in the price of oil, oil-importing developing countries found themselves with a collective balance of payments deficit of US \$21 billion (in the current account). As the IMF, the traditional source of balance of payments financing, has been able to meet only a fraction of the demand for international credit since then, it is the private multinational banks which have filled the gap. 152/ It is in this context that Euromoney reported:

"Although the Carter tirade against those countries infringing Human Rights gave a somewhat sticky start to the development of the two countries (Chile and Argentina) as a much needed sink-hole for excess banking liquidity, it is plain that doubts over the wisdom of lending to countries that contravene Human Rights are fast being dismissed." 153/

And in October 1977, AGEFI (a well known financial newsletter directed to the banking community), after noting a new loan being lead-managed by Wells Fargo for Chile, stated:

"These operations at least prove that even if Mr. Pinochet is not popular amongst political circles he is certainly inspiring confidence in the international financial community. But it is well known that bankers tend to prefer authoritarian regimes (whether right or left)." 154/

382. But lending to Chile has nevertheless been a politically sensitive area for the private banks. In April 1976, when a US \$125 million loan was being arranged for Chile by the Morgan Guarantee Trust, the Wall Street Journal reported:

"New York and Canadian banks are close to agreement on a major international loan to Chile, a loan that confronts the banks with thorny political and public relations problems.

"There is an outpouring of vituperation all over the world', said one banker here. 'Naturally, bank officers and boards of

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152/ International Debt, The Banks, and US Foreign Policy, a staff report prepared for the use of the Subcommittee on Foreign Economic Policy of the Committee on Foreign Relations, United States Senate, Washington, 1977, pp. 2, 3, 10, 11.

153/ "How Chile reappeared on the tombstones", by Charles Meynell, Euromoney, June 1977, pp. 101, 103, 105.

154/ AGEFI Letter, No. 184, 21 October 1977.

directors are leery of giving the appearance of supporting a military dictatorship.' (...) Moreover, in contrast to the usual practice in international lending, it appears that no single bank will be publicized as the lending syndicate's leader.

"Nevertheless, one banker noted, 'Banking is a competitive business and you don't make money by saying "no".'" 155/

The loan was granted by the end of May, and although it emerged that sixteen banks were part of the consortium, the Morgan Guarantee Trust spokesman declined to identify the other members. 156/ "Until very recently, lending to Chile or Argentina was not the sort of thing to be done in public, even if the figures did look promising", wrote Euroney in June 1977. 157/ ACEFI letter No. 183 refers, for instance to the "US \$42 million extremely private placement just made for the [Chilean] State owned petroleum company", adding that "this loan has been very secretively arranged by Citibank, Deutsche Bank, Continental Illinois and Schroder Wagg". 158/

383. The Chairman of the United States House Banking Committee, Representative Henry S. Reuss, sent telegrams to six of the main multinational banks lending to Chile, noting that their actions appeared "inconsistent" with standards intended to prevent banking practices from interfering with the public interest, and "hoping" they would make public a full explanation. 159/ Similarly, loans to Chile dominated the annual general meeting of Lloyds Bank in London, when shareholders asked about the effect of the Bank's participation in syndicated loans totalling more than US \$200 million to Chile in 1977. Sir Jeremy Morse, Lloyds Bank Chairman, admitted that the Chilean regime was repressive, but said that Lloyds would lend to anyone who wanted to borrow if they were credit-worthy, unless it was banned from doing so by the British Government as in the case of Rhodesia. 160/ However, there were times when the Bank would not lend money if social or moral harm resulted.

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155/ "Chile is Granted \$125 Million Loan by a Consortium", Wall Street Journal, 26 May 1976.

156/ He did, however, say "The loan is the first medium-term credit Chile has received from the private banking sector in several years" (Wall Street Journal, 26 May 1967, cit.). Reporting this, the Wall Street Journal also noted that:

"Made to the Central Bank of Chile, the loan is for three and a half years, with a grace period on payments of one year. There aren't any restrictions on the use of the funds, which presumably will help meet Chile's international payments deficit".

157/ "How Chile reappeared on the tombstones", cit., p. 105.

158/ ACEFI Letter, No. 183, 14 October 1977.

159/ "Several US banks Accused of Undercutting Policy on Chile", Washington Post, 12 April 1978.

160/ "Lloyds bounces Chile protest", Guardian, 31 March 1978.

386. In addition to this quantitative aspect of the need for foreign investment, there are also qualitative considerations. Given the orthodox laissez-faire approach which the Chilean Government has adopted to integrate the Chilean economy in the world market, foreign investments are expected to bring in the technology, marketing expertise and managerial abilities indispensable to gain foreign markets. Again, Mr. Samaniego explains:

"The policy of the Government with regard to foreign investment is frankly one of opening to it. The reason for this central economic principle is the necessity for a country of eleven million inhabitants to have wide external markets. This can only be achieved by accepting the idea of exporting and importing. Foreign investment provides access to these markets, as well as bringing economic resources and technology." 166/

It is thus not by chance that Decree-Law 600, a new foreign investment statute enacted on 11 July 1974, was officially presented as "one of the milestones of the reconstruction of the Chilean economy". Even more liberal legislation in this matter was introduced in March 1977, eliminating any discrimination against foreign investment and all limitations on profit repatriation, establishing a minimum of only 3 years for capital repatriation, and granting the privilege of tax invariability for ten years. Chile had become the best place in Latin America in which to invest, according to the executive secretary of the Foreign Investment Committee when introducing the new decree-law (Decree-Law 1,784). 167/

387. Foreign investors have so far failed to satisfy the hopes and prognoses of the Chilean authorities. Evaluating the results for 1974, El Mercurio reported that "approximately \$4 million ... have come in by virtue of the Foreign Investment Statute." 168/ An IMF staff report prepared in June 1977 notes:

"This statute [Decree Law 1784], like its predecessor, places no limitation on profit remittances or capital repatriation, and in addition, it establishes ground rules for the tax treatment of foreign companies. . . . The actual gross inflow of direct foreign investment into Chile during 1976 was negligible, and a total inflow of only US \$30 million is projected for 1977; however, the authorities expect the new legislation to remove obstacles to such new investment, and point to a list of projects totalling US \$400 million which have been negotiated with foreign interests. Agreement on two large mining investments not on this list would raise the total to well over US \$1 billion." 169/

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166/ Ibid.

167/ Latin America Economic Report, 25 March 1977, vol. V, No. 2, p. 45.

168/ "Inversión Extranjera", El Mercurio, international edition, 10 January 1975.

169/ International Monetary Fund, "Chile - Staff Report for the 1977 Article XIV Consultation", report prepared by the staff representatives for the 1977 Article XIV consultation with Chile, 24 June 1977, p. 14.

384. The over-all impact of private bank lending to Chile on the enjoyment of economic, social and cultural rights has undoubtedly been negative. Such lending has allowed the Chilean Government basically to sidestep efforts by the international community effectively to condition foreign economic assistance on such rights. Funds provided are in no way decided or conditioned on either human rights or developmental criteria, and must be seen as effectively a support for the Chilean Government in pursuing its current priorities. Yet more disturbing are suggestions that "bankers tend to prefer authoritarian regimes!"<sup>161/</sup>

### 3. Private investment

385. Juan Samaniego, Secretary of Chile's Foreign Investment Committee, explained the basis for the strong emphasis placed by Chile on foreign investment by saying that "Internal resources are not sufficient to finance investment at the required rate..."<sup>162/</sup> Private domestic investment in Chile has been historically very low, requiring large inputs from the public sector to achieve rates of total domestic investment capable of generating a minimum of economic growth. The relative importance of public investment in total domestic investment in Chile was growing continuously throughout the 1960s, reaching 60.9 per cent in 1965, 69.2 per cent in 1967 and 74.8 per cent in 1969.<sup>163/</sup> Even in 1976, in spite of the dramatic reduction in public expenditure (mainly in investment expenditure), public investment still represented \$792 million out of a total domestic investment of \$1,202 million, almost exactly two thirds of the total. The specialist newsletter, Latin America Economic Report, refers to this, saying:

"State investment had already dropped by 55 per cent between 1973 and 1974 from its previous share of around 75 per cent of total investment, and has remained at about the same level. The only area where state investment has actually increased is in the military sector (chiefly construction); military investment has risen from 9 per cent to 22 per cent of all state investment."<sup>164/</sup>

Given the Chilean Government's determination to reduce State participation in the economy to a minimal level, and the lack of any indication that the domestic private sector was either prepared or able to fill this gap, the attraction of foreign investment became a vital aspect of government policy. ODEPLAN, the official planning agency, has calculated that in order to achieve an increase in GDP of the order of 6.2 per cent, the proportion of GDP allocated to investment should be between 15 and 19 per cent per year, namely, around US \$1 billion, a goal which, according to the large industrialists' association, SOFOFA, can only be achieved with the participation of foreign investment.<sup>165/</sup>

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<sup>161/</sup> ACEFI Letter, No. 184, 21 October 1977.

<sup>162/</sup> El Mercurio, "Informe Económico", August 1976, p. 16.

<sup>163/</sup> Sergio Ramor, Chile, Una Economía de Transición, CESO, Santiago, Ed. Universitaria, 1972, p. 80.

<sup>164/</sup> Latin America Economic Report, 10 June 1977, vol. V, No. 22, p. 87.

<sup>165/</sup> El Mercurio, "Informe Económico", August 1976, p. 16.

Finance Minister Sergio de Castro is, however, still optimistic:

"What happens in Chile is what happens in the case of all countries under recovery: first come loans at high rates and short terms, then loans are extended at longer terms, interest rates drop and some investments begin to drop ... and then more investments come, and this is the stage at which we find ourselves, and more investments are beginning to arrive". 170/

388. The bad external image the Chilean authorities have earned through their gross violations of human rights is certainly one of the factors explaining Chile's poor performance in attracting foreign investment. Companies are in many cases unwilling to risk problems of public image by investing in Chile. In one case at least, public opinion has forced a reconsideration of a decision to invest. This occurred with an authorized investment by the Dutch Stevin Group of \$62.5 million, for the exploitation of gold, silver and other minerals on the Chilean coast. 171/ The Dutch business paper Het Financieele Dagblad estimated that "Chile is possibly going to be a gold mine for Stevin", and El Mercurio gave front page prominence to the deal 172/ which was the biggest single foreign investment proposal at that time. The first reactions by Dutch parliamentarians, church personalities and human rights lobbies were dismissed by Dr. R.J. Stratenus, President of the Board of Directors of the Stevin Group, who said that it was not for him to influence Chilean internal policies and defended the decision on the grounds that it would provide employment. However, pressures continued to build up, and in a statement on 27 August 1976, the Stevin Group announced the cancellation of the Chile deal and expressed its concern at the lack of clear government guidelines on this matter, declaring that private enterprises are not in a position to adopt restrictive positions in relation to particular regimes. 173/

389. In Canada, Noranda Mines Ltd., which was awarded a contract for the development of the Andacollo deposits involving a reported total investment of US \$350 million in all the stages of the project, was subjected to strong and persistent pressure (which still continues) both from outside pressure groups, the media and politicians, and from company shareholders such as the Canadian Anglican, Catholic and United Churches. The latter distributed a statement to the shareholders of the company at the 1976 annual shareholders' meeting proposing "that Noranda Mines Ltd. proceed with its investment plans only after an independent review by the United Nations Commission on Human Rights indicates that civil and political rights have been restored". The statement noted that "Noranda has an opportunity to demonstrate its standards of corporate social responsibility by establishing the condition under which it will agree to the proposed investment plans". 174/

170/ Hoy, 8-14 March 1978, quoted by Chile News (Santiago), No. 687, 13 March 1978, p. 3.

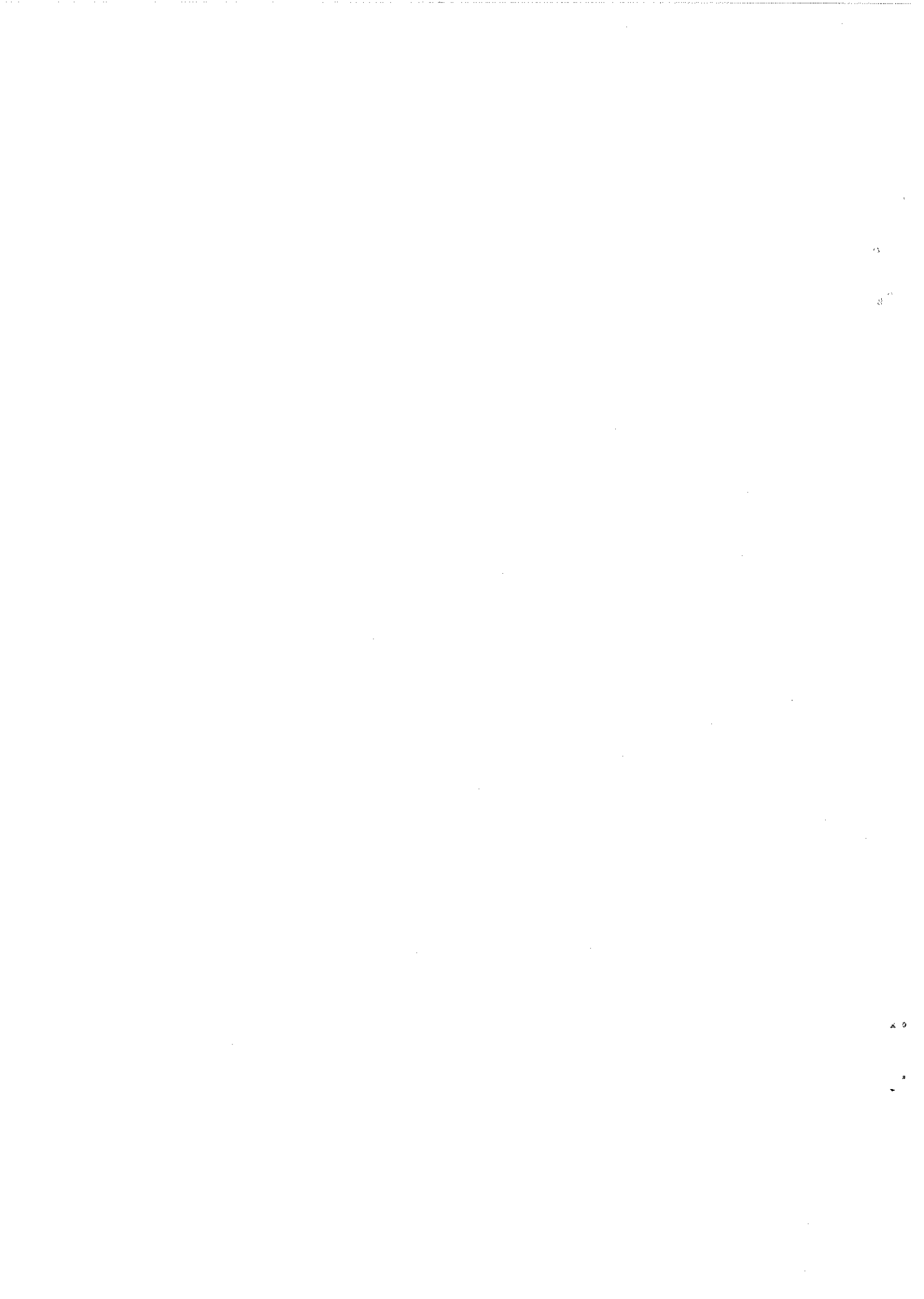
171/ Chile Komitee Nederland, "Un caso de boicot económico: El Grupo Stevin de Holanda".

172/ El Mercurio, 19 July 1975.

173/ Chile Komitee Nederland, cit.

174/ Statement to shareholders of Noranda Mines Ltd. (1977) by the Canadian Churches, signed by the Venerable E. Light (General Secretary, Anglican Church of Canada); Bishop Adolphe Pronic (Chairman, Human Rights/Social Affairs Commission, Canadian Catholic Conference of Bishops) and Dr. Donald Ray, (Secretary, General Council, United Church of Canada).





391. In January 1978, the American corporation EXXON acquired for \$107 million the shares of the State-owned La Disputada copper mines. It was pointed out in a report of the Washington-based "Transnational Institute" that "the EXXON investment was significant not only because of the size of the transaction, but also because it may serve as an indication to other firms that the Chilean junta is now considered stable enough in financial circles to warrant large direct investments". 180/

392. On 30 March 1978, a United States group of "Christians concerned about human rights in Chile", the San Francisco-based "Bay Area Ecumenical Committee of concern for Chile", sent a letter to the Chairman of the Board of EXXON. In this letter, after stressing that they were "particularly concerned about the effects this [the EXXON investment and its possible increase in the coming years] may have of keeping an undemocratic government, notorious for its human rights violations, in power during the coming years", the group requested the following information:

- "(1) Did Exxon take the human rights situation in Chile into account in deciding to make this investment in Chile?
- (2) Have you attempted to insure the rights of your employees in Chile to form unions and to bargain collectively?
- (3) Do you feel your investment will help to stabilize the political situation in Chile?
- (4) What further plans do you have for investment in Chile?"

393. Mr. Jarvis M. Freymann, an official of EXXON, replied on 28 April 1978 on behalf of EXXON's Chairman. In his detailed letter he stated, inter alia, the following:

"After weighing the information available to us, we concluded that there was strong reason to hope that political, social, and economic conditions in Chile would continue to improve over the next few years so that if we acquired the shares of the Disputada company we would be justified, after careful evaluation, in making the large investments required to develop the property.

In December we submitted a bid, which was accepted. We are now working with the existing staff of Disputada to facilitate the company's ongoing operations, and we are proceeding with the evaluation of the future investment opportunity. We hope that expansion will be possible, for the investment returns it could provide to our shareholders, for the employment and income it could provide to Chile, and for the copper supplies it could provide for world economic growth.

Having acquired the new mining interest so recently, it has not yet been possible for us to complete any kind of detailed assessment of the labour relations situation at Disputada. This much, however, you

may find reassuring: eleven unions, representing 96 per cent of the workforce, are already established at the mines. These same eleven unions were active in the early 1970's under the previous regime, and their leaders are the same ones who held office in 1973. The labour contracts which were in effect in September 1973 are still in force today.

Exxon has been continuously active in Chile as a marketer of petroleum products for more than sixty years. During that period, we believe that we have built a reputation for dependability and fair dealings with our suppliers, our customers, and our employees. In all our undertakings in Chile, we intend to conduct ourselves so as to retain that reputation. We are mindful of our obligation to conduct our operations in a socially responsible manner.

Our initial studies of Disputada have led us to believe that there is a good chance that its properties contain sufficient high quality copper ore reserves to justify a large investment for expansion of production. Such an investment may be many times larger than the initial cost of the shares of the company. No definitive decision on such a large investment will be possible, however, until after an extensive evaluation - estimated to take at least two more years - is completed. With respect to our other interests in Chile, we anticipate only modest levels of expenditures in the period immediately ahead.

Exxon believes that the operations of its affiliates in Chile will be a constructive force for progress in that country in the years to come." 181/

#### 4. Suppliers' credits

394. Suppliers' credits extended to Chilean importers represent a part of the total transfers taking place, ~~and have been included in this report for the sake of completeness although they do not play a prominent role in foreign economic assistance to Chile. The large majority of export business world-wide is carried on through the system of suppliers' credits, or the longer-term buyers' credits.~~ The foreign exporter sells to his Chilean importer on deferred payment terms and takes out a loan from a private bank to cover himself over the intervening period. If the export has also received government insurance, the bank credits may be available at a reduced rate, but normally this kind of business is operated at the usual commercial rates.

395. The following table provides a very partial indication of the spread of credits over the last few years from various countries. The table considers only credits extended for over twelve months, and an indication of its incompleteness can be gained from the fact that in the British Export Credit Guarantee Department, which arranged guarantees for about 35 per cent of British exports in 1975-6, 91 per cent of the total value was in short-term dealings. 182/

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181/ Letter of 28 April 1978.

182/ ECGD Services, insurance facilities of the British Government's Export Credits Guarantee Department, January 1977.

Table 70

Suppliers' credits to Chilean importers  
(Thousands of US dollars)

	1974	1975	1976	1977
United States of America	89,996	13,497	125,675	6,997
Argentina	35,695	297	3,058	3,843
Brazil	56,611	4,736	3,100	17,615
France	20,369	3,841	105	1,891
Germany, Federal Republic of	5,471	10,335	6,308	2,403
Japan	49,928	77,347	92	745
Spain	6,000	65,971	9,213	105
United Kingdom	1,857	1,339	-	-
Switzerland	-	-	-	-
TOTAL	271,459	178,266	147,551	39,348

Source: World Bank, computer print-out, October 1977.

396. Lack of information on detailed dealings and the nature of the flows makes it impossible to assess the impact of suppliers' credits on economic and social rights in any but the most general terms. Any attempt to do so, however, should take into account the changes that have occurred in Chile's import policies. As pointed out above (paras. 89 ff.) the Chilean authorities' general policy of encouraging a free market society has led to the progressive dissolution of the complex series of import restrictions which were in force under previous governments. This fact has been directly linked with the spread of unemployment. <sup>183/</sup> The composition of imports has changed also, and while the nutritional standards of the majority of the population have declined dramatically, it is luxury imports such as whisky that have shown the most dramatic increases in the import figures. <sup>184/</sup>

<sup>183/</sup> This is illustrated in the case of a firm called Sindelen: "When the tariff on foreign appliances was cut to 32 per cent from 100 per cent last year, Sindelen's sales dropped 75 per cent as consumers chose cheaper imports. To survive the company has moved in with a maker of space heaters, halted production of TV sets, washing machines and refrigerators and cut its work force in half". (Chile's Businesses Find That 'Free Trade' has Unpleasant Drawbacks", Wall Street Journal, 12 December 1977).

<sup>184/</sup> "George Fava who represents a Scotch distiller, said on a recent visit that consumption of Scotch in Chile shot up 400 per cent in 1976 over 1975 and was still rising" ("Chile opens its Door and Heart to Scotch", New York Times, 18 December 1977).

397. The issuing of suppliers' credits depends on the estimates of country risks made by private banks and government export guarantee departments. While the banks have shown themselves unwilling to take on the responsibilities that accrue from their important role in many third world economies, some of the governmental institutions operating in this area have demonstrated their concern for developmental factors as regards third world clients, and an attempt to favour those exporters who were providing essential goods rather than luxury items would be one way to promote the welfare of the population of recipient countries.

Chapter III

THE RELATION BETWEEN FOREIGN ECONOMIC ASSISTANCE AND  
THE ENJOYMENT OF CIVIL AND POLITICAL RIGHTS

398. The question of the impact that foreign economic assistance can have on civil and political rights and, more generally, the problem of the connexions between the enjoyment or disregard of these rights and foreign economic assistance, is even more complex and difficult than the problem of the correlation between foreign economic assistance and economic, social and cultural rights. For the nexus between the two categories of phenomena is even more indirect and subtle than in the case of social, economic and cultural rights. On the basis of the material available, and without claiming to exhaust the whole spectrum of problems that could come within the purview of the subject-matter, the Rapporteur will deal with a few facets of the question.

399. First, he will determine whether and to what extent the granting of foreign economic assistance to Chile has been influenced by the situation of human rights in that country. To this end, the Rapporteur will endeavour to ascertain, generally and on the basis of official documentation, whether States or international agencies have decided to withhold economic assistance to Chile - thus stopping a flow of help that could benefit the vast majority of the Chilean people - because of the present situation as regards civil and political rights in that country.

400. A second question to be considered is whether the present situation of gross disregard of civil and political rights in Chile in some way appears advantageous to governments, international agencies or private institutions granting economic assistance. In other words, it must be seen whether the violations of human rights in Chile show such features as to attract foreign loans or investments. It is clear that this aspect is precisely the opposite of the issue raised in the previous paragraph.

401. A third question to be addressed is whether the actual use in Chile of foreign economic assistance is rendered less efficacious by the present situation as regards civil and political rights. In particular, the Rapporteur will try to determine whether the present restrictions on civil and political rights have an adverse effect on the full utilization of foreign economic aid.

402. A fourth question which will be examined in this section is whether the benefit of foreign economic assistance reaches those persons who have been directly affected by the present practices of the Chilean authorities in the field of civil and political rights. The Rapporteur intends to examine here whether those persons who have suffered deprivation of their civil and political rights can take advantage of economic assistance. In particular, he will try to ascertain whether foreign economic assistance benefits families of missing persons or persons affected by imprisonment or detention.

403. A fifth - and more general - question which deserves close attention is whether and to what extent the social and economic policies adopted by the present Government in Chile and supported by foreign economic assistance have an adverse impact on civil and political rights. If a link can be established between the carrying out of these social and economic policies, the current repression of or restrictions on civil and political rights in Chile and foreign economic assistance to Chile, the conclusion could be drawn that foreign economic assistance, albeit indirectly, is instrumental in maintaining the present practice of the curtailment or suppression of the aforementioned human rights in Chile.

A. Violations of civil and political rights in Chile and the withholding of foreign economic assistance

404. The first of the five questions referred to above can be broached on the basis of the replies sent by governments in 1977 in response to the request of the Secretary-General of the United Nations for information under General Assembly resolution 31/124 and of the replies to the request for information sent out by the present Rapporteur in October 1977. In the following paragraphs an analysis will be undertaken of the official comments made by governments on how they have behaved towards Chile in the field of economic relations since the military take-over of 11 September 1973. After quoting the official statements that are relevant to this question, the Rapporteur will attempt to draw some general conclusions.

405. In its reply of 14 December 1977 to the request for information sent by the Rapporteur, the Government of the German Democratic Republic stated, inter alia:

"... The German Democratic Republic refuses the Pinochet régime any recognition ... Starting from this position in principle, the German Democratic Republic suspended its diplomatic relations with Chile immediately after the entering into power of the Junta. In international relations, particularly within the framework of the United Nations, their bodies and specialized agencies, the GDR stands up consistently for the international isolation of the Pinochet Junta and opposes any assistance for it. At no time, the present Chilean rulers have received any political, economic, financial or military aid from the socialist German State. The German Democratic Republic does not maintain relations of any kind with the Chilean military Junta in the fields of economy, trade, finance, transport, culture or tourism. No relations whatsoever exist between the parties, mass organizations and institutions of the German Democratic Republic and State or other institutions of Chile under the responsibility of or close to the Junta."

406. In its reply to the Secretary-General's note verbale sent under General Assembly resolution 31/124, the Federal Republic of Germany stated that as a consequence of the present disregard for human rights in Chile, "the Federal Government has not provided Chile with any more development aid. It has discontinued supplies of weapons and military equipment. In negotiations for the rescheduling of debts, harder terms have been imposed. University partnerships have not been continued". 1/

407. In its reply to the request for information sent by the present Rapporteur, the Government of Italy has pointed out the following:

"Economic, financial, cultural and technical co-operation between Italy and Chile have been strongly influenced since September 1973 up to the present - both at the multilateral and the bilateral level - by the attitude adopted by our country towards the military Government headed by General Pinochet. In keeping with the unequivocal positions it has taken at the political level, Italy has gradually broken off all forms of collaboration, so that it can now be said that official aid by Italy to the Chilean Government is virtually non-existent.

As to economic and financial co-operation within the competent multilateral organizations in regard to loans granted to Chile (World Bank and Inter-American Development Bank), Italy's position has always been negative; in particular, Italy voted against the grant of a loan to Chile in January 1974 and in May 1975 (\$20 million for an agricultural reorganization programme), and it abstained from voting on the decision concerning three other loans to Chile in February (\$33 million) and December 1976 (\$25 million and \$35 million).

In the Inter-American Development Bank also, which Italy formally joined only in May 1977, the position adopted with regard to the grant of two loans to Chile, considered by the Board of Executive Directors in October 1977, was as follows: abstention on an integrated technical assistance programme which also includes Bolivia and Peru, and a vote against the grant of a loan of \$20 million exclusively to Chile.

With regard to multilateral technical co-operation, during the consideration of UNDP aid programmes for developing countries, Italy has not failed to express reservations concerning programmes for Chile, in view of the non-observance by the Chilean Government of the resolutions adopted by various United Nations bodies which call for respect for human rights and the restoration of fundamental freedoms in that country.

As regards the consideration of economic and financial relations on a bilateral basis, it must be pointed out that, during the period in question, Italy suspended the privileges enjoyed by Chile under the Insurance and Export Credit Law and that, consequently, no request concerning that country has been considered by the competent organizations.

A similar attitude has been adopted in regard to bilateral technical co-operation. In September 1973, various programmes were being executed in fields such as occupational training, university education and building, together with volunteer programmes, chiefly in education. Today, there is only one volunteer programme (9 persons), for occupational retraining of personnel of the Curanilahue coalmines, which has not been discontinued because of its distinctly social character ...

This consistent over-all attitude ... is also reflected in the refusal by our authorities to take part in multilateral talks held within the Club of Paris with a view to restructuring Chile's external debt."

408. In its reply of 10 February 1978 to the request for information sent by the Rapporteur, the Government of Japan transmitted a table clearly showing that since 1973 governmental economic assistance has greatly decreased. 2/

409. In its turn, Netherlands has pointed out that "The Netherlands Government has taken a number of concrete steps which it hopes will contribute to the restoration and safeguarding of human rights and fundamental freedoms in Chile. Financial assistance in the framework of development co-operation has been suspended. Aid is provided only in respect of certain small welfare projects, directly benefiting the poorest section of the population. This aid is channelled

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2/ See table 53 above (para. 277).



through non-governmental organizations." And it goes on to say: "In the field of trade, credit guarantees by governmental bodies for export transactions by Dutch companies have been discontinued as from 1973." <sup>3/</sup> In its reply of 21 December 1977 to the request for information sent by the Rapporteur, the Government of the Netherlands pointed out that "Since the coup d'état of 1973 in Chile, the Netherlands does not provide any bilateral aid to the Chilean Government. Through some non-governmental organizations funds are supplied for activities which are directly benefiting the most distressed groups of the Chilean population."

410. In a note of 25 November 1977 to the United Nations the Government of ~~Norway~~ states that as a consequence of the dismantling of the democratic institutions in Chile,

"Bilateral aid given to Chile from Norway has been suspended. Together with the Governments of the other Nordic countries the Norwegian Government has voted against loans to Chile from the World Bank. At the twenty-third session of the Governing Council of UNDP, held in January 1977, the Norwegian representative and those of the other Nordic Governments in a joint statement made clear that the land programme to Chile did not enjoy their support because of the failure of Chilean authorities to concur with past United Nations resolutions to improve the human rights condition in Chile."

411. The Government of ~~Poland~~ pointed out in 1977 that:

"In reaction to the coup which took place in Chile on 10 October 1973, the Government of the Polish People's Republic resolved to suspend its relations with that country to express its condemnation both of the coup itself and of the persecution of political activists ...

... Following the decision of the Government of the Polish People's Republic, economic relations with Chile were suspended immediately after the coup. Among other measures, a 24-member group of Polish mining specialists was ordered back to Poland, this terminating their work on the deepening of coal-mine shafts." <sup>4/</sup>

412. In its reply of 5 December 1977 to a request for information sent by the present Rapporteur, the Government of ~~Sweden~~ stated the following:

"The Swedish Government extends no aid to the present Chilean authorities. The Swedish policy in this regard is illustrated by the following facts: On 31 August 1973, an Agreement, called the Development Co-operation Agreement of 1973, was signed in Santiago de Chile between the Government of Sweden and the Government of the Republic of Chile. The preamble of this Agreement states that the objective of the Agreement is to enable the respective Governments to continue 'their co-operation for the purpose of economic development and social and economic justice in Chile as envisaged in the Development Plan of Chile for 1971-76'. The resources made available by Sweden according to the Agreement were intended to contribute to the achievement of these goals as stated in the Plan.

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<sup>3/</sup> A/32/234, pp. 12-13.

<sup>4/</sup> Ibid., pp. 14-15.

Statements by representatives of the Government of Chile and the decision of the Government in the sphere of social and economic affairs after 11 September 1973, indicated that it was not the intention of the Government of Chile to shape its policies in accordance with the aforementioned Development Plan. The Swedish Government thus concluded that the circumstances constituting the essential basis of the Development Co-operation Agreement of 1973 had been fundamentally changed and that the prerequisites for the implementation of the Agreement therefore were no longer existent.

The Ministry for Foreign Affairs accordingly informed the Chilean Authorities in December 1973 that the Swedish Government considered the Agreement between the Parties no longer valid.

On the same occasion, the Ministry for Foreign Affairs gave notice of termination to the Chilean authorities of 'the Agreement between the Government of Sweden and the Government of the Republic of Chile on terms and procedures governing the provision of resources for Development purposes by the Government of Sweden to the Government of the Republic of Chile' signed in Santiago de Chile on 31 August 1973."

413. The United Kingdom Government has followed the same pattern. In a note to the United Nations, it lists among the measures adopted the following:

"Suspension of British aid to Chile, except for funds provided for humanitarian purposes through non-official channels; denial of debt rescheduling facilities to the Chilean Government in 1975, the last occasion on which such facilities were requested." 5/

In its reply of 23 May 1978 to a questionnaire sent by the present Rapporteur, the Government of the United Kingdom pointed out that:

"The United Kingdom in 1974 discontinued aid to the Government of Chile, except for a small programme for training Chileans in the UK, in the fields of natural resources development, community health and technical training."

414. Finally, in a note sent in 1977 to the Interparliamentary Union in relation to the implementation of a resolution of the Interparliamentary Union on Chile, the National Group of members of the Belgian Parliament stressed the following:

"Since the coup d'état of 11 September 1973, Belgium has refrained from supplying military or financial aid to Chile and, in international financial and monetary organizations, has systematically taken a negative position concerning loans to that country. The position of the Belgian Department of Foreign Affairs will remain unchanged until the rule of law is restored and human rights are fully re-established in Chile." 6/

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5/ Ibid., p. 18.

6/ CL/121/77/5(b), September 1977.

415. The stand of the United States Government must also be taken into account although this Government has not, so far, sent any official reply to, or comment on, the request for information sent by the Rapporteur. The position of this Government vis-à-vis Chile, in the field of economic assistance, has been reviewed above (see paras. 264 ff.). To sum it up, it is suitable to quote here from a study submitted to the Ad Hoc Working Group on the situation of human rights in Chile by the Center for International Policy. It is stated there that:

"Since 1974, Congressional critics of United States Chilean policy have legislated limitations on military and economic aid to Chile on the grounds of its human rights violations ... Thus far, when all military aid and most forms of bilateral economic aid have been denied to Chile by the United States Congress and it has become increasingly evident that very little aid would be available, the Chilean Government has responded by renouncing any United States bilateral assistance. The complete rejection of this aid came in response to the State Department's decision to delay for 30 to 60 days \$9.3 million of the \$27.5 million economic assistance package for [fiscal year] 1977 to express disapproval of human rights violations by the Chilean Government of President Augusto Pinochet (Washington Post, 1 July 1977). The Chilean junta issued a note which formally 'spurned the proposed \$27.5 million economic aid package' angrily reacting against the Carter Administration's attempt to use human rights as a factor in considering foreign aid distribution." 7/

416. As stated above (para. 275), in 1978 the United States somewhat changed its policy. According to press reports, on 24 April 1978 \$38 million in commercial export credits to farmers and ranchers in Chile were approved by the Commodity Credit Corporation, a private corporation run by the Agriculture Department. It is worth stressing that, according to a United States newspaper, "State Department officials confirmed ... that approval of the credits was delayed for some time, but they denied that the credits reflect a departure from the administration's emphasis on human rights. Officials emphasized that the credits were for private parties rather than the Chilean Government, and were intended primarily to aid American farmers. They also stated that the credits reflected approval of what was described as 'encouraging political developments' within Chile's military Government. One State Department official cited the recent amnesty for many political prisoners in Chile and the Government's decision to turn over to United States authorities Michael Vernon Townley, the 35-year-old American who has been charged with conspiracy in the murder of former Chilean Ambassador Orlando Letelier in 1976." 8/

417. Criticism was expressed, however, by a prominent United States Senator, Mr. Edward M. Kennedy who, in a speech on the Senate floor, said the following:

7/ "Chile: An analysis of human rights violations and United States security assistance and economic programmes", a research study prepared by the Center for International Policy, Washington, D.C., July 1977, pp. 1-2.

8/ Washington Star, 5 May 1978.

"I am disturbed by the Administration's recent approval of \$38 million in Commodity Credit Corporation credits for Chile. Although these CCC credits finance non-governmental wheat-sales, it would have been much wiser for the United States to loan this much money on the basis of substantial human rights movement in Chile. I am now consulting with the Administration to ensure that this action will not be misunderstood, or repeated in the absence of further progress. Let us not lose this opportunity to make a critical difference in the lives of the Chilean people - and to demonstrate that the United States can be an effective force for human rights in Latin America." 9/

418. In addition to the aforementioned statements of Governments, mention should be made of the attitude taken by many States in the governing bodies of such international agencies as the World Bank, the International Monetary Fund, the Inter-American Development Bank, and the United Nations Development Programme. As recalled elsewhere in this report (*supra*, chapter II, *passim*), on many occasions Member States have cast a negative vote or have abstained when a vote was taken on loans or development projects for Chile. The reason given for this attitude was the persistent gross disregard for human rights in Chile.

419. From the above exposition, the conclusion can be drawn that the vast majority of the States which have commented on their behaviour vis-à-vis Chile in the field of economic relations after 11 September 1973, have pointed out that they have either refused or substantially decreased their economic assistance to Chile, as a direct consequence of the suppression of civil and political rights in that country carried out by the present authorities. Thus, the introduction of a repressive system in Chile has resulted in a vast segment of the international community denying economic aid to Chile, with a view to bringing pressure to bear on the present Chilean authorities for a restoration of human rights in that country.

420. Although a change has recently occurred in United States policy, this change has been justified primarily by emphasis on the fact that the Chilean authorities are in the process of improving the human rights situation in that country. While the present Rapporteur is not called upon to pass judgement on this official United States assessment of the Chilean situation, he must stress that even this new stand reveals that a close link is instituted between foreign economic assistance and respect for human rights in Chile.

B. Repression of human rights as a means of attracting foreign economic assistance

421. The relation between foreign economic assistance, the economic policy of the present Chilean Government, and its current repression of civil and political rights shows also another significant characteristic. The present Chilean policy of gross violations of human rights, in particular of trade union rights, has become an important factor for attracting foreign economic assistance.

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9/ United States of America, Congressional Record, Proceedings and Debates of the 95th Congress, session, vol. 124, No. 64, (4 May 1973), p. 2.

422. Attracting foreign investment is regarded by the Chilean authorities as a "central economic principle". <sup>10/</sup> Among the most important aspects of their drive to attract foreign capital is their offer of ~~cheap labour~~ as well as the violently enforced industrial discipline of labour. Immediately after September 1975, the highly influential El Mercurio started campaigning for "the perfecting of the labour market", suggesting - among other things - that "the cost of hiring labour should be reduced substantially in relation to that of capital". The elimination of virtually all trade union freedoms, and in particular the right freely to elect trade union representatives, the right to collective bargaining, and the right to strike, have put Chilean workers in a position of impotence, with few means of defending their rights to decent living and working conditions. This situation has been amply documented in reports by the ILO and the United Nations Commission on Human Rights, which have urged the Chilean Government to "promulgate new trade union legislation as soon as possible and to repeal Legislative Decree No. 198 in order to ensure the normal functioning of trade union activities". <sup>11/</sup> Economy Minister Sergio de Castro explained in a seminar on the Chilean policy on foreign investment:

"We think that foreign investors take their capital from one place to the other, looking for the highest profitability. This is why they have to periodically evaluate the most important variables for their companies' profits, such as wage-levels, taxes and customs tariffs." <sup>12/</sup>

423. This is a recurrent theme in the Chilean Government's attempts to attract foreign investment. An advertisement that appeared in the Wall Street Journal, headed "Chile: safety zone for foreign investors", pointed out, for instance, that:

"Tranquillity and stability in all sectors of the labour force, plus a high standard of technical and professional skills [are] readily available."

and it assured the reader at the end of the advertisement that "It is safe to invest in Chile." <sup>13/</sup>

424. Foreign investors are thus offered the advantages of the violation of the human rights of the Chilean workers, both in their political and civil rights dimension and in terms of the social, economic and cultural rights universally agreed at the United Nations. They are openly invited to translate the transgression of these human rights into increased profitability.

C. Impact of the restrictions on civil and political rights on the utilization of foreign economic assistance

425. ~~The serious violations of human rights that are still occurring in Chile cannot but have adverse consequences on the actual use of the foreign economic aid flowing into Chile.~~ In particular, the grave restrictions on freedom of expression, on freedom of association and on trade unions rights do not allow the vast majority of the Chilean people to take part in the decision-making process concerning the utilization of foreign economic assistance, nor do they permit close scrutiny on the part of the Chilean population of the way that assistance is actually used in Chile.

<sup>10/</sup> El Mercurio, "Informe Económico", August 1976, p. 16.

<sup>11/</sup> Report of the Ad Hoc Working Group on the situation of human rights in Chile (E/CN.4/1266), para. 133.

<sup>12/</sup> El Mercurio, international edition, 22-23 September 1975, p. 6.

<sup>13/</sup> Wall Street Journal, 8 June 1977, p. 16.

426. The lack of freedom of expression and the existence of a ruling group which takes all the basic decisions affecting the life of the people indisputably do not permit a free exchange of ideas in the country and the introduction of improvements or corrections in the carrying out of economic policies, including the utilization of foreign economic assistance.

427. This idea has been forcefully spelled out by the Permanent Committee of the Episcopal Conference of Chile, in a statement it issued on 25 March 1977. After stressing that "for many families, especially those who are unemployed or earning a minimum wage, the extremely precarious and difficult conditions in which they are living are becoming almost intolerable" and that "the peasants, workers and settlers appear to be bearing an excessive and disproportionate burden", the Permanent Committee goes on to say the following:

"Economic development depends on decisions taken at the national level, and the right of participation defended by the Catholic social doctrine is also applicable to the economy.

In the economic sphere it is easy to create a technocratic elite which aspires to take all the decisions itself.

Some people even believe that economic decisions depend solely on scientific reasons, as if in the human sciences there were no variety of opinions and theories, which also permit of a variety of options.

To maintain that economic problems have only one solution, without any alternative, is to establish the rule of science and the scientific élite over human responsibilities. It is also to assume that the decisions taken are based only on scientific reasons and that no part is played in them by reasons of dogma or group interest. But this is not the case: doctrinal positions and group interests often play a part in taking decisions, though sometimes unconsciously.

In the name of human rights and of the right of participation, the Church asks that the various economic options should be the subject of open discussion, and that access to decisions and the possibility of exerting influence should not be reserved to a single scientific school or to a few more privileged economic groups. Without a great national debate, the reasons given by the specialists lack full credibility. There is usually more wisdom in the discussion of different opinions than in a single opinion which is affirmed dogmatically and without contradiction." 14/

428. It seems important to stress that the same need to participate in the economic decision-making process is felt by the workers themselves. A group of trade union leaders have expressed themselves in this sense, in a letter they sent on 29 April 1977 to the President of the Republic of Chile. They stated:

"It is urgently necessary for the Government to develop an investment plan in view of the historical failure of private enterprise; in order that these decisions might be taken, we call for a revision of economic policy, in which the workers should be allowed to participate and be taken into consideration." 15/

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14/ El Mercurio, 26 March 1977 (emphasis added).

15/ A/32/227, annex LIII, p. 297 (emphasis added).

429. In the opinion of the Rapporteur, the views expressed in general terms by the Permanent Committee of the Episcopal Conference and by trade union leaders also apply to the field being considered in this report. As no political parties or political groups are allowed in Chile, and trade unions are under strict control, persons other than the members of the ruling group cannot participate in the decisions concerning (a) the type of economic assistance to be requested abroad; (b) the choice of the States, international institutions or private groups which may furnish economic assistance; (c) the conditions on which such assistance can be accepted, and (d) the social or economic areas to which the foreign assistance can accrue. As a consequence, many persons and groups, who in abstracto could participate in the elaboration and implementation of the economic policies of Chile, actually cannot contribute to modifying the schemes of foreign economic assistance in such a way as to obviate the major defects which, as shown elsewhere in this report (see chaps. I and II), greatly limit at present the beneficial influence that foreign economic assistance could virtually have.

D. Foreign economic assistance and the condition of those suffering from the present disregard of civil and political rights in Chile

430. In its latest report (1 February 1978), the Ad Hoc Working Group on the situation of human rights in Chile established by the Commission on Human Rights pointed out, inter alia, that the Chilean authorities "continue to refuse to respect the liberty and security of persons believed to be opposed to the present régime. The system of intimidation through arrests, detention, torture or ill-treatment and harassment continue to be used to repress those sectors of the Chilean population." 16/ According to the Ad Hoc Working Group, "persons detained by the security agencies continue to disappear, though at a rate significantly less than in the past." 17/

431. Particularly serious problems are raised by the fate of political detainees and of relatives of missing persons or political detainees. Their lot has been aptly described by the representative of Amnesty International in a statement he made on 24 February 1978 before the Commission on Human Rights. He pointed out the following:

"Often, the victims of arbitrary arrest and imprisonment were from the poorer sectors of society.... They could be divided into four different groups. The first consisted of prisoners charged with political offences, the greatest number of whom were in the three major prisons of Santiago, and their families. Where the prisoner had been the chief breadwinner, the family lived in the utmost need and poverty. The second category comprised political prisoners charged with and tried for a common law offence. That was a phenomenon particularly noticed in recent months and which Amnesty International had only recently begun to investigate, and it had not always been possible to ascertain beyond all reasonable doubt that there were political reasons behind the arrest. The third category was composed of former political prisoners and former detainees who had been held without trial under the provisions of the state of siege.

16/ E/CN.4/1266, para. 156 (a).

17/ Ibid., para. 156 (b).

On release they faced common problems and underwent extreme hardship. Finally, there were the families of missing persons, possibly the most tragic group, who suffered severe psychological disruption and often serious financial stress. It was estimated that over 10,000 persons had been affected." 18/

432. In 1978 the Ad Hoc Working Group on Chile received the report of a mission that visited Chile in 1977 under the auspices of the World Council of Churches. According to the Ad Hoc Working Group, it was stated in this report that "the mental and physical health of the families, especially the children, of persons who have disappeared has been severely affected. The information provided to the Group in this report concerning 145 specific cases of children revealed somatic disorders, psychological problems, and retardation of development ..." 19/

433. As was mentioned above (para. 172) the medical doctors who have been detained for political reasons are often denied their right to work when they are released. It was also recalled (para. 238) that the families of the "disappeared" frequently undergo hardship even in the field of education. Not less serious, also, is the fate of persons who oppose the Government's social policy or are regarded by the authorities as potential opponents. Thus, as was mentioned above (para. 171), trade union leaders or trade union members are often left without a job or encounter great difficulty in obtaining employment.

434. Up to now the distressing fate of relatives of missing persons or political detainees, or of opponents, has been alleviated, to some extent, by relief agencies operating in Chile, mainly by the Vicaría de la Solidaridad, the Fundación de Ayuda Social de la Iglesia Cristiana (FASIC), and the Ayuda Cristiana Evangélica (ACE), as well as by the Intergovernmental Committee for European Migration, the Office of the United Nations High Commissioner for Refugees and the International Committee of the Red Cross. They have received financial and other forms of support from some governments and private institutions (see supra, paras. 292-299). It appears, however, that the financial means available to these bodies are not sufficient.

435. From the documentation gathered by the Rapporteur, it appears that the foreign economic assistance provided to the Chilean authorities by most governments, by intergovernmental institutions or by such private institutions as banks, is not designed to meet the special needs of the category of persons to which reference is being made in this section. It also appears from the sources available to the Rapporteur that the Chilean authorities, when they receive this foreign economic assistance, do not use it in such a way as to take account of the particular situation of the persons under consideration.

436. The conclusion is therefore warranted that at present foreign economic assistance provided to the Chilean authorities does not benefit those people in Chile who suffer directly or indirectly from certain forms of deprivation of liberty for political reasons (detention, disappearances, etc.). These persons are mainly helped thanks to financial and other forms of assistance furnished by governments or private bodies directly to relief agencies operating in Chile (these agencies have been referred to above, in paras. 292-299).

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18/ E/CN.4/SR.1456, para. 16.

19/ A/32/227, para. 272.



E. Socio-economic policies adopted in Chile, repression of civil and political rights and foreign economic assistance

437. An attempt has been made above (paras. 88-112) to indicate the main features of the policy carried out by the present Chilean authorities in the social and economic fields. These features include: (a) privatization of the economy and enhancing of private enterprise; (b) opening of the market to imported products and reduction of customs tariffs and duties; (c) removal of existing price controls; (d) drastic reduction of State expenditure, including the cutting off of staff wages and salaries.

438. A description has been given above (paras. 113-248) of the main consequence that these socio-economic policies have produced for the Chilean people. Suffice it to recall here that such consequences include the following: (a) rise in unemployment; (b) reduction of the income of wage earners; (c) decrease of the purchasing power of wage earners; (d) bankruptcies of small and middle-sized national enterprises; (e) serious deterioration of public services such as the health services; (f) undernourishment of poor strata; (g) reduction of the categories of persons who are economically eligible for admission to University education.

439. These major drawbacks for very large segments of the Chilean population could not but give rise to discontent and a profound sense of dissatisfaction. Actually, a strong protest has been voiced by some groups in Chile. Suffice it to recall here the important statement issued on 25 March 1977 by the Permanent Committee of the Episcopal Conference of Chile, and quoted several times in this report (see supra, para. 427), and the letter sent on 29 April 1977 to the President of the Republic of Chile by a group of Chilean trade union leaders, a significant document that has already been mentioned in the present report (see supra, para. 428).

440. It is indisputably important that the Government has not prevented dissent and criticisms being publicly expressed in Chile by prominent groups of persons. It should, however, be noted that when the Government authorities draw up and implement - without prior consultation of and agreement with the political parties or trade union organizations - economic and social measures that prove to be seriously detrimental to the interests and needs of the less privileged strata, normally, in democratic countries, trade unions endeavour to oppose those measures by resorting to such democratic means as strikes, walk-outs, public protests, etc. It is apparent from several sources that, if this has not occurred in Chile, it is primarily because of the lack of freedom of assembly and association, and in particular of trade union rights. It therefore appears that there exists a close link between the kind of policies carried out by the present authorities in the socio-economic field, and repression in the field of civil and political rights. In short, suppression of or serious restrictions on civil and political rights are, inter alia, necessary to impose and enforce the economic and social policy of the military Government.

441. It is necessary to point out that this view does not constitute a novelty. Actually, as early as 1970, Jorge Cauas, one of the main economic policy-makers in Chile, who was Minister of Finance to the military Government and is now Ambassador to the United States, showed himself to be aware that only political repression can allow a system of free market to survive in such a society as that of Chile. As long ago as 1970 he described the political measures that should accompany the implementation of his economic theories and of the monetary policy he advocated (control of the money supply through restriction of domestic credit, a single exchange rate and a balanced budget, etc.), warning that serious problems were to

be faced in applying that policy, most of them deriving from the need for discipline to ensure that the measures taken would be respected. "The main pressure factors to be taken into account are the actions of organized groups of workers in connexion with wage policy and the ambitious governmental programmes which must be financed by non-inflationary means." He concluded that "in a democratic system ..., there are obviously both conceptual and practical difficulties" in applying the proposed scheme, but these disappear as soon as it is agreed to use "other measures, in the form of the establishment of a centralized system, with the consequent loss of freedom." 20/

442. It has been shown elsewhere in this report (see, especially, chapters I and II, passim) that foreign economic assistance to a great extent serves to prop up the present Government authorities in Chile. It is designed to be or it ultimately turns out to be supportive of the policy chosen and carried out by the Chilean authorities in the field of socio-economic relations (in that it strengthens and consolidates the economic system adopted by those authorities, and allows them better to implement the strategy devised in the field of social relations), and also supportive of the policy concerning the relations between the State authorities and individuals - a repressive policy which actually tends to suppress or grossly restrict all the basic human rights.

443. It follows from the above considerations that foreign economic assistance, to the extent that it reinforces and shores up the present Government in Chile and its socio-economic strategy, contributes to consolidating and perpetuating the repressive system which to a great extent is a counterpart of the socio-economic policies of the Chilean authorities.

444. The Rapporteur feels it necessary to underscore the fact that the above conclusion has already been reached by other persons who have dealt with the problems of Chile. In this connexion, it is worth citing a statement made, on 29 April 1976, before the Sub-Committee on International Organizations of the Committee on International Relations of the United States House of Representatives, by Mr. Leonard C. Meeker, a prominent lawyer who, inter alia, has been Legal Adviser to the United States Department of State. Although in this statement Mr. Meeker refers only to the economic assistance furnished to Chile by the United States, its conclusions can also apply to the assistance provided by other States. After surveying the various forms of economic assistance provided by the United States to Chile, he stressed that this assistance did not go to those who are most in need, and concluded:

"Under present programs, US Government assistance is simply shoring up and easing the problems of a brutally repressive régime." 21/

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20/ "Short-term economic policy, Monetary Studies II", Central Bank of Chile, 1970, pp. 44-45, quoted by Dominique Labbé and Arturo Montes, in their study "L'inflation au Chili (1973-1976) et les problèmes de la croissance économique" (Inflation in Chile and problems of economic growth), Problèmes d'Amérique Latine XLVI, Notes et études documentaires, No. 4443-44-45, 12 December 1977, published by "La documentation française" (emphasis added).

21/ Hearings before the Sub-Committee on International Organizations of the Committee on International Relations, House of Representatives, 94th Congress, second session, 29 April and 5 May 1976, "Chile: the Status of Human Rights and its relationship to US economic assistance programs", 1976, p. 7.

Later on, replying to a question by United States Representative A.T. Moffet, Mr. Meeker said the following:

"The US Government needs to make it clear in its own statements to the Government of Chile that it is deeply offended by the treatment that that government is meting out to human beings, that it is a kind of treatment that we simply cannot condone. We will not support that government in its policies, and we will not give it the practical sinews to continue its repression through grants of foreign aid that go to the government to be dispensed by the government at its discretion." 22/

445. And on 4 May 1978 Senator Edward M. Kennedy, speaking on "Challenges to human rights in Chile", stated in the United States Senate that:

"The economic assistance tragically continues which, in so many instances, is being used to perpetuate in power those particular forces and those particular interests which we state are alien to our own traditions and our own basic and fundamental principles." 23/

446. The conclusion is warranted that foreign economic assistance is to a very great extent instrumental in supporting the present repressive system in Chile. This repressive system serves, in its turn, to attract (at least some forms of) foreign economic assistance, primarily private investments (see, supra, paras.421-424). There is therefore a two-way relationship, or a "circular" relationship, between gross disregard of human rights and foreign economic assistance.

22/ Ibid., p.12.

23/ United States of America, Congressional Record, cit., p.5.

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STUDY OF THE IMPACT OF FOREIGN ECONOMIC AID  
AND ASSISTANCE ON RESPECT FOR HUMAN RIGHTS IN CHILE

Report prepared by Mr. Antonio Cassese, Rapporteur\*

Chapter IV. Concluding observations

Annex I. Methods of work

Annex II. Letter dated 5 December 1977 from the Permanent  
Representative of Chile to the International  
Organizations in Geneva addressed to the  
Secretary-General

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\* For technical reasons, the report will be distributed in four volumes. Volume I contains the table of contents and the introduction; volume II contains chapter I; volume III contains chapters II and III; volume IV contains chapter IV and the annexes.

#### IV. CONCLUDING OBSERVATIONS

447. For the reasons set forth in the introduction (supra, paras. 75-86), in order to pin-point the possible impact of foreign economic assistance on human rights in Chile, the Rapporteur has considered it necessary to take a global approach to the matter. Therefore, before trying to see what kind of impact each specific instance of foreign economic assistance has had on human rights, he has endeavoured to establish whether an over-all correlation can be drawn between the general situation of human rights in Chile (i.e. between its improvement or deterioration), on the one hand, and foreign economic assistance, on the other. For the purpose of drawing such a correlation, the Rapporteur set out to investigate the general economic and social situation of Chile. He has tried to determine what kind of repercussion the economic policy carried out by the present Government has had on the economic, social and cultural rights of the population, i.e. whether that policy has turned out to promote the effective implementation of those human rights of the Chileans, or whether it has instead proved detrimental to the realization of human rights. To undertake this research, it has proved necessary to indicate first the main trends of the economic policy pursued by the Chilean authorities. The Rapporteur has then considered how this policy affects the Chilean population in general and the rights to work, to food, to health, to housing and to education, in particular.

448. The Rapporteur then considered the various instances of foreign economic assistance granted to Chile. They have been grouped according to their source (governmental, intergovernmental, private) and to their type (loans, investments, debt rescheduling, etc.). In examining each instance of economic aid, care has been taken to ascertain, to the extent possible, whether it - considered per se, namely in its intrinsic characteristics and potential impact - has had a beneficial influence, directly or indirectly, on the human rights situation in Chile. However, because of the lack of adequate means of verification, and also because it is difficult to assess the impact that each specific instance of foreign economic assistance can have on human rights without considering the over-all socio-economic setting in which that assistance is utilized, it has often proved arduous to proceed to such specific evaluation. The focus of the research has therefore been placed on the impact on human rights which the various forms of foreign economic assistance have, or are likely to have, if considered in the light of the general socio-economic context of Chile within which those forms of assistance operate. In other words, assessment of the various instances of foreign economic assistance has been primarily made by determining the possible interplay between each specific form of foreign economic assistance and the general policy, as well as the specific measures, adopted by the Chilean authorities in the area covered by that form of foreign assistance.

449. This examination has primarily hinged on the extent to which foreign economic assistance can help promote economic, social and cultural rights. It has then been considered appropriate to deal with the correlations between foreign assistance and civil and political rights, and on the possible interplay between these two categories of phenomena.

450. After thus briefly indicating the outline of this report, it may be fitting to summarize the main results of it and point to the conclusions which can be drawn from the research.

A. The consequences for economic, social and cultural rights of the economic policy implemented by the Chilean Government

451. The first area of problems which have been dealt with is that of the repercussions of the economic policy drawn up and implemented by the Chilean authorities after September 1973 on the social situation of the Chilean population, and more specifically on their basic economic, social and cultural rights.

452. Indisputably the economic policy of the new Government has pursued three basic objectives: to force down inflation, to improve the balance of payments and "to provide incentives to reactivate the Chilean economy".<sup>1/</sup> There is also common agreement on the modalities by which this policy has been carried out: restoration of a free market economy; drastic cutting of public expenditure on social services; freezing of wages and salaries; restoration to private ownership of enterprises previously belonging to the State and redistribution of land previously assigned to farmers' co-operatives; lifting of price controls; lowering of trade barriers and opening up of the Chilean market to foreign goods and capital. According to the Chilean authorities, this policy is capable of "healing the economy", making Chilean enterprises competitive, and attracting foreign investment, with the result, inter alia, of decreasing the huge foreign debt.

453. The Chilean Government has consistently maintained that the above economic policy has produced positive effects on the economic and financial plane. In 1978, the rate of inflation will be reduced, according to the Government's figures, to 30 per cent<sup>2/</sup>; the balance of payments may have in 1978 a surplus of about \$256 million. Furthermore, according to the Government, Chile's foreign debt has been lowered<sup>3/</sup> and non-traditional exports have increased.<sup>4/</sup>

454. The Government has contended that its policy has also been beneficial in the social area. Thus, unemployment has fallen, according to the Chilean authorities, to about 12 per cent in 1978<sup>5/</sup> and the purchasing power of the workers and employees has risen by about 20 per cent.<sup>6/</sup> Other areas "in which by government action there is notable progress" are nutrition, infant mortality, and the general death rate.<sup>7/</sup> In particular, the Government is insistent on its

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<sup>1/</sup> See, inter alia, the statement made by the President of the Republic on 11 September 1977, E/CN.4/1266, annex V, p.7.

<sup>2/</sup> Le Monde diplomatique, June 1978, p.7.

<sup>3/</sup> E/CN.4/1247/Add.1, p.69.

<sup>4/</sup> A/C.3/32/6, p.59

<sup>5/</sup> Ibid.

<sup>6/</sup> Ibid., p.60.

<sup>7/</sup> Ibid., p.59.

achievements in the decrease of infant mortality<sup>8/</sup> and in the distribution of milk to children.<sup>9/</sup> It also stresses its ability to provide "adequate housing for the most deprived sectors of the population"<sup>10/</sup> and to develop "unprecedented programmes for the elderly".<sup>11/</sup>

455. It is apparent from the sources available to the Rapporteur that, on the whole, the economic and social situation in Chile has steadily deteriorated from September 1973; this deterioration reached its peak in late 1974 and early 1975 (see supra, paras. 106-112). Since then, the economic situation has been recovering. Among the main aspects of this economic recovery are the decrease of the rate of inflation (which, according to the Government's target, should not exceed 30 per cent in 1978) and the improvement of the balance of payments.

456. To make a correct assessment of this economic achievement of the present Government, three factors should be taken into account. First, the economic recovery has not taken place to the extent claimed by the Government. Thus, for instance, certain achievements consistently emphasized by the Chilean authorities are not indicative of a real improvement in the economic situation.<sup>12/</sup> Furthermore, there is a decrease in productive investments (see supra, paras. 102-105). The external debt and the debt servicing ratio are increasing (see supra, paras. 116-120). The rate of borrowing from abroad

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<sup>8/</sup> E/CN.4/Sub.2/398, p.8.

<sup>9/</sup> A/C.3/32/6, p.66.

<sup>10/</sup> Ibid., p.60.

<sup>11/</sup> Ibid.

<sup>12/</sup> According to W. Goodfellow "Chile's chronic economic crisis", cit., p.19:

"One of the few economic success stories coming out of Chile today involves the doubling of non-copper exports in 1974 over the previous year. In 1975 non-copper exports rose another 36 per cent (20 per cent in real terms) although copper remains Chile's primary foreign exchange earner. Significant about the growth of non-copper exports is the fact that in almost all cases the increases are accompanied by declines in absolute output. The increased exports represent a change in the marketing structure for Chilean firms involved. Domestic demand is so low that producers were faced with the choice of either exporting or closing their doors". (Emphasis added in the last sentence.)

is at a level considered by the Director of the International Monetary Fund as "unsustainable".<sup>13/</sup> This high borrowing inter alia contributes to explaining why the balance of payments has improved (see supra, para.114).

457. Furthermore, it must be stressed that the policy pursued by the Chilean authorities has proved incompatible with international co-operative schemes to which Chile had adhered in the past and has therefore led Chile to discontinue such co-operation. Thus, Chilean foreign investment policy has become inconsistent with the Andean Integration Principles; Chile therefore withdrew from the Cartagena Agreement as well as from the Corporación Andina de Fomento. Chile also dissociated itself from the Association of Iron Ore Exporting Countries and appears to stand isolated within the International Council of Copper Producing Countries (CIPEC).

458. A second factor that must be taken into account is that economic recovery has not been accompanied by a corresponding improvement in the social field. In fact, one of the main consequences of the economic policy of the Chilean authorities has been the reduction of the income level of the majority of the

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<sup>13/</sup> At a meeting of the Administrative Committee on Co-ordination held at United Nations Headquarters, New York, on 31 October 1977, Mr. Witteveen, Managing Director of the IMF, observed inter alia that "One of the few benefits of world inflation was that the increase in world prices had generated increased export earnings for the developing countries, thereby easing the debt burden. The main problem involved a number of developing countries that had over-accelerated their economies and were, as a result, borrowing up to 12 per cent of their national income. Such a rate of borrowing was unsustainable, and urgent adjustments were called for in order to avert major debt-servicing difficulties which would have serious repercussions on the entire international financial system" (CO-ORDINATION/SR.71/Rev.1, p.10; emphasis added). According to some sources the rate of borrowing in Chile is about 15 per cent of the national income.



Chilean population, especially of the wage earners (see supra, paras.121-124).<sup>14/</sup> Furthermore, the wage earners have suffered a marked decrease of their purchasing power (see supra, paras.125-136). In addition, employment, nutrition, health, housing and education have either remained in the very bad conditions which took shape between the end of 1973 and 1975 or have only slightly improved. Some achievements, consistently stressed by the Chilean Government, such as the decrease in infant mortality, are not indicative - for the reasons set out above (supra, paras.207-211) - of a general amelioration of the social conditions.

<sup>14/</sup> In addition to table 15 (supra, para. 123), the following table clearly shows the decrease of the income of salary and wage earners:

Table 71-

Distribution of domestic income  
by kind of compensation  
(Percentage of total per year)

Year	Salaries and wages	Employer Social Security contribution	Remuneration on work of employees and labourers	Other payments to factors	Domestic income
1960	44.4	7.2	51.6	48.4	100.0
1961	43.1	7.2	50.3	49.7	100.0
1962	42.3	6.8	49.1	50.9	100.0
1963	39.4	6.3	45.7	54.3	100.0
1964	38.3	6.5	44.8	55.2	100.0
1965	40.6	7.2	47.8	52.2	100.0
1966	40.6	7.7	48.3	51.7	100.0
1967	40.8	7.3	48.1	51.9	100.0
1968	42.2	7.4	49.6	50.4	100.0
1969	41.1	7.5	48.6	51.4	100.0
1970	44.3	8.0	52.3	47.7	100.0
1971	52.1	9.6	61.7	38.3	100.0
1972	53.2	9.6	62.8	37.2	100.0
1973	41.1	6.1	47.2	52.8	100.0
1974	34.6	7.6	42.2	57.8	100.0
1975	34.7	7.2	41.9	58.1	100.0
1976	34.7	6.4	41.1	58.9	100.0

Source: Economic and Financial Survey, Chile News, vol. 14, No. 700, 12 June 1978, p.5 (see ibid., p.4, for the caveat concerning the significance of this table, which however, despite certain deficiencies point out there, "reveals at least an order of magnitude").

459. The basic reason why social advance has not gone along with economic recovery lies, in the opinion of the Rapporteur, in the economic policy chosen and in the basic attitude of gross disregard of civil and political rights. The economic policy adopted by the Government, by its very nature, tends to sacrifice the needs and aspirations of the vast majority of the population, in particular of the underprivileged strata, while it favours the interests of a small élite of big landowners, financiers and industrialists (especially those dealing with export of manufactured goods) as well as the military ruling groups with which they are connected. In fact, the basic philosophy behind that policy is the concept of a free market and free competition and of minimal State intervention in the social sphere. In a society like that of Chile, where there exist deep social inequalities, this philosophy cannot but lead to enhancing the position of the upper classes and disregarding the needs of the underprivileged.

460. In assessing the present situation of economic, social and cultural rights in Chile a third factor should be borne in mind. In other developing countries which follow the same economic policy as that of the present Chilean Government or a similar one, the starting-point has often been a situation of extreme poverty, of lack of social services, of poor health and education conditions, of the absence of trade union tradition and of the consequent absence of collective bargaining. In the case of Chile there was instead a solid tradition of great respect both for economic, social and cultural rights, and for civil and political rights. Social services, especially in the fields of health, nutrition and education, were very advanced. In addition, there was a deep-rooted tradition of trade-unionism and the participation of the unions in the determination of labour conditions was not hampered. These achievements have been cancelled by the present Government. The current deterioration of economic, social and cultural rights can be perceived in all its magnitude only if it is contrasted with the previous situation of respect for them. Therefore, when it is claimed that there is a slight improvement in some areas (e.g. in employment or nutrition), these improvements - assuming that they have actually occurred to the extent claimed by the Government - should always be seen against the background of the pre-1973 situation and evaluated accordingly.

461. As a detailed analysis of both the principal causes and the manifestations of the deterioration of the basic economic, social and cultural rights has already been made above (supra, paras. 147-249) the Rapporteur will here confine himself to drawing attention to one of the measures of the Chilean Government which best illustrates why and to what extent those human rights are not fully implemented.

462. Among the striking features of the economic policy adopted by the present Chilean Government is the slashing of public expenditures in social areas. Table 2 is repeated here, as it gives a clear idea of the magnitude of this measure:

Percentage of public expenditure accounted for by certain Ministries

	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>
Public Works	16.1	15.6	14.1	10.1	13.5	8.5	n.a.	5.9	5.3
Education	20.2	19.4	20.1	18.3	14.2	15.7	"	15.5	17.7
Agriculture	4.7	4.1	5.5	4.6	2.7	1.3	"	1.8	1.8
Health	8.0	8.0	9.4	8.7	6.6	6.5	"	5.9	6.6
Housing	4.3	6.4	5.7	7.2	6.6	3.5	"	3.8	3.1
Defence	9.9	8.3	9.5	10.3	13.1	19.7	"	19.9	21.9

Sources: 1970-1975 OIT, Programa regional del empleo para América Latina y el Caribe (PREALC), Monografía 5, Junio 1977, "Políticas de estabilización y empleo. El caso de Chile 1973-1975", p.42, table 6.

1977-1978 Comentarios sobre la situación económica, Taller de coyuntura, Universidad de Chile, II Sem.1977, p.60.

It is apparent from this table that there has been a marked decline in the expenditure on public works, agriculture, health and housing, as well as a decrease in the spending for education, while there has been a remarkable increase in defence spending. This decline has occurred despite the fact that: (a) wages for particular sectors, which formerly were charged in part to the budget of the Ministry of the Economy, are now covered directly and in full by the Ministry concerned; (b) there has been an over-all real reduction<sup>15/</sup> in the budget (for example, in 1975 it declined by 34 per cent in relation to 1972). This reduction is to a large extent continuing.

463. The sharp decrease in public expenditure in social services helps to explain why even in those areas, such as primary education or child nutrition, where the Government claims to have achieved remarkable results, the progress is not adequate, owing to a series of factors: thus the contraction of public expenditures for education implies the dismissal of hundreds of specialized personnel; the reduction in expenditure on health and the consequent privatization of medical care, and the reduction of expenditure for free medicaments to poor people all result in inadequate health care.

<sup>15/</sup> By "real" reduction it is meant that the effects of inflation have been excluded.

464. To justify the fact that the economic, social and cultural rights of Chileans are grossly disregarded, the Chilean authorities have sometimes pointed out that the economic advance of the country has a high "social cost" but that this would be compensated by the over-all economic recovery, from which in the long run benefits would accrue to the whole population. As has been emphasized above (supra, paras.101-105), this argument cannot appear convincing without entering into the merits of the view whereby it is proper and equitable to sacrifice the needs of the present generation to the advantage of the future ones. Suffice it to make two points. First, it is apparent that the present social burdens are not shared equally by all strata of society but are mainly borne by the underprivileged (in terms of unemployment or underemployment, bad housing conditions, lack of medical care, financial inability to have access to all levels of education, etc.). Second, it appears from the available sources that the current economic policy of the Government is not able to create an improvement in the economic conditions of such magnitude as to affect social conditions in the future.

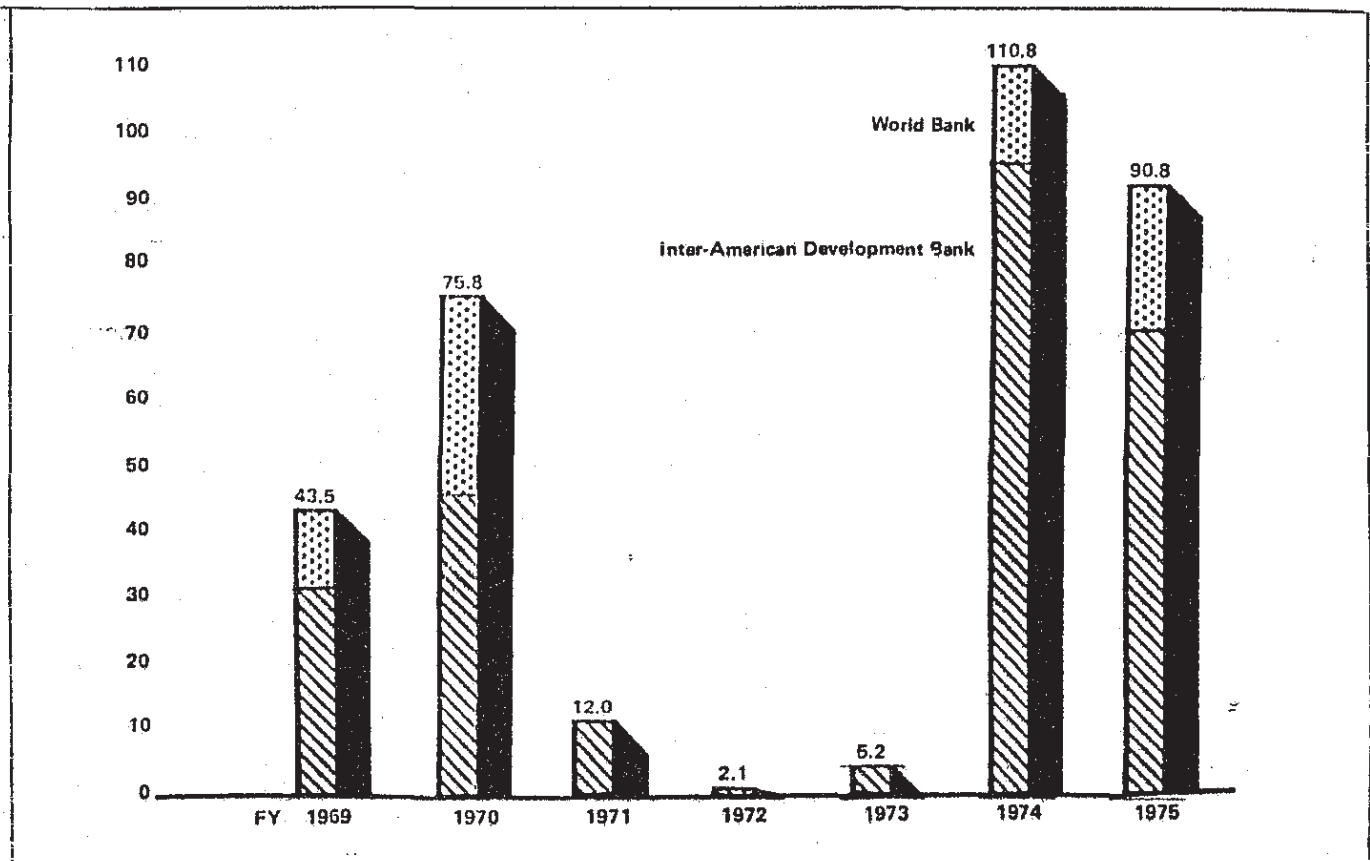
465. In the opinion of the Rapporteur, the Chilean experience cannot be compared with that of other countries where the "social cost" has been paid to increase investments through national savings (often in heavy industry) and these investments produce a better standard of living for future generations. In Chile, on the contrary, the rate of investment has decreased from an average of about 12 per cent of the gross national product in 1971-1973 to less than 10 per cent in 1975-1977, one of the lowest rates of investment in Latin America. These figures mean that the consumption - especially the conspicuous consumption - has increased from 88 per cent of GNP to more than 90 per cent. The conspicuous consumption consists to a great extent of imported goods paid for with the foreign exchange that the country is receiving from abroad through foreign aid. It seems therefore that the dominant groups in Chile are not using their resources for investments, to increase the productive capacity of the country. Instead, they are improving their present standard of living. In addition, as has already been pointed out, the external debt and the debt servicing payments are increasing enormously (see supra, paras. 116-120). This means that the Chilean authorities are mortgaging the future of the Chilean people.

B. Foreign economic assistance to Chile: its magnitude and the shift from public to private sources

466. The huge debt and the high ratio of debt servicing payments to export receipts, as well as the decision of the Government to attract foreign capital and investments, have led Chile to rely very heavily on foreign economic assistance. Soon after September 1973 the inflow of loans and credits from the World Bank, the International Monetary Fund and the United States of America skyrocketed as compared to previous years. The following table shows very clearly the magnitude of this economic help:

Table 72

World Bank and Inter-American Development Bank  
loans to Chile, 1968-1975



Source: W. Goodfellow, "Chile's chronic economic crisis: 1976 and beyond", International Policy Report (Center for International Policy, Washington, D.C.), vol. II, No. 2, September 1976, p.3, based on data from the World Bank and the Inter-American Development Bank.

468. After 1976, however, increasing pressure was put on Governments and intergovernmental institutions to stop or greatly diminish economic aid to Chile because of the gross violations of human rights occurring in that country. Following the passing of the Harkin Amendment in the United States Congress (see supra, para. 267) the United States greatly reduced its assistance. Also other public sources increasingly attached human rights criteria to their economic assistance projects. Because of the new United States legislation in October 1976, the Chilean Government communicated to the United States Government "its desire not be considered for the purposes of the economic assistance legislation to be approved for fiscal year 1978" and also renounced other specific forms of United States assistance. 16/

469. The aid flowing from public sources was however replaced by aid from private sources such as banks and multinational corporations. The following table (reproduced above as table 4B) shows very clearly how these private loans increased steeply after 1976, to achieve the record amount of \$800 million in 1977. According to a report submitted to the Rapporteur, "official estimates indicate that, by 1978, private sector loans will account for more than 90 per cent of Chile total foreign borrowing". 17/

470. On the whole, it appears that loans of private banks and suppliers' credits have to a great extent replaced the external financing previously flowing from Governments or intergovernmental institutions. Furthermore, this new influx of loans has greatly surpassed the previous external financing from public sources.

C. The composition of foreign economic assistance and its impact on economic, social and cultural rights

471. Everything considered, it can be said that the economic assistance flowing from public sources has been to a minimum extent human rights-related, while the greatest part of it has been geared to development or not directly concerned either with human rights or with development (for these categories, see supra, paras. 62-74). By contrast, the aid currently flowing from private sources is almost exclusively based on commercial criteria: foreign private banks or multinational corporations are mostly interested in maximizing profits and eliminating risks and do not attach great importance to human rights criteria nor are they directly concerned with development criteria.

472. As has just been pointed out, only a very small proportion of total foreign economic assistance to Chile has gone for purposes directly related to improving the situation of economic, social and cultural rights in that country. Mention has already been made, in the different sections of chapter II of this report, of the various instances where it can safely be said that a given loan or credit

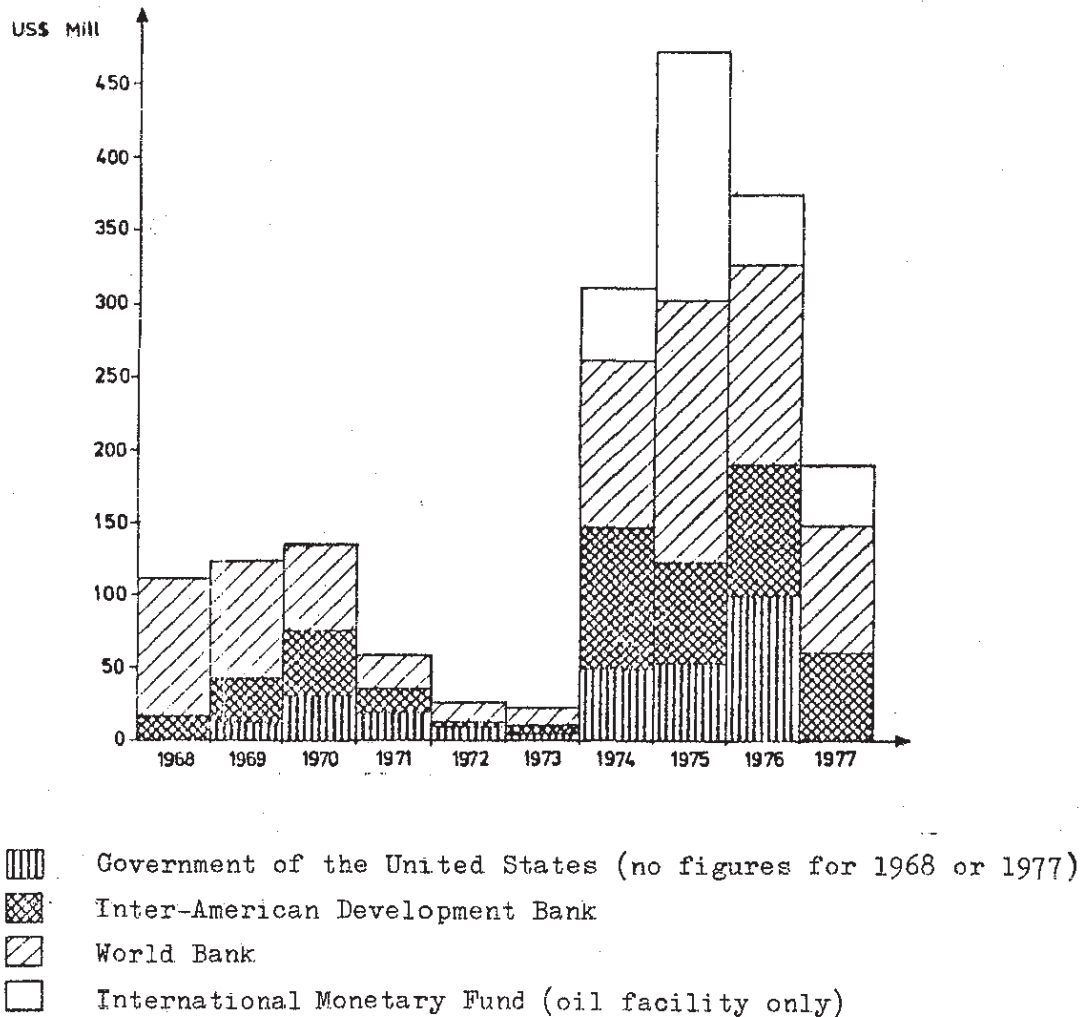
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16/ For more details see E/CN.4/Sub.2:398 and supra, para. 274.

17/ I. Letelier and M. Moffitt, op.cit., p.19.

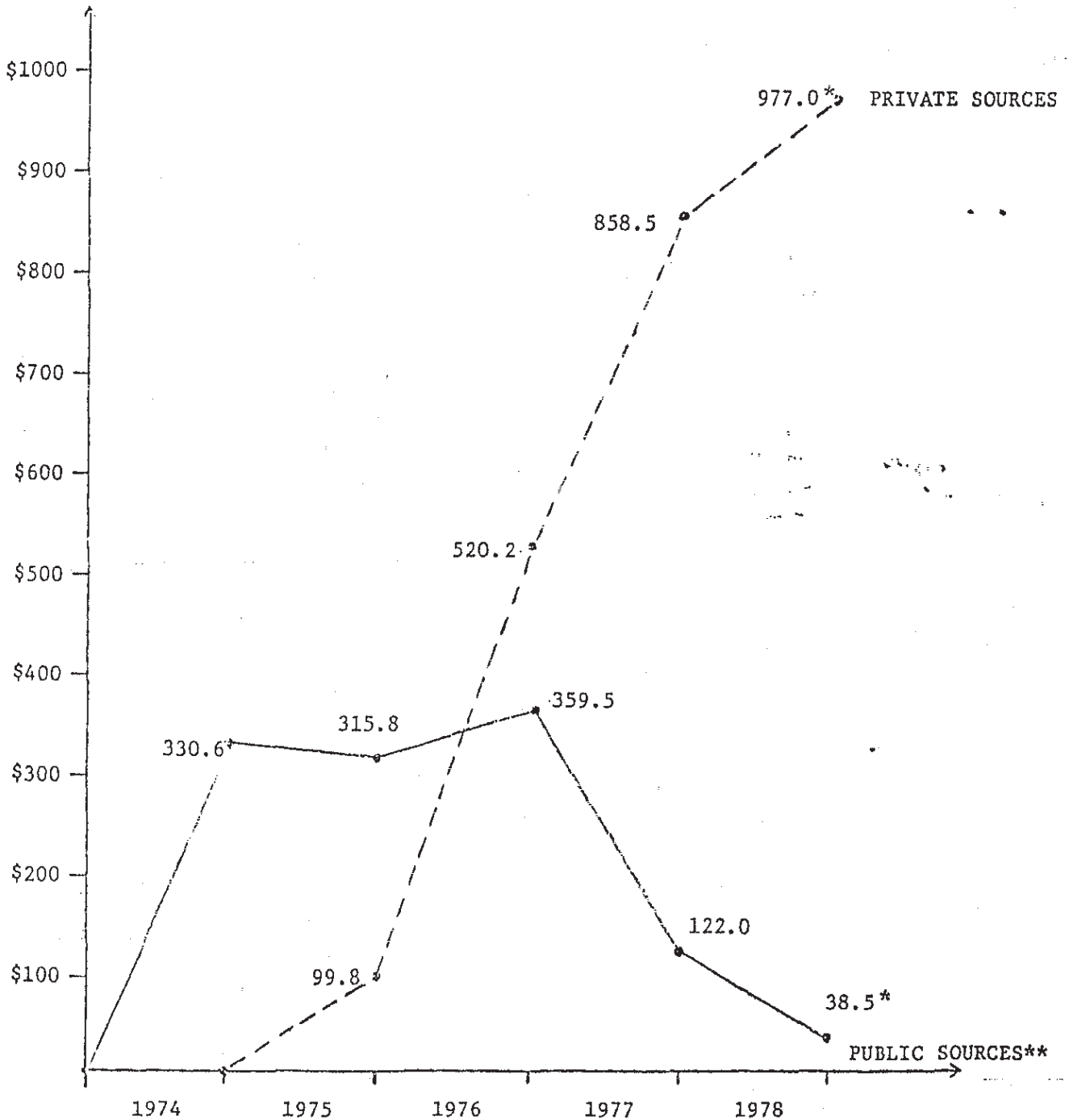
467. Table 45, which covers also the economic help granted by the United States of America, is reproduced again here:

Economic aid to Chile  
(World Bank, Inter-American Development Bank, United States  
Government, International Monetary Fund - 1968-1977)



Source: M. Dias-David, V. Millán and A. Vial, "Asistencia financiera externa a la Junta Militar de Chile, 1973-1977", Institute of Latin American Studies, Stockholm, 1978 (report submitted to the Rapporteur), p. 20.

Chile's foreign borrowing, 1974-1978  
(Millions of US dollars)



Source: I. Letelier and M. Moffitt, "Human rights, economic aid and private banks - the case of Chile" (Washington, D.C., April 1978), p. 14.

\* Projected.

\*\* Public Sources include only United States bilateral aid, multilateral development assistance, and drawings on the resources of the IMF. Does not include non-U.S. bilateral assistance.



is designed to be directly beneficial to human rights (see, for instance, paras. 269 and 296, concerning United States food assistance; paras. 331 and 337-338, concerning economic assistance from the World Bank; paras. 345-347, concerning assistance provided by ILO and WHO; paras. 362 and 363-368, concerning assistance granted by the Inter-American Development Bank). An attempt to quantify the amount of this form of assistance has been made by the London-based institute Contemporary Archive for Latin America (CALA). In a report submitted in 1978, they say the following:

"While no good breakdowns, according to these criteria, exist for total financial flows, the great majority of those with a positive impact are included in the following table, drawing on a very extensive itemisation and classification of loans by the World Bank:

Loans directly benefiting economic,  
social and cultural rights

(Millions of US dollars)

	<u>1974</u>	<u>1975</u>	<u>1976</u>
Education	1.6	0.0	0.0
Housing	0.0	27.6	30.0
Health	3.9	5.0	1.8
Social Infrastructure	0.0	0.0	12.9
Food Aid	15.7	17.2	0.0
Needy Agric. Sectors	0.0	35.0	0.0
<b>TOTAL</b>	<b>21.1*</b>	<b>84.8</b>	<b>44.7</b>
Loans individually classified by World Bank	482.7	242.6	488.0
All loans	861.6	706.6	615.2

\* not equal to sum of entries due to rounding.

These loans account for only 12.4% of the loans itemised by the World Bank, and a mere 6.9% of total figures for loans to Chile; 9% would be a generous compromise to take sampling omissions into account. Governmental and intergovernmental sources provided some two thirds of the rights-related total, and as these sources have been declining sharply in their share of total assistance the proportion of such assistance which is rights-related has doubtless had the same tendency." 18/

18/ Contemporary Archive for Latin America, Report on foreign economic assistance to Chile, London, May 1978, p. D.5, 1 (emphasis added).

473. It appears from available sources that an increasingly small proportion of total economic assistance has been of a sort which, by its nature, could be expected to be directly concerned with developmental criteria. The following table shows the amount of this category of aid:

Table 73  
Assistance categories with developmental criteria  
(Millions of US dollars)

	<u>Bilateral government assistance</u>	<u>Multilateral Development assistance</u>	<u>Total loan assistance</u>
1974	231.2 (26.8%)	115.6 (13.4%)	861.6
1975	119.1 (16.9%)	106.2 (15.0%)	706.6
1976	109.6 (17.8%)	114.9 (18.7%)	615.2
1977	40.0 (4.7%)	89.5 (10.4%)	859.7

Source: Contemporary Archive for Latin America, op. cit., p. D.I, 1.

474. Especially after the shift from public to private sources referred to above (supra, paras. 466-470), the vast majority of foreign economic assistance appears to be geared neither to human rights nor to development.

475. As was pointed out above, to assess the impact of the three categories of foreign economic assistance on human rights in Chile it is necessary to consider how this assistance is used, what measures the recipient Government takes in the area covered by the assistance, and, more generally, what kind of economic and social policy it implements. In principle, all of the three categories of assistance can turn out to have direct positive consequences for the economic, social and cultural rights of the population. All depends on the way the recipient Government allocates its own resources, as well as on the general context within which it utilizes the inflow of foreign resources.

476. Let us first assess the assistance directly related to human rights. It must be pointed out that, although - as the Rapporteur has already indicated (see supra, para. 472) - there are various cases where such assistance indisputably goes to the poor segments of the population, the amounts granted, already in themselves minimal, are largely insignificant in relation to the total social spending required in these sectors, and often fall far short of the amounts by which the Chilean Government has cut back its own spending. Further, particularly in the case of suppliers' credits (see supra, paras. 394-397), a significant part of these funds seems to help finance the Chilean Government's resource allocation priorities, rather than helping to shape them along more beneficial lines. In other words, often the funds supplied for specific purposes (housing, nutrition, small farmers, etc.) do not, in practice, achieve their objective of helping to improve the situation in those sectors, since in many cases the Chilean authorities have proceeded to reduce, by even greater amounts, the funds which were formerly provided for such purposes.

477. One of the sectors which serves to illustrate this conclusion is housing. In January 1976 the Agency for International Development provided the Central Bank of Chile with a credit of \$US 30 million to be used for the construction of new housing. In February 1977 this amount was increased by a further \$US 25 million. 19/ Statistics indicate that this credit is not being reflected in an increase in housing construction or in a lowering of the housing shortage growth rate, since the funds provided by the State for these purposes have been greatly reduced. 20/ It is thus apparent that the funds raised abroad are serving only as a partial palliative for this reduction. In 1977 the construction of housing in the public and private sectors fell in relation to the previous year, indicating that the same situation has recurred...

478. Mention can also be made, by way of example, of the \$7.5 million IDB loan, approved in December 1976, for potable water in 150 rural communities. As pointed out above (see supra, para. 368) official cutbacks in such areas are on a scale which means that foreign assistance is probably doing little more than helping to cover some of the growing inadequacies in Chilean government provisions.

479. The loans granted by the Inter-American Development Bank (IDB) to "improve the health services of the neediest populations in the rural sectors of the country" lend themselves to the same considerations. As was stressed above (supra, paras. 363-368), the potential impact of the IDB projects is considerably curtailed as a result of the Chilean Government's health policy and of the drastic contraction of resources allocated to health (see supra, paras. 195-213).

480. Equally indicative is what has happened with the system of savings and loan associations. This system has received credits from international financial institutions such as the United States Agency for International Development (AID) and the Inter-American Savings and Loan Bank. However, the volume of activity of the associations, far from increasing, has fallen, owing to the fact that they are faced with a policy which is leading to their virtual extinction. This is so much so that the biannual report for the period July-December 1977, prepared by the Economic Analysis Unit of the Department of Economics at the University of Chile, points out that in the present circumstances the existence of the savings and loan system cannot be justified and that it ought to become a department of the Central Bank. Its operations have fallen off sharply. 21/

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19/ El Mercurio, 23 February 1977.

20/ While in the three-year period 1971-1973 new starts were made on 5,653,115 m<sup>3</sup> of housing in the public sector, in the following three-year period (1974-1976) only 1,661,361 m<sup>3</sup> were started. Public construction of housing fell by more than 70 per cent (see, inter alia, Economic and Financial Statistics, Chile News, vol.14, No. 701, 19 June 1978, p.10).

21/ In 1974 SINAP granted 23,732 loans, which fell to 8,472 in 1975 and to 5,804 in 1976. As a result of the general economic situation, there has also been a sharp drop in the number of new depositors in the system, which fell from 157,851 to 37,844 between 1974 and 1976.

481. A similar conclusion can be drawn, for example, for the credits for small farmers granted by financial agencies of the United States Government (see supra, paras. 272-273 and 275) or by the World Bank (see supra, paras 331 and 337-338). It is apparent that the loans or aid received by small farmers in Chile have actually fallen in volume. An example of this is the position of the new owners who have received plots in the reformed sector. 22/

482. The conclusion is warranted that the funds from foreign sources provided for specific purposes are not having the desired effect because the total funds for the sectors concerned are reduced by the Chilean authorities.

483. As for economic assistance geared to development or that unrelated to any human rights or development criteria, it is apparent from the documentation available that these resources have not benefited the majority of the Chilean population. In fact, despite the steep increase in the inflow of foreign loans, credits and investments, the standard of living and the level of consumption of the large majority of Chileans have on the whole deteriorated, though this is not the case for a small percentage of Chileans with large incomes (see chap. I above). In spite of the slight recovery which started in 1976, the situation of economic, social and cultural rights remains very serious. One can infer from the comparison between this situation and the growing influx of foreign capital that the foreign resources have not had the effect of promoting the implementation of human rights.

484. It must be added that, according to available statistics, foreign resources have not been directed in relevant volume to increase investments. On the contrary, these have been maintained over the years at very low levels. 23/

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22/ On 5 March 1978 the newspaper El Mercurio, after covering more than 4,000 kilometres in order to report on their situation, arrived at the following conclusions: "shortage of capital for working the land due to the high cost of agricultural credit; virtually no technical assistance; use of poor-quality seeds; reduced use of fertilizers and pesticides; leasing, sale or surrender to share cropping of a high percentage of the 36,000 plots allotted...". The Confederation of Farmers of the Reformed Sector has declared: "The financial position of most allottees is bad; the sale of their produce will not bring in enough money to pay off their loans and arrears of debt, both of which are increased tremendously by the inflated rates of interest. This problem has assumed dramatic proportions for the farmers of the reformed sector. The fact that they cannot pay their debts on time means that those debts are increased by the interest which continues to be charged on them, and, what is even more serious, that they have no possibility of obtaining credit to enable them to meet the new agricultural year" (El Mercurio, 13 March 1978). The smallholders are also in a very difficult situation.

23/ According to figures of the Chilean National Accounts drawn up by ODEPLAN, the gross national investment in fixed capital decreased in 1975 to levels which the country had not known since 1960. In 1975 it was 2,325,000 pesos, whereas in 1971 it was already 2,546,000 in money of the same value. During 1976 the amount was even lower - 2,246,000 pesos. In 1977, according to preliminary estimates, it reached 2,655,000 pesos - an amount that corresponded to the level

of investment in fixed capital during 1962, 15 years earlier. In the three-year period 1975-1977, the total gross national investment reached 7,256,000 pesos, an amount that must be compared with the 9,283,000 pesos invested in the three-year period 1971-1973 and with 9,886,000 pesos invested in the years 1968-1970. (All the figures given in this note are expressed in pesos of 1965.)

Table 74

Account of gross domestic savings and investment

(Millions of 1977 dollars)

<u>Particulars</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>	<u>1975</u>	<u>1976</u>
	<u>I. SAVINGS</u>						
<u>Gross National Savings</u>	1 512	1 327	816	997	1 399	308	863
Current Account Deficit of the Nation	136	267	480	297	69	404	-136
<u>Gross Domestic Savings</u>	1 648	1 594	1 296	1 294	1 468	792	727
	<u>II. INVESTMENT</u>						
1. Gross domestic investment in fixed capital:	1 449	1 466	1 241	1 205	1 373	1 002	955
1.1. Building and other works:	824	899	797	667	823	538	424
1.1.1. Buildings:	415	484	421	320	388	220	184
1.1.1.1. Housing	270	313	262	217	247	146	115
1.1.1.2. Non residential buildings	145	171	159	103	121	74	69
1.1.2. Other building and works	409	415	376	347	456	318	240
1.2. Machinery and equipment:	625	567	444	538	550	464	531
1.2.1. Imported	497	431	306	407	421	380	454
1.2.2. National	128	136	138	131	129	83	77
2. Increased stocks	199	128	55	88	94	-210	-228
<u>Gross Domestic Investment:</u>	1 648	1 594	1 296	1 204	1 469	792	727
GDI index (1970 = 100):	100.0	96.7	78.6	73.1	89.1	48.1	44.1
GDI as a % of Goods and Services Used	17.1	15.3	12.5	12.0	13.9	8.4	7.4

Source: Economic and Financial Survey, Chile News, vol. 14, No. 699,  
5 June 1978, p. 4, on the basis of ODEPLAN estimates in 1965 pesos, converted  
to 1977 dollar by deflating factor of 2,351.

In other words, the economic scheme followed in Chile not only has had negative consequences in the short term, but also has a regressive projection towards the future. It would seem that this deterioration of the investment level makes it difficult for the country to recover in the short term the economic activity level reached before 1973. This seems even more difficult because - according to some sources - an important part of the country's facilities have been deteriorating during this period. According to the Cámara Chilena de la Construcción, because of the cuts in public spending, the funds allocated have not even covered the maintenance of the existing infrastructure. 24/

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24/ According to a report:

"The President of the Cámara Chilena de la Construcción, Modesto Collados, feels that 'from the standpoint of public works, the current situation is seriously deficient' and, unless a serious policy is adopted in this connection, 'within a period of not more than three years, we shall see our economic development critically threatened by the lack of the physical support it essentially requires'. Mr. Collados believes that 'although Chile ought to invest at least 0.3% of its gross domestic product in infrastructure, it only allocates 3.2% to this end', whereas only 'to maintain and replace facilities built by the Bureau of Public Works, after their useful life is reached, 390 million dollars are required every year, excluding work in connection with the Santiago underground railway and energy infrastructure'. In view of this evident situation in his own opinion, Mr. Collados indicated the need to reallocate public spending, inasmuch as while on the one hand investment in infrastructure is minimum, on the other, public outlays in relation to the gross domestic product are 'disproportionately high' and would be revealing the existence of other exaggerated components in public spending, because 'the State not only spends too much, but also spends on functions that are altogether alien to it'. Consequently, he suggests a redistribution of public spending, by means of increasing allocations intended to investment in infrastructure, while pointing out that any additional unemployment as a result of shrinking certain expenditure components, would be more than compensated by higher occupation required to build infrastructure works." (Economic and Financial Survey, Chile News, vol. 14, No. 699, 5 June 1978, pp. 1-2).

485. If the consumption of the majority of the population is not increasing and the investment is kept at low levels, it may be asked what role is played by the copious flow of external resources. It seems that a large volume of external resources has been used to maintain the rate of imports. The direct investment made is usually for the purpose of gaining control of State enterprises, which then pass into the private sector. 25/

486. Foreign resources have also been used, in the last few years, to cover the heavy deficit in the current account of the balance of payments, which had a deficit of \$US 518 million in 1977, according to Central Bank statistics. Estimates made in March by the Central Bank indicate that the deficit is likely to increase in the course of 1978 to \$US 593 million. The magazine Economía y Sociedad believes in the light of those estimates that the deficit may climb to as much as \$US 650 million. 26/ It originates in the trade deficit and, in particular, the deficit on the services account, which is mainly due to the high cost of this external financing.

25/ In 1977, external inflows amounted to \$US 1,361 million, according to official Chilean Central Bank figures. Projections made by the same Bank indicate that in the course of 1978 they will reach the unprecedented figure of \$US 1,650 million (Hoy, 12 April 1978). The publication Economía y Sociedad (March 1978), basing itself on the Central Bank's statistics, concluded that the gross capital inflow would rise to \$US 1,750 million, of which \$US 1,300 million would come from medium-term and long-term credits, \$US 200 million from short-term credits, \$US 170 million from direct foreign investment and \$US 80 million from sales by private persons as through the financial system.

26/ The following projection provides an indication:

Table 75

Projected balance of payments, 1978

(In millions of dollars)

A. <u>Trade balance</u>		
1.	Exports:	2 400
1.1.	Traditional:	<u>1 700</u>
	(a) Mining	<u>1 450</u>
	- Copper	1 230
	- Iron	120
	- Saltpetre and iodine	50
	- Other	50
	(b) Industrial	<u>250</u>
	- Fishmeal	70
	- Paper, cellulose, paperboard	140
	- Finished copper products	40
1.2.	Non-traditional	<u>700</u>
	(a) Livestock, fish and seafood	205
	- Agricultural	160
	- Other	45
	(b) Industrial	<u>495</u>
	- Wood	75
	- Other	420

487. As has already been mentioned, the gross loans given are used, in addition to paying off the deficit, for servicing the external debt, which, precisely because of these borrowings, does not diminish. At the end of 1972 it stood at \$US 3,602 million and by the end of 1977 it had reached \$US 5,275 million, and there is every indication that, if the present state of affairs persists, it will continue to expand. Its increase was particularly pronounced in 1974 and 1975, amounting to \$US 1,215 million. The upward trend abated in 1976 owing to the drastic curtailment of imports which accompanied the drop in production and consumption levels in 1975, but in 1977 it began to move up again, although slowly. 27/

488. Several sources also indicate that defence expenditures have increased. It could be inferred from several facts given above (see supra, paras. 88-146) that they benefit largely from the foreign exchange made available by assistance coming from abroad. In the distribution of the fiscal budget for the present year the resources allocated to the Ministry of Defence, in national currency, will amount to 21.9 per cent of the total, as against 19.9 per cent in 1977. In terms of foreign exchange they will, however, remain practically the same, at around 15 per cent. Again in terms of foreign exchange, if the sums earmarked for servicing the public debt are excluded, the budget appropriation for the Ministry of Defence is equivalent to 58.39 per cent of total allocations (see supra, para. 99). It follows from the above observation that the present Chilean Government has benefited over the years from a generous inflow of external resources which has enabled it to keep its economic scheme in operation. It may reasonably be claimed therefore that it is this inflow of capital that has to a great extent permitted the viability of an economic policy which has had the severe repercussions pointed out above (paras. 147-249) on the living conditions of the vast majority of Chileans - in particular on their rights to work, to food, to health, to housing and to education.

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27/ It appears from the available sources that another part is to some extent directed to sustaining a high level of consumption for a minority and to obtaining remarkably high profits in financial speculation. In 1976 the real interest on credits given by the banks for short-term operations had an annual accumulated rate of 63.5 per cent, and in 1977, 56.3 per cent. There have been times when the real interest rates of the banks for credits of 30 days have reached monthly levels of 0.3 per cent. The reality of this financial speculation has been publicly recognized by Professor Arnold Harberger, Director of the University of Chicago's Department of Economics, who is one of the economists on whose theories the designers of the Chilean economic scheme based themselves. "The maintenance of such high rates of real interest for so long is a phenomenon unique in the world", he said last November (El Mercurio, 27 November 1977).

The members of the minority that benefits from this policy have at the same time increased their patrimony, having become owners, on very favourable conditions, of enterprises that were previously publicly owned. At the same time, the Government authorities allow a great deal of resources to pass into the hands of foreign investors.



2.	Imports	<u>2 600</u>
2.1.	Consumer goods <u>a/</u>	300
2.2.	Foodstuffs	360
2.3.	Intermediate products	1 320
2.4.	Capital goods	620
3.	<u>Net trade balance</u>	
	(1-2)	-200
B.	<u>Balance of services</u>	
1.	Return on capital	-430
	(a) Interest	-405
	- Medium- and long-term debts	-334
	- Short-term debts	- 43
	- IMF interest payments	- 28
	(b) Profits	- 25
2.	Non-financial services (freight and insurance, net)	- 40
3.	Transfers (net)	+ 20
	<u>Net Balance of services (1 + 2 + 3)</u>	-450
C.	<u>Net balance on current account (A + B)</u>	-650
D.	<u>Capital account</u>	+900
	- Gross capital inflow	<u>1 750</u>
	- Medium- and long-term credits	<u>1 300</u>
	- Short-term credits	200
	- Direct foreign investments	170
	- Private currency sales	80
E.	<u>Net balance of payments</u>	+250

Assumption: price of copper, 63 ¢ per pound.

Source: Economía y Sociedad, March 1978.

a/ 2.1 covers consumer goods other than foodstuffs.

D. The relation between foreign economic assistance  
and the enjoyment of civil and political rights

489. As pointed out in chapter III, five sorts of relations between foreign economic assistance, on the one hand, and civil and political rights in Chile, on the other hand, may be distinguished.

490. First, the large-scale violations of civil and political rights which have been perpetrated since 1973 in Chile have led many States and, in a few instances, intergovernmental organizations to withhold economic assistance previously granted or scheduled to be granted to the governmental authorities (see supra, paras.404-420). As a consequence, a large flow of foreign aid that could have produced beneficial consequences for the vast majority of the population has been stopped.

491. Secondly, the present Chilean policy of repressing some human rights, in particular trade union rights, has become an important factor for attracting foreign investments, especially of private entities. For the Chilean authorities can offer cheap labour and violently enforced industrial discipline. In addition, thanks to the "creditworthiness" attained by freezing wages, severely cutting public expenditures and reducing inflation, the Government can attract loans from international institutions such as IMF, which attach great merit to "creditworthiness" (see supra, paras.421-424).

492. Thirdly, it seems that the present serious violations of, or restrictions on, civil and political rights, in particular freedom of expression, freedom of association and trade union rights, have an adverse impact on the utilization of foreign economic aid. Thus, for instance, political groups or trade unions cannot participate in the decision-making process concerning the economic policy choices. All decisions on these matters are taken by the small ruling group. Thus, other groups which inter alia could better channel the aspirations and the needs of vast segments of the population are kept outside the decision-making process and cannot propose or contribute to implementing measures designed to use foreign economic assistance in a manner more advantageous to the underprivileged (see supra, paras.425-429).

493. Fourthly, all those Chileans who suffer more directly from the present repressive system, in particular because of the "disappearance" or arbitrary arrest, detention, torture, ill-treatment or harassment of their relatives, do not draw any direct benefit - so far as it has been possible to ascertain on the basis of the available material - from the huge economic assistance flowing from abroad. Even worse is the fate of those who, after being detained for political reasons, look for a job to earn their living. According to Amnesty International, they face all the common problems of the poor segments of the population and undergo extreme hardship. <sup>28/</sup> Except for the economic assistance granted by a few Governments to humanitarian bodies operating in Chile for the purpose of helping finance their relief action, no special benefit is drawn by this category of particularly distressed persons from the foreign economic aid channelled to the Chilean authorities (see supra, paras.430-436).

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<sup>28/</sup> See supra, para.431.

494. Fifthly, the Rapporteur has identified another relationship between repression of civil and political rights and foreign economic assistance. The Government's economic policy produces to a great extent harmful consequences for the social condition of the vast majority of the population (suffice it to consider the high rate of unemployment and "concealed" unemployment, the reduction in the purchasing power of wage and salary earners or the worsening of public services following the cuts in public expenditures). Consequently, that policy cannot but give rise to discontent and unrest. In order to keep them under control, the Chilean authorities need a repressive system, based on the denial of the basic civil and political rights. Through this system they prevent the vast majority of the population from expressing freely their dissatisfaction with present living conditions and from bringing about social and political change.

495. As foreign economic assistance largely serves to strengthen and to prop up the economic system adopted by the Chilean authorities, which in its turn needs to be based on the repression of civil and political rights, the conclusion is warranted that the bulk of present economic assistance is instrumental in consolidating and perpetuating the present repression of those rights (see supra, paras.437-446).

E. The two mutually supporting adverse effects  
of foreign economic assistance

496. From what has been stated so far, the following general conclusions can be drawn as concerns the basic relation between foreign economic assistance (or, better, the greatest part of this assistance) and human rights. The present gross violations of human rights in Chile are related to economic assistance in two respects. The first and most apparent is that the bulk of this assistance helps to strengthen and maintain in power a system which pursues a policy of large-scale violations of these rights. It has been stressed above that this applies to some forms of economic assistance concerned with development as well as to most forms of economic assistance that show no concern either with human rights or with development (in the main, this can be said of the financial resources at present flowing in huge quantities from foreign private sources) It must be added that the same holds true for many cases of assistance directly related to human rights (assistance given with the specific aim of improving the situation of the population in the field of housing, sanitation, hospitals, health centres, etc.) Often the Government uses this assistance to replace national resources, which are diverted to other ends, including that of financing the repressive system. In all these cases there arises a relationship in which economic assistance often appears instrumental in perpetuating or at least maintaining the current situation of gross violations of human rights.

497. The second aspect is no less important. In order to obtain the assistance which it seeks abroad, the Government has to ensure a favourable presentation of the indices by which an economy is normally held to be "healthy". It must appear to be "creditworthy" (i.e. it must have a favourable balance of payments, inflation under control and diminishing, a reduction of public expenditure, etc.). This domestic policy does not take into account the human factor involved, and in fact creditworthiness can only be obtained by a redistribution of income which is unfavourable to the vast majority of the population. Furthermore, to the extent that it is not only foreign economic assistance in the form of loans

(bilateral or multilateral), but investment that it is sought to attract, the state of poverty or backwardness of the working sector of the population does not appear as a negative factor. It appears rather as a positive element that may lead foreign enterprises attracted by cheap labour and the low cost of production in the country to take the decision to invest. In this respect a major role is played not only by the drop in wages or purchasing power, but also by a deterioration in the benefits that workers and their families receive in other than monetary form (social services, which generate possibilities and expectations of welfare and progress in the areas of health, construction of low-cost housing, free education, etc.). It appears that sometimes the nearer to poverty the worker appears the better are the conditions for the investor. An added - and a major - advantage for foreign investors is the fact that social unrest, strikes, etc. are forcefully prevented by a repressive system which denies some basic human rights, including trade union rights (in particular those relating to the election of union officials, collective bargaining and the right to strike).

498. If the two aspects of the relationship between economic assistance and the violation of human rights are considered, it can be seen that in the second aspect the "causal" relationship is inverted. Thus, together, they make up a closed circle of cause and effect: economic assistance to a very great extent permits the perpetuation of violations of human rights, and such violations, in their turn, bring about the necessary conditions to obtain economic assistance.

499. It may now prove useful to ask ourselves to which of the two abstract models of correlation between human rights and foreign economic assistance, set forth above (supra, introduction, paras.58-61) the situation of Chile comes closer. On the basis of the research undertaken so far, it is submitted that, all things considered, the situation in Chile does not correspond to either of the two extreme categories identified above. In particular, it does not fully fit in the extreme "negative" category where any form of foreign economic assistance indisputably has an adverse effect on human rights. As noted above (supra, para.472), there are instances of foreign economic aid which effectively benefit some categories of indigent people in Chile. These cases are, however, minimal. By far the greatest portion of foreign assistance does not have any directly beneficial effect on economic, social or cultural rights and instead serves to strengthen and shore up the present economic and political system. It would therefore seem that, in the wide spectrum of possible concrete correlations between human rights and foreign economic assistance, the Chilean situation tends to come very close to the extreme "negative" category.

F. Some considerations which might prove helpful  
for any United Nations action

500. The Rapporteur does not believe that he is called upon to make recommendations, much less propose a blueprint for action. In his view, it is up to the competent United Nations bodies to decide what action, if any, they may wish to recommend on the basis of the present study, to Governments, intergovernmental agencies, and private bodies. The Rapporteur believes, however, that it may be useful to set forth a few general observations and recall some views that are based on an approach different from the philosophy currently behind most forms of foreign economic assistance.

## 1. States

501. It has been stressed in this report that the over-all effect of governmental aid has been to provide considerable general financial support for the Chilean Government at a time when other avenues were closed. The specific impact of such assistance is hard to qualify except on the most general level, but given the kinds of economic and social priorities that have emerged in Chile over the last five years, its role must be viewed critically. It has also been emphasized that one of the most notable points about governmental assistance is that so little of it is conditioned in any way by direct consideration of the economic and social welfare or the human rights of the recipients. Development aid does consider these factors, but attempts to make such aid really effective have led eventually to a reduction of over-all transfers, though there have been interesting and innovative alternative programmes. Decisions on debt rescheduling, however, require no revision of welfare or rights and it would seem essential, if government attitudes to developing countries are to be consistent, that they should take the responsibility of reviewing the developmental effects of inputs as important as these. These remarks would also apply to assistance extended through support to private trade, though here, developmental considerations are present on paper in many cases but require extension and more thorough supervision in practice.

502. It has also been pointed out that since 1976 a growing concern over human rights violations has led to the emergence of policies designed to stop or restrict aid to the Chilean Government, or to ensure that any assistance granted should be conditioned in such a way as to make its human rights impact really beneficial.

503. A range of measures are currently being proposed or implemented by different providers of economic assistance to help bring about a more positive human rights balance. Some of the investment guarantee programmes, for example, already include provisions trying to promote employment through more labour-intensive technology. In some instances, local counterpart funds are called for to help increase the over-all impact of amounts provided. Assistance such as the direct distribution of food under the United States PL480 Title III Programme, is provided in a way ensuring that goods are directly accessible to the destitute, or go to programmes such as soup kitchens and rural health facilities from which the indigent people in particular will benefit. Assistance for such projects as industrial and agricultural co-operatives, beyond ensuring that the poor benefit, seek to promote some control by them of productive resources and greater share in the decision-making which immediately affects their lives. Chilean Government sector policies are reviewed in relation to developmental projects, and some degree of influence would appear to be exercised over such policies by at least some sources.

504. Discontinuance of economic assistance on human rights grounds, conditioning of such assistance to an increasing extent on respect for human rights, or adoption of one or more of the various measures referred to in the previous paragraph, undoubtedly constitute valid responses to the question of how to render foreign economic assistance to Chile beneficial to human rights. The Rapporteur feels, however, that before making a decision on which of the above attitudes should be taken, States ought to become aware of both the basic philosophy behind those possible attitudes and their real impact on the human rights situation in Chile. In this respect, he believes that two fundamental approaches to the question of "human rights and foreign economic aid" can be identified, each showing different features and involving varying consequences. These two approaches - which will be briefly considered in the next paragraphs - could be termed "the Harkin Amendment approach" and "the Netherlands development aid approach".

505. Reference has been made above (para. 267) to the "Harkin Amendment" of 1975, which constitutes Section 116 of the United States International Development and Food Assistance Act of 1961. It reads as follows:

"Sec.116. Human Rights. - (a) No assistance may be provided under this part to the government of any country which engages in a consistent pattern of gross violations of internationally recognized human rights, including torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges, or other flagrant denial of the right to life, liberty, and the security of person, unless such assistance will directly benefit the needy people in such country.

"(b) In determining whether this standard is being met with regard to funds allocated under this part, the Committee on Foreign Relations of the Senate or the Committee on International Relations of the House of Representatives may require the Administrator primarily responsible for administering part I of this Act to submit in writing information demonstrating that such assistance will directly benefit the needy people in such country. If either committee or either House of Congress disagrees with the Administrator's justification it may initiate action to terminate assistance to any country by a concurrent resolution under section 617 of this Act.

"(c) In determining whether or not a government falls within the provisions of subsection (a), consideration shall be given to the extent of co-operation of such government in permitting an unimpeded investigation of alleged violations of internationally recognized human rights by appropriate international organizations, including the International Committee of the Red Cross, or groups or persons acting under the authority of the United Nations or of the Organization of American States."

\* | It is the opinion of the Rapporteur that this piece of legislation must be greatly praised, at least in three respects. First, it rightly starts from the assumption that it would be ethically inconsistent and politically counterproductive to grant economic assistance to a foreign Government which behaves in a manner contrary to the basic values with respect to human dignity agreed upon by the international community. Such assistance could not but serve to keep that Government alive, thus helping perpetuate gross disregard of basic human rights. Second, for the assessment of whether a foreign Government misbehaves, the aforementioned United States legislation does not use domestic standards; the yardstick by which foreign governments should be gauged are instead the international standards accepted by the whole community of States and spelled out in United Nations instruments. This can clearly be inferred from the terminology used in the Harkin Amendment ("any country which engages in a consistent pattern of gross violations of internationally recognized human rights"). Thus, the legislation does not project American values abroad but relies upon the basic principles accepted at the international level. Third, the Harkin Amendment shows an awareness of the difficulty of determining soundly whether and to what extent a Government grossly violates human rights, and of the consequent need for international investigation of alleged infringements of human rights. It therefore aptly uses as a criterion for determining whether a foreign Government misbehaves the degree of co-operation of such Government in permitting international inquiry. It follows that, under the Harkin Amendment, whenever a Government refuses to allow an international organization to conduct an independent and objective investigation of its alleged disregard of human rights, there arises a presumption that that Government engages in a consistent pattern of gross violations of human rights.

506. Despite the major merits referred to above, the Harkin Amendment shows, in the opinion of the Rapporteur, two significant flaws. First, it tends to focus primarily on civil and political rights, neglecting to some extent economic, social and cultural rights. Indeed, although the wording of subsection (a) is rather broad and loose, the exemplification used refers only to some basic civil and political rights; it therefore gives the impression that other categories of human rights are regarded as less momentous. The Rapporteur believes that in assessing the behaviour of a foreign Government in the field of human rights, such basic rights as the right to food, to health, to work, to housing and to education cannot but be considered as of equal rank with the right to life, liberty etc. Otherwise, it might be thought that a traditional Western "eighteenth-century" approach to human rights was being taken. The second deficiency of the "Harkin Amendment doctrine" is closely linked with the previous one. The Amendment disregards the general socio-economic context of the prospective recipient State, in that it does not take into account the economic policy carried out by that State and its impact on the conditions of the underprivileged. In fact, in evaluating whether a foreign Government is entitled to obtain economic assistance, the economic and social policy implemented by that Government should be examined, to see to what extent that policy can prove conducive to respect for human rights. In other words, human rights (especially civil and political rights) should not be considered per se but within the general socio-economic setting and against the background of the general living conditions of the population of a given country.

507. This basic deficiency of the Amendment also lies behind the "needy people" exemption clause to be found in subsection (a) ("No assistance may be provided ... unless such assistance will directly benefit the needy people in such country"). The concept of granting economic assistance to the authorities of a country which grossly violate human rights provided that such assistance "will directly benefit the needy people" of that country does not take account of the following fact: such assistance can be used by the recipient authorities in such a manner that the beneficial effect for the "needy people" proves to be very limited, while at the same time having advantageous consequences for the State authorities (e.g., if these authorities use foreign aid to replace domestic resources, which are then diverted to targets that are not socially useful, such as defence). The "needy people" doctrine is in fact a short-term policy which can serve the purpose of meeting the needs of only small segments of the society and only to a very limited extent. Therefore, this doctrine ultimately turns out to be based on a "charity" philosophy. Or, at least, it shows some features in common with that philosophy: it can eventually contribute to healing only the most glaring social ills and only in a limited and superficial manner; it cannot tackle the deep roots of social inequalities nor does it contribute to radically improving the fate of the underprivileged strata of society.

508. The other basic approach to "human rights and foreign economic aid", namely the one taken by the Netherlands legislation on development aid, will now be considered. The criteria for the selection of target countries are set forth in the explanatory memorandum accompanying the 1975 Development Co-operation Budget. It is stated there that Netherlands aid must be guided not only by "the degree of poverty" but also by "the extent to which a social and political structure is present which will make possible a policy truly designed to improve the situation within the country and will provide a guarantee that the aid will benefit the whole community". <sup>29/</sup> Furthermore, "particular attention will also be paid to the policy being pursued with regard to human rights". This last makes explicit the aim implied in the previous sentence.

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<sup>29/</sup> Quoted by J.P. Pronk, "Human rights and development aid", Review of the International Commission of Jurists, 1977, p. 37.

509. The philosophy behind the Netherlands legislation was clearly stated by Mr. J.P. Pronk, then Netherlands Minister for Development Co-operation, in an article on "Human rights and development aid". He stated there that

"Development aid means working for fairer social structures - a matter of fundamental importance as regards human rights; it also means giving direct aid to the victims of violations of human rights, among them political prisoners and refugees." 30/

He went on to say:

"It will be clear that I do not believe that development aid can be neutral in character. Development aid must set in motion processes through which the poor and the oppressed can achieve freedom and the right to a say in their own affairs. This means in turn that development aid must benefit people, and not be geared to powerful interests: it must also help reform the world community in the interests of the poor countries and the poor people in those countries. Working for human rights involves people within societies, and may affect the foundations of those societies. Working for human rights very often means encroaching upon vested interests. Development aid is not identical with work for human rights, but the two overlap ..." 31/

He then pointed out:

"Development aid should be concerned with the rights of peoples and individuals, and not with the interests of states. We must try to use channels which reach the people directly, and for this reason we attach great importance in our policies on human rights and development aid to national and international non-governmental organizations active in the promotion of justice and reform. The view is gaining ground, and it is supported by practical experience, that in situations of oppression, exploitation and persecution, the dominant political, economic and military powers are not suitable instruments for bringing about reform. Reform can be brought about primarily by the oppressed and those who are discriminated against themselves. UNESCO statements on racial discrimination and UN resolutions on apartheid and colonialism support this view. The World Council of Churches, meeting recently in Nairobi, put it thus: 'We realize that those who operate the structures of oppression are dependent on the people they oppress and that both are equally in need of liberation and God's forgiving love. In this fallen world, however, it is far more likely that the will and strength to end oppression comes from those who bear the brunt of it in their own lives rather than from the privileged persons, groups and nations.'" 32/

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30/ J.P. Pronk, loc.cit., p. 36 (emphasis added).

31/ Ibid., p. 37 (emphasis added).

32/ Ibid., p. 30 (emphasis added).



510. The Rapporteur fully endorses these views and the general philosophy behind them. He would like to stress, in particular, the following points in the "Netherlands philosophy" of the link that should exist between economic assistance and respect for human rights. First, emphasis is placed on the situation of economic, social and cultural rights (without neglecting, however, civil and political rights) of the prospective recipient country. Second, the aim which is sought is not an improvement in the lot of some indigent people, but a basic change in the conditions of "the poor and the oppressed", a change which should lead to the creation of "fair social structures". In other words, economic assistance should be designed both to better the living conditions of the underprivileged and to put them in a position to participate in a democratic decision-making process. Third, whenever a decision on granting economic assistance must be made, account must be taken of whether the existing social structures of the prospective recipient State, as well as its economic policy, are likely to render foreign aid truly beneficial to the whole community. In short, the Netherlands philosophy appears to be a long-term policy, which can prove capable of helping to come to grips with the fundamental problems of respect for human rights in countries where these rights are consistently trampled upon.

511. In addition to action by States Members of the United Nations in the field of economic assistance to Chile, action by the Chilean authorities themselves is urgently called for in a number of sectors. In particular, adequate measures are necessary for the improvement of the social and health conditions of political detainees and of their families. In this respect, the Rapporteur shares the suggestions made by the representative of Amnesty International in the Commission on Human Rights on 24 February 1978. He suggested inter alia the following:

"... prisoners should be allowed to carry out useful and remunerative work; ... every effort should be made to find permanent and stable employment for those affected by arbitrary imprisonment and detention and, in the meantime, there should be special welfare arrangements to compensate for the loss of social security benefits; ...

"Until those objectives had been achieved, interim relief was essential. The greatest needs were the provision of a sufficient and balanced diet for prisoners; the establishment of workshops within the prisons and marketing of the goods produced; the rehabilitation of ex-prisoners and ex-detainees, for example by sponsorship of small work projects prepared by the ex-prisoners themselves under the sponsorship of the established Chilean agencies, for no external organization had yet met that need; ... medical assistance for prisoners, their families and the families of missing persons, particularly since Amnesty International had received reports of outbreaks of tuberculosis in prisons without the authorities taking any action; ... food and schooling for all children affected; regular travel for relatives in remote areas to visit prisons; and special care for the relatives of missing persons." 33/

2. United Nations specialized agencies

512. A striking fact pointed out in the course of the research for the present report is that many United Nations specialized agencies do not base their action on human rights criteria. There is here a clear inconsistency between the principles proclaimed by the principal United Nations organs and the action of intergovernmental organizations linked to the United Nations (particularly the International Monetary Fund and the World Bank). In fact, while United Nations agencies are invited, under General Assembly resolution 31/124 of 16 December 1976, "to take steps which they may consider appropriate as a contribution to the restoration and safeguarding of human rights and fundamental freedoms in Chile", the available evidence shows little direct concern for any criteria beyond the intrinsic merits of many of the projects and programmes in themselves. Particularly in cases where the human rights impact is currently tenuous at best, more active consideration could be given to ways in which project and programme design, and any potential influence on broader sectoral policies, could be used to achieve a more positive impact.

513. The relevant international instruments pertaining to the relationships between the United Nations and the specialized agencies make provision for co-ordination of their respective action. Thus, the Charter of the United Nations provides in Article 58 that "The Organization shall make recommendations for the co-ordination of the policies and activities of the specialized agencies". And Article 64, paragraph 1, provides that "The Economic and Social Council may take appropriate steps to obtain regular reports from the specialized agencies. It may make arrangements with the Members of the United Nations and with the specialized agencies to obtain reports on the steps taken to give effect to its own recommendations and to recommendations on matters falling within its competence made by the General Assembly". Furthermore, the Charter provides for mutual consultation <sup>34/</sup> and for the participation of representatives of the specialized agencies in the deliberations of United Nations bodies, and vice versa. <sup>35/</sup> The Agreements governing the relationship between the United Nations and each specialized agency restate and amplify this co-ordination of their

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<sup>34/</sup> Article 63, paragraph 2, provides that the Economic and Social Council "may co-ordinate the activities of the specialized agencies through consultation with and recommendation to such agencies and through recommendations to the General Assembly and to Members of the United Nations".

<sup>35/</sup> Article 70 provides: "The Economic and Social Council may make arrangements for representatives of the specialized agencies to participate, without vote, in its deliberations and in those of the commissions established by it, and for its representatives to participate in the deliberations of the specialized agencies."

respective action. <sup>36/</sup> Therefore there would be, in principle, ample opportunity for the specialized agencies to bring their action into line with the recommendations of the United Nations General Assembly on Chile and constantly take human rights issues into consideration when deciding upon the sort of action to be taken with respect to Chile, within their respective fields of competence.

514. Yet the above considerations tend to remain rather theoretical, because of the following facts. First, the specialized agencies whose actions have the greatest impact on Chile, and for which there consequently arises a greater need for co-ordination with General Assembly recommendations on Chile, are the World Bank and the International Monetary Fund (IMF). These two organizations, however, are precisely those which enjoy the greatest freedom of action and autonomy with respect to the United Nations, as is apparent from the statutes of these organizations and from the Relationship Agreements they concluded with the United Nations. <sup>37/</sup> It therefore proves less easy for the United Nations to urge them to adjust their policy - at least as far as Chile is concerned - to the resolutions adopted by the General Assembly on Chile. In addition, at least on one occasion, in 1967, there emerged a clear difference of views between the United Nations and the Bank on the question whether the Bank should comply with the request of the General Assembly to withhold economic assistance to Portugal and South Africa until they renounced their policy of colonial domination and racial discrimination. On that occasion the President of the Bank made the following statement:

"The Bank's articles provide that the Bank and its officers shall not interfere in the political affairs of any Member and that they shall not be influenced in their decisions by the political character of the Member or Members concerned. Only economic considerations are to be relevant to their decisions. Therefore, I propose to continue to treat requests for loans from these countries (Portugal and South Africa) in the same manner as applications from other Members". <sup>38/</sup>

Later on, the Bank again pointed out that it interpreted its Articles of Agreement and the Relationship Agreement with the United Nations to the effect that the Bank, in the conduct of its activities, enjoys "a positive independence of the

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<sup>36/</sup> See thereon: A. Malintoppi, "Saggi su aspetti normativi del coordinamento nel sistema delle Nazioni Unite", Annali della Facoltà giuridica dell'Università di Camerino, vol. XXX, 1964, p. 272 ff.; J. Dagory, "Les rapports entre les institutions spécialisées et l'Organisation des Nations Unies", Revue générale de droit international public, 1969, p. 286 ff. (especially 349 ff.).

See also R.J. Dupuy, "Le droit des relations entre les organisations internationales", Recueil des Cours de l'Académie de Droit International de La Haye, 1960-II, vol. 100, p. 575 ff.

<sup>37/</sup> See A. Malintoppi, loc. cit., pp. 304-306; I. Dagory, loc. cit., p. 349 ff. R. Lavalley, La Banque Mondiale et ses filiales: aspects juridiques et fonctionnement (Paris, 1972), pp. 127-134; E.S. Mason and R.A. Asher, The World Bank since Bretton Woods (Washington, D.C., 1973), pp. 559-570.

<sup>38/</sup> Statement made on 29 March 1966, A/6825, p. 8, referring to article 1, section 10, of the Articles of Agreement of IBRD.

need to have regard to any considerations other than economic considerations". 39/  
The Bank therefore refused to discontinue economic assistance to the two  
aforementioned Governments.

515. Despite the above considerations, it seems that there is room for believing  
that both the Bank and the IMF could endeavour to take, at least to some extent,  
human rights or social development criteria into consideration when considering  
economic assistance to Chile.

516. With respect to the World Bank, it is appropriate to recall first that in  
1967 it did not rule out consideration of criteria other than economic ones in  
determining its policy towards States. It stated:

"The Bank may and does take into consideration, and is influenced in its  
lending decisions by, the economic effects which stem from the political  
character of a member and from the censures and condemnations of that  
member by United Nations organs. However, by virtue of article IV,  
section 10, of its Articles of Agreement, the Bank, in exercising its  
judgment, must consider such economic effects together with all other  
relevant economic factors, in the light of the purposes of the Organization.  
What is precluded from considering is the political character of a member  
as an independent criterion for decision." 40/

The Bank further pointed out that

"... in creating an organization to which member Governments with different  
political characters and aims or interests were about to furnish sizable  
but limited resources to be used for economic reconstruction and  
development, it was thought necessary to prevent the use of the leverage  
that would be provided by the granting or withholding of financial assistance

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39/ An exchange of communications between the United Nations and the  
World Bank is reproduced in United Nations Juridical Yearbook, 1967, pp. 108-132.  
See in particular letter of 20 July 1967 from the Legal Counsel of the  
United Nations to the General Counsel of IBRD, ibid., p. 131.

On the divergence between the two organizations on the question of economic  
assistance to Portugal and South Africa, see S.A. Bleicher, "UN v. IBRD, A dilemma  
of functionalism", International Organization, 1970, pp. 31-47; D. Ruzié,  
Organisations internationales et sanctions internationales (Paris, 1971),  
pp. 140-148; H.G. Schermers, International Institutional Law, vol. II, Functioning  
and Legal Order (Leiden, 1972), pp. 684-685; E.S. Mason and R.E. Asher, op.cit.,  
pp. 586-591.

40/ "Extract from a letter dated 5 May 1967 from the General Counsel of the  
International Bank for Reconstruction and Development to the United Nations  
Secretariat transmitting a paper containing comments of the Legal Department of  
the Bank on the memorandum prepared by the Secretariat", United Nations Juridical  
Yearbook, 1967, p. 124.

to a particular member for the furtherance of the political aims of any member or any group of members, no matter how worthwhile such aims might appear to be." 41/

517. Furthermore, it has been rightly pointed out by a great authority that

"The Agreement between the UN and the BANK provides no basis for an obligation on the part of the latter to follow UN resolutions. It may however be a strong ground for permitting the BANK to take the action requested by the UN autonomously. A general obligation to bring its policy into line with that of the UN could be derived from the general principles underlying the functionally decentralized structure of the "UN Family". This general obligation could be a basis for the BANK to act according to the wishes of the UN whenever it is permitted to do so." 42/

518. Apart from the above considerations, it can be pointed out that, as has already been stressed (supra, paras. 330-339), 43/ the World Bank is showing increasing practical concern with social development and not just infrastructure development. However, it seems that there is ample room within its present terms of reference for a more full and consistent application of social considerations in project appraisal. In particular, the consideration of conditions of labour is conspicuously absent in the otherwise extremely detailed country and project assessment. A more careful analysis of possible recommendations and conditioning could ensure a maximization of the positive impact of the projects it finances on economic, social and cultural rights.

519. If the World Bank did not deem it fitting to take greater account of human rights criteria, action on the part of Member States could prove helpful. In this connexion, mention should be made of the clause in the Harkin Amendment adopted in 1977 by the United States House of Representatives which "required the U.S. delegate to each of the international financial institutions to vote against loans to repressive governments unless the loan was directly beneficial to needy people". 44/ Although this amendment incorporates the "needy people exemption

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41/ Ibid., p. 131.

42/ H.G. Schermers, op.cit., p. 685.

43/ See also J. Touscoz, "Le Groupe de la Banque Mondiale face aux exigences du développement", Revue belge de droit international, 1970, pp. 15-28.

44/ G.D. Loescher, "U.S. human rights policy and international financial institutions", The World Today, December 1977, p. 462. This author mentions another significant piece of United States legislation: The "Reuss Amendment to the multilateral banks [which] recommended that the Administration encourage the various multilateral lending institutions to channel aid to those countries which are advancing human rights" (ibid.). Loescher points out, however, that "President Carter and the President of the World Bank, Robert McNamara, have expressed their opposition to these developments and argued that the U.S. should not approach the IFIs [international financial institutions] as a means of chastisement rather than as a positive tool for human rights development" (ibid.). On this point see also R. Rosenblatt, "World Bank to reject funds if US links them to rights", International Herald Tribune, 15 July 1977.

clause", which is based on a general approach to human rights that the Rapporteur does not regard as the most appropriate one (see supra, paras. 506-507), adoption of similar legislation by other States might prove useful, at least in some respects.

520. Turning to the International Monetary Fund, it must be stressed again that it has consistently used its very considerable leverage to push for increasingly strong austerity measures, including public spending cuts, strict wage control and restriction of the money supply. Its overriding criterion in this has been the promotion of freer trade and foreign exchange policies, this being the purpose for which the IMF was established. The immediate global impact of such policies on human rights conditions - and particularly on the position of the poorer sectors - has undoubtedly been negative. While the basic economic policies favoured by the Fund and the Chilean military Government have in any case been fundamentally similar, the IMF has if anything tended to aggravate the negative aspects - in human rights terms - of official Chilean policy. Particularly striking has been IMF insistence on the need for a reduction in already minimal wage levels, with the inevitable direct negative impact on human rights such as those to just and favourable remuneration and to an adequate standard of living.

521. As against the clear, immediate negative impact of IMF policies on the position of the poor and the underprivileged and more broadly on various economic, social and cultural human rights, IMF argues that such policies are essential to domestic "stabilization" and the promotion of freer international trade and investment, and that these objectives can best promote longer-term development and social welfare nationally and internationally. While it is not within the scope of this report to evaluate this argument per se, certain observations are relevant with regard to the situation of economic, social and cultural rights and available options which could tend to promote these.

522. Within IMF's existing economic policy framework, there are two ways in which the Fund could seek a more positive role in safeguarding human rights. First, and most directly, at least progress towards the respect for human rights could be made one of the conditions for IMF assistance, becoming more strict - as with other IMF conditions - as the extent of such assistance increases. At least minimal guarantees for rights such as those to social security, to just and favourable conditions of work, to form and join trade unions, and to effectively exercise the right to collective bargaining would be of major importance in helping to offset what is otherwise the tendency for IMF policies to promote negative consequences in these fields.

523. The second way in which the IMF could seek a more positive human rights role, within the framework of its present economic theories, is by more carefully supervising the allocation of scarce resources within the austerity programmes it imposes. In its analysis of Chile's 1974 public investment programme, a World Bank report noted:

"Defence spending historically has constituted no more than 2 per cent of total public investment; in the apparent program it would rise to almost 7 percent." 45/

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45/ World Bank, Special Report on the Chilean Economic Outlook (Washington, D.C., 1974), p. 72, para. 164.

Yet IMF showed no apparent concern for Chile's large military spending, requiring only that spending as a whole be cut. By establishing guidelines for a more socially and economically beneficial distribution of spending within its over-all limits, IMF could again help offset tendencies towards negative consequences on economic, social and cultural rights.

524. The often drastic consequences of IMF policies, particularly on Third World countries, has led to increasingly sharp questioning of these policies themselves. Reflecting widespread concern in business and official circles, the Financial Times of London recently wrote in an editorial:

"The present Peruvian crisis and similar difficulties facing the Jamaican authorities raise yet again the question of the appropriateness of the demands that the Fund makes on developing countries as the price for its assistance. Austerity measures which the rich countries such as Britain find burdensome but in the last event tolerable can have devastating effects on the political and economic fabric of poorer countries." 46/

Such "devastating effects" conflict seriously with even IMF's minimal terms of reference of seeking to guarantee a stable international economic order and as certifiers of nations' international "creditworthiness". A shift away from a "bank balance" approach to such problems, placing emphasis instead on strengthening the economic and social fabric of a country, might help overcome this contradiction and would certainly be more favourable to respect for human rights. 47/

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46/ "Peru after the IMF", Financial Times, 22 May 1978.

47/ Reference should also be made to a bank which, although it does not belong to the United Nations "family", plays a great rôle with regard to Chile, namely the Inter-American Development Bank (IDB). The use of financial leverage by IDB and others of Chile's creditors to encourage increased allocations for public works, and mainly social infrastructure, would not only be beneficial in terms of the country's economic and social development, but it would help also in the short term to increase employment and thus have a positive impact on the right to work. Given the increasing concern within IDB about the position of economic, social and cultural rights in Chile, it is likely that IDB assistance for the "general development" type of project will tend to diminish. At a minimum, greater consideration can be expected with regard to the social impact of such projects. In relation to projects which do directly benefit economic, social and cultural rights, the main concern must be with their relationship to official Chilean Government policies, to ensure that the potential benefits from intrinsically beneficial projects is not lost and that maximum leverage is exercised in forcing the Government to pursue more progressive policies in related sectors.

### 3. Private entities

525. It has been stressed above that, while official sources increasingly put human rights criteria at the centre of their lending policies, the overwhelming majority of foreign economic assistance to Chile now comes from private commercial sources with little apparent concern for such criteria. Private multinational banks, by far the most important source of foreign assistance for the Chilean authorities since 1976, have been instrumental in allowing them to by-pass official government assistance which was increasingly conditioned to human rights improvements, and have provided massive financial support.

526. Growing concern at this gulf between official and private policies towards Chile is well exemplified in the Senate statement on 4 May 1978 by Senator Edward Kennedy, calling for the

"... denial of back-door economic support, for example, the private loans of hundreds of millions of dollars to Chile by leading U.S. banks - undercutting the suspension of official assistance - especially Bankers Trust, Chemical Bank, Citicorp, First Chicago, Morgan Guaranty, and Wells Fargo.

"This shocking banking behaviour was recently documented by Isabel Letelier and Michael Moffitt of the Transnational Institute - and should be stopped by the Congress if it is not ended voluntarily by the banks." 48/

A number of moves are now underway to bring the activities of private lenders and investors more into line with the concern of governments throughout the world to help improve the respect for human rights in Chile. As in the case of South Africa, the international community is moving increasingly towards assuming full responsibility for the social and political consequences of all types of economic relations in which its members are engaged, and moving towards a fuller application of human rights criteria to the allocation of both public and private economic resources.

#### (a) Loans

527. It has been pointed out above (paragraph 383) that in 1978 the question of loans to Chile dominated the annual general meeting of Lloyds Bank in London, when shareholders asked about the effect of the Bank's participation in syndicated loans totalling more than \$US 200 million to Chile in 1977. Sir Jeremy Morse, Lloyds Bank Chairman, admitted that the Chilean régime was repressive, but he said Lloyds would lend to anyone who wanted to borrow if they were credit-worthy, unless it was banned from doing so by the British Government, as in the case of Rhodesia. Lloyds' response to its shareholders illustrates the

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48/ United States of America, Congressional Record, Proceedings and Debates of the 95th Congress, second session, vol. 123, No. 64 (4 May 1978).



moral and also the commercial problems faced by the private banking community, forced to confront issues for which it is clearly not adequately equipped, because of the absence of statutory government regulations concerning lending to countries where systematic violations of human rights are being committed. Banking is a competitive activity, and, given the fact that any advantage conceded to competitors will mean condemning oneself to a less advantageous position at the next business opportunity, it is clear that general regulations from governments and the international community will be required if any substantial changes in current practice are to be brought about.

528. In the absence of clear government regulations, private enterprises tend to disregard ethic considerations, arguing that if they do not take advantage of a business opportunity, somebody else will, and thus their abstention will in any case be fruitless in terms of furthering respect for human rights. In at least one case, that of the Netherlands Stevin Group (see supra, para. 388), private entrepreneurs have expressed concern at the lack of clear government guidelines on this matter. Calls for government regulations have come also from a number of other quarters, including churches, trade unions, parliamentarians and human rights bodies, and there are indications that controls for private loans are in preparation. As for foreign investments, regulations such as the one initiated by the United Kingdom in relation to South Africa are starting to be adopted by other countries, and may well be a useful starting-point to control private activities in Chile as well. At the same time, serious doubts have been raised about the relative merits of "constructive engagement" or "economic disengagement" from States which promote the systematic denial of basic economic, social and cultural rights.

529. Given the enormous importance private loans have achieved as a source of Chile's external financing, some steps towards regulation of this activity will have to be taken if the international community is to effectively gear foreign economic assistance towards a restoration of human rights in Chile.

530. Some moves towards proper supervision and regulation of the activities of multinational private banks have already started to emerge, with concern for their human rights impact being reinforced by concern over such matters as tax avoidance and the possibility that too much high-risk lending to Third World countries could result in a disastrous series of bankruptcies and subsequent collapse in the financial system. United States Congressman T. Harkin, author of the human rights amendment to the foreign aid bill which dramatically reduced money to the Chilean Government from the public sector (see above, paragraph 267), is reported by the New York Post to be considering a disclosure-licensing bill. 49/ Senator Edward Kennedy of Massachusetts, in the aforementioned Senate floor statement of 4 May 1978, criticized private United States bank loans to Chile, stating that they should be stopped by Congress if they are not ended voluntarily by the banks, and undertaking to "cosponsor legislation to require full bank disclosure of all loans to countries, including Chile, where our foreign aid has

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49/ "A warning to Chile's US bankers", New York Post, 17 April 1978.

been cut off for human rights reasons". <sup>50/</sup> Federal bank regulatory agencies in the United States are reportedly about to introduce for the first time a co-ordinated system for monitoring foreign lending by banks. The Financial Times reports that

"The proposal rejects the establishment of uniform procedures which banks would have to follow in making a foreign loan, and also rejects the setting-up of a system of credit ratings of countries which banks must avoid in making loans.

"Where it would differ from previous approaches, however, is in the emphasis on analysing "country risk", which arises from economic, social, legal and political conditions in a foreign country, as opposed to the traditional "credit risk" analysis which is common to domestic and foreign lending." <sup>51/</sup>

At an international level, a United States Senate staff report recently stated:

"... Government banking authorities (have been led) to try to upgrade the quality of data on private bank lending and on international debt, through a joint project under the auspices of the Bank for International Settlements." <sup>52/</sup>

531. There are, however, indications that some Governments do not consider it appropriate to place restrictions on private banks' lending to foreign Governments or private institutions of countries with a bad human rights record. Thus, for instance, the President of the United States said at a new conference

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<sup>50/</sup> United States of America, Congressional Record, Proceedings and Debates of the 95th Congress, second session, vol. 124, No. 64 (4 May 1978).

<sup>51/</sup> "New plan for supervision of banks' foreign lending", Financial Times, 15 May 1978.

<sup>52/</sup> International Debt, the Banks, and United States Foreign Policy, a Staff Report prepared for the use of the Subcommittee on Foreign Economic Policy of the Committee on Foreign Relations, United States Senate, Washington, 1977, p.2.

held on 30 March 1978 that any such restriction would be against the principles of the free enterprise system. 53/

53/ The following question was put to President Carter: "The American commercial banks are the main Brazilian source of external credit. It seems to some people in Washington that sooner or later a Congressman may try to establish a link between the commercial banking loans and the human rights policy. I'd like to know your opinion about this subject." (Weekly Compilation of Presidential Documents, vol. 14, No. 13, p. 629). The President replied:

"Brazil is a major trading partner of the United States in commercial goods and also in loans and, I might say, timely repayments. The debt of Brazil is very manageable. The loans of the American banks to Brazil are sound. Additional loans are being pursued by the American banks as an excellent advantage for their future investments in Brazil, based on the strength of your country. It would be inconceivable to me that any act of Congress would try to restrict the lending of money by American private banks to Brazil under any circumstances.

"This would violate the principles of our own free enterprise system, and if such an act was passed by Congress, I would not approve it" (Ibid.)

It was then asked: "What comes in the first place for you: the private enterprise and the private system or the human rights policy?" The President replied:

"Well, they're both important to us. And I don't see any incompatibility between a belief in a free enterprise system, where government does not dominate the banks or the production of agricultural products or commercial products on the one hand, and a deep and consistent and permanent and strong belief in enhancing human rights around the world.

"I might say that the American business community, the Congress of the United States, the general populace of the United States supports completely a commitment of our Nation to human rights. It's a basic element of our national consciousness that has no violation at all -- or no conflict between human rights on the one hand and the free enterprise system on the other." (Ibid.)

532. Especially in view of those instances where national action designed to place restrictions on private banks or lending institutions proves difficult, international action aimed at urging States to take appropriate steps in this direction could be particularly helpful. In this regard, mention may be made of a precedent which demonstrates that the international community has already considered the question of private institutions and their dealings with Governments that gravely disregard the basic standards of conduct agreed upon at the international level.

533. Following the unilateral declaration of independence of Southern Rhodesia in 1965, the United Nations adopted a series of resolutions designed to put a stop to the Southern Rhodesian illegal régime. On 29 May 1968, the Security Council, after condemning inter alia "all measures of political repression [adopted by the Southern Rhodesian authorities], including arrests, detentions, trials and executions which violate fundamental freedoms and rights of the people of Southern Rhodesia" (paragraph 1), decided among other things that

"all States Members of the United Nations shall not make available to the illegal régime in Southern Rhodesia or to any commercial, industrial or public utility undertaking, including tourist enterprises, in Southern Rhodesia any funds for investment or any other financial or economic resources and shall prevent their nationals and any persons within their territories from making available to the régime or to any such undertaking any such funds or resources and from remitting any other funds to persons or bodies within Southern Rhodesia, except payments exclusively for pensions or for strictly medical, humanitarian or educational purposes or for the provision of news material and in special humanitarian circumstances, foodstuffs" (paragraph 4). 54/

534. Of course, the situation of Southern Rhodesia showed distinct and unique features: it was inter alia characterized by the Security Council as "a threat to international peace and security", and in the above-mentioned resolution the Council explicitly stated that it was acting under Chapter VII of the Charter of the United Nations. This is also why it took decisions and did not merely make recommendations on the matter. It could be argued, however, that, mutatis mutandis, similar measures could be adopted in cases of grave and large-scale violations of human rights.

535. In the opinion of the Rapporteur, if the General Assembly has already made a finding in a resolution to the effect that a State engages in a consistent pattern of gross violations of human rights, it could proceed to recommend inter alia to Member States to adopt the measures referred to above, or similar measures. The requirement that the General Assembly must have made a prior determination that a State grossly and consistently disregards international standards on human rights would appear to provide sovereign States with a guarantee against possible abuses. It should furthermore be stressed that the General Assembly would merely recommend that action be taken by Member States.

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See on this resolution R. Zacklin, The United Nations and Rhodesia: A Study in International Law (New York-Washington-London, 1974), pp.51, 76-88. See also D. Ruzié, op.cit., pp. 78-85, 140-148.

(b) Investments

536. As regards Chile, a problem of major concern is the assistance provided by private banks or multinational corporations in the form of investment. It should be noted that some Governments (including those of the United States, the United Kingdom and the Federal Republic of Germany) establish human rights-related criteria for decisions on whether to grant official insurance for foreign investment projects. The Swedish EKN (Exports Credits Guaranty Board) requires:

"For an investment proposal to be approved for coverage, it must show that it is going to contribute to development of the host country, while the foreign company that receives the investment must conform to specified provisions concerning its labour policy." 55/

The United States Overseas Private Investment Corporation (OPIC) requires, in its application form for insurance, answers to questions such as:

"What effect do you anticipate the project's local employment will have on local salaries and wages scales?

"What relationships do you expect with local trade unions?

" ...

"Describe briefly other specific constructive development contributions resulting from the project (e.g. any unique transfer of technology, special training program for host country nationals, new facilities such as schools, housing, or medical care planned to be provided for the local community in connexion with the project)." 56/

537. It seems to the Rapporteur that it could prove helpful to recommend to States that do not yet have such legislation the adoption of similar legislative measures.

538. It is worth recalling that, following widespread dissatisfaction with the record of voluntary "constructive engagement" in South Africa, Canada and the European Economic Community (EEC) have adopted codes of conduct guiding the operations of their transnational companies in that country,

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55/ The Overseas Private Investment Corporation: A Critical Analysis, prepared for the Committee on Foreign Affairs by the Foreign Affairs Division, Congressional Research Service, Library of Congress (Washington, D.C., United States Government Printing Office, 1973), p.122.

56/ Ibid., p. 156.

while a number of church and other groups have gone much further, calling for a policy of "economic disengagement" as the only way not to participate in and reinforce a system designed to deny basic rights. 57/ In the discussion over investment in Chile, the same arguments and positions have been put forward. 58/ It would therefore seem useful and appropriate to explore means of establishing, at the international or at the national level, a "code of conduct" for private enterprises operating in Chile. Although the elaboration of codes of conduct for transnational corporations has been subject to criticism, 59/ it seems to the Rapporteur that this could constitute one of the possible avenues to be explored for the purpose of achieving restoration of respect for human rights in Chile. It may be useful to recall in this connexion that the "annotated outline of a code of conduct" prepared in 1977 by a working group of the United Nations Commission on Transnational Corporations included "respect for human rights and fundamental freedoms" among the major principles related to the activities of transnational corporations. 60/ Other

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57/ For the Canadian Code, see "Ottawa Code for South Africa", Financial Times, 2 May 1978. For the EEC Code of Conduct for firms in South Africa, see infra, para. 539, note 69.

58/ See: Chili Komitee Nederland, "Un caso de boicot económico: El Grupo Stevin de Holanda"; El Mercurio, 19 July 1975; Statement to Shareholders of Noranda Mines Limited (1977) by the Canadian Churches, signed by The Venerable E. Light (General Secretary, Anglican Church of Canada), Bishop Adolphe Proulx (Chairman, Human Rights/Social Affairs Commission, Canadian Catholic Conference of Bishops) and Dr. Donald Ray (Secretary, General Council, United Church of Canada); "GM sees near-record sales of '77s", Detroit Free Press, 22 May 1976; Th. Scheetz, "GM: a case study", America, 6 November 1976, pp. 297-300; 1976 General Motors Public Interest Report, pp.46-48.

59/ (See e.g. F. Francioni, "International control over multinational enterprises: an alternative to Codes of Conduct" The Italian Yearbook of International Law, vol.III, 1978 (forthcoming))

In general, on codes of conduct concerning multinational enterprises, see J. Davidow and L. Chiles, "The United States and the issue of the binding or voluntary nature of international codes of conduct regarding restrictive business practices", American Journal of International Law, 1978, p. 247 ff.

On multinational corporations and human rights, see Th.E. McCarthy, "Transnational corporations and human rights", in A. Cassese (ed.), Modern International Law: Problems and Prospects (Leyden, 1978) (forthcoming).

60/ United Nations Commission on Transnational Corporations, Report of the Intergovernmental Working Group on the Code of Conduct (first and second sessions), E/C.10/31, paras. 4 and 16.

principles to be respected by those corporations included "Adherence to economic goals and development objectives, policies and priorities" and "Adherence to socio-cultural objectives and values". 61/ Particularly important also are the principles concerning employment and labour, the annotations to which read as follows:

"Relevance of ILO principles and standards regarding inter alia employment promotion and security, discrimination of employees, training of local employees, replacement of foreign citizens by national citizens in management at all levels, wages, working conditions, safety and health, freedom of association, trade union rights and collective bargaining and measures in case of lay-offs, closures of plants and shifts in production." 62/

539. The ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policies can also provide useful elements for reflection. 63/ Of particular importance appears the "Code of Conduct for Companies with Subsidiaries, Branches or Representation in South Africa", adopted by the Foreign Ministers of the European Economic Communities on

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61/ Ibid.

62/ Ibid.

63/ The Declaration inter alia states that all parties concerned "should respect the Universal Declaration of Human Rights and the corresponding International Covenants" as well as "the Constitution of the International Labour Organisation and its principles according to which freedom of expression and association are essential to sustained progress" (ILO, Report of the Reconvened Tripartite Advisory Meeting on the Relationship of Multinational Enterprises and Social Policy, ILO Governing Body doc. GB.203/6/2, appendix II). The declaration also covers the following areas: employment promotion; equality of opportunity and treatment; security of employment; training; wages; benefits and conditions of work; safety and health; freedom of association and the right to organize; collective bargaining; consultation; examination of grievances and settlement of industrial disputes (ibid., paras. 78-88). See also Th.E.McCarthy, loc. cit.

20 September 1977. Many provisions of this Code could serve as a helpful precedent or could provide significant guidelines 64/ if it were decided to

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64/ The Code of conduct includes the following provisions:

"1. Relations within the undertaking

(a) Companies should ensure that all their employees irrespective of racial or other distinction are allowed to choose freely and without any hindrance the type of organisation to represent them.

(b) Employers should regularly and unequivocally inform their employees that consultations and collective bargaining with organisations which are freely elected and representative of employees are part of company policy.

(c) Should black African employees decide that their representative body should be in the form of a trade union, the company should accept this decision. Trade unions for black Africans are not illegal, and companies are free to recognize them, and to negotiate and conclude agreements with them.

(d) Consequently, the companies should allow collective bargaining with organisations freely chosen by the workers to develop in accordance with internationally accepted principles.

(e) Employers should do everything possible to ensure that black African employees are free to form or to join a trade union. Steps should be taken in particular to permit trade union officials to explain to employees the aims of trade unions and the advantages of membership, to distribute trade union documentation and display trade union notices on the company's premises, to have reasonable time off to carry out their union duties without loss of pay and to organise meetings.

(f) Where works or liaison committees already operate, trade union officials should have representative status on these bodies if employees so wish. However, the existence of these types of committee should not prejudice the development or status of trade unions or of their representatives.

"...

"3. Pay

Companies should assume a special responsibility as regards the pay and conditions of employment of their black African employees. They should formulate specific policies aimed at improving their terms of employment. Pay based on the absolute minimum necessary for a family to



envisage the possibility of drawing up a code of conduct for multinational corporations operating in Chile (or, more generally, in States with respect

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survive cannot be considered as being sufficient. The minimum wage should initially exceed by at least fifty per cent the minimum level required to satisfy the basic needs of an employee and his family.

"...

"5. Fringe benefits

(a) In view of their social responsibilities, undertakings should concern themselves with the living conditions of their employees and families.

(b) For this purpose company funds could be set aside for use

- in the housing of black African personnel and their families;
- in transport from place of residence to place of work and back;
- in providing leisure and health service facilities;
- in providing their employees with assistance in problems they encounter with the authorities over their movement from one place to another, their choice of residence and their employment;
- in pension matters;
- in education matters;
- in improving medical services, in adopting programmes of insurance against industrial accidents and unemployment, and in other measures of social welfare ...

"...

"7. Reports on the implementation of the Code of Conduct

(a) Parent companies to which this Code is addressed should publish each year a detailed and fully documented report on the progress made in applying this Code.

(b) The number of black Africans employed in the undertaking should be specified in the report, and progress in each of the six areas indicated above should be fully covered.

(c) The Governments of the Nine will review annually progress made in implementing this Code. To this end a copy of each company's report should be submitted to their national Government."

to which the General Assembly has declared that they grossly violate basic human rights and fundamental freedoms).

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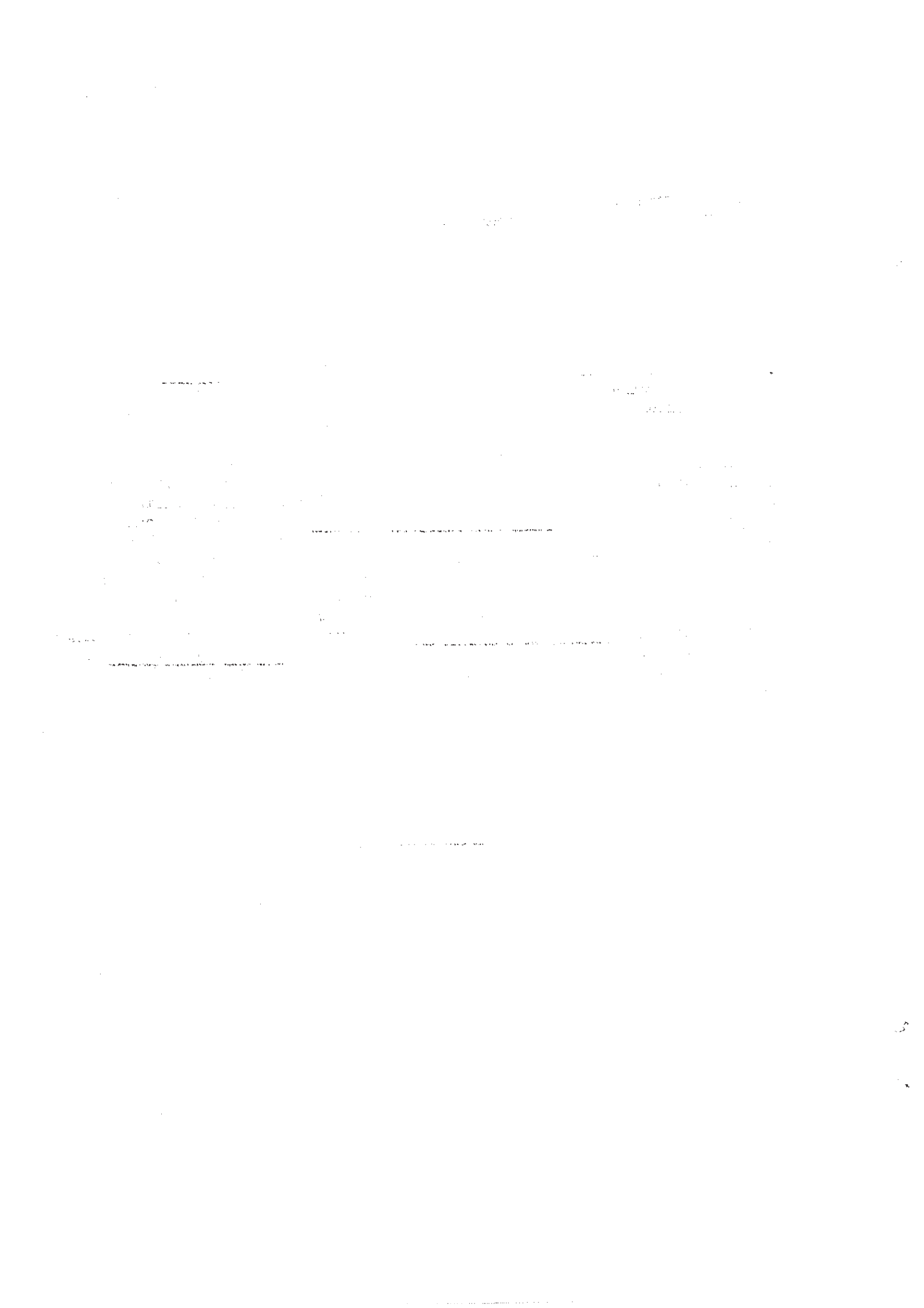
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540. The Rapporteur believes that at least some of the above measures might be of help in reorienting foreign economic assistance in such a way as to make it consonant with international standards on human rights, and therefore fully and directly conducive to the effective implementation of such rights.

541. There is, however, a fundamental point which the Rapporteur wishes to emphasize again, in view of its importance. It follows from the extensive research undertaken for the present report that foreign economic assistance must always be looked upon within the general context of the economic and social policy carried out by the recipient State. Consequently, whichever of the aforementioned measures is adopted (by States, intergovernmental organizations or private institutions), one basic fact should always be borne in mind: whenever a recipient State adopts a repressive policy that results in gross disregard of civil and political as well as economic, social and cultural rights, the preliminary condition for making foreign economic assistance truly advantageous to the population of that State is a basic reorientation of the general policy of the Government, and full restoration of all the basic human rights and fundamental freedoms.

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Annex I

METHODS OF WORK

1. The Sub-Commission has developed and the Commission on Human Rights has approved a method and procedure for carrying out its studies (resolutions B and G and chapter V of the report of the Sub-Commission on its sixth session (E/CN.4/70 and paras.376-418 of the report of the Commission on its tenth session (E/2573)); since this method and procedure have proved generally acceptable and successful in the preparation of numerous studies, the Rapporteur decided to follow these precedents.
2. The main sources of material for this study have been:
  - (a) Governments of States Members of the United Nations and of States members of the specialized agencies;
  - (b) The specialized agencies;
  - (c) Non-governmental organizations in consultative status with the Economic and Social Council;
  - (d) Governmental departments in Chile;
  - (e) Regional organizations;
  - (f) Independent institutions;
  - (g) Reliable publications.
3. At the request of the Special Rapporteur, the Secretary-General sent a note verbale on 5 October 1977 to the Governments of States Members of the United Nations and members of the specialized agencies, in which he indicated that he would be grateful to the Governments consulted for any help they could give the Special Rapporteur in the preparation of his study, in particular, reports or other material which would enable him to fulfil the request, made by the Sub-Commission in paragraph 3 of its resolution 11 (XXX), to analyse the volume, origins, development and significance of the assistance given to the present régime in Chile and to study whether a quantitative or qualitative change in the aid now being given might contribute to restoring respect for human rights in Chile.
4. On 6 October 1977 a similar request was addressed by the Deputy Director of the Division of Human Rights to the following specialized agencies and United Nations bodies: Food and Agriculture Organization of the United Nations (FAO), Inter-Governmental Maritime Consultative Organization (IMCO), International Bank for Reconstruction and Development (IBRD), International Civil Aviation Organization (ICAO), International Labour Organisation (ILO), International Monetary Fund (IMF), International Telecommunication Union (ITU), United Nations Educational, Scientific and Cultural Organization (UNESCO), Universal Postal Union (UPU), World Health Organization (WHO), World Intellectual Property Organization (WIPO), World Meteorological Organization (WMO), Economic Commission for Latin America (ECLA), United Nations Industrial Development Organization (UNIDO).

5. The latter request was also sent to non-governmental organizations in consultative status with the Economic and Social Council, and to various independent institutions engaged in relevant activities.
6. Substantive replies were sent to the Rapporteur by the Governments of the following countries on the dates indicated: Bulgaria (20 December 1977), Chile (5 December 1977 and 13 February 1978), Cyprus (17 November 1977), German Democratic Republic (14 December 1977), Germany, Federal Republic of (30 January 1978), Greece (8 December 1977), Italy (17 March 1978), Japan (10 February 1978), Netherlands (21 December 1977), Norway (25 November 1977), Romania (19 January 1978), Surinam (4 January 1978), Sweden (15 December 1977), Union of Soviet Socialist Republics (17 April 1978).
7. Acknowledgements were received from the Governments of Australia, Austria, Barbados, Botswana, Denmark, Finland, France, Grenada, Guatemala, Haiti, Madagascar, New Zealand, Nigeria, Panama, United States of America.
8. Replies were sent to the Rapporteur by the following specialized agencies on the dates indicated: ILO (23 November 1977), UNESCO (29 November 1977), WHO (30 November 1977), IBRD (16 November 1977), ICAO (14 November 1977), WMO (9 November 1977), IMCO (26 October 1977), WIPO (21 October 1977).
9. Replies were sent to the Rapporteur by the following non-governmental organizations in consultative status with the Economic and Social Council on the dates indicated: category I: Inter-Parliamentary Union (27 October 1977), International Youth and Student Movement for the United Nations (20 September 1977), World Federation of Trade Unions (29 November 1977); category II: Amnesty International (29 November 1977), Centre for Latin American Monetary Studies (24 October 1977), Chamber of Commerce of the United States of America (3 November 1977), Co-ordinating Committee for International Voluntary Service (4 November 1977), Friends World Committee for Consultation (29 November 1977), Inter-American Council of Commerce and Production (28 October 1977), Inter-American Statistical Institute (26 October 1977), International Association for Social Progress (5 December 1977), International Bar Association (17 October 1977), International Committee of the Red Cross (20 October 1977), International Commission of Jurists (13 December 1977), International Law Association (23 November 1977), Socialist International (20 October 1977), Vienna Institute for Development (19 October 1977), World Federation of Catholic Youth (22 October 1977); Roster: Commission to Study the Organization of Peace (9 October 1977), the Trilateral Commission (18 October 1977).
10. Replies were sent to the Rapporteur by the following independent institutions on the dates indicated: American Public Health Association (22 November 1977), Bay Area Ecumenical Committee of Concern for Chile (30 March 1978), Centro de Investigación y Docencia Económicas, A.C. (9 November 1977), Chile Committee for Human Rights (27 January 1978), Columbia University - School of Public Health (23 November 1977), Contemporary Archive on Latin America (25 November 1977, 12 and 19 June 1978), Inter-American Bar Association (15 November 1977), North American Congress on Latin America (8 November 1977), Tampere Peace Research Institute (25 October 1977), the Transnational Institute (16 March 1978 and 19 April 1978).

11. With the assistance of the secretariat, the Rapporteur is supplementing this material with the information obtained from United Nations documents and other publications, including periodicals, the press and the writings of scholars and experts.

12. In April 1978 a second note verbale was sent to the Governments of the following countries: Belgium, Canada, Germany, Federal Republic of, Italy, Japan, Netherlands, Spain, United Kingdom of Great Britain and Northern Ireland, United States of America. This note verbale was accompanied by the following questionnaire:

"1. Does your Government grant general economic or financial assistance to Chile or does it grant such assistance only in specifically defined areas (e.g. employment, education, health, housing, etc.)? If given for specific areas, please enumerate.

2. Is your Government informed of loans or credits accorded to Chile by private banks or corporations in your country? If so, please furnish detailed data.

3. Is economic or financial assistance given to Chile by State agencies or by private banks or corporations ever made subject to any conditions (e.g. that the assistance be used in certain areas, for specific projects, subject to certain guidelines, or to be used within a certain time-limit, etc.)? If so, please describe.

4. In the event your Government grants economic assistance to Chile for specified purposes, are such grants made conditional upon the allocation and expenditure of specified funds from the Chilean budget for the same purposes? If so, please describe.

5. When your Government gives economic or financial assistance to Chile are procedures established for verifying how this assistance is actually used? If so, does your Government use its own means of verification or does it rely upon reports from Chilean authorities? Assess the value of such verifying procedures.

6. Does your Government have methods for determining if assistance is directly beneficial to needy people?"

13. Answers were received from the Government of Italy (27 April and 4 July 1978), Germany, Federal Republic of, (31 May 1978), the Netherlands (2 August 1978) and the United Kingdom (23 May 1978).

14. On 11 April 1978 a second note verbale was sent to the International Monetary Fund and the International Bank for Reconstruction and Development. The following questionnaire accompanied the note verbale:

"1. Does your organization grant general, economic or financial assistance to Chile or does it give such assistance only in specifically defined areas (e.g. employment, education, health, housing, etc.)? If given for specific areas, please enumerate.

2. Is economic or financial assistance granted to Chile by your organization ever made subject to any conditions? (e.g. that the assistance be used in

certain areas, for specific projects, subject to certain guidelines, or to be used within a certain time-limit, etc.)? If so, please describe.

3. In the event your organization grants economic assistance to Chile for specified purposes, are such grants made conditional upon the allocation and expenditure of specified funds from the Chilean budget for the same purposes? If so, please describe.

4. When your organization gives economic or financial assistance to Chile are procedures established for verifying how this assistance is actually used? If so, does your organization use its own means of verification or does it rely upon reports from Chilean authorities? Assess the value of such verifying procedures.

5. Does your organization have methods for determining if assistance is directly beneficial to needy people?"

15. Answers were received from the International Bank for Reconstruction and Development (World Bank) on 3 February, 25 May and 29 June 1978 and from the International Monetary Fund on 26 May 1978.

Annex II

LETTER DATED 5 DECEMBER 1977 FROM THE PERMANENT REPRESENTATIVE  
OF CHILE TO THE INTERNATIONAL ORGANIZATIONS IN GENEVA ADDRESSED  
TO THE SECRETARY-GENERAL

On the instructions of the Government of Chile I have the honour to reply to communication No. G/SO 214 (22-1), which you addressed to the Minister for Foreign Affairs, the Minister of Finance and various authorities and institutions of my country on behalf and at the request of Mr. Antonio Cassese, Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities.

1. The above-mentioned communication refers to resolution 11 (XXX) entitled "Study of certain questions relating to the situation of human rights in Chile", adopted by the Sub-Commission on 31 August this year, and requests any help that my Government could give in the preparation of a study which it is proposed to make for the dual purpose of analysing "the volume origins, development and significance of the assistance given to the present régime in Chile" and determining "whether a quantitative or qualitative change in the aid now being given might contribute to restoring respect for human rights in Chile".
2. The passages in that communication which I have quoted show that the issue has already been prejudged, despite the request for my Government's co-operation in carrying out the study.
3. I am bound to point out also that the communication addressed to the Minister of Finance goes beyond the resolution itself and, in terms not used in the resolution, requests information on foreign investment in Chile in recent years.
4. On the occasion of the submission and subsequent adoption of the text of resolution 11 (XXX), the Government of Chile expressed its outright rejection of the terms and objectives of that text because the repeated adverse judgments it pronounces on the Chilean situation bear no relation to the real situation prevailing in my country; because they are neither compatible with the collaboration which the Chilean Government extends to international organizations nor in keeping with the respect which those organizations owe to their members; because concealed behind the arguments of self-styled humanitarian concern is interference in the domestic affairs of States; because it would set a precedent with serious consequences in the United Nations; and lastly because there is an obvious intention to duplicate or supplant the workmanlike, responsible and honest activities of genuinely humanitarian international organizations such as the International Red Cross and UNHCR, which extend invaluable assistance to Governments without giving way to the politicizing and publicity that destroy due process.
5. Article 2, paragraph 7, of the Charter of the United Nations lays upon the United Nations the obligation not to intervene in matters which are essentially within the domestic jurisdiction of any State. As I have already pointed out, the resolution in question has features which are apparent from a mere perusal and which constitute dangerous and deliberate interference in the domestic affairs of Chile.



6. The national budget of Chile, its foreign debt both public and private, the amounts, sources and objectives of the budget and the volume of foreign investment and aid are matters which fall exclusively within its domestic sovereignty and no one can claim that they should be subjected to international investigation by political organs that have no competence, whatever their intentions and purposes may be. The specialized agencies of the United Nations and the international financing agencies are in a different situation and we shall continue to supply them with relevant information in accordance with their particular purposes, statutes and constituent instruments.

7. The Government of Chile consequently reiterates what was stated to the Sub-Commission; it shares the view expressed by the experts - most of them distinguished Latin American jurists - who opposed the resolution at the recent meeting of the Sub-Commission and instructs me to inform you that, for the reasons given, it will not collaborate in any way in the study for which its co-operation has been requested.

8. Nevertheless, you may rest assured that my Government will be ready at all times to continue giving you its fullest co-operation in any matter which may serve the promotion of human rights - a fundamental purpose of the United Nations which is clearly absent from the proposed study.

9. Lastly, on the express instructions of my Government, I would request that in future, in order to avoid confusion and delay, communications on these matters addressed to Chilean authorities and institutions should be sent to this Delegation, which will gladly undertake to transmit them to Santiago.

(Signed) Manuel TRUCCO

Ambassador  
Permanent Representative