Fourth item on the agenda

REPORT OF THE FACT-FINDING AND CONCILIATION COMMISSION
ON FREEDOM OF ASSOCIATION CONCERNING THE CASE OF CHILE

1. Appended to this paper is the report of the Panel of members of the Fact-Finding and Conciliation Commission on Freedom of Association appointed by the Governing Body at its 193rd Session (May-June 1974) to examine the case relating to Chile.

2. This report has been communicated to the Government of Chile, the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions and the other workers' organisations which also submitted complaints concerning this case.

3. As indicated in a previous case, the reports of the Fact-Finding and Conciliation Commission do not constitute judgments calling for a decision by the Governing Body, but an account of the inquiry carried out by the Commission regarding freedom of association, of which the Governing Body is invited to take note.

4. In the present case the Commission's report contains a suggestion calling for a decision by the Governing Body. In paragraph 541 the Commission recommends the Governing Body, in accordance with the powers vested in it by Article 19, paragraph 5(e) of the Constitution, to invite the Government of Chile to report to the Director-General, in such manner and at such time as the Governing Body deems appropriate, on the situation of its legislation and practice concerning the matters covered by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and, more particularly, on the different questions examined by the Commission. The Commission indicates that this will enable the Governing Body and the other competent ILO bodies to follow any developments in the matter and to see what effect is given to the Commission's recommendations.

1 See Minutes of the 167th Session of the Governing Body, p. 87.
5. The Governing Body will no doubt wish:

(a) to take note of the Commission's report;

(b) to decide whether it wishes to invite the Government of Chile to submit, in accordance with Article 19, paragraph 5(e) of the Constitution, and at a date to be determined, a report on the situation of its law and practice concerning the matters covered by Conventions Nos. 87 and 98, and which have been examined by the Fact-Finding and Conciliation Commission, and are dealt with in the latter's recommendations;

(c) if it should be decided to request such a report, to request the Committee on Freedom of Association to examine the report submitted by the Chilean Government and to submit a report to the Governing Body thereon.


POINT FOR DECISION:

Paragraph 5.
REPORT OF THE FACT-FINDING AND CONCILIATION COMMISSION ON
FREEDOM OF ASSOCIATION CONCERNING THE TRADE UNION SITUATION IN CHILE
CORRIGENDUM

- Paragraph 158, footnote: for "paras. 435 to 443" read "paras. 436 to 444".
- Paragraph 260, line 5: for "People's Unity Vinilants." read "People's Unity. Vinilants ...".
- Paragraph 318, line 15: for "notified of any change" read "notified of any charge".
- Paragraph 340, line 13: for "only a few days after" read "only a few days before".
- Paragraph 503, lines 6 and 7: for "in the case of the others the particulars furnished were insufficient to enable them to be located." read "in the case of one other the particulars furnished were insufficient to enable him to be located."
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PART I

CHAPTER 1

INTRODUCTION

1. The Fact-Finding and Conciliation Commission on Freedom of Association was established by the International Labour Organisation in agreement with the United Nations in 1950.

2. The procedure for the examination of allegations of infringements of trade-union rights has already been described in a previous Report of the Fact-Finding and Conciliation Commission and in a series of ILO official documents, particularly a number of reports of the Committee on Freedom of Association of the Governing Body. It does not, therefore, appear necessary to give an explanation of that procedure in this report.

3. It is the function of the Commission to examine such cases of infringements or alleged infringements of trade union rights as may be referred to it, to ascertain the facts, and to discuss the situation with the government concerned with a view to securing the adjustment of difficulties by agreement.

4. In principle, no case may be referred to the Fact-Finding and Conciliation Commission without the consent of the government concerned. The only exception is in respect of any complaint relating to the application of a ratified Convention, in which case the Governing Body may designate the Fact-Finding and Conciliation Commission as a commission of inquiry under article 26 of the Constitution of the International Labour Organisation.

5. The case dealt with in the present report is one of the four cases in which the government concerned has given the required consent.

6. Allegations of infringements of trade union rights are examined in the first instance by the Committee on Freedom of Association of the Governing Body of the International Labour Office, which has considered over 800 cases since 1951. It was in September 1973, after the change of regime in Chile, that a case containing allegations of infringements of freedom of association in that country (Case No. 1.

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3 The first case concerned Japan (see Official Bulletin, Vol. XLIX, No. 1, January 1966, Special Supplement); the second concerned Greece (Official Bulletin, Vol. XLIX, No. 3, July 1966); and the third concerned Lesotho (for which case the report is soon to be published).
765) case before the said Committee. It made two reports to the Governing Body on this case; they are dated November 1973 and February 1974 respectively.1


8. The Governing Body designated three members of the Commission to examine the case (see paragraph 38 below).

9. The Commission met for the first time in Geneva from 3 to 6 July 1974 to determine its procedure. The second session was held, also in Geneva, from 14 to 25 October 1974, and included — from 16 October onwards — hearings of representatives of the parties and other evidence. The Commission then went to Chile in order to hold its third session and to visit the country; it remained there from 28 November to 19 December 1974. Lastly the Commission met again in Geneva from 25 April to 8 May 1975 to prepare its final report.

10. Chapters 2 to 19 of the present report contain a description of the procedure followed in this case, as well as an analysis of the information available to the Commission and of the evidence received. Chapter 20 contains the Commission's conclusions and recommendations.
11. Numerous complaints of alleged infringement of trade union rights in Chile were made to the ILO by various international trade union organisations, in accordance with the established procedure, after the change of political regime which took place in that country on 11 September 1973. The substance of the complaints was communicated to the Government as each one arrived and the complaints were referred for preliminary examination to the Committee on Freedom of Association of the Governing Body. The Committee examined the case (classified as Case No. 765) and made two successive reports thereon to the Governing Body.

12. The complaints were submitted by the following organisations: International Confederation of Free Trade Unions; World Confederation of Labour; World Federation of Trade Unions; Trade Unions International of Workers of the Building, Wood and Building Materials Industries; Latin American Central of Workers; International Metal Workers' Federation; Trade Unions International of Workers of the Food, Hotels, Tobacco and Allied Industries; Trade Unions International of Public and Allied Employees; Trade Unions International of Agricultural, Forestry and Plantation Workers; Trade Unions International of Chemical, Oil and Allied Workers; Miners' Trade Unions International (WFTU); Trade Unions International of Workers in Commerce; Trade Unions International of Textile, Clothing, Leather and Fur Workers; Latin American Federation of the Building, Wood and Building Materials Industries.

13. The complaints in question include allegations respecting the life, liberty and personal safety of (particularly) certain trade union leaders and members; the dissolution of the Single Central Organisation of Workers of Chile (CUT); measures to dissolve or repress other trade union organisations; legislative action allegedly aimed at the abolition or restriction of certain trade union rights; and other allegations respecting the suppression of the fundamental human freedoms the enjoyment of which is indispensable for the exercise of trade union activities and rights.

14. The first communication in which the Government made observations upon the various allegations was received on 5 November 1973, during the 65th Session of the Committee on Freedom of Association.

15. When the Committee on Freedom of Association first examined this case at its 65th Session, it submitted to the Governing Body a number of preliminary conclusions and recommendations which figure in paragraphs 553-560 of its 139th report. In paragraph 556, the Committee pointed out that its examination of the question had been rendered difficult because the Government's reply was received after the beginning of its session. In these circumstances the Committee had been unable to examine the substance of the issues placed before it, nor could it reach any definitive conclusions. The Committee was well aware of the serious situation in which the case at issue had arisen. However, in other cases in which it had considered complaints concerning alleged infringements of trade union rights committed during a state of siege or emergency, or under the terms of an Internal Security Act, the Committee had always held that it ought not to express an opinion on the need or advisability of such emergency legislation, which was a purely political question, but that it should consider the repercussions which the legislation might have on the free exercise of trade union rights.

16. In these circumstances, the Committee proposed to examine the substance of the case at its next session, taking into account any supplementary information which it might receive either from the complainants or from the Government.

17. Nevertheless, in paragraph 560 of its 139th Report, the Committee made a preliminary recommendation to the Governing Body:

"(a) to express its concern at the gravity of the allegations posed in the various complaints with respect to which it had just received a reply from the Government;"
(b) without at present coming to a conclusion as to the substance of the complainants' allegations, to call the attention of the Government:

(i) to the importance which it attaches to the generally accepted principle that employers' and workers' organisations should not be subject to suspension or dissolution by administrative authorities;

(ii) to the importance which it attaches to the principle of a fair trial by an independent and impartial judiciary and if possible by the regular courts, in all cases, including cases in which trade unionists are charged with political or criminal offences which the Government consider have no relation to their trade union functions;

(c) to request the Government to transmit any supplementary information which it might obtain on the latest developments concerning the situation of the several persons mentioned in the complaints and concerning whom it has already supplied certain information;

(d) to take note of the present interim report, it being understood that the Committee will submit a new report to the Governing Body at its next session, taking into account any supplementary information which might be transmitted by either the complainants or the Government."

18. At its 191st Session (November 1973), the Governing Body approved the above recommendations and instructed the Director-General to ask the Government of Chile whether, should the Governing Body decide to refer the complaint to the Fact-Finding and Conciliation Commission on Freedom of Association, the Government would be willing to agree to such referral. The two decisions were brought to the Government's attention in a communication dated 22 November 1973.

19. Some of the complainant organisations mentioned above sent additional complaints or supplementary information after the 65th Session of the Committee. The Government sent further observations and information in three communications dated 4 December 1973 and 8 and 11 February 1974.

20. In its communication of 8 February 1974 the Government answered as follows the question put to it by decision of the Governing Body: supposing the Committee on Freedom of Association were to recommend and the Governing Body to conclude that the case should be referred to the Fact-Finding and Conciliation Commission, the Government would not be able to reach the appropriate decision regarding its willingness to accept such a referral until, after examining the relevant report of the Committee and any resolution which the Governing Body might adopt, it had evaluated the grounds adduced in support of the referral and until it had considered whether the rules of procedure applicable to the case had been complied with.

21. At its session in February 1974 the Committee on Freedom of Association made a further report on this case (paragraphs 222-271 of its 142nd Report to the Governing Body).

22. In paragraph 268 the Committee noted with interest the detailed information provided by the Government in reply to the allegations made, particularly regarding the situation of a number of trade union leaders and organisations and the character of the various legislative measures taken by Government. It appeared from this information that several of the leaders mentioned were at liberty, while others had sought asylum in embassies or had left the country; but there was no indication of the reasons for their flight, nor whether charges had been brought against them, nor whether they were prevented in any way from obtaining safe conduct. As regards the various trade union organisations mentioned by the Government, the information received did not show when and in what circumstances several of them had elected their committees of management. In this connection, the Committee noted that Ministry of Interior Circular No. 243 provided that trade union meetings could be held only with prior authorisation and in the presence of a member of the State police; that the intendant or governor1 was empowered to decide whether trade union committees should resign in whole or in

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1 In Chile, the intendant and the governor are respectively chiefs of the provincial and departmental administrations.
part, and the said authorities might accept or refuse the nomination of persons proposed to them by the organisations concerned; that the Minister of Labour was to propose the means by which members of union committees belonging to outlawed political parties should be replaced. Moreover, the Government had still not sent its observations on the death, by execution or in other ways, of several members and leaders of trade unions.

23. The Committee noted, from the information available, that the situation regarding the events mentioned in the complaints was highly complex. Moreover, the allegations related to such serious matters as the arrest and even execution of trade unionists, asylum in embassies, restrictions on the right to organise, dissolution of trade union organisations or the restriction of their activities. The Committee added that a large part of the Chilean trade union movement seemed to be affected, and that fresh complaints on these subjects had recently been lodged.

24. The Committee stated that in such circumstances it would be highly desirable to be able to proceed with an impartial and detailed examination of the situation, which raised important problems with regard to a number of basic principles of freedom of association. The Committee stated that a body appropriate for carrying out the examination was the Fact-Finding and Conciliation Commission on Freedom of Association. In this regard the Committee recalled that in the resolution concerning Freedom of Association adopted by the Fifth Conference of American States Members of the ILO (Petropolis, April 1952) the attention of governments was drawn to the desirability, when considering whether or not they were prepared to refer cases in which they might be concerned to the Fact-Finding and Conciliation Commission, of having full regard to the advantages of impartial and objective examination of any allegations by the Commission as a means of alleviating tensions arising out of such allegations.

25. In paragraph 271 of its 142nd report, the Committee recommended the Governing Body:

"(a) to decide to request the Government of Chile to give its consent to the case being referred to the Fact-Finding and Conciliation Commission on Freedom of Association;

(b) should the Government consent, to request the Director-General to submit more detailed proposals to the Governing Body at its next session, for the reference of the matter to the Fact-Finding and Conciliation Commission."

26. The Governing Body approved these recommendations at its 192nd Session (February-March 1974). The decision was communicated to the Government of Chile by the Director-General in a letter dated 4 March 1974.

27. In a letter from the Ministry of Labour and Social Welfare to the Director-General dated 9 May 1974, the Government communicated its reply to the above-mentioned request by the Governing Body. The Government first of all said it had found it difficult to understand the attitude adopted in this matter, and continued as follows: "It has been traditional, in all similar cases which have come before the Organisation, to consider that the purpose of its jurisdiction, so to speak, is not to pass judgment on internal political situations which induce member States to take decisions of an institutional character that modify - sometimes substantially - the fabric of public law on which they rest."

28. The Government went on: "When such cases arise, as has occurred in Chile, the Committee on Freedom of Association has always taken care not to be rushed into judging them on the basis of complaints presented for obvious reasons of political expediency or passion." The Government referred to the principle applied by the Committee on Freedom of Association, according to which the Committee reports to the Governing Body that a case does not call for further examination if it finds the allegations made to be so purely political that it seems undesirable to pursue the matter further. In subsequent comments, the Government described the objectives pursued by the complainants as political and stressed the unusual haste with which, in its view, the matter was being handled, for the case had been referred to the Fact-Finding and Conciliation Commission after only a few days and despite the detailed replies presented. The Government would have expected a request for further clarification of any points not covered by the full reply it had already made. Chile, it pointed out, had not ratified Conventions 87 and 98, but an attempt was now being made to use their provisions as a yardstick for the severe measurement of the Chilean case, whereas no similar strictness had been used in examining the
application of Convention 87 by certain States which had ratified it but had adopted a negative attitude respecting referral of their cases to the Commission.

29. The Government stated that such circumstances and considerations might well have led it to reject referral of the case, forthwith and at such short notice, to the Fact-Finding and Conciliation Commission. However, "conscious of the justice of its cause and mindful of the profound significance and high merit of the International Labour Organization in international law", the Government of Chile had decided in freedom and sovereignty to consent to the Commission's taking cognisance of the case.

30. In view of the Government's reply, the Director-General presented to the Governing Body at its 193rd Session (May-June 1974) proposals for the submission of the case to the Commission.

31. The Director-General pointed out that, when the Governing Body had appointed the members of the Commission at its 111th and 112th Sessions (March and June 1950), it had also decided that the Commission's work might be done by panels of not less than three nor more than five of the members.¹

32. The Director-General accordingly suggested that, as in previous cases, a panel of three members of the Commission would be most appropriate for the efficient discharge of the task which it was proposed to entrust to the Commission.

33. In view of the functions they would be called upon to perform, it seemed appropriate that as in previous cases, the members of the panel should undertake by a solemn declaration to perform their duties and exercise their powers "honourably, faithfully, impartially and conscientiously". A solemn declaration in such terms would be in accordance with the undertaking which judges of the International Court of Justice were required to give, and with that given by members of the Commissions appointed under article 26 of the ILO Constitution.

34. The Director-General pointed out that, under the procedure in force², the Commission was "essentially a fact-finding body" but was "authorised to discuss situations referred to it for investigation with the government concerned with a view to securing the adjustment of difficulties by agreement".

35. It followed from these terms of reference, which had been agreed on between the Governing Body and the Economic and Social Council in 1949, that although the Commission would be free to hear evidence from all concerned, any discussions which it might have "with a view to securing the adjustment of difficulties by agreement" should be conducted with the Government. It would not be authorised to undertake any discussions in the nature of negotiations with political parties or industrial organisations.

36. The Director-General suggested that the panel should meet in Geneva as soon as possible to take cognisance of the case and to determine its future procedure, including both the arrangements for hearing representatives of the parties and any witnesses, and also the arrangements which might have to be made for a visit by the panel to Chile.

37. As regards such a visit, the Director-General continued, it appeared useful to ensure, as had been done in the case of the study group appointed by the Governing Body to examine the labour and trade union situation in Spain - and under the same conditions - that the panel would enjoy certain facilities for the performance of the mission, i.e. that it would be free to obtain the requisite information from the authorities, from official organs and agencies, and from any Chilean citizen it might wish to interview.³


² Ibid.

³ The conditions in question, as set out in para. 21 of the Report of the study group, provide that "the group would enjoy complete freedom of movement and would be entitled to undertake private talks and interviews at which no witness would be present. No person who had been in contact with the group might for that reason be subjected to coercion, sanction or punishment at any time." See ILO: Report of the (Footnote continued on next page)
38. The Director-General further proposed that the Governing Body appoint Mr. José Luis BUSTAMANTE I RIVERO (Peru) and Mr. Jacques DUCOUX (France) as members of the Fact-Finding and Conciliation Commission, and that the panel to consider the case of Chile be composed as follows:

**Chairman:** Mr. José Luis BUSTAMANTE I RIVERO (Peru), former President of the International Court of Justice; former Judge of that Court; former President of the Republic of Peru.

Mr. Jacques DUCOUX (France), Councillor of State; member of the panel of the Fact-Finding and Conciliation Commission on Freedom of Association which considered the case of Greece in 1966; member of the Commission set up in 1969-70 under article 26 of the Constitution to consider the complaints against Greece concerning the observance of the freedom of association Conventions.

Mr. H.S. KIRKALDY (United Kingdom), member of the Fact-Finding and Conciliation Commission; Professor Emeritus of Industrial Relations in the University of Cambridge; member of the Committee of Experts on the Application of Conventions and Recommendations.

39. On 1 June 1974, during its 193rd Session, the Governing Body unanimously approved the proposals set out above.

40. By letter dated 7 June 1974 the Director-General informed the Government of the Governing Body's decisions and requested that it consent to the grant of the facilities mentioned in paragraph 37 above.

41. At its 59th Session (June 1974) the International Labour Conference adopted a Resolution concerning Human and Trade Union Rights in Chile. It runs as follows:

"The General Conference of the International Labour Organisation,

Expressing its deep concern at the gravity of the situation in Chile as regards the arrest, execution and deportation of trade unionists, violation of human and democratic rights, dissolutions of trade union organisations and restrictions of the right to organise and collective bargaining,

Referring to the reports and recommendations of the Committee on Freedom of Association submitted to and adopted by the Governing Body at its 191st (November 1973) and 192nd (February-March 1974) Sessions,

Noting that the military junta has increased the working week by four hours (Decree No. 35) and has at the same time frozen wages, which is contrary to all national and occupational agreements in Chile and a flagrant violation of the principles and standards laid down in the Constitution of the ILO and in the Hours of Work (Industry) Convention, 1919 (No. 1), which has been ratified by Chile,

Noting that the Chilean authorities have secured the dismissal (by Legislative Decree No. 32) of tens of thousands of workers in industry, agriculture, services, the public service and the universities and has prohibited any employment of those persons in violation of the most elementary principles of non-discrimination based on political or trade union views, and, more particularly, of the provisions of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has been ratified by Chile,

Stressing the fact that the military junta has suspended the operation of the conciliation committees and the labour arbitration courts (Order No. 36), thus establishing strict control by the military authorities over the labour courts,

Noting that the Governing Body decided to request the Chilean authorities to give their consent to the visit of the Fact-Finding and Conciliation Commission on Freedom of Association,

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(Footnote continued from previous page)
Noting that the Chilean authorities have now responded favourably to the request of the Governing Body,

1. Urges the Chilean authorities -

(a) to cease violations of human and trade union rights and to lift all restrictions on the exercise of trade union activities;

(b) to close down the concentration camps in which workers, militant workers and trade union leaders are interned for political reasons;

(c) to guarantee within the framework of a general amnesty, the life and freedom of the workers, militant workers and trade union leaders and members of any political parties who have been arrested, deported, or imprisoned;

(d) to repeal the repressive Acts, legislative decrees and orders issued since 11 September 1973, so that the Chilean workers can fully enjoy democratic liberties and trade union rights;

(e) to repeal the dissolution of the Central Organisation of Workers (CUT) and guarantee its freedom of action;

(f) to abolish the special tribunals and withdraw trade union activities from the jurisdiction of the military authorities;

(g) to put an end to the torturing of trade union militants and leaders and punish those who were responsible for such inhuman activities;

(h) to grant safe conducts to all trade union leaders and members of all parties and organisations who have taken refuge in embassies.

2. Invites the Governing Body of the International Labour Office to instruct the Director-General -

(a) to take with the utmost urgency the steps necessary to send immediately the Fact-Finding and Conciliation Commission to Chile;

(b) to set up, in accordance with article 26, paragraphs 3 and 4, of the Constitution of the International Labour Organisation, a Commission of Inquiry to study the failure of Chile to apply the Hours of Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111.), both of which Chile has ratified, and to submit a report on the subject to the 195th Session of the Governing Body;

(c) to follow continuously the development of the trade union situation in Chile and to submit reports to the 194th Session of the Governing Body and the 60th (1975) Session of the General Conference."

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1 The Governing Body established the Commission of Inquiry at its Session following directly on the 59th Session of the Conference and decided to appoint as members of that Commission the persons already appointed as members of the panel of the Fact-Finding and Conciliation Commission on Freedom of Association which was to take up the Chilean case. See Report of the Commission of Inquiry set up under article 26 of the Constitution to consider the Observance by Chile of the Hours of Work (Industry) Convention 1919 (No. 1) and the Discrimination (Employment and Occupation) Convention 1958 (No. 111.), ILO, Geneva, 1975.
CHAPTER 3

SUMMARY OF THE CASE BROUGHT BEFORE THE COMMISSION

42. A summary of the allegations made by the complainant organisations and of the Chilean Government's replies as communicated to the Committee on Freedom of Association of the Governing Body will be found below.

Allegations concerning the life, safety and freedom of trade unionists and workers

43. On the one hand, several complaints denounced the general state of insecurity and the repressive and restrictive measures of all kinds to which the Chilean trade union movement and workers were allegedly exposed since the change of political regime in September 1973. The complainants stated, for example, that the Government was violating all the rights of the workers and their organisations; that the authorities had organised a brutal repression of trade unionists and workers and had arrested or were searching for many of them; that basic human rights and safeguards, including the right to a fair trial and guarantees regarding defence before the courts were disregarded; that some workers and trade union leaders had suffered summary execution; that many persons had lost their employment because of their trade union membership; that many trade union leaders and workers had been obliged to leave the country and others to seek asylum in foreign embassies.

44. The Government, especially in its first reply received in November 1973, put forward its point of view on the circumstances in which the change of regime had taken place in Chile and set out the reasons for which the armed forces and police (carabineros) had intervened to effect the change. The Government stated in particular that under the previous regime state control of the national economy had resulted in systematic persecution of those workers and trade union leaders who did not share the ideology of the then Government. It maintained that in the state-run undertakings Marxist trade union leaders had become "informers" for the new masters and had served interests contrary to those they pretended to represent; legitimate strikes, such as that of the El Teniente copper miners, had been repressed with unprecedented violence. The Government declared further that the new authorities had not detained or persecuted trade union leaders, as had been reported to the ILO, and that this had not been so stated. It said that a few extremists who were also union leaders had engaged in acts of violence such as sabotage, unlawful possession of weapons, armed resistance to the army or police, illegal trafficking on the black market in goods for the most part coming from the premises where they worked, and that those persons had to answer for their acts before the law in the same way as any criminal at any period in the history of Chile.

45. In the same reply, received in November 1973, the Government said that all such persons were being tried by the Courts in accordance with the statutory procedures and provisions which had been in force in Chile for many years. Some others had sought asylum in the embassies of foreign countries, thus proving, the Government argued, their participation in criminal acts. The Government stated further that the political situation in Chile at the time was one of civil war, which obliged the authorities to restrict application of some statutory provisions, but that the restrictions were temporary and exceptional and would be removed when the guerilla forces had been disarmed and civil peace restored and when a freely and democratically eligible chief executive (ejecutivo unipersonal) had been installed. The Government added that human rights had been respected at all times.

46. On the other hand, both immediately after the events of September 1973 and later, allegations were made respecting trade union leaders or militants whose names and trade union functions or membership or place of employment were specified and who, according to the complainants, were or might be in danger of suffering from repressive measures or had been victims of such measures.

47. A list sent in September 1973 mentioned the following names of officers of the Single Central Organisation of Chilean Workers (CUT) or of the Permanent Congress of Trade Union Unity of Latin-American Workers: Luis Figueroa, Rolando Calderón, Ernesto Vogel, Eduardo Rojas, Octavio Gonzáles, Luis Guzmán, Fidelma
In another communication (October 1973) it was alleged that Patricio González, General Secretary of the Chilean Confederation of Private Employees (CEPCH), had presumably been arrested.

As regards Lina Benítez, member of the Santiago Provincial Committee of the CUT and also an officer of the National Federation of Health Workers (FENATS), a complainant organisation at first stated (November 1973) that she had been sentenced to death, but later information from the same source (January 1974) said that she was under arrest, as was also Lucila Lortsch, leader of the Chilean University Workers' Association.

In November 1973 some complainant organisations alleged that David Miranda, former General Secretary of the Chilean Miners' Federation, had been shot on 19 October together with 25 of his comrades.

In January 1974, a complainant organisation sent the following list of militants and leaders alleged to have been executed: Ivan Gordillo, officer of the Antofagasta branch of the CUT; Almonacid, officer of the O'Higgins branch of the CUT; Héctor Rojo, Samuel Ninñez, Armando Jiménez and Guillermo Álvarez, dockers' leaders at San Antonio; Tsidoro Carrillo, Bernabé Cabrera and Vladimir Araneda, coal workers at Lota; Luis Valdivia and Luis Hamani, trade union officers at Calama; Ricardo García, a worker acting as manager of the "Cobre-Sal" mine and five union officers in the same undertaking; Héctor Martínez Molina, agricultural workers' leader; and Manuel Donoso, teacher and officer of the teachers' union at Arica. The complainant organisation added that apparently Luis Norambuena, a CUT leader, had died after being beaten by soldiers and that Danilo Vergara had died on Dawson Island as a result of torture.

The Government sent information in November 1973 respecting the persons named in paragraph 47 above. It stated that Luis Figueroa Mazuela (President of the CUT during the events of September 1973), Fidelia Allende, Benedicto Cerqueira da Silva, Rolando Calderón, Eduardo Rojas, Luis Guzmán, Jorge Godoy (Minister of Labour and Social Welfare until 11 September 1973) and Roberto Prieto had sought asylum in foreign embassies. The following had left the country: Luis Guzmán, for Argentina; Roberto Prieto, for Sweden; and Benedicto Cerqueira, for Panama. Ernesto Vogel (first vice-president of CUT), Octavio González, Manuel Dinamarca, Mario Navarro, Aldo Ramaciotti, Tucapel Jiménez, Gilberto García and Jorge Espinosa had not, the Government said, been arrested, interrogated or molested by the authorities. Juan Ponce had not been arrested; he had gone to Moscow in June 1973.

According to information provided by the Government in February 1974, Luis Figueroa Mazuela, Rolando Calderón, Eduardo Rojas, Fidelia Allende and Jorge Godoy still had asylum in foreign embassies.

The Government also stated that Patricio González, the former CEPCH leader, was entirely free and that Carlina (Lina) Benítez had been arrested in accordance with ordinary legal procedure for supposed participation in criminal acts and then released.

In February 1974 one of the complainant organisations alleged that since the change of regime 13 militants and leaders of the Interplast Industrial Union in Santiago, including a national officer of the Single Union of Workers in the Plastics Industry (SUTRAP), had been arrested, tortured and detained for more than 45 days in the National Stadium, and that the organising secretary of SUTRAP had been arrested on three occasions. Further, the same complainant organisation alleged that the principal officers of the Single National Union of Chemical, Pharmaceutical, Laboratory and Allied Workers (SUTRAL) had been detained.
Allegations concerning action taken by the Government with respect to trade union organisations and activities.

56. Various questions have been raised concerning the action taken by the Government by way of military orders or decrees with force of law, modifying trade union legislation particularly because of the state of siege or internal war that had been proclaimed in the country, and dissolving the Single Central Organisation of Chilean Workers (CUT).

(a) Dissolution of the Single Central Organisation of Chilean Workers (CUT)

57. Legislative Decree No. 12, issued on 17 September 1973 revoked the legal personality of the CUT and prohibited any publicity regarding that organisation. On 13 November 1973 Legislative Decree No. 133 declared the CUT to be dissolved and ordered liquidation of its assets.

58. Replying to the complaints made in this respect, the Government pointed out that legal personality of the CUT was revoked because it had been proved to be a political and not a trade-union instrument, serving interests contrary to those of the workers. Its minority character, the declaration of principles recognising its own intention to establish Marxist-Leninism in Chile, the fraudulent election of its national committee to the detriment of the democratic majority, its constant betrayal of the workers' cause during the previous three years, and its servile dependence on the state as employer, which was prejudicial to the interests of its members — all that had constrained the Government to terminate its legal existence. To demonstrate the total political dependence of the CUT, the Government recalled that the law recognising its legal personality (Act No. 17594 of 31 December 1971) provided in section 2 that its aims were social and could in no circumstances be "party-political or electoral in character": yet, the reply continued, this trade union organisation had been so politicised and its activities controlled by the previous Government to such an extent, that of Sénor Allende's four Ministers of Labour, three — Messrs. Oyarce, Figueroa and Godoy — were officers of the CUT, and two of them replaced one another as Minister of Labour and Social Welfare and President of the CUT.

59. In a subsequent communication dated 8 February 1974, the Government analysed Act No. 17594 by virtue of which legal personality was granted to the CUT and other trade union organisations. Section 1 of this Act, it pointed out, had provided that trade unions and trade union federations and confederations should enjoy legal personality in accordance with the Constitution, conditional only on depositing their articles of association and their rules with the competent inspector of labour; under section 2, the Labour Code and its supplementary legislation continued to be applicable to the requirements for the establishment of trade unions and trade union federations and confederations, the form of their articles of association and the approval of their rules. The Government asserted that section 1 was consequently a mere declaration of principle without practical effect, since the rules of such organisations had, as formerly, to be approved by the President of the Republic. As evidence of the foregoing, the Government submitted the text of Decrees (published in the Official Gazette of June 1973) declaring certain plant unions to be constituted, granting them legal personality and approving their rules. Under section 3 of the above-mentioned Act, however, to give effect to section 1, the CUT was required merely to register with the Department of Labour, and was to enjoy legal personality from the date of such registration. The Government pointed out that the effect of the sections mentioned was to make the CUT alone entitled to obtain legal personality by the mere filing of its rules; so the object of the Act was to grant legal personality to that organisation only and implicitly to prohibit the existence of any other trade union centre; this was a violation of both Convention 87 and the Constitutional Amendment Act of 1970. The Government went on to say that since it was clear that the CUT had

1 In an Appendix to its observations the Government reproduces statements made by Ernesto Vogel, Vice-President of the CUT, to a Latin American railway workers' congress held at Mexico City in November 1973, mentioning irregularities which he said had been committed in the elections to the CUT committee in 1972 and stating that, faced with falsified results, the Christian Democratic candidates had accepted membership only to avoid splitting the working class.
obtained its legal personality by law in order to place itself at the service of a certain government, another law might legitimately revoke its legal personality if the succeeding government has no need of the CUT's services as a political tool.

60. In the same communication the Government declared that the trade unions formerly belonging to the CUT could form a new confederation or central organisation; several confederation had already been formed since 11 September 1973; it would, however, no longer be possible to form a trade union organisation with legal personality conferred directly by law. The Government stated further that the only case in which it had revoked the legal personality of a trade union organisation was that of the CUT.

61. In a communication dated 15 February 1974, one complainant organisation stated that the establishment of the CUT in 1953 had enabled the workers to overcome disunity in the trade union movement; that the CUT had been operating without interference from employers, governments or political parties; and that in 1972 it had more than one million members, i.e. 40 per cent of the employed population or 90 per cent of the organised workers. The members of all its organs, right up to the National Executive Council, were chosen by proportional representation and direct secret ballot. The National Executive had been elected in 1972 by a nation-wide vote: nine lists of candidates were presented and the Council was formed on the basis of the four lists receiving the greatest number of votes. The same communication pointed out that the Government of Popular Unity had included in its programmes proposals approved at CUT congresses.

(b) Allegations concerning other trade union organisations

62. There have been various complaints alleging persecution or restriction of other trade union organisations.

63. The Government has sent information on the present situation of the following organisations named by the complainants: the Chilean Confederation of Private Employees (CEPCH); the Chilean Miners' Federation; the National Confederation of Copper Workers; the Industrial Federation of Building, Wood and Building Materials (FIEEMC); the National Association of Public Employees (ANEF); the National Association of Municipal Workers; the Federation of National Health Service Professional and Technical Staffs; the National Federation of Health Workers (FENATS); the National Federation of Textile Workers (FENATEX); the National Leather and Shoe Workers' Federation (FONACC); the National Confederation of Peasant and Indigenous Workers "Bancalit"; and the Single National Union of Chemical, Pharmaceutical, Laboratory and Allied Workers (SUTRAL). According to that information, most of the above organisations now had executive committees and were functioning. In December 1973 the National Confederation of Copper Workers had restructured its executive committee on which Communist, Socialist and Christian Democratic tendencies were represented.

64. In a communication dated 15 February 1974 another complainant organisation alleged that, because of the restrictions imposed, not more than a quarter of the 130 federations and confederations formerly registered with the CUT were still functioning; several of their offices had been closed and the documents and property which these contained had been confiscated or destroyed; in November 1973 18 rural workers' organisations had been dissolved in the Province of Bio-Bio and 15 in other parts of the country.

(c) Legislative Decree No. 32

65. Some complainant organisations alleged that Legislative Decree No. 32 of 4 October 1973 added to the list of permissible grounds for dismissal by eliminating the protection against the dismissal of anyone who leads or has led strikes which are considered illegal or who prevents or has prevented the worker from going to his employment.

66. The Government pointed out in its observations that the text of this provision mentions clearly and in all cases the unlawful character of the acts specified as grounds for dismissal.
67. Some complainant organisations alleged that Proclamation No. 36 of 18 September 1973 suspended the submission of claims for purposes of collective bargaining and cancelled the right to be absent in order to deal with trade union questions.

68. The Government stated that these measures were taken a few days after the fall of the previous government and were necessitated by the state of emergency existing in the country, but that these have gradually ceased to have effect.

69. Some complainant organisations alleged that Legislative Decree No. 43 of 29 September 1973 suspended all agreements on wages, allowances and other remuneration and all automatic adjustment of pensions.

70. The Government stated that the above Decree, which originated from the Ministry of Finance, temporarily suspended the regulations for the fixing and automatic adjustment of wages, salaries, etc., in both public and private sectors; that its was issued because of inflation; and that subsequently other regulations were published on the subject, whereby benefits, anticipated readjustments of wages and pensions were granted and which also provided for tripartite commissions to study and propose general principles on remuneration and conditions of work.

71. Some complainant organisations alleged that Circular No. 243 laid down that trade union meetings had to be previously authorised and that a member of the police had to be present; it also provided for the removal from office, by administrative decision, of trade union leaders who were members of a political party declared to be illegal.

72. The Legislative Decree No. 198 of 29 December 1973 provides that while the state of war or the state of siege persists, trade union organisations may hold meetings only for purposes of information or internal administration; they are required to inform the nearest unit of police (carabineros), in advance, of the place and agenda of any meeting.

73. The Decree also provides for the automatic filling of vacancies in union committees of management by co-option of the senior workers in the occupations concerned; the workers and employers concerned and the authorities, may raise objections to an appointment if the provisions of the Decree are not complied with. It prohibits any political activity by organisations and by their officers as such. The Decree provides further for the automatic extension of the terms of office of committees of management, and so prevents trade union elections.

74. The Government referred to the constitutional provisions which allow the President of the Republic to declare a state of emergency at any place or places within the territory of the Republic; to section 31 of the Internal Security Act, under which the President may suspend or restrict the right of assembly and other constitutional safeguards. The Government stated in February 1974 that its measures affecting the right of assembly had been less severely applied in the last few weeks and that many trade union meetings had taken place in that period. The preamble to Legislative Decree No. 198, which states that the serious crisis in which the Government took over the country prevents an immediate and complete return to normal trade union activity. The Government also stressed the interim character of the above measures, which - it stated - were a result of the state of war.

75. In a communication dated 15 February 1974, one complainant organisation repeated its protest against the restriction of a series of trade union rights, including the right of assembly, freedom of opinion and expression, freedom of movement and residence, and the following aspects of freedom of association: the
right to establish trade union organisations; the right of such organisations to draw up their rules and to elect their officers freely; the right to establish federations and confederations; the principles that a trade union organisation shall not be dissolved or suspended by administrative authority, and that public authorities shall refrain from any interference which would restrict the above rights or impede their lawful exercise. The complainant alleged further that collective bargaining had been suspended or altogether stopped. As regards workers' participation, the complainant stated that government nominees had replaced the boards of social security and housing institutions and the collegiate bodies that had been set up in undertakings in the public sector, on all of which the organised workers had obtained a right to participate, through their representatives, on the basis of agreements between the previous government and the CUT.
76. The Fact-Finding and Conciliation Commission on Freedom of Association held its first session in Geneva from 3 to 6 July 1974, in the course of which the members of the Commission made a solemn declaration before Mr. Francis Blanchard, Director-General of the International Labour Office. When asking them to make this declaration, Mr. Blanchard addressed them as follows:

Gentlemen: the Governing Body of the International Labour Office has appointed you as members of the Fact-Finding and Conciliation Commission on Freedom of Association relating to alleged infringements of trade union rights in Chile.

When the Governing Body took this decision on 1 June 1974, it noted that according to the current procedure adopted by common consent by the Governing Body of the ILO and the Economic and Social Council of the United Nations in 1949, the Commission "is essentially a fact-finding body" but is authorised to discuss situations referred to it for investigation with the government concerned "with a view to securing the adjustment of difficulties by agreement". Under these terms of reference, your Commission is free to hear the testimony of all interested parties, but any discussions it might have "with a view to securing the adjustment of difficulties by agreement" should be discussions with the Government.

You have now met in Geneva to take cognisance of the case and establish your future procedure, including that for hearing any witnesses and the arrangements which might have to be made for your group to visit Chile. In this connection, the Governing Body has asked me to undertake the necessary consultations with the Chilean Government so that I may be assured that certain facilities will be granted you for the accomplishment of your mission, i.e. that you will be able freely and independently to obtain the necessary information from official bodies and institutions and from any Chilean citizen you may wish to meet. I have approached the Chilean Government on this subject.

A second task has since been added to this one. On 24 June 1974, the International Labour Conference adopted a Resolution concerning Human and Trade Union Rights in Chile in which it invited the Governing Body "to set up, in accordance with article 26, paragraphs 3 and 4, of the Constitution of the International Labour Organisation, a Commission of Inquiry to study the failure of Chile to apply the Hours of Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), both of which Chile has ratified, and to submit a report on the subject to the 195th Session of the Governing Body". The Governing Body has decided to form a Commission of Inquiry to examine the application by Chile of these two Conventions, to appoint you as members and to ask you to establish your own procedure, in accordance with the Constitution of the ILO and having regard to the procedure followed by previous commissions set up under article 26 of the Constitution.1

You have thus a twofold task, and I need not stress how important it is. It has been entrusted to you as independent persons. You will have to establish the facts without fear or favour and in complete independence. Given the nature of your functions, the Governing Body has decided that, as in similar procedures, you should be called upon to make a solemn declaration

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1 See Report of the Commission of Inquiry, already referred to under para. 41.
undertaking to perform your duties and exercise your powers honourably, faithfully, impartially and conscientiously. The terms of this declaration are identical with those of the declaration made by the judges of the International Court of Justice.

Accordingly I ask each of you in turn to make this solemn declaration.

77. The members of the Commission then made the following declaration:

"I solemnly declare that I will honourably, faithfully, impartially and conscientiously perform my duties and exercise my powers as a member of the panel of the Fact-Finding and Conciliation Commission on Freedom of Association set up by the Governing Body of the International Labour Office on 1 June 1974, in accordance with current procedure, to examine the complaints presented by a number of workers' organisations against the Government of Chile relating to alleged infringements of trade union rights, and as a member of the Commission of Inquiry set up by the Governing Body of the International Labour Office on 26 June 1974 under article 26 of the Constitution of the International Labour Organization to examine the observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)."

78. At its first session, the Commission took cognisance of the case and established the procedure to be followed for the remainder of its proceedings.

Submission of supplementary information

79. The Commission decided to offer the Chilean Government the opportunity of submitting to the Commission by 15 August 1974, at the latest, any written communications it might wish to make, and more particularly observations on the complaints and allegations referred to in paragraph 267 of the 142nd Report of the Committee on Freedom of Association. The opportunity of submitting any written communications by the same date was also offered to the fourteen organisations which had made complaints receivable under current procedure, namely the Latin American Central of Workers, the International Confederation of Free Trade Unions, the World Confederation of Labour, the International Metalworkers' Federation, the Latin American Federation of Workers of the Building, Wood and Building Materials Industries, the World Federation of Trade Unions, the Trade Unions International of Chemical, Oil and Allied Workers, the Mine Workers' Trade Unions International, the Trade Unions International of Textile, Clothing, Leather and Fur Workers, the Trade Unions International of Agricultural, Forestry and Plantation Workers, the Trade Unions International of Workers of the Building, Wood and Building Materials Industries, the Trade Unions International of Workers in Commerce, the Trade Unions International of Public and Allied Employees, and the Trade Unions International of Workers of the Food, Hotels, Tobacco and Allied Industries. The Commission requested those concerned to refrain from repeating in their communications information already supplied.

80. The Commission also decided to allow the International Organisation of Employers, which has consultative status with the ILO, to submit by 15 August 1974, at the latest, any communication it might wish to make on these issues.

81. The Commission informed all the organisations concerned that its competence extended no further than the issues submitted to it by the Governing Body, that any document or testimony brought before it should deal only with those issues and that the Commission would not deal with the examination of any matter which had not been placed before it for examination by the Governing Body.

82. The Commission also informed the complainant organisations and the International Organisation of Employers that, since the Commission was entrusted with the task of investigating the facts relating to the issues of trade union rights put before it for examination, it followed that any question of a political character went beyond its terms of reference, and that the opportunity afforded to those concerned to submit written communications and otherwise to participate through representatives and witnesses in the Commission's proceedings was aimed purely at gathering information concerning facts in connection with the issues which the Commission was bound to consider. The Commission proposed to give all
reasonable scope to those whom it invited to submit written or oral communications to it respecting the communication of information on the facts. It would, however, accept no written or oral communications relating to matters outside its terms of reference.

83. The Commission decided that any written information submitted by the complainant organisations or by the International Organisation of Employers pursuant to the provisions stated above as well as any other relevant information would be forwarded to the Chilean Government so that the latter might send its observations within one month.

84. The Commission transmitted to the Government an analysis of the Chilean trade union legislation, which had been drawn up by the International Labour Office, and requested the Government to point out any errors or omissions it might discover in this document by 31 August 1974 at the latest.

85. The Commission decided to hold its second session in Geneva from 14 to 26 October 1974, and beginning on 16 October 1974 to hold sittings for the purpose of hearing the representatives of the parties and the witnesses. To this end, the Commission requested the Government of Chile to appoint a qualified person to act as its representative before the Commission.

86. The Commission decided to allow representatives of the International Confederation of Free Trade Unions, the World Confederation of Labour and the World Federation of Trade Unions (i.e. the three international workers' organisations which, as well as being each complainants in the case before the Committee, have consultative status with the ILO) to participate in its meetings on an equal footing with the Government's representatives. The Commission also decided that the other complainant organisations might be represented by one of these three international organisations. The Commission accordingly requested the International Confederation of Free Trade Unions, the World Confederation of Labour and the World Federation of Trade Unions each to appoint a qualified person to act as its representative before the Commission. The Commission informed the Government and the organisations concerned that the representatives would assume responsibility for presenting the case generally and bringing forward their respective witnesses.

87. The Commission informed the Chilean Government and the complainant organisations that it was disposed to examine any request from the Government or the three organisations named above to the effect that it should hear at its second session any person capable of giving significant testimony on the issues under review. The Commission also stated that the name, qualifications as a witness on these matters, and a brief outline in each case of the questions on which testimony was offered should, in respect of each witness, be in the hands of the Commission no later than 15 August 1974.

88. The Commission informed the Chilean Government that it would request that the Minister of Labour or a person named by him for the purpose should be present during this second session in order to state what the policy of the Chilean Government was, especially in respect of the establishment, functioning and dissolution of trade union organisations.

89. The Commission also informed the Chilean Government that it would like to hear the testimony of certain other government officers and public servants, namely:

(a) the Minister of Labour or one or more representatives of the Ministry of Labour having a full knowledge of matters relating to the structure and operation of trade union organisations prior to September 1973 and of the changes which had come about in this respect, including the question of the management of the main organisations from that time on, and of the legislation, regulations and other official provisions concerning trade unions, collective bargaining, industrial disputes and the implementation of such legislation, regulations and provisions;
the Minister of Justice or his representative having a full knowledge both of
criminal law and of the regulations relating to the detention and indictment
of individuals and the legal position of the trade union leaders and activists
named by the complainants;

the Minister of the Interior or his representative having a full knowledge of
the facts referred to in the allegations regarding the imprisonment, ill-
treatment, execution and the exercise of the right of asylum of trade union
leaders and activists and in the allegations on the intervention by the
authorities in trade union affairs with particular reference to control over
trade union meetings in general and the dissolution of agricultural unions.

90. The Commission decided that the sittings of the second session would be
in camera. The Commission informed the Government and the three workers'
organisations qualified to present witnesses that it would like their
representatives or their substitutes to be present during the entire period of
hearings. Further, it adopted rules of procedure respecting the hearing of
witnesses which it intended to adopt at its second session. These rules were
brought to the notice of the Chilean Government and of the above-mentioned
organisations, and read as follows:

1. The Commission will hear all witnesses in private sittings and the
information and evidence presented to the Commission therein is to be treated
as fully confidential by all persons whom the Commission permits to be
present.

2. The Government of Chile and the three international workers'
organisations who enjoy consultative status with the ILO, i.e. the
International Confederation of Free Trade Unions, the World Confederation of
Labour and the World Federation of Trade Unions, will be invited to designate
representatives to act on their behalf before the Commission. The
representatives or their substitutes will be expected to be present throughout
the hearing of witnesses and will be responsible for the general presentation
of their witnesses and evidence.

3. Witnesses may not be present except when giving evidence.

4. The Commission reserves the right to consult the representatives
in the course of or upon the completion of the hearings in respect of any
matter on which it considers their special co-operation to be necessary.

5. The function of the Commission is to ascertain facts which are
relevant to its inquiry into the issues which have been referred to it by the
Governing Body of the International Labour Office. Political matters are
outside its scope, and the opportunity to furnish evidence is given for the
purpose of supplying factual information bearing on the case before the
Commission. The Commission will give witnesses all reasonable latitude to
furnish such information, but it will not permit statements relating to
matters not relevant to the issues referred to it.

6. The Commission will require each witness to make a solemn
declaration identical to that provided for in the Rules of Court of the
International Court of Justice. This declaration reads: "I solemnly declare
upon my honour and conscience that I will speak the truth, the whole truth and
nothing but the truth".

7. Each witness will be given an opportunity to make a statement
before questions are put to him. If a witness reads a statement, the
Commission would appreciate six copies being supplied in English, French or
Spanish.

8. The Commission or any member of the Commission may put questions
to witnesses at any stage.

9. The representatives present in accordance with the rules laid down
in paragraph 2 above will be permitted to put questions to the witness, in an
order to be determined by the Commission.

10. All questioning of witnesses will be subject to control by the
Commission. The Chairman will not allow political questions outside the terms
of reference of the Commission to be put or answered.
11. Any failure on the part of a witness to reply satisfactorily to a question put will be noted by the Commission.

12. The Commission reserves the right to recall witnesses, if necessary.

91. The Commission informed the Chilean Government that it would be grateful if the Government would assure it that persons testifying to the Commission at its second session would enjoy full protection against any sort of discrimination because of statements made before the Commission.

92. The Commission considered that the testimony of those persons which it wished to hear was of the greatest importance for the examination which it had to carry out. It said that in the preparation of its report it would necessarily take into account the co-operation of these persons in its task of ascertaining the facts.

93. The Commission proposed to visit Chile for about three weeks starting on 28 November 1974, in accordance with procedures to be established later, in order to complete its own information on the questions before it. In this connection the Commission requested the Chilean Government to indicate its agreement with respect to the facilities described in paragraph 37 of this report.

94. The Commission authorised its Chairman to deal on its behalf with any question of procedure that might arise between the sessions, if necessary in consultation with the other members as often as he might deem requisite.

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95. By communications dated 5 July 1974, the Government of Chile and the international organisations of workers and employers concerned were informed of the decisions taken at the first session.

96. At the end of the first session, the Commission met the Permanent Representative of Chile in Geneva and informed him of the decisions taken at this session. The Commission expressed the hope that the Government would extend its full co-operation and afford the above-mentioned facilities so as to enable the Commission to obtain, in full freedom and independence, the information necessary for the completion of its task.
Supplementary information submitted by complainant organisations and the Chilean Government

97. In answer to its invitation to the complainant organisations to submit any written communication they wished, the Commission received supplementary information from the following organisations: the International Confederation of Free Trade Unions, the World Confederation of Labour, the World Federation of Trade Unions, the Trade Unions International of Agriculture, Forestry and Plantation Workers, and the Trade Unions International of Chemical, Oil and Allied Workers.

98. The International Confederation of Free Trade Unions sent a communication dated 13 August 1974 accompanied by 75 documents in support of its allegations. These include statements by a number of witnesses, in particular former trade union leaders and an ex-Minister of Labour; press cuttings on the dissolution of agricultural trade unions in the province of Bio Bio and the trade union situation in general; a document dealing with workers' economic and social rights and alleged infringements of the right of association, in particular of the rights to hold meetings, elect representatives; an analysis of the military junta's policy towards trade unions, referring to the right to hold meetings, the right to freedom of opinion, expression, association, movement and residence, the right to collective bargaining, and to strike; the alleged causes of the dissolution of the Single Central Organisation of Workers and the alleged repression of the trade union movement, and finally a document referring to violations of human rights, democratic freedom and freedom of association said to have been committed by the junta, and the development of government action against political opponents.

99. The World Confederation of Labour submitted two letters dated 8 August 1974 and a third communication accompanied by identical documents as those sent by the ICFTU, mentioned in the preceding paragraph. The WCL enclosed with one of its letters of 8 August 1974 a note referring particularly to various legislative decrees and proclamations promulgated by the junta after 11 September 1973, especially Legislative Decree No. 198 regulating trade union activity and restricting the right to hold meetings, Proclamation No. 15 setting up press censorship and Legislative Decree No. 12 dissolving the Single Central Organisation of Workers (CTU). The complainant organisation also refers to the dissolution by military proclamation of 18 agricultural workers' trade unions in Bio Bio province and to Proclamation No. 6 which it states cancels the legal personality of two provincial federations of agricultural trade unions and 13 agricultural workers' trade unions at commune level. The document also mentions Legislative Decree No. 82 relating in particular to the freezing of 90 per cent of the funds of the Single Union of Educational Workers (SUTE) and Proclamation No. 36, which, it is stated, practically abolishes collective bargaining. The WCL document also contains allegations regarding the arrest, ill-treatment and death of workers and trade union leaders.

100. The WCL's other letter of 8 August 1974 concerns David Polanco, a former leader of the CUT who, it states, was arrested for no reason on 3 August 1974.

101. The World Federation of Trade Unions communicated, on 12 August 1974, documents identical with those sent by the ICFTU, and, on 13 August 1974, seven supplementary documents referring in particular to specific cases of workers alleged to have been dismissed from their employment or arrested, ill-treated or killed in various towns in Chile. These documents contain further information on allegations of infringement of freedom of association and press cuttings on the trade union situation after the change of regime.

102. The Trade Unions International of Agricultural, Forestry and Plantation Workers alleged, in a communication dated 7 August 1974, that the authorities had arrested many workers, and cited the case of Jacinto Nazar, a member of the National Federation of Peasant and Indigenous Workers (RANQUIL).
103. The Trade Unions International of Chemical, Oil and Allied Workers sent the Commission a communication dated 12 August 1974 containing allegations on the repression of its affiliated organisation, the Single National Union of Chemical and Pharmaceutical Laboratory and Allied Workers (SUTRAL). The complainant organisation stated that the activities of this trade union had been brought to a standstill and that some of its leaders were dead whilst others had been arrested or forced into exile.

104. As decided by the Commission, copies of these statements were sent to the Chilean Government under cover of a letter dated 20 August 1974.

105. On 10 September 1974 the Government sent a communication in answer to the Commission's invitation to submit any written communication it wished, in particular observations on a number of complaints and allegations mentioned in the 142nd Report of the Committee on Freedom of Association.

106. The Government began by stating that, of the complaints submitted to the ILO, only the allegations referring to the dissolution of organisations by administrative decision, the suspension of trade union elections and meetings and collective bargaining, and the detention and execution of workers' leaders as such were directly connected with trade unionism in the proper sense of the term. The Government also observed that States such as Chile which had not ratified Convention No. 87 were bound only by the general principles of freedom of association contained in the ILO Constitution and the Preamble and Declaration attached thereto. In order to establish the exact meaning given by the ILO to the term "trade union" when Convention No. 87 was adopted, the Government quoted Article 10 of the Convention which states that "the term 'organisation' means any organisation of workers or of employers for furthering and defending the interests of workers or of employers", and Article 8 which states that "in exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land". This in connection the Government commented that the Commission on Freedom of Association had frequently drawn attention to the principles set out in the resolution concerning the trade union movement adopted by the International Labour Conference of 1952 stating, inter alia, that "the fundamental and permanent mission of the trade union movement is the economic and social advancement of the workers" and that "when trade unions in accordance with national law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the core of the trade union movement or its social and economic functions, irrespective of political changes in the country". The Government concluded that trade union organisations which stray from their proper path by giving priority to illegal activities unconnected with trade unionism and contrary to the genuine economic and social interests which should be their essential purpose thereby lose any right to shelter behind the protective standards agreed by the International Labour Organisation in respect of genuine trade union activities.

107. The Government went on to consider the trade union situation in Chile in September 1973. It stated that there then were two kinds of trade unions, those so far perverted as to have become political and revolutionary organisations which had completely forgotten their vocational purpose and taken on a wholly illegal character, and those which no longer enjoyed real freedom of association because they lived under the bureaucratic and administrative tyranny of Socialist state control. Trade unions of the former kind had, in the opinion of the Chilean Government, turned into political instruments for bringing about violent change in established institutions and become servants of political parties. They had, it was stated, transformed themselves into para-military organisations to set up correlated pressure groups and intimidation squads known as "industrial cordons", and stirred up spurious labour disputes so that the State could take control of enterprises. Furthermore, funds intended for the education of trade unionists were, with previous government agreement, devoted to political indoctrination encouraging class war and social revolution. Those unions, however, wishing to adhere to the trade union line

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1 See para. 83 above.

2 At the Government's request the Commission had granted it a further period expiring 15 September 1974 in which to submit its observations.
in the proper sense of the term had, according to the Government, been deprived of all genuine freedom of association. If they applied for legal personality insuperable bureaucratic obstacles were put in their way under strict government instructions, and "parallel" trade unions had been set up at government instigation. The Government added that centralised control of wages practically put an end to any possibility of negotiating workers' pay and that the political parties in power themselves exercised workers' voting rights at trade union elections.

108. The Government explained that, faced with this situation, it had had to take measures essential for the protection of the public weal, including the restriction of some civic rights incompatible with the state of internal war prevailing in the country. These included the right to hold meetings, elect trade union representatives and conduct collective bargaining. The Government proceeded to analyse a number of regulations, especially Proclamation No. 36 and Legislative Decree No. 198, stressing their transitional character.

109. The Government enclosed 24 documents including copies of trade union statutes, texts on trade union elections, training agreements concluded by the National Federation of Agricultural and Indigenous Workers (RANQUIL), a report on applications for legal personality made by trade unions before and after the change of régime, information on the centralised wage control policy in force before 11 September 1973, and the Chilean Government's Declaration of Principles of 11 March 1974.

110. In a letter of 27 September 1974 the Government forwarded its observations on the documents submitted by the complainant organisations. It stated that they were unacceptable as proof and that the great majority of them showed an obvious lack of objectivity.

111. In answer to the invitation mentioned in paragraph 84 above, on 28 August 1974 the Government communicated to the Commission a number of observations on the analysis of trade union legislation which had been sent to it.

Letter from the International Organisation of Employers

112. The International Organisation of Employers wrote to the Commission on 3 July 1974 stating that it had no communication to submit on the alleged violations of freedom of association in Chile.

Letter from the Government on facilities requested for carrying out the Commission's terms of reference

113. In reply to the Director-General's communication dated 7 June 1974 mentioned in paragraph 40 above, the Chilean Government wrote to the Director-General on 1 August 1974 stating that it saw no difficulty in granting the facilities requested within the framework of the possibilities which the state of internal war and the international situation permitted.

Communications concerning the witnesses whom the Commission wished to hear at its second session

114. The three international workers' organisations given the opportunity of submitting lists of witnesses whom they wished to call wrote on 12, 13 and 15 August 1974 respectively sending three identical lists of such witnesses and specifying the matters on which these persons would give evidence. On 25 September 1974 the Commission informed the organisations that it agreed to their list of witnesses and to most of the matters on which they proposed to give evidence.

115. On 10 September 1974 the Government forwarded a list of witnesses whom it wished to be heard. The Commission wrote to the Government on 24 September 1974 that it agreed to heard them.
CHAPTER 6

SECOND SESSION OF THE COMMISSION


Oral evidence of the representatives of the parties and the witnesses

117. Sixteen (16) private meetings were held, attended by the following representatives of the Chilean Government, the International Confederation of Free Trade Unions, the World Confederation of Labour and the World Federation of Trade Unions: for the Government of Chile: Mr. Alfredo Bowen Herrera, representative, and Don Jaime Lagos Erazo, First Secretary Asst., Permanent Delegation of Chile to the International Organisations in Geneva, substitute; for the International Confederation of Free Trade Unions: Don José A. Aguiriano, ICFTU representative in Geneva, representative, and Mr. J.M. Martinez and Mrs. Janine Miguel, substitutes; for the World Confederation of Labour: Don Luis Henry Molina, assistant general secretary of the Latin American Central of Workers, representative, and Messrs. J. Vittori, permanent WCL representative in Geneva, and Bernardo Leighton G., as substitute; for the World Federation of Trade Unions: Don Carlos de Angeli, permanent WFTU representative to the United Nations and ILO, representative, and Mrs. Aida Figueroa and Mrs. Carmen Ansaldi, substitutes.

118. The Commission began by listening to preliminary statements by the representatives of the parties. It had previously informed the Government of Chile that there were certain people it would like to see, and in this connection the Chilean Under-Secretary for Labour, at the Commission's ninth meeting on 21 October, made a statement. The Government declared that the Ministers of Justice and of the Interior had been unable to arrange for representation in Geneva but the Commission could meet them in Chile.

119. The international organisations presented the following 16 witnesses, who were heard by the Commission: Mr. Luis Figueroa Mazuela, President of the Single Central Organisation of Chilean Workers (CUT) and sometimes Minister of Labour and Social Security; Mr. Bolaños, First Secretary Asst., Permanent Delegation of the CUT and the leader of the National Confederation of Peasant and Indigenous Workers "Fanguil"; Mr. Jorge Godoy, CUT secretary for education and sometime Minister of Labour and Social Security; Mrs. Fidelma Allende, CUT secretary for international relations and a leader of the Single Union of Workers' Education (SUTE), and a former member of parliament; Mr. Mario Merino, a national leader of the National Federation of Health Workers (FENATS); Mr. Juventino Velázquez, a leader of the "Peasant Triumph" Federation of Cautín; Mr. Sergio Insunza, sometime Minister of Justice; Mr. Eduardo Morris, a leader of the customs officers' union; Mrs. Mireya Baltra, a former national leader of the CUT and sometime Minister of Labour and Social Security; Mr. Ernesto de Maio, General Vice-President of the United Electrical, Radio and Machine Workers of America (United States); Mr. Roberto Prieto, a member of the secretariat of the Permanent Trade Union Unity Congress of Latin-American Workers (CPUSTAL) and a member of the administrative committee of the Trade Unions International of Workers of the Food, Tobacco and Beverage and Hotel, Café and Restaurant Workers; Mr. J. Baird, a trade union official from the Australian Amalgamated Metal Workers Union; Mr. Luis Guzmán, CUT national financial secretary and a leading figure in the Chilean metalworkers' movement; Mr. Héctor Toro, a leader of the National Federation of Port Employees; the Reverend Pierre Depuy, a worker-priest; Dr. Alfredo Jadresic, sometime Dean of the Faculty of Medicine and member of the Supreme Board of the University of Chile. All these witnesses were living outside Chile. The Chilean trade unionists, Mr. Insunza, Mr. Prieto, the Reverend Father Dupuy and Dr. Jadresic had left Chile after the change of regime. Almost all these people had taken refuge in foreign embassies in Santiago before leaving the country. Messrs. de Maio and Baird had visited Chile after 11 September 1973.

120. The Government of Chile presented the following nine witnesses, who were heard by the Commission: Mr. Gustavo Moder y Pérez de Valenzuela, head of the Trade Union Organisations Branch, Department of Labour; Mr. Guillermo Medina Gálvez,
Chairman of the El Teniente Copper-Workers' Union; Mr. Eduardo Rios Arias, President, Chilean Confederation of Shipping; Mr. Ernesto Vogel Rodriguez, President of the Railway Industry Federation and first vice-president of the CUT before the latter was wound up; Mr. Pedro Briceño Molina, President of the Joint Occupational Union of the Pacific Steel Corporation and a CUT leader before the CUT was wound up; Mr. Rubén Hurtado O'Ryan, President of the National Sugar-Growers' Federation (FENAZU) and sometime Chairman of the Víña del Mar Sugar Refinery Industrial Union; Mr. Gustavo Diaz Fabres, Chairman of the Libertad Peasants' Confederation; Mr. Orlando Saenz Rojas, sometime President of the Fabril Development Corporation and former President of the Metallurgical Employers' Association; and Mr. Ignacio Garcia Reyes, a former general manager of the Fábrica de Enolzado S.A. (FENSA) and at present Director of the F. and H. Electro-Chemical Industries.

Hearings of witnesses

121. Before giving audience to the witnesses, the Chairman made the following statement:

The Commission on this occasion wishes to emphasise the importance it attaches to there being no sanctions of any kind or description imposed for attendance at its meetings or for the giving of evidence. The Governing Body has taken a similar view concerning the persons interviewed by the Commission in Chile. The Commission understands that the fact that the Government has given its consent to the matter being referred to the Fact-Finding and Conciliation Commission on Freedom of Association, that in reply to the Governing Body's request it has stated that it did not see any difficulty in making facilities available to the Commission for its work during its visit to Chile and that it was participating in the procedure implies the obligation, freely undertaken by the Government, to ensure that the necessary guarantees are available to enable the Commission to bring its work to a conclusion in appropriate conditions.

122. All witnesses, having made the solemn affirmation laid down in the rules of procedure, stated their identity and gave their qualifications as witnesses. All took the opportunity of making a general statement. Thereupon the representatives of the parties to the case (or their deputies) were questioned. The witnesses offered various documents in support of their testimony.

123. At its fourth meeting, on 17 October, Mr. De Angeli, WFTU representative, expressed fear lest in giving evidence the witnesses might reveal information leading to the identification of their informants, with unfortunate consequences for the latter. Hence he urged the Commission to rule that in certain circumstances information about actual or potential informants might be given in confidence. The Chairman explained that the reason why the Commission asked a witness to supply reasons for his assertions was to enable the Commission to decide how trustworthy they were; in any event, such statements were protected by the fact that proceedings were secret and hearings confidential. Mr. A. Bowen, representing his Government, agreed that in serious cases, when witnesses might have misgivings about the safety of their informants, they should, after the hearings, personally hand in the names of those informants, so that the Commission might then better assess the validity of what they had said; the names need not be revealed during the hearings themselves. The Chairman felt that with such safeguards the matter might be considered as settled.

124. At the sixth meeting, on 18 October, Mr. J. Baird, a witness, suggested that two documents should be handed in, provided they were perused by the members of the Commission on their own. Since their contents would permit the identification of certain informants and thus place the latter in a position of danger. Mr. Alfredo Bowen felt that any document adduced as evidence by one party ought to be passed to the other for its comments. Mr. Aguiriano, representing the ICFTU, thought that it was for the Commission to decide whether or not a document could be accepted as evidence. Mr. Molina, representing the WCL, felt the same way and pointed out that the Government representative had agreed that a document might be handed in, or the name of an informant revealed, provided that the members of the Commission were alone apprised. Mr. Alfredo said there was a difference between a witness supplying the Commission, and it alone, with specific data about a source of information (lest the informant suffer a prejudice), and preventing the other party from having information about particular allegations.
125. After some discussion in camera, the Commission at the opening of the seventh meeting (19 October) announced its ruling in the following terms:

At this stage in the proceedings, that is to say, during the examination of witnesses, which of necessity involves cross-examination, the Commission cannot receive from any one party or from a witness produced by one party, any document which cannot be revealed to another party, contrary to what has been agreed upon exclusively with respect to disclosure of the source of information, which disclosure may be made in confidence to the Commission.

In the light of this development, Mr. Baird decided not to present the documents in question.

126. On 24 October 1974, at the close of its fifteenth meeting, the Chairman of the Commission referred to the documents submitted by the witnesses nominated by the workers’ organisations and by the Government of Chile; the secretariat would make these documents available to the parties so that, within eight days of receipt, the latter might offer their comments thereon.

127. On 25 October, at its sixteenth meeting, when the hearing of witnesses had been completed, the Chairman said that, as announced before, the Commission had drawn up a list of trade union leaders who, according to the allegations made, had been murdered, executed, detained or banished. He gave the Government representative a copy with the request that the Government provide information about the persons concerned, about the circumstances in which they had died or been executed (if indeed they were dead) and about the reasons for their detention or imprisonment (if detained or imprisoned), and to say whether they had been brought to trial and by what court. On behalf of the Commission, he asked the Government to supply such information within 30 days. It would be understood (as he himself had said on 22 October, at the close of the tenth meeting) that should information be received about other persons whose fate the Commission wished to investigate, the latter would transmit their names to the Government so that it might supply fuller details with all reasonable despatch.

128. All the witnesses having been heard, the representatives of the parties to the case then made short final statements about the evidence adduced. Thereupon, bringing this phase in the procedure to a close, the Chairman announced that the Commission would reconvene in Santiago on 28 November 1974, availing itself of the Government’s offer to make all requisite facilities available and to ensure that members could interview anybody they might wish to question.

129. On 25 October 1974 the last private session was devoted to the drafting of an interim report on activities to date, and progress made. This report was duly submitted to the Governing Body at the latter’s 194th (November 1974) Session.
I n accordance with the plans announced in its Second Report to the Governing Body, the Commission and the members of its secretariat visited Chile from 28 November to 19 December 1974.

The full Commission first stayed in Santiago from 28 November to 4 December. After that date the Commission members separated and visited areas in the north, centre and south of the country until 14 December. The Commission then reassembled in Santiago where it stayed until leaving Chile on 19 December 1974.

During its first stay in Santiago the Commission met the Head of State, two other members of the government junta, the Minister of Labour and Social Welfare, the Minister of Foreign Affairs, the Minister of Justice, the Minister of the Interior, the Under-Secretary of State for War, the President of the Supreme Court, the President of the Constitutional Reform Committee, and the Study Committee on the Labour Code.

During his first stay in Santiago the Chairman of the Commission met the former Presidents of the Republic, the Papal Nuncio and the Cardinal Archbishop of Santiago. Individual Commission members also had talks with the Comptroller-General of the Republic, the Vice-Chancellor of the University of Chile, the Chairman of a special commission set up under Legislative Decree No. 193, a Judge who had chaired a special tribunal set up under Legislative Decree No. 32, a former Minister of Labour, lawyers who had defended trade unionists, professors specialising in labour legislation and industrial relations from the University of Chile and the Catholic University, and representatives of the Co-operation for Peace Committee.

The Commission also met representatives of employers' organisations: the Confederation for Production and Commerce, the National Agricultural Society, the Central Chamber of Commerce, the Society for Industrial Development, the National Association of Building Trade Employers and the National Mining Company.

Individual Commission members met in Santiago the representatives of various national workers' organisations covering numerous branches of activity, viz.: the National Federation of Textile Workers (FENATEXI), the Industrial Federation of Building, Wood and Building Materials (FIERMC), the Chilean Miners' Federation, the National Confederation of Peasant and Indigenous Workers "Pamquill", the United Confederation of Workers and Peasants, the Peasant Confederation "Liberty", the Industrial Federation of Railway Workers, the Single Union of Workers in Education (SUTE) and the National Association of Education Service Employees (ANESE), and the National Federation of Metal Workers. The members of the Commission also met other trade union leaders, past or present, some of whom had held high office at national level before 11 September 1973.

Each member also visited an establishment in the Santiago area - a textile factory belonging to Sumar S.A., a factory belonging to the metal trades enterprise Sindelen, and the State Bank - where he met management representatives and the leaders of the trade unions existing in the enterprise. At the State Bank a Commission member met representatives of the National Confederation of State Bank Workers.

After their stay in Santiago the Commission members separated to visit the interior of the country, accompanied by the members of the secretariat. Mr. Ducoux went to Antofagasta, Chuquicamata, La Serena and Coquimbo, Mr. Kirkaldy to Valparaiso, Santiago (return visit), Rancagua, Talca and Linares. The Chairman, Mr. Bustamante i Rivero, visited Temuco, Valdivia, Concepción and Lota.

In each region the members of the Commission met the regional authorities, in particular, the intendants and heads of provincial labour offices and provincial labour inspectors or their staff. They interviewed representatives of trade union and employers' organisations, leaders or former leaders of trade unions and other people such as dismissed workers, relatives of detained trade unionists, priests and lawyers. They also visited undertakings of various kinds belonging to the public and private sectors.
During his stay in Antofagasta, Mr. Ducoux had interviews with the leaders of various port workers' trade unions, namely the Seafarers' Trade Union, the Port Maintenance Workers' Trade Union, the Port Employees' Trade Union, the Chilean Port Enterprise Workers' Trade Union (EMPOSEPCHI) and the Dockers' Trade Union. He visited the privately owned Antofagasta-Bolivia Railway Company and talked to the management and various trade unions in the enterprise, and met leaders of the local industrialists' association.

At the Chuquicamata copper mines Mr. Ducoux met a management representative and leaders of industrial and employees' trade unions. In Coquimbo he met trade union leaders from Coquimbo port representing the Port Employees' Association, the Dockers' Trade Union, the Port Employees' Trade Union and the Transport Trade Union. He talked to some 50 trade union leaders from the northern zone of the Pacific Steel Company who were attending a congress in La Serena. In the same region he visited two food preserve factories (Coloso and Pesqueria Cavel/os), the Coquimbo Railway Company and La Serena hospital. In each of these establishments Mr. Ducoux talked to management and trade union representatives.

In Valparaiso Mr. Kirkaldy met leaders of the Maritime Confederation of Chile (COMACH), the National Port Workers' Federation, the National Customs Employees' Association (ANEACH), the Dockers' Federation, the provincial Building Workers' Trade Union and trade union members of the provincial council of labour coordinators. He talked to management representatives of the Chilean port enterprise and visited the Viña del Mar Sugar Refining Company, where he met a representative of the management and trade union representatives.

On his return visit to Santiago Mr. Kirkaldy met National Confederation of Copper Workers' representatives and other past or present trade union leaders. In Rancagua he met trade union leaders from the El Teniente Copper Mining zone and the heads of an inter-occupational group from O'Higgins Province representing employers, trade unions and other vocational associations.

In Talca Mr. Kirkaldy met representatives of an agricultural trade union organisation, the "Progress" Federation, a labour judge and representatives of the Co-operation for Peace Committee. He also visited three firms, namely the Chilean Match Company, the YARZA S.A. Tannery and Footwear Company, and the United Breweries, and met their management and trade union representatives.

In Linares Mr. Kirkaldy met representatives of the Federation of Agricultural Producers, the agricultural workers' organisations, the "Free Chile" Federation (an affiliate of the "Peasant Triumph" Confederation), the "Espiga Floreciente" Federation (an affiliate of the Peasant Confederation "Liberty") and the "Eduardo Frei" Trade Union from Yerbas Buenas (an affiliate of the "Free Chile" Federation). He also visited a farm and met the management.

Mr. Bustamente Rivero, Chairman of the Commission, first went to Temuco and talked to representatives of employers' organisations from the Cautín Province. He met leaders of regional or local trade union organisations, namely the provincial branch of the National Federation of Health Workers (FENATS), the Federation of Bank Employees, the Association of Employees of Savings and Credit Establishments, the Trade Union of Employees of the Catholic University, the "President Frei" Provincial Federation of Agricultural Workers from Cautín (an affiliate of the "Peasant Triumph" Confederation), the Bakery Workers' Trade Union of Cautín Province, the provincial branch of the National Association of Public Employees (ANEP) and the Itinerant Traders' Trade Union. In the region around Temuco he visited the Loncoleche S.A. dairy produce factory and met the manager and trade union representatives. He also visited a Mapuche Indian reserve.

In Valdivia the Chairman met the President of the Chamber of Commerce and representatives of employers' organisations in various branches of activity - the Agricultural and Stockraising Society, the Manufacturers' Association and the footwear and woodworking industries - leaders of the provincial Building Workers' Trade Union and the provincial branch of the National Association of Public Employees (ANEP). He visited three local enterprises (a railway equipment factory belonging to the INMAR Company, a dairy co-operative at Cuyumapu and the NASISI Company, a timber firm) and the Valdivia regional hospital. In each of these establishments he talked to the management and trade union representatives. He also talked to some of the hospital staff.

During his stay in Concepción the Chairman met representatives of employers' associations, namely the Chamber of Production and Commerce, the Chamber
of Building Trades, representatives of the National Coal Company (ENACAR), the Pacific Steel Company (CAP) and the Engineers' Association and visited a seminar of about 600 trade union leaders from the eighth administrative region of Chile. He talked to a group of trade unionists carrying out provincial co-ordinators' duties, representatives of the regional Maritime and Port Workers' Council (whose headquarters are at Talcahuano), leaders of the Pacific Steel Company Single Trade Union from the Huachipato factory, provincial counsellors of the National Federation of Health Workers (FENATS), leaders of the regional United Association of the National Petroleum Company and trade union leaders from the INCHALAM Metal Works. He visited the "Paños de Oveja" textile factory in Tomé and talked to the management and trade unions.

148. In Lota he visited the National Coal Company (ENACAR) and talked to the General Manager and representatives of 16 trade unions existing within the enterprise.

149. During their final stay in Santiago the members of the Commission again met representatives of the national workers' organisations - the Chilean Confederation of Private Employees (CEPCH), the National Association of Public Employees (ANEP) and various past or present trade union leaders. The Commission received a delegation of trade union leaders which handed it a declaration signed by a large number of leaders of national, regional and local trade union organisations.

150. In all, the members of the Commission met officers from more than 120 workers' trade union organisations at national, regional, local and factory level. These meetings took place at the request of the Commission or its members, or at the request of the relevant organisations. They were held in hotels at which members of the Commission were staying, on trade union premises, at the firms visited or at other places agreed on with the persons concerned. Apart from one or two cases in which employers were present during part of the conversations, these interviews took place without any representatives of employers or the authorities being present.

151. In many cases the members of the Commission were given written information.

152. In Santiago and elsewhere, the members of the Commission interviewed past or present trade union leaders whom the Commission had expressed a wish to meet and who had been held in custody in various parts of the country. Most of these detainees were past or present trade union leaders whose arrest had been alleged by the complainants. A list of the names and trade union functions of about 120 of these persons had been transmitted to the Government during the Commission's second session in Geneva, with a request for information on them. The Government gave the Commission in Santiago information on most of these persons and indicated that, as regards the others, the information given in the lists was not enough to identify them. The Commission gave the Government the names of the detainees it wished to see, reserving the right of meeting other leaders as well who might be in a similar situation. The Commission made use of this right. Thus its members met the following persons who had performed trade union functions during the Government of Popular Unity: Pedro Cornejo Faundez, leader of an agricultural trade union and national leader of the CUT, and Norman Alberto Gamboa Tapia, FENATS national counsellor, just before he left the country; both these persons were detained at Tres Alamos in the suburbs of Santiago; Eulogio Rodriguez Moya, leader of the National Federation of Leather and Shoe Workers, imprisoned in Santiago penitentiary; Claudio Alemany Gonzalez, Director of SUDE and of the Chilean Teachers' Union; Emilio Cisternas Peña, leader of the Concepción provincial branch of the CUT, both imprisoned at Puchuncaví; Alarno Guzmán Ordenes, President of the Chilean Miners' Federation at the time of his arrest in September 1974, José Salinas Montecinos, Secretary-General of the "Alta Montaña" Agricultural Trade Union and Provincial Counsellor of the CUT in Curicó, and Ethel Moraga Puentenlaha, President of the "Sewell and El Teniente Mines" Agricultural Trade Union and national leader of the National Confederation of Copper Workers, all three imprisoned at Ritoque; Mario Puentenlaha Cardenas, President of the Single Union of the Neulme Woodworking Industry (Panguipulli), and Mario Antonio MadridMuñoz, President of the Industrial Trade Union of United Mechanical, Metallurgical and Shipbuilding Industries at the INMAR Company in Valdivia and provincial secretary of the CUT, both detained in Isla Teja prison in Valdivia; Miguel Angel Lee Urzúa, secretary of the El Teniente

1 The Government communicated, in April 1975, additional information in this connection.
Employees' Trade Union in Rancagua and treasurer of the National Confederation of Copper Workers, and Daniel Mondaca Galvez, president of the El Teniente Employees' Trade Union in Santiago, both detained at Rancagua prison; and Ivan Gordillo, regional education secretary of the CUT in Antofagasta and Luis Bravo Aranguiz, president of the Workers' Trade Union of Antofagasta, affiliated with the Milling Federation, both detained in Antofagasta prison.

153. One member of the Commission also interviewed Jacinto Nazar Quiroz, detained in Puchuncavi, and Jorge Montes Moraga, detained in Ritoque. The former said he had assisted in the work of the National Confederation of Peasant and Indigenous Workers "Ranquil". The latter said he had been a Communist party senator and had not held trade union office since 1957. The Government had agreed to his being interviewed because his case had been specifically mentioned during the Commission's hearings in Geneva.

154. One member of the Commission visited Chacabuco detention camp in northern Chile where according to information received many trade union leaders had been detained. The authorities stated that the camp now contained only common criminals, but at a meeting of all the prisoners in the presence of the members of the Commission, they gave permission for any trade union leaders among them to talk to the Commission member. As a result Carlos Catalan Quiroz, former secretary of the Chilean Industries Company (CIC) Trade Union and Julio Humberto Lobos Cortez, former secretary of the Ferias Libres "La Cisterna" Trade Union talked to the Commission member. They admitted that they were being detained on account of common law crimes which had no connection with their trade union activities.

155. In Santiago the Commission received more information regarding Mario Navarro, a national leader of the CUT, to the effect that he had been arrested in October 1974 and was at Tres Alamos. Members of the Commission visited Tres Alamos and asked for Mr. Navarro, only to be informed that he had been transferred to Ritoque.

156. The Commission expressed a wish to meet Mario Gonzalez Gonzalez, president of the Industrial Trade Union of the firm "Hirmas", Osvaldo Tello Bianchi, president of the Chuquicamata Industrial Trade Union, Rolando Fidel Vasquez Torres, national leader of the CUT and Victor Liberona Rodriguez, leader of the National Confederation of Copper Workers. The authorities intimated that these people had been set free, but that the three last-named had been sent to various places in the interior of the country.

157. All interviews with detainees took place without witnesses being present.

158. As indicated elsewhere, further to the request for assurances that certain facilities would be granted to the Commission to enable it to fulfil its mission, and in particular that no persons who had been in contact with the Commission would for that reason be subjected to coercion, sanctions or punishment at any time, the Government had stated that it saw no difficulty in granting these facilities in so far as the state of internal war and the international situation permitted. The Government confirmed these guarantees shortly before the Commission left for Chile and during talks in Santiago with high officials of the Chilean Government who informed the Commission that the authorities concerned had been given all necessary instructions in this respect. The Commission did not fail to stress the importance it attached to such guarantees, in particular those ensuring that persons called upon to give the Commission information would be able to do so frankly and freely.1

Preliminary observations made to the Chilean Government at the end of the visit

159. As already pointed out, the mandate which the Governing Body has given to the Commission is not only to investigate the facts relating to the complaints

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1 As regards certain questions which arose in this connection after the Commission's visit to Chile, see Chapter 19, paras. 435 to 443.
but also to act as a conciliation body. It is, therefore, invited to examine with the Government the situations referred to it for investigation with a view to securing the adjustment of any existing difficulties. This procedure has been applied in previous cases. Accordingly, and in order to enable the Government to take, as soon as possible, certain measures to resolve these difficulties, some of which were urgent in character, the Commission, at the end of its visit to Chile, prepared a document containing a number of preliminary considerations and recommendations relative to the matters which had been submitted to it, and stated that it would be prepared to examine any communication that the Government might wish to send before 15 March 1975, indicating its comments on the recommendations contained in the document and any information concerning the measures it had taken, or which it proposed to take in this respect. The full Commission again met the Minister of Labour and Social Welfare, and handed him this document which is reproduced below. The Commission has preferred to reproduce the text of this document in its entirety, notwithstanding the fact that some parts of the document concern matters dealt with by the Commission of Inquiry.

Our visit to Chile concludes an important stage in the fulfilment of the duties entrusted to us by the Governing Body of the International Labour Office as members of the Fact-Finding and Conciliation Commission on Freedom of Association and of the Commission appointed under article 26 of the Constitution of the ILO to examine the observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). In Geneva we had already assembled a considerable amount of documentation and heard a number of witnesses.

In Chile we have met the Head of State, two other members of the government junta, several ministers, other authorities and government officials, representatives of employers' and workers' organisations, distinguished citizens and many others from all walks of life, including trade union leaders and former trade union leaders, some of them now in custody. Our talks with the national authorities and with Chileans in different walks of life and parts of the country enabled us freely to gather abundant information on the matters within our terms of reference. We wish to express our thanks for the facilities which the authorities provided to us, as agreed, for carrying out our mission in Chile. We earnestly trust that no one whom we met will in any way be penalised on that account. We shall carefully examine and reflect on the information and opinions which we have gathered and it will of course take some time to draft our final reports.

We think it only right - and the Governing Body will certainly expect it of us - to make an interim report without delay giving a general account of our visit and setting out some preliminary observations on certain matters, particularly those which, because of their important and urgent nature, will not only have a close bearing on the development of the trade union and labour situation in Chile but go beyond the national framework and affect Chile's position as a member of the world community of nations.

Like the missions carried out by similar commissions set up by the International Labour Organisation in the past, our mission to Chile obviously originated from the international concern aroused by allegations of violations of certain generally recognised principles on freedom of association and standards embodied in ratified instruments on other matters.

It is equally obvious that, as the problems involved affect primarily the Chilean people, it is essentially for them to resolve these problems, in accordance with their well-known tradition of freedom and in keeping with universal principles of social justice.

Before we leave Chile, therefore, we feel bound to inform the Government of some of the impressions we have already formed. We do so both out of

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1 See paragraphs 3, 34, 35 and 39.
3 See report of the Commission of Inquiry, op. cit, paras. 38 and 39.
courtesy and as a contribution to the solution of outstanding problems, in accordance with the duty to conciliate laid upon us by the terms of our appointment. Our observations relate to some basic problems of human rights and civil liberties which have a close bearing on the effective exercise of trade union rights, and to trade union problems as such. We also wish to refer to possible future developments in national policy and legislation on freedom of association and industrial relations.

We realise that the Chilean nation is passing through one of the most difficult periods in its history. Although it is not for us to judge the reasons for this situation, we cannot overlook the circumstances which preceded and accompanied the change of régime on 11 September 1973. Many of those we have met have emphasised that, when appraising events after 11 September 1973, one must bear in mind the situation of the country before that date. They maintained that that situation had deeply disrupted the life of the nation and accounted for the change of régime. As for trade union activities at that time, it was stressed in various quarters that many trade union organisations and their activities had become excessively political.

Whatever those circumstances may have been, we were bound by our terms of reference to investigate the allegations of violations in Chile since 11 September 1973 of human rights which are related to the carrying on of trade union activities and in particular to the freedom, life and personal safety of many trade unionists. The information we have obtained leads us to conclude that, as a result of the events which occurred in Chile, the safeguards required for the enjoyment of those rights were seriously impaired. Among the dead, those summarily sentenced to severe penalties and those maltreated under questioning according to trade unionists, the Government has maintained that they were killed or deprived of liberty not because of their political or trade union activities but because they had taken part in armed clashes or committed crimes or offences triable before the civil or military courts or were detained because they were regarded as a threat to state security. The Commission cannot, however, overlook the following facts: that many trade unionists were arrested immediately after the change of régime; that even today a certain, albeit more limited, number of trade unionists, who have been in custody for long periods, continue to be detained without trial and some are being released on condition that they leave the country; and that the lack of normal legal safeguards and procedures gives cause to fear that some trade unionists may have suffered abusive or unwarranted treatment or penalties. As a result, important sections of the trade union movement have been crippled.

We realise that the current situation must be judged without losing sight either of the state of siege proclaimed in the country or of the relaxation of the initial severity. Nevertheless, we are convinced that it is of the utmost importance that measures should be adopted without delay which would give all sections of the Chilean people a justified feeling of confidence in respect for civil rights and individual freedoms, without which the exercise of trade union rights will in practice be inhibited by fear. It would be highly desirable to give priority to the following objectives: to reduce as quickly as possible the number of trade unionists in custody either by releasing them or by bringing them to trial under procedures which provide full safeguards of defence and impartial judgment; to guarantee the right not to be arrested except in accordance with the ordinary criminal procedure; and to issue special instructions prescribing effective penalties to guarantee protection against all forms of pressure during detention.

Now that over 15 months have passed since the events which shook the country, such measures, and indeed any step taken to review sentences already pronounced or to apply clemency or even an amnesty, would certainly help to restore that climate of normalcy which is one of the main conditions for the effective exercise of trade union rights and for the development of the whole country in the years ahead.

As regards more specifically the trade union situation, one of the most far-reaching measures has been the dissolution of the Single Central Organisation of Workers by legislative decree. In addition, as the Government admits, trade union activity has also been severely restricted by a series of transitional measures relating to the holding of trade union meetings, the impossibility of appointing or replacing trade union leaders by election, and the suspension of the right to submit claims, to bargain collectively and to strike.
On the other hand, we have found that most trade union organisations in undertakings are still headed by executive committees which consist wholly or partly of leaders elected before 11 September 1973. Other organisations are run by executive committees of not more than three members generally appointed from among the senior workers in accordance with Legislative Decree No. 198. Such organisations seem to be engaged in genuine though reduced activities. Most of the federations and confederations continue to exist, although in some cases with more or less substantial changes in the composition of their executive committees. Other organisations, however, mainly in agriculture and teaching, have been dissolved or ceased activity.

Clearly the full restoration of trade union freedom calls, among other things, for review of the various restrictions mentioned above. In particular, the workers' confidence in their trade unions and the effectiveness of trade union representation depend on the election of all trade union leaders by the workers themselves. The Commission trusts that the preparatory work on a new Labour Code, to which we refer again below, will be completed with all despatch so as to lay down as soon as possible the standards which should govern trade union life.

It is perhaps worth drawing attention here to the distinction between trade union freedom and the performance of essentially political activities, which are different in character. In a resolution which it adopted in 1952 on the independence of the trade union movement the International Labour Conference itself declared that any political action which trade unions undertake in accordance with the law as a means towards the advancement of their economic and social objectives should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country. However, in the view of the competent ILO bodies, recourse should be had to ordinary judicial proceedings to deal with any problems that may arise because of actions taken by trade union organisations outside their proper competence and in pursuit of essentially political ends.

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On the basis of these observations, we now wish to refer more particularly to the future development of trade unionism in Chile and to the conditions we deem necessary to enable trade union organisations to fulfil their essential duty of furthering - and defending - the workers' interests, effectively and independently. We have paid special heed to the development of the trade union situation over the past few months and to the measures needed to restore the situation to normal in the light of international principles on freedom of association.

We have heard the views of trade unionists, employers and government officials and those of the committee set up to draft the new Labour Code. We have noted with interest the Government's statement that its aim is to restore trade union activities to normal and so enable the workers to organise freely and exercise their rights effectively.

We believe that, for that purpose, it will be vital not only to restore in full the civil liberties and guarantees of personal safety mentioned above, but also to amend the whole body of trade union law to bring it into conformity with generally recognised principles in this field.

Thus any new legislation on trade unions, to be in conformity with the principles of freedom of association, should have regard to the following guidelines:

**First:** The right to establish trade unions should be granted to all workers in the private and public sectors, including public servants.

**Secondly:** It should be possible to establish trade union organisations without previous authorisation by the public authorities and the
legal formalities of establishing them, including the conditions for acquisition of legal personality to enable them fully to perform their functions, should not in practice be tantamount to a requirement of previous authorisation nor constitute an obstacle which might in fact be tantamount to prohibition.

Thirdly: Workers should have the right to establish the organisations of their own choosing. Such organisations should have the right to further and defend their members' interests. To avoid the disadvantages of a possible multiplicity of small and weak trade unions, however, it would be worth considering granting the most representative organisations special rights, mainly with regard to collective bargaining on behalf of a group or category of workers, their representative character being determined by objective criteria and procedures.

Fourthly: Trade union organisations should have the right freely to establish federations and confederations, and such federations and confederations should have the same statutory rights as their affiliates.

Fifthly: Trade union organisations should have the right, without official interference, to draw up their own rules, to elect their representatives in freedom, to hold meetings to discuss questions which concern them, and to decide on matters of internal management and action to further and defend their members' interests. Freedom of expression should be guaranteed to all trends of trade union opinion.

Sixthly: Trade union organisations should respect the law of the land, but the law should not be incompatible with the principles of freedom of association. Trade union organisations should not be liable to suspension or dissolution by administrative authority.

Seventhly: Workers, and in particular trade union leaders and other representatives of the workers in the undertaking, should enjoy adequate protection against acts of anti-union discrimination in respect of employment.

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The Commission has received with much interest the text of a preliminary draft of trade union legislation prepared by the Study Committee on the Labour Code, which was communicated to it during its stay. It has noted that the draft will serve as a basis for the final text which may be adopted in May 1975. At first sight, the draft contains positive elements, but in regard to certain questions it gives rise to problems. Because we are shortly to leave the country, we cannot make specific comments on the text. In order to make available to the Government and employers' and workers' organisations as soon as possible an opinion on the draft based on the principles of freedom of association and the standards embodied in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), we suggest that the International Labour Office should examine the draft and communicate to the Government any comments made by the competent ILO bodies on similar legislative provisions which they may have examined in performing their functions. We believe that such comments would serve a useful purpose, particularly with a view to early ratification and implementation of Convention No. 87 - which we regard as highly desirable. The Convention has so far been ratified by 80 States and is universally recognised as a basic instrument for the protection of human and workers' rights. Its ratification by Chile would constitute a solemn commitment to the international community to give effect to the Convention.

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Collective bargaining is one of the most important of the generally recognized activities of trade union organisations. We have noted with interest the statement made by General Nicanor Diaz Estrada, the Minister of Labour and Social Welfare, that the submission of claims and the right to strike are inalienable rights of the workers. The Minister further stated, however, that because of current inflation and the Government's efforts to check and reduce it, the right to submit claims for collective bargaining will continue to be suspended and may possibly be restored towards the end of 1975, when the annual rate of inflation may be down to 50 or 60 per cent, wages in the meantime being subject to automatic adjustment. In keeping with the view expressed in general terms by other ILO bodies we believe that such a restriction should be regarded as exceptional, applied only so far as necessary and for not more than a reasonable period, and accompanied by adequate safeguards to protect the workers' standard of living. No one denies that the general level of wages in Chile is low at present, on account, amongst other things, of the general economic situation. General Gustavo Leigh Guzmán, a member of the government junta, stressed to the Commission the need to preserve a balance between economic and social development and to avoid sacrificing the latter to the former. The Commission found that workers in general give special priority to the possibility of submitting claims and bargaining collectively. It therefore hopes that the practice of collective bargaining will be restored as soon as possible so that trade union organisations can represent the workers' interests effectively. In the meantime, it is important that measures be taken to ensure that, in examining periodic wage adjustments through tripartite consultation, special consideration is given to all the relevant factors so as to achieve real improvements in the standard of living of the workers and their families.

Two other questions are before us as members of the Commission of Inquiry. As already indicated, they concern the application of Convention No. 1 and Convention No. 111, which deal respectively with hours of work in industry and with discrimination in employment and occupation. Chile has ratified both instruments.

We have examined the situation relating to the allegations that the Government of Chile has infringed Convention No. 1 by increasing the working week by four hours under Legislative Decree No. 35. From information obtained from many employers and trade union organisations of workers we conclude that the decree, which in any case stipulated that hours of work might not exceed 48 a week and which, moreover, is no longer in force, did not have the practical effect of making hours of work exceed the weekly maximum of 48 prescribed in the Convention, that the limitations imposed by the decree were observed and that the decree therefore did not infringe the Convention.

As regards the allegations of non-observance of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the information and
opinions we have obtained on dismissals on all grounds which have occurred since 11 September 1973 vary quite widely as to the number of workers dismissed and the specific grounds for dismissal. At all events, the number of dismissals has been high, although the proportion of workers dismissed to the total number of workers seems to have varied with the occupation or branch of activity, both in the public and private sectors, and with the region.

The Commission has also found that many workers in the public and private sectors gave up their employment immediately after 11 September 1973. The reasons for their doing so could not be ascertained. They are probably many and various, but the large number of cases suggests that they were not always attributable solely to the workers' own initiative.

It seems clear beyond doubt that those dismissals which were based on the special provisions adopted shortly after the military coup - such as Legislative Decree No. 32, which applies to the private sector, and Legislative Decrees Nos. 6, 22 and 98, which apply to the public sector - occurred mainly in the first few months after the change of régime. At present, apart from a further reduction of staff in the public administration due to be made for financial reasons, the number and the circumstances of dismissals seem to be in keeping with normal practice. Provisions have recently been adopted to limit the number of dismissals authorised in the private sector and the Commission has been informed that the authorities require employers to give full justification for such dismissals.

Most of the dismissals of a political nature seem to have occurred during the initial period mentioned above. The new grounds for dismissal set out in Legislative Decree No. 32 relate for the most part to the performance of certain illegal acts or acts prejudicial to the undertaking or to normal working. The other legislative decrees, which apply to public employees, leave a much larger element of discretion in terminating employment. At all events the Commission has been informed in various quarters that many of the dismissals were connected with political activities undertaken by the workers concerned at the workplace. The Commission has been informed, in particular by some of those dismissed from public employment, that in many cases the grounds were performance of activities which at the time were regarded as lawful or widespread or even sometimes the mere political ideology of those concerned. Those who consider the measures taken by the Government or private employers in this matter to have been justified contend that they penalised not adherence to an ideology as such but what is called "political activism" or "agitation", which took the form of such acts as ideological propaganda at the workplace or abuse of authority, fomenting disorder, discord or indiscipline among the workers, or exerting pressure on fellow workers. Some of the acts reported to the Commission and alleged to have been committed by trade union leaders or workers would indeed have constituted just grounds for dismissal.

The machinery set up to hear complaints alleging unfair dismissal may nevertheless be open to criticism from the point of view of the safeguards offered to prevent or redress possible abuses by the employer or the Government. True, the special tribunals which were set up by Legislative Decree No. 32 for the private sector, and which operated until October 1974, and the special commissions set up by Legislative Decree No. 193 for the public sector did allow a number of the appeals lodged with them and ordered reinstatement. The Commission has heard criticisms, however, of the composition both of the special tribunals and of the procedure followed by the latter. As regards composition, it was stated that one serious flaw was the inclusion among the members of both types of bodies of persons having no training for hearing such complaints. Furthermore, in the case of the special commissions, one of the members is drawn from the very service from which the claimant was dismissed. The Commission has also been told that the summary procedure followed by the special commissions, which seems to vary from one province to another, generally does not afford sufficient opportunity for proper review of the complainant's case nor facilitates the submission of evidence by him.

The Commission was also repeatedly informed that workers dismissed under the above-mentioned special provisions often have serious difficulty in finding new employment.
In conclusion, the Commission of Inquiry is not convinced that the many dismissals which have occurred in Chile since 11 September 1973 did not involve infringement of the provision of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) — which Chile has ratified — that each State which ratifies the Convention undertakes to promote equality of opportunity and to eliminate any form of discrimination in respect of employment on the basis, inter alia, of political opinion.

While reserving the right to deal with this matter more fully in its final report, the Commission of Inquiry therefore considers that the Government of Chile should examine and adopt as soon as possible legislative and other measures to ensure that no one may be dismissed or otherwise prejudiced in his employment or occupation on grounds of political opinion. Close attention should also be given to the situation of workers dismissed under the above-mentioned provisions and to the possibility of re-opening proceedings in some cases which have already been concluded so as to ensure justice to workers whose dismissal may have been improper in the light of the provisions of Convention No. 111.

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In concluding these interim observations, which should be regarded as a whole, we wish to make one general remark.

When a nation has suffered deep wounds and divisions, its unity cannot be restored in a day. We do not wish to pronounce on matters outside our terms of reference, but we are convinced that a broad and generous policy would be the one most likely to bring about the national reconciliation required to overcome the serious difficulties facing the country. Freedom of association and the principle of non-discrimination, once they are safeguarded, will not only enable the workers to defend their legitimate interests and give them a sense of full citizenship; but will also, in a broader context, ensure effective participation by the vital forces of the nation in its economic and social development. The co-operation of strong, independent and representative organisations of workers and employers is an essential condition for the success of any social policy. The Commission hopes that its recommendations will be studied in this constructive spirit.

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During the coming weeks the Commission will be studying more closely the abundant material it has gathered. It will meet in Geneva in April 1975 to draft its final reports. It will then be glad to examine any further communication which the Government of Chile may wish to submit between now and 15 March 1975 commenting on the recommendations in this report and informing it of any relevant measures which may have been taken or may be contemplated. The Commission will formulate its final conclusions in the light of any such further indications and of the situation prevailing at the time of drafting its final reports.

160. The Commission drew up an interim report on its visit to Chile at the end of its stay there and submitted it to the Governing Body at the latter's 195th Session in February/March 1975.

161. It also decided to meet again in Geneva at the end of April 1975 to prepare its final report.
PART III

CHAPTER 8

CHILEAN LEGISLATION REGARDING TRADE UNIONS

162. The present chapter contains a survey of the chief provisions of Chilean legislation, whether in force on 11 September 1973 or issued since that date, on matters with which the Commission is concerned.

163. The Chilean Constitution of 1925 conferred on all inhabitants the right to associate, in conformity with the law, without prior authorisation. The Constitutional Amendment Act of 1970 specified the right to organise within a person's occupation or employment and the right to strike - in conformity with the law in both cases. The same amendment provided that "trade unions and federations or confederations of trade unions shall acquire legal personality by the mere act of registering their articles of association and their rules in the manner and under the conditions laid down by law" and also that "trade unions shall be legal persons and shall have freedom and independence to appoint their governing bodies and their representatives in a democratic manner by free and secret ballot of all their members".

164. Chile has ratified neither the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) nor the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). It has ratified the Right Association (Agriculture) Convention, 1921 (No. 11).

165. The main provisions of Chilean legislation concerning trade union matters are contained in the Labour Code of 1931, the application of which, as regards trade union organisation, is regulated by Decree No. 323 of 1964; the Trade Unions (Agriculture) Act; the Copper Workers' Code and - as regards the public sector - the Administrative Code. The Internal Security Act includes some provisions applicable to collective disputes and strikes.

166. Since 11 September 1973 the new Government has issued transitional provisions which modify the legislation in various aspects and which, in particular, limit the right of meeting of trade unions and suspend trade union elections, collective bargaining and strikes. Moreover, the emergency measures taken immediately after the change of regime, which applied to the whole population and included declaration of a state of siege, had various consequences on trade union activities; these are discussed in other parts of the present Report. The new Government has also appointed commissions responsible for preparing a new constitution and labour code.

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1 Article 10, paragraph 5 of the Political Constitution.
2 Act No. 17398, published 9 January 1971, section 10(14).
3 Ibid, section 10(17).
4 ILO Legislative Series 1964 - Chile 1.
5 Act No. 16625 of 1967; ILO Legislative Series 1967 - Chile 1.
6 Legislative Decree No. 313 of 1956, amended in 1966.
7 Legislative Decree No. 336 of 1960.
8 Act No. 12927 of 1958.
9 The draft legislation concerning trade unions is examined in Chapter 18.
The right to organise

167. The Labour Code of 1931 recognises the right to organise of persons over the age of 18 years working in the same undertaking or business, or carrying on the same trade or occupation or similar or related trades or occupations, whether manual or non-manual. This provision applies to employers, salaried employees, wage earners and persons carrying on a trade or occupation on their own account. The Code defines a salaried employee (empleado) as any person in whose work mental predominates over physical effort and a wage earner (obrero) as any person, not being an employer or a salaried employee, who is employed by another person in a manual trade or work or to perform a specified manual service.

168. The above-mentioned Trade Unions (Agriculture) Act specifies that agricultural workers and employers, without distinction, shall have the right to establish and, subject only to the law and to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation. In this Act, the term "worker" covers wage earners, salaried employees and self-employed workers. It brought the legislation into conformity with the provisions of the Right to Association (Agriculture) Convention, 1921 (No. 11), ratified by Chile, under which all those engaged in agriculture must enjoy the same rights of association and combination as industrial workers.

169. According to the Labour Code, in the case of works unions (sindicatos industriales) and the unions of workers in the big copper mines, membership of the union is compulsory once the union has been established, but such establishment requires a majority vote by the workers concerned.

170. Under the Labour Code, no salaried employee or wage earner in the service of the State, a municipality, a fire service or a public enterprise is allowed to organise or to join a union. The Administrative Code prohibits salaried employees and wage earners in the service of the State from forming unions or calling strikes or stopping work or taking any action which would disturb normal operation of the service. However, subsequently workers in the public sector did for some years establish a number of organisations which engaged in activities of a trade union character. A special Act of 1972 provided that the above prohibitory rules should not apply to staff of the Ministry of Education. Another Act stated that recognition of the legal personality of certain specified organisations of workers (some of them in the public and semi-public sectors) should be dependent on registration of their rules with the Department of Labour; and the rules had to include certain clauses specified in the Act.

171. In a report dated 22 September 1972 concerning Convention 87, the Government of Chile indicated that agricultural workers in the service of the State, municipalities or public undertakings were able to form unions or to join existing agricultural workers' organisations.

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1 Section 365.
2 Section 2.

3 See International Labour Conference, 52nd Session, 1968, Report of Committee of Experts on the Application of Conventions and Recommendations (ILO, 1968), p. 33. This question had been the subject of comment by the ILO supervisory organs for many years, since issue of Act No. 8811 (1947), which placed restrictions on the right of association of agricultural workers.

4 These are made up of wage earners and restricted to a particular undertaking.

5 Section 166.
6 Section 368.


Trade unions are defined in the Code as institutions for mutual collaboration between the parties in industry. Accordingly, organisations whose methods are detrimental to discipline and order at work are deemed contrary to the spirit and letter of the law.

The Code deals separately with the purposes and rights of works unions, occupational unions and their respective federations.

A works union may be formed by the wage earners of any industrial or commercial undertaking which employs more than 25 wage earners. Such a union may conclude collective agreements with the undertaking, represent the wage earners in relation to rights arising out of individual contracts of employment and in collective disputes, organise mutual benefit societies, retail stores, unemployment insurance, vocational schools, co-operatives and in general promote such cultural aims and such objectives of solidarity, co-operation and social security as are approved by the members and specified in the rules. In addition the union is entitled to share in the profits of the undertaking in the manner prescribed by the Code. Federations and confederations of works unions are permitted only to engage in educational, welfare and social security work and to establish retail shops and co-operatives.

Occupational unions are associations formed by persons, whether employed in the same or in different undertakings, who belong to the same occupation, trade or industry (or similar or allied occupations, trades or industries), their exclusive purpose being to study, promote and legitimately defend the common interests of the members. They may conclude collective agreements, represent their members in collective disputes or in conciliation and arbitration, and also represent the common economic interests of the members' occupation(s). Several such unions having the same occupational coverage may set up a federation or confederation, which will have the same rights as the primary unions.

Under the Copper Workers' Code, in each workplace of a major copper undertaking a single wage earners' union and a single salaried employees' union may be set up. Only the unions of the major mining companies may belong to the Copper Workers' Confederation.

The Trade Unions (Agriculture) Act allows to agricultural workers' organisations (unions, federations, confederations) a wide range of activities with a view to improving conditions of work, concluding collective agreements, representing workers in matters arising out of their individual contracts and in collective disputes, supervising observance of social legislation, promoting justice and mutual respect in management-labour relations, and in education, co-operation, placement, provision of advisory services etc.

The principle laid down in the Labour Code prohibiting trade unions from pursuing objectives other than those specified in the laws and in their rules is of general application. They are also prohibited from engaging in any activity resulting in the infringement of the freedom of the individual, or freedom to work, or freedom to engage in economic activity.

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1 Section 367.
2 Sections 405-408.
3 Section 2.
4 Act No. 17594, of 31 December 1971, provided that the rules of trade unions and their federations and confederations must contain an express statement to the effect that the objects of the particular organisation shall not be of a party-political or electoral character.
A works or occupational union is considered duly constituted as soon as legal personality has been granted to it by the President of the Republic and the union has been registered with the Department of Labour.  

Persons wishing to form a trade union must apply to the competent inspector of labour, the application being signed by any one of them. In the case of a works union, at least 55 per cent of the personnel of the undertaking must consent to establishment of a union; in that of an occupational union a minimum membership of 25 persons is required.

When the granting of legal personality is requested, various documents have to be presented, including a copy of the rules, a list of the provisional officers and a list of the members. The request is considered by the Department of Labour, which examines the rules and may require their modification if they do not comply with the law. The President of the Republic then determines, by Decree, that the union is lawfully constituted, that the rules are approved and that legal personality is granted to it. Similar provisions apply to federations of works and of occupational unions.

The position is different in agriculture. The Act of 1967 provides that an agricultural workers' union must be composed of at least 100 persons, though this number may be reduced in certain circumstances. Such unions, and their federations and confederations, are legally constituted and have legal personality by the mere fact of depositing the statute and rules with the competent labour inspector, provided the rules comply with the law. The inspector may require the union to modify any clauses of the rules which in his judgment are unlawful. The union has 60 days in which to comply or to appeal to the labour court.

In its above-mentioned report of 1972 the Government explained that the position of works and occupational unions as regards grant of legal personality had been fundamentally changed by the Constitutional Amendment of 1970, which had extended to all trade union organisations the system previously applying in that regard to agricultural workers' unions.

Act No. 17594, above-mentioned, stated in section 1 that trade unions and trade union federations or confederations shall acquire legal personality simply by communicating their articles of association and their rules to the competent inspector of labour. In section 2 the Act specified four points which must figure in the rules of every organisation. These include: "a statement of the social purposes for which it was established and an express declaration that these shall not be of a party-political or electoral character"; a declaration that the members of the executive committee (directiva) shall be appointed democratically by systems providing for their direct election by all the members of the union. The above Act also stated that the provisions of the Labour Code and supplementing laws shall continue to govern the requirements or conditions for the formation of unions, federations and confederations, the formalities relating to their constituent meetings and approval of their rules.

According to its report of 1972, the Chilean Government itself considered that since the provisions of Act No. 17594 were very general in character considering that they specified no periods within which, and no procedures by which, the rights mentioned should be exercised, the practical application of the Act was impossible without specific regulation. Accordingly, as no rules had been enacted to apply the Constitutional Amendment the new provisions were without practical effect and the provisions of the Labour Code and Decree No. 323 remained in full force. In practice, Decrees recognising the legal personality of unions and giving approval to their statutes continued to be issued by the Executive Power.

1 Sections 382 and 383 of Labour Code and regulations issued thereunder.
2 Decree No. 323 of 23 June 1964.
3 In practice some of these have been acting as de facto organisations, without legal personality - in some instances because they are not composed in the manner prescribed by the Code.
Approval of union rules

186. As regards works and occupational unions, when the rules have been adopted by a general meeting and a person has been appointed to handle the incorporation procedure on behalf of the union and empowered to accept any prior modifications required by the authority concerned, an application is submitted to the President of the Republic, through the labour inspector, requesting approval of the rules and grant of legal personality. The same procedure applied if amendments to a union’s rules were proposed. Provision was also made for submission of certain internal rules of unions for approval by the administrative authority.

187. As stated above, the Trade Unions (Agriculture) Act provides for a right of appeal to the labour court as to the legality of any objection made by the administrative authority to the rules of a union.

Provisions concerning the Single Central Organisation of Chilean Workers (CUT) and other organisations

188. Act No. 1759 of 31 December 1971 also contained provisions relating specifically to the CUT and certain other organisations. Section 3 stated that, in order to have legal personality, the CUT must register its rules with the Department of Labour. The rules were to be drafted by a committee of at least five persons, appointed at a plenary meeting of the CUT’s member federations, "so that the various ideological trends within the organisation shall be represented". Section 4 required the rules to contain the declarations specified in section 2 and mentioned above. Furthermore, under section 5 the rules of the CUT, and those of any of its member federations and confederations not subject to auditing by the official labour authorities, must contain clauses ensuring appropriate investment and administration of its or their resources.

189. Section 6 of the same Act provided that the following organisations should also enjoy legal personality on registration of their rules with the Department of Labour: National Federation of Workers in Semi-public Employment (ANATS), National Federation of Salaried Personnel in Public Employment (ANEF), Confederation of Salaried Employees in Industry and Commerce (CEIC), Chilean Confederation of Private Salaried Employees (CEPCH), Confederation of Bank of Chile Employees’ Associations (CONBEC) and National Association of Prison Officers (ANFUP).

Union officers

190. Under the Labour Code, every trade union must be governed by an executive committee of five persons not less than 18 years of age, of Chilean nationality, not having been sentenced and not being on trial for a crime or misdemeanor at the time of election. An alien with a Chilean spouse or resident for more than five years is also eligible.

191. The Trade Unions (Agriculture) Act does not prescribe the number of such union committees, which is to be determined by the rules of the union, but it does require that they must have been agricultural workers in the area covered by the union during the twelve months preceding the election. On the other hand, this Act permits a person who has been sentenced for a criminal offence to be elected on expiry of the prescription period.

192. According to the Labour Code members of union committees cannot receive

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1 Decree No. 323, section 23.
2 Ibid., section 29.
3 Decree No. 376, section 91.
4 Decree No. 16625, section 20.
5 Section 376.
remuneration for acting as such, but there are provisions on the payment of travelling expenses and of allowances for loss of earnings.

193. Elections had to be conducted by secret ballot in the presence of a labour official. In works unions the Code provided that any worker with three or more years of consecutive service in the undertaking had the right to two votes.

194. A member of a union executive committee cannot be dismissed without the consent of the labour court, which will be given in certain cases specified in the Code. This immunity extends to candidates for membership of a provisional or definitive committee who have been designated at a meeting held during the month preceding the election, and continues to apply for six months after expiry of a member's term of office. In 1963 and 1972 the Administrative statute was modified to extend immunity from dismissal to the officers of specified national organisations of civil servants and employees in the public and semi-public sectors.

195. Decree No. 323 contains detailed provisions on the election procedure in works and occupational unions. In agricultural workers' unions the matter is left to the rules of the organisation.

Supervision of trade unions by the labour authorities

196. There are statutory provisions and regulations dealing specifically with the supervision of unions by the labour authorities.

197. For instance, officials of the labour authorities may attend meetings of works and occupational unions and examine their documents and records, including those relating to financial administration and other activities. The authority may convene a general meeting of a union where special circumstance justify such action.

198. Union monies must be paid into the nearest branch of the State Bank. In some special cases transfers of funds by a works or occupational union must be approved by the labour inspector.

199. The accounts of any union having a budget in excess of a certain amount must be in the hands of a professional accountant, appointed by majority decision of the general meeting of the union. The meeting may request the Department of Labour to audit the accounts; if such examination shows, or gives good ground for

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1 Section 377.

2 The inspector or his substitute presides over the election. See inter alia Decree No. 323, section 33.

3 Section 390.


5 Act No. 15364 of 23 November 1963, section 13, and Act No. 17590 (already mentioned), section 8. The organisations in question are the Agrupación Nacional de Empleados Pciales (salaried personnel in public employment), known as ANEF, the Agrupación Nacional de Trabajadores Semi-Pciales (workers in semi-public employment), known as ANATS, and the Sole Union of Education Workers. The immunity extends also to the officers of organisations affiliated to ANEF or ANATS.

6 Decree No. 323, section 67.

7 Decree No. 1103 (amending Decree No. 323), section 90.

8 Ibid., section 92, as amended by Decree No. 909.

9 Ibid., section 98.
suspicion, that an offence has been committed, the Department will take the appropriate criminal proceedings.¹

200. In the case of agricultural workers' unions, expenditure of funds by the committee must be based on an annual budget adopted by the general meeting. The Department of Labour may have the expenditure or management of a union's funds examined at the request of any of the members.²

**Right to affiliate with international organisations**

201. The Labour Code contains no provisions respecting the affiliation of trade union organisations with international bodies. Decree No. 323 lays down rules on their right to contribute to other bodies: such contributions must figure in the budget under a separate heading and may be made only to organisations the object of which is to co-ordinate or unify trade union action. The Trade Unions (Agriculture) Act expressly recognises the right of trade union associations to affiliate with or withdraw from international organisations of workers or employers.

**Dissolution of trade organisations**

202. Under the Labour Code an occupational union may be dissolved by decree of the President of the Republic if the membership drops below the statutory minimum, or if the union has been inactive for over a year. A works union is dissolved if the undertaking ceases to exist or if the number of its wage earners drops below 25. A union may not dissolve itself without prior approval from the President. It may be dissolved by decree: if it is found to be contrary to public order, law or morality; if it fails to pursue the objects for which it was formed; if it fails to comply with instructions given by the Department of Labour under the powers assigned thereto; or if it fails to submit a collective dispute to the conciliation board within the statutory time or disregards an arbitration award. Dissolution of agricultural unions takes place through the labour courts.⁵

**Protection against anti-union discrimination and interference by employers**

203. The immunity of union officers from dismissal is mentioned above. As regards the protection of workers generally when engaged in union activities, only the Trade Unions (Agriculture) Act contains express provisions. Under this Act it is unlawful to make the employment of an agricultural worker conditional on his not joining a union or to dismiss him or victimise him in any other way by reason of his membership of or activities in a union. The same law prohibits interference by agricultural workers' and employers' organisations in each other's affairs, whether directly or through their agents or members. In particular, acts which are designed to promote the establishment of workers' organisations under the control of employers or employers' organisations, or to subsidise workers' organisations with the object of bringing them under the control of the employer(s), are deemed to be acts of interference.

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¹ Ibid., section 97.
² Act No. 16625, article 15.
³ Section 415.
⁴ Decree No. 323, section 58; Labour Code, sections 636 and 637.
⁵ Act No. 16625, section 20.
⁶ Section 19.
Collective bargaining and disputes

204. There was statutory provision both for the promotion of collective bargaining and for procedure to settle collective disputes. The duties of the Collective Bargaining Branch of the Department of Labour included studying, recommending and publicising systems and methods of discussion and adjustment which would enable collective disputes to be avoided and facilitate the performance of contracts, agreements, negotiated settlements or arbitration awards. The Branch was also responsible for mediating in collective disputes, at the request of either party or on its own initiative, before the conciliation procedure or after its conclusion. The Labour Code required disputes to be referred to the conciliation board within 48 hours. Subsequently, the Code provided, the chairman of the board would, as a rule, propose arbitration (unless the parties themselves had so proposed), and a refusal by either party would affect the date at which the terms of the final award became binding on the parties. A strike could be called after conciliation had failed and arbitration refused. In agriculture and the big copper mining undertakings the legislation laid down special disputes procedures; if these failed, strikes were permissible.

205. The Labour Code provided that the Government could order compulsory resumption of work in the case of a strike or lockout in an undertaking or service in which a work stoppage would seriously affect the health or the economic and social life of the population. The Internal Security Act broadens the scope of this provision: it states that in the case of a work stoppage in an industry or service which is essential to the national economy, in the transport industry or in an industry producing goods which are necessary for national defence or for supplying the population, the President may order resumption of work and assistance by the civil and military authorities. According to the latter Act it is a criminal offence to effect a collective interruption or suspension of work, a strike or lockout in any public service or public utility undertaking, or in industry, transport or commerce, without due regard for the law or if the stoppage causes either public disorder, or disturbance in a public utility service or service required by law to operate, or damage to an essential industry. A more recent Act provided that the President could likewise order resumption of work in the case of a strike if an absolute majority of the workers concerned so requested after a secret ballot.

206. Under the Labour Code a collective agreement was binding on all the employers who had signed it and on all workers belonging to lawfully established unions which were represented at the conclusion of the agreement. The Trade Unions (Agriculture) Act provided that collective agreements concluded by the organisations which were most representative of agricultural workers and employers, or by the most representative agricultural employers, could be extended by decree, in whole or in part, to all agricultural workers and undertakings in the country or region.

207. On 7 May 1973, a resolution had been published by the Inter-ministerial Council for the Economy, containing rules for the centralised planning of wages policy, the effect of which was to restrict collective bargaining, mainly in the public sector.

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1 Legislative Decree No. 2 of 1967.
2 Section 636.
3 Section 617.
4 Act No. 16625 and regulations issued thereunder.
5 Decree No. 313 of 1956, as amended.
6 Article 626.
7 Law No. 12927 concerning the internal security of the State (1958), section 38.
8 Article 11.
10 Section 17.
11 Section 22.
Dissolution of the CDT

208. On 17 September 1973 the legal personality of the Single Central Organisation of Chilean Workers (CDT) was revoked under Legislative Decree No. 12, signed by the Minister of Justice. On 13 November the Organisation was dissolved under Legislative Decree No. 133, signed by the Minister of Labour and Social Security. The preamble to the latter measure stated that dissolution was necessary in order to liquidate the Organisation's assets and to designate a beneficiary, there being no provision in that regard in its rules. The Director of Labour was appointed liquidator and was to act in accordance with Decree No. 323 of 1964. A statement issued by the Director of Labour on 29 January 1974 asserted that the legal personality of all trade union organisations which had had such personality on 10 September was still in effect, excepting only that of the CDT.

Proclamation (Bando) No. 36

209. In Proclamation (Bando) No. 36, dated 18 September 1973 and addressed to all workers - wage earners, salaried employees, technicians and professional personnel - the Government Junta of the Armed Forces announced certain "general and provisional guidelines effective until further orders". After referring to the necessity of overcoming the country's economic prostration and of increasing output and stability, the Proclamation indicated the Government's intention that all law-abiding workers should be permitted to work, and that employers, administrators and managers should not make indiscriminate dismissals; only harmful elements (extremists, saboteurs, delinquents, persons recognised as mere activists or agitators) should be separated from their posts; such persons' contracts should be terminated "in accordance with the statutory procedures now in force or to be laid down by this Junta". Furthermore, the Government Junta stated that it was obliged to take the following measures "pending formulation of more definite policies on completion of the technical studies now being rapidly made": (a) the conciliation boards and tripartite wages committees, the Central Joint Committee on Wages (except in its capacity as an appeals tribunal) and all other bodies with similar or equivalent functions, were to stand recessed; (b) submission and consideration of collective requests for changes in conditions of employment and of collective disputes of all kinds were to be temporarily suspended and the validity of collective or informal agreements, arbitration awards and other instruments in force was to be considered as prolonged; (c) leave of absence on union business was to be suspended; (d) all trade union meetings were to be held outside working hours; (e) vigilance committees and "any other similar body having no statutory basis" were to be suspended.

210. In the same Proclamation the Government Junta repeated its intention to respect workers' rights, to establish social justice without distinction, to make participation a reality and to fight unemployment.

Measures concerning dismissal

211. Legislative Decree No. 32 of 21 September 1973 provided for the establishment of special labour courts and for the amendment of the statutory provisions concerning grounds for dismissal and union immunities. The preamble refers to the emergency situation and the necessity of restoring the principle and practice of labour discipline.

212. The above Decree provided that a dismissed worker could complain only to a special court which was to operate in each territorial department and to consist of:

3 Text communicated by the Government.
of the magistrate competent for labour matters together with a representative of the armed forces and a labour inspector. There were to be five such tribunals in the department of Santiago.

213. To the existing grounds for dismissal, Legislative Decree No. 32 added other grounds which may be summarised as follows: commission of an unlawful act which prevents or has prevented the worker from attending his employment; any offence against property situated in the undertaking; any act causing or having caused destruction of materials, tools or merchandise or reduction of their value; leading, or having led, an unlawful interruption or total stoppage of operations, acts of violence at workplaces or improper detention of persons or withholding of property; incitement to destroy installations, to render them useless or to interrupt their functioning, or participation in such acts; taking, or having taken, part in the unlawful manufacture or storage of arms. In the above cases, under section 5 of the Decree, dismissal would no longer be prevented by the union immunity provisions of labour legislation.

214. The special courts were to hear and determine, without any right of appeal, all complaints against dismissal.

215. The above provisions on the establishment of special courts and their procedure were abrogated by Legislative Decree No. 676, published 9 October 1974; but the provisions on additional grounds for dismissal were not repealed at that time, but subsequently by Legislative Decree No. 930 of 15 March 1975.

216. As regards the public sector, Legislative Decree No. 6, published in September 1973 and two Legislative Decrees (Nos. 22 and 98) published in October of the same year, had the effect of putting an end to the permanent status of almost all the personnel and of placing all personnel on a temporary footing. Legislative Decree No. 22 laid down that the authorities could confirm the persons concerned in their posts, thereby putting an end to their temporary status, or discharge them from the service. Legislative Decree No. 193, published in December 1973, provided for the establishment of special committees, made up in each case of the governor of the department, a representative of the armed forces and a representative of the service in which the person worked, to consider complaints against dismissals in that sector.

**Wage-fixing**

217. Legislative Decree No. 43, published 29 September 1973, suspended application of all provisions, whatever their nature or origin, regarding wage determination or adjustment in the public and in the private sector. As stated above, the effects of collective agreements and similar instruments had been prolonged. Legislative Decree No. 97 of 22 October 1973 ordered payment of specified bonuses to workers in both sectors in order - the preamble stated - to compensate them for the rise in the cost of living. It provided that workers covered by collective agreements or analogous instruments providing for automatic wage adjustments could opt between acceptance of the bonuses and maintenance of the adjustments, provided the latter had been agreed on before 1960.

218. Other adjustments were granted subsequently in the public and in the private sector - by Legislative Decrees No. 275 of January 1974, No. 446 of May 1974 and No. 550 of June 1974. A bonus and an end-of-year gratuity were provided for by Legislative Decree No. 507, also of June 1974. Legislative Decree No. 307, published 7 February 1974, established a single system of family benefits. By

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1 Listed in Act No. 16455 of 1966.

2 In its communication of 11 February 1974 the Government refers to this provision in the following terms: "unlawful acts which have prevented or which prevent other workers from attending their employment". That is to say, the fact that a worker failed to turn up for work because he had committed an unlawful act (and had been detained as a result) would not constitute a justifiable reason for dismissal, as the provision in question would give to understand, but dismissal would be justified if an unlawful act committed by a worker prevented other workers from performing their duties.

virtue of Legislative Decree No. 670 of 1 October 1971 a system of automatic adjustment of wages and other emoluments was introduced, pensions increased and minimum incomes fixed. This Legislative Decree also provided for the setting up of tripartite committees of a consultative character which are able to fix emoluments at a higher rate than those which result from the automatic adjustment.

Transitional rules for trade union activity

219. Legislative Decree No. 198 was issued on 10 December 1973.1 Section 1 lays down the principle that workers' and employers' organisations are to be governed by "the laws and agreements in force, save as otherwise prescribed in the present Legislative Decree, which shall for the time being take precedence over the said laws and agreements".

220. The Decree provides that such organisations and their committees and officers shall refrain from any political activity in the performance of their functions.

221. It is further provided that the term of any union committee which was in office on 11 September 1973 shall be prolonged. Where the term has come to an end before that date, or the committee presently contains a number of officers less than that required by law or by the rules of the union, the vacancies must be filled by those members of the organisation who have most seniority in the undertaking or occupation as the case may be. The same procedure is to be applied when vacancies occur subsequently. In the case of federations and confederations, vacancies are to be filled by the officers of affiliated unions who have most seniority as workers in the employment concerned. If there is doubt regarding seniority, the provincial labour inspector will decide.

222. When the committee is complete, a new election of its principal officers (chairman, secretary, treasurer etc.) must be held and the labour inspector informed within ten days. The committee will then have all the powers prescribed by law or by the rules of the union and the provisions of the Termination of Employment Act No. 16455, as amended, will be applicable to its members.

223. Employers are required to give union officers the leave of absence they need to perform their functions as such, provided that the leave may not exceed four hours a week for each officer of a union with a membership not exceeding 500, or six hours if the membership exceeds 500, or eight hours in the case of federations and confederations, or ten hours in the case of a confederation having affiliated unions in several territorial departments. The duration of such leave will be deemed to be time worked; the organisation will be required to pay all wages, social security contributions and other benefits due to the individual; provided that payment will be at the employer's expense if so agreed between the parties in the case of an organisation having legal personality.

224. The above provisions of the Decree which relate to leave for union officers will not apply to workers covered by the Trade Unions (Agriculture) Act or the Copper Workers' Code, nor to dockers, who will continue to be covered in this regard by the laws, regulations and agreements in force.

225. In a newly established union the provisional committee of management is to be composed of the workers with most seniority, as indicated above, and will be converted into a permanent committee at the appropriate time (i.e. when the union has obtained legal personality).

226. When the labour inspector, and the employer where appropriate, have been informed of the appointments, any worker concerned or the employer or the public authority may object to a newly appointed member of a committee as "not complying with the requirements of this Legislative Decree". Such an objection will be settled by the provincial inspector; pending his decision the member challenged will remain in office.

227. The same Decree provides that during continuance of the emergency (estado de guerra o de sitio) "general meetings shall be held only for purposes of

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information or the internal management of the organisation". Such meetings must be outside working hours and comply with the provisions of the curfew. The intended time, place and agenda must be communicated in writing, at least two days in advance, to the unit of police (carabineros) situated nearest to the workplace or headquarters of the union as the case may be.

228. As regards the public sector, Legislative Decree No. 349, published 13 March 1974, extended the terms of office of members of committees of the staff associations mentioned in the Administrative Code until 30 September 1975 inclusive, where their term would have expired before that date.

**Offices for labour questions and labour co-ordination committees**

229. Presidential Decree No. 314, published 4 May 1974, provided for the formation - in every province - of a committee on labour and social security questions, to be responsible for disseminating the rules laid down by Government in that field and for keeping the authorities informed of labour problems. Each such committee was to be composed of an officer of the armed forces as chairman, the provincial inspector of labour, and specialists on the subject. Provision was also made for the establishment in each case of an office of labour affairs, serving the committee as executive secretariat and intended to maintain permanent communication between workers and employers so that the "emergence of labour problems might be foreseen and avoided".

230. Presidential Decree No. 852, published 12 December 1974, revoked the above provisions; all labour relations questions were to be centralised in the Ministry of Labour and Social Welfare. Instead of the institutions mentioned in the preceding paragraph, the Decree provided for the establishment of a national and of provincial labour co-ordination committees, which were to study problems affecting the workers, propose solutions to the Minister and disseminate information on official measures; they would also act as channels for consulting the opinion of the workers on particular matters whenever the Government might so decide. The committees were to be composed, in each case, of a representative of the labour authority at the appropriate level, as president, and officers of the national or provincial organisations of workers in the public and private sectors, with the addition - at provincial level - of an officer of the armed forces. Presidential Decree No. 852 was itself repealed by Legislative Decree No. 3 of 9 January 1975, which essentially maintains the system of co-ordination committees, although it also provides for the chairmanship of the provisional committees (and departmental committees which are also set up) to be assigned to an officer on active service of the armed forces or the police.
EXAMINATION OF THE CASE BY THE COMMISSION

General remarks

231. The Government, the witnesses called by it, and many of the persons interviewed by the Commission during its visit to Chile referred to various aspects of the situation in the country prior to 11 September 1973 and stressed the need to bear that situation—which explained the change of regime—in mind. The aspects mentioned included the state of insecurity reigning in the country, the state of the economy, the political infiltration of the trade unions, the relations between the Single Central Organisation of Workers (CUT) and the Government, the requisition of businesses and farms, the illegality of various measures taken by the Government and the problem of the industrial cordons. Some of these matters are discussed in the following chapters in so far as they have a bearing on the questions of freedom of association raised in this case.

232. On the subject of the economic situation, the Government in its submissions and one of its witnesses in particular made reference during the hearings in Geneva, inter alia, to the control of a substantial proportion of the means of production and distribution, the supply of credit and communication media acquired by the Government by illegal means; to the political impregnation of the management of industry without regard to efficiency; to the seizures of land and the fall in agricultural production; to the discriminatory system of distribution of food supplies; to the high rate of inflation (303.6 per cent between September 1972 and August 1973, black market prices having risen by slightly over 1,000 per cent during the same period); to the balance of trade deficit (which would have exceeded US$450 million in 1973 as compared with a surplus of US$175 million in 1970); to the increased external indebtedness (by some 60 per cent in three years); to the increase in the budget deficit (which reached 45 per cent of aggregate government expenditure in 1973); to the falling off in investment in the country; to the fall in industrial production; etc.

233. The complainant organisations which attended the hearings in Geneva argued that the material referring particularly to economic questions was irrelevant to the case and should therefore not be examined. However, the World Federation of Trade Unions submitted a document part of which described the economic situation during the period of office of the previous government in terms different from those indicated above. This document was transmitted to the Government, which made comments thereon.

234. According to the WFTU document, the disorganised state of the economy when the Junta took over was the outcome of the plot hatched against the Government of Popular Unity; however, the Chilean economy was a developing one and fundamentally healthy. The copper mines had been taken over by Chile on 17 July 1971; thus the principal source of the nation’s wealth had been recovered from foreign ownership. However, it had proved necessary to do more than maintain production at previous levels; production had to be increased considerably, and at the same time the problems left behind by the previous owners had to be overcome. Large amounts of slag had accumulated; plant and equipment was run down; supplies of spare parts had run out and not been replenished; the mines were being operated so irrationally that there was a danger that the deposits might be completely exhausted, etc. These difficulties were overcome within two years.

235. The same document stated that in 1971 and 1972 the expropriation of all rural estates comprising more than 80 hectares of irrigated land was completed. These lands were distributed among peasants organised in co-operatives of various kinds. The estates concerned comprised 45 per cent of all the irrigated land in the country and 35 per cent of all arable land. The document states that to counter the financial monopoly existing in the credit field the State took over the administration of banks holding 95 per cent of all deposits and 96 per cent of all financial resources and made these monies available for the co-ordinated development of the national economy. It also created a public sector in industry and commerce which had become the most dynamic sector of the economy. It was explained that this sector comprised the largest undertakings which had previously belonged to monopolies and accounted for 30 per cent of industrial production by value and employed 20 per cent of the industrial labour force.
236. The document stated that during the first two years of office of the Government of Popular Unity production was almost twice as high as under the previous two governments. The wages and salaries element in national income - 49 per cent between 1959 and 1964 and 51 per cent between 1965 and 1970 - increased to 58 per cent. Ninety-nine per cent of all children between 6 and 14 years of age were able to go to school. The number of children who completed their secondary schooling increased by 18.2 per cent and the number of students completing university courses by 34.9 per cent. The infantile mortality rate fell sharply as a result of the free milk distribution scheme. The document claimed that the full implementation of all these achievements by the Government of Popular Unity was hindered by subversive activity, the cut-off of external finance and large-scale economic sabotage accompanied by widespread opportunist deviations of a left-wing and right-wing character.

237. The Government rejected the allegation that the Chilean economy had been fundamentally sound, referring once again to the very considerable increase in the rate of inflation under the previous government and the general shortage of the most essential foodstuffs, the latter having given rise to the development of a black market in which government officials resold, at enormous profit to themselves, the goods they had been able to obtain at controlled prices. According to the Government the only persons who could obtain goods at controlled prices were persons enjoying the favour of the government who had obtained posts in state-owned enterprises. Another fact illustrative of the disorganised state of the economy was the fact that the country's monetary reserves were exhausted; the amount of foreign exchange reserves on current account had fallen from US$331 million in October 1970 to only US$823 million by 29 September 1973; the fact that in less than three years a country with only 10 million inhabitants had received this amount in loans gave the lie to the statement that there had been a boycott against Chile.

238. The Government asserted that the state-owned sector was far from being the most dynamic sector of the economy; in fact, production in that sector had fallen considerably. Industrial production during the first nine months of 1973 was 11.4 per cent less than during the corresponding period in the previous year. No investment took place in these industries, and during the period of the previous regime not a single new industrial enterprise had been created.

239. In agriculture production had fallen every year, and the greater part of the nation's food supply had had to be imported, the earnings of the main copper mines being used for this purpose. In fact, the rural sector had been turned into a focal point of political agitation, directed by extremist officials who had been making use of the peasants in order to establish themselves in political positions. As regards copper production, during the period before the Popular Unity Movement came to power substantial investments had been made to increase production and new deposits had been opened up. During the term of office of the Government of Popular Unity production from the principal deposits had fallen. The nationalisation of the copper industry had become effective before the Government of Popular Unity came to power - to put it another way, when the country acquired 51 per cent ownership of the main deposits. The process of nationalisation was completed in 1971 by a unanimous decision of Congress and the details of the compensation to be paid to the former owners were fixed. The Government stated that the change in the level of GNP per head - which was lower in 1973 than in 1969 - was indicative of the seriousness of the situation in the production sector.

240. Lastly, the Government stated that real wages during the last three months of the term of office of the Government of Popular Unity were over 20 per cent lower than those prevailing in 1970. The Government also stated that the figure for total wages and salaries as a percentage of national income was not a reliable indicator of whether the majority of people in the country were better off or not, since the relevant statistics did not include a considerable segment of the poorest sectors, where economically active persons set themselves up in a self-employed capacity. The existing situation, in which the price structure was so skewed, had bought advantages to the best organised and best prepared groups at the expense of the poorest groups, who were unable to protect themselves against the consequences of inflation on account of their lack of organisation or preparation.
CHAPTER 9

Dissolution of the Single Central Organisation of Chilean Workers (CUT)

241. Following the cancellation of the legal personality of the CUT in September 1973 and its dissolution in November 1973 it was provided that the disposal of its assets would be dealt with in a Ministry of Labour decree, which has still not been issued. The legislative decrees concerning the CUT contain no provisions about the legal position of the CUT's affiliated organisations. Some of the principal leaders of the CUT, amongst whom Messrs. Luis Figueroa Mazuela (President), Rolando Calderón Aránguiz (Secretary-General), Eduardo Rojas (Second Vice-President), Jorge Godoy (ex-President and Minister of Labour at the time of the change of regime), Luis Guzmán Rojas (Financial Secretary) and Mrs. Fidelma Allende (Secretary for International Relations) were in exile. All of the persons named above, except for Mr. Eduardo Rojas, gave evidence before the Commission. Others still hold trade union office in their respective federations in Chile. Some others, although in Chile, no longer exercise trade union activities which are recognised as being legal.

242. In explaining the reasons for the dissolution, the Government says, in brief, that the CUT was a political and not a trade union organisation. Its intention was to bring about a Marxist-Leninist régime in Chile. Its executive committee had been fraudulently elected and it was dependent on the State as the employer. It had links with the Popular Unity parties and certain CUT leaders had in fact held portfolios in the People's Unity Government. Before 11 September 1973 the more important organisations had ceased to be trade union bodies and had become political instruments intent on the violent overthrow of existing institutions in the service of the parties committed to those ends. The Government, in support of this statement, sent a copy of the rules of various agricultural trade unions set up in 1972, to show that such bodies had been obedient tools of party policy. The Government also referred to the fact that certain trade unions had been part of para-military organisations and pressure groups called "cordones industriales". It also referred to the promotion of artificial collective disputes to enable the Government to take firms over and to the use, for party political ends, of money allocated by law to the training of peasant trade unionists.

243. The Government goes on to say that trade union organisations which give priority to non-occupational, illegal activities, contrary to the social and economic interests they ought to be defending, have no right to invoke national and international standards laid down for the protection of genuine trade unionism.

244. According to the Government, those unions and workers who were anxious to carry on purely trade union activities were subject to bureaucratic dictatorship. Since 1971 a system of preferences had grown up in the Ministry of Labour in granting legal personality to unions, the aim being to favour government-sponsored unions, and especially the "single" unions, which were not provided for by law. As regards wages, there was a policy of centralised direction, contrary to the principle of collective bargaining. For example, the Government quoted a news item published in June 1973, according to which Socialist Party activists in the National Confederation of State Bank Unions (CONSBEC) had been ordered by that party to support the People's Unity incomes policy and to combat any financial adjustments that were no longer justified, since power was now in the workers' hands.

245. All it had been trying to do, the Government asserted, was to re-establish economic and social order and to eliminate the defects, chiefly political, whereby organisations set up to defend workers' interests had been deflected from their proper path. The revised version of the Labour Code would demonstrate its intentions. Moreover, the statement of principles issued by the Government Junta in March 1974 contained a statement to the effect that the trade union movement would be independent in the pursuit of its specific ends. Hence any interference by parties, whether direct or indirect, in the establishment and workings of trade union executive bodies was expressly forbidden. The Government would not allow a return to a state of affairs in which organised groups "feigning to accept the rules of democracy, promote doctrines and behaviour designed to bring about a totalitarian..."

* See paragraph 271.
State", would be permitted to resume their activities. It followed that Marxist parties and movements would not be allowed to re-enter civic life. It should be observed in this connection that Legislative Decree No. 77 dated 13 October 1973 banned various parties as illegal, together with all bodies and movements preaching Marxism. The preamble states, among other things, that the Marxist doctrine of the State and the class struggle is incompatible with the idea of national unity, and that three years of Marxist government was enough to destroy the country, morally, institutionally and economically.

246. The complainant organisations likewise referred to the dissolution of the CUT and to the position of the Chilean trade union movement before and after 11 September 1973. A communication dated 15 February 1974, sent by the International Confederation of Free Trade Unions, stated that the creation of the CUT in 1953 put an end to a long-standing split within the trade union movement, and that the body in question, set up to defend the workers' economic and social interests, had carried on its activities free from any control by employers, political parties or the Government. The CUT, this document affirmed, had been a democratic, representative body; all its officers were elected by direct secret ballot and in 1972 it had a million members (40 per cent of the population employed and 90 per cent of all organised labour). The statement of principles, approved in 1965, and submitted by the complainants, asserts that the primary aim of the CUT is to organise all workers, in town and countryside, irrespective of political allegiance or religious creed, to combat the exploitation of man by man, until such time as full-scale socialism is achieved.

247. This same communication, answering certain points made by the Government, argued that the workers, like other citizens, were entitled to be elected to official posts in a popular government. There was nothing in the law which forbade that. For many years the workers had been demanding a democratic, people's government, which would put a stop to the country's underdevelopment and dependent status. Various proposals made in CUT congresses had been taken up by People's Unity. The Government had launched a programme summarising the workers' most deeply-felt aspirations as regards such matters as employment policy, wages, social security, workers' participation in management, etc. When the multinational corporations intensified their economic blockade of Chile and internal reactionary forces started terrorism to paralyse production, the President of the Republic had set up a cabinet in which People's Unity parties, representatives of the armed forces and representatives of the CUT held seats. The idea of bringing in the CUT was to guarantee the workers' rights and conquests. Nevertheless, the CUT was not a political party.

248. Another document submitted to the Commission by the ICFTU, WCL and WFTU about various aspects of the general position and status of the trade unions in Chile stated that an analysis of the action taken against human and trade union rights in Chile made it easy to discern why the CUT had been dissolved, even if the political part it might play be overlooked. Ever since 11 September 1973, the authorities had ridden rough-shod over the most elementary human and trade union freedoms. The workers' economic, social and trade union rights had been abolished and the forces of repression had concentrated on the working class and its organisations. Persecution of trade union leaders had been quickly followed by the dissolution of the CUT and other trade union organisations. The new régime had begun to implement a policy of establishing a new kind of trade unionism, compromising with the capitalist class.

249. At the Commission's second session, almost all the witnesses, in their general statements, mentioned the state of affairs existing before 11 September 1973, either to show how reactionary the new régime was or to explain why it had taken the action it had. The Commission put questions to various witnesses about the CUT, its relations with the previous Government, and the reasons for the dissolution of that organisation.

250. Mr. Figueroa, who had been active in various capacities in the CUT since its foundation and its elected chairman for the period 1970-75, said that the CUT had not been set up as a workers' confederation of the traditional kind, since it included unskilled workers, university lecturers, salaried employees and self-employed workers belonging to organisations of various kinds. In September 1973 the CUT had been made up of 127 federations, unions, associations and nation-wide confederations, covering the majority of all organised labour. Father Dupuy said that a union joined the CUT when its assembly so decided: it was perfectly free to join or to remain outside. According to Mr. Figueroa, Mr. Godoy and Mr. Calderón,
at the Sixth CUT Congress in 1971 the former procedure of election by the Congress had been replaced by a system whereby officers were proportionally elected by direct secret ballot of the members, in accordance with the general electoral system in force in Chile. The idea had been to ensure unity of the various schools of thought within the CUT and to prevent the latter from becoming too narrow in outlook, under unilateral leadership. At the national level, there was an executive council of 55 members, a secretariat of 13 and an executive board of 4. Under that system, four groups could be represented on the executive board, each being elected, according to the majority obtained, to the posts of Chairman, General Secretary, First and Second Vice-Chairmen, in that order. In the 1972 elections of a national council and provincial councils there had been nine lists submitted by various political or trade union groups. There had to be a specified minimum number of signatures on every list and it had to bear a party emblem or other distinctive sign so as to prevent fraud. Mr. Godoy said that in the Chilean trade union movement it was traditional for the candidates to indicate the political school to which they belonged. According to Mr. Figueroa, the electoral system had been discussed with the mandates for the nine lists. After the elections there had been no complaints, except that the trade union department of the Christian Democratic Party had taken the line that the outcome of the elections was not sufficiently clear. Nevertheless, the record had been signed by all nine nominees. This same witness declared that since, at that time, political parties had been legal, they had put forward candidates for positions on professional and other social bodies, including the trade union movement, and not only for posts in national or local government. Thus it was not implied that a trade union party, i.e., a social organisation in which political or ideological tendencies found expression, as in society at large. Asked by the Government representative whether, in standing as a candidate for the CUT elections, Mr. Figueroa had done so as a worker or as representative of the Communist Party, the witness said he saw no reason at all why, as a printing worker, he could not put his name forward on the list of a political party if other citizens could do so.

251. As regards what had been said about the CUT's having been a political organisation subservient to the Government, Mr. Figueroa said that throughout the history of Chile, workers had undertaken tasks not strictly limited to trade union matters. By institutional means they had promoted a gradual economic, political and social transformation. Having for generations past fought for democratic development, it would be surprising if, quite suddenly, they were to turn into spokesman for violence. As a proof of the attachment of the trade union movement to democratic processes, the witness referred to the support given by the workers to Salvador Allende as part of a regular electoral process, and to the nationwide stoppage ordered by the CUT in defence of national institutions when, during the presidency of Mr. Frei, certain military units staged a rising in 1969. He rejected the allegation of subservience to the Government. In 1969 the CUT had signed an agreement with the Frei Government on six matters of interest to the workers. During Mr. Allende's Government, those 6 had been raised to 12 and later to 18. The central trade union organisation had by then acquired weight enough to negotiate with the Government at the national level.

252. The witnesses, and in particular Mr. Figueroa, affirmed that during the three years of the Popular Unity Government, all organisations and schools of thought had remained represented in the CUT. The executive board had four members, including the first Vice-Chairman, Mr. Vogel, a Christian Democrat. There had been an agreement to the effect that in the latter's absence he should be replaced by someone from the same party. Agreements were unanimously reached except on three occasions, when a vote had proved necessary. When an officer occupied the post of Minister of Labour, for instance, although he remained an officer of the CUT, he could not, according to the rules, discharge both functions at the same time. Moreover, although the CUT had been accorded legal personality by virtue of Act No. 17,594 published on 4 January 1972, that same law laid down that its rules must be drafted by a committee in which the various parties were represented.

253. The witnesses brought forward by the complaining organisations, who referred to this matter, denied that the CUT had organised para-military units. Mr. Figueroa said that the so-called "cordones industriales" had originally been means whereby trade unions in Greater Santiago had been associated. In a big city, the normal arrangements were inadequate as far as trade union action was concerned. There were numerous undertakings with only a small number of workers, and the committees of the industrial cordons were a means of grouping them round the bigger undertakings for an interchange of trade union experience and for joint ventures, such as children's nurseries. Father Dupuy stated that the industrial cordons he
had known in Valparaiso were bodies legally set up within the central trade union organisation, and they had not been armed. Mr. Figueroa indicated that in view of sabotage to industries and services as, for instance, on the occasion of the lorry drivers' strike in 1972, the CUT had promoted the creation of industrial protection committees for the purposes of self defence. Mr. Toro said that, according to a CUT decision, any blow at democracy anywhere in the country had to be opposed by a general strike, involving occupation of places of work. On 11 September 1973, that had been impossible because the armed forces had stepped in first.

254. As regards the promotion of single trade union organisations, Mr. Figueroa declared that throughout the history of Chilean trade unionism there had been a striving for unity, not as a result of political instructions but because the Chilean working class wanted to be defended by powerful organisations. At the Huachipato plant there had been as many as seven unions; now the authorities had allowed them to unite. The witness said that the fact was a proof that when a single trade union co-operated with the authorities there was no objection to having such a union. Mr. Godoy added that the employers, too, favoured unity, since it was more convenient to negotiate for a whole industry than to negotiate between 50 and 100 different agreements.

255. The Government representative said that in May 1973, when Mr. Figueroa was Minister of Labour, it had been decided to centralise wages policy and to put an end to free collective bargaining. Mr. Figueroa answered that a decision had been taken by the CUT to the effect that a more rational wages policy was essential, with a view to securing greater justice and improving both production and productivity. A committee had been set up to make a careful review of government policy in that regard, but in no sense replaced collective bargaining.

256. Several witnesses declared that when the military rising broke out on 11 September 1973, the armed forces had immediately taken over the premises of the CUT National Council and the CUT's national training school, together with CUT provincial offices and the premises occupied by various federations and confederations. Property had been either destroyed or confiscated. According to the same witnesses, action had simultaneously begun against the leaders of the CUT and its affiliated organisations, and in this connection they provided much detailed information.

257. The Government witnesses referred to various aspects of CUT activities before 11 September 1973, stressing the links between certain CUT officers and the Popular Unity parties. Mr. Medina Galez said that the balance of the trade union movement had been entirely upset, and in the agreement reached in December 1970 between the CUT and the Government (defining the form of workers' participation in social welfare schemes), targets had been laid down whereby the workers would be introduced to full-scale socialism. In the CUT-Government committee set up to consider how such participation might be brought about, and in the executive board set up in June 1971 to apply that policy, the workers had been represented only by representatives of the CUT who were active in People's Unity parties. The document drafted by that committee had laid down what the CUT and its affiliated organisations, and in this connection they provided much detailed information.

258. Mr. Vogel said that he had attended all congresses of the CUT since its foundation. Right from the very first congress, in 1953, the non-Marxist workers had been able to see for themselves the abusive domination of the Marxists and how single-minded they were. On that occasion, those leaders who belonged to the Christian Democrats had been forced to withdraw from the congress although, for political reasons, four Christian Democrats later joined the CUT in senior posts. The Christian Democrats had been obliged to withdraw once again, on the occasion of the sixth congress in 1971, in view of the "totalitarian attitude of the Marxists in the Government", pending the elections which were to take place 120 days later. During the months preceding those CUT elections, various protests had been made against the fact that promises made to the workers had not been kept. The witness quoted some of his own statements made in public at that time, denouncing the CUT's subservience to the Communist Party and urging the workers to make the CUT serve their own interests and not those of persons pursuing political ends. The results of the elections were challenged by the Christian Democrats, who finally decided to accept them since they did not wish to split the working classes.
259. Mr. Medina Gálvez said that in these elections the self-employed had been unable to participate, since under section 22 of the relevant rules every list of candidates for senior posts had to be endorsed by a political party or group, or by a specific number of officers of unions or other bodies affiliated to the CUT. For instance, Mr. Calderón, who had been put forward under the slogan: "Let's Win the CUT for Socialism". Other witnesses too, notably Mr. Mober, Mr. Rios and Mr. Vogel, affirmed that the sponsoring of candidates was a political operation. Mr. Vogel quoted some statements made by the Frente Unido de Trabajadores and by the Radical Party, denouncing fraud in the elections.

260. Witnesses put forward by the Government said that the workers' interests had suffered as a result of CUT officers being members of the Popular Unity Government, chiefly in connection with certain collective disputes. The authorities, and their champions within the CUT, had promoted parallel trade unions in sectors where existing unions were not dominated by the People's Unity Vigilante. Committees had been formed as a means of keeping an eye on fellow workers. Production committees, too, had been set up, which discussed ways of using firms for political ends. With regard to the industrial cordons, Mr. Vogel said they had not pursued trade union ends, but had rather been instruments for speeding-up the advent of a socialist society. They concerned themselves with the organisation of marches and demonstrations. Mr. Medina Gálvez supplied certain documents which he said came from the Socialist Party. In one of them activists were instructed to increase Party and Popular Unity influence in the copper mines. Supervisors classed as "enemies" were to be replaced by People's Unity activists, and a Party member was to be placed in every department directed by an opponent, to keep a watch on his activities. There were to be meetings between political leaders and trade union leaders to decide, for political, technical and technical tasks had to be performed and ensure that they were carried out. Another document summarised the discussions at a meeting of socialist leaders on 22 July 1973 concerning the Party's policy in the industrial cordons. According to this document, Mr. Calderón criticised the conduct of other COT officers in those bodies, for instance, for not doing enough to mobilise all the workers for the purpose of taking over factories, or for making it look as though the CUT were an instrument for handing the factories back. Mr. Medina Gálvez said that the industrial cordons had been used on the occasion of the El Teniente miners' strike under the former Government, and especially to oppose by force the strikers' march on Santiago.

261. Mr. Briceno mentioned certain labour disputes in the Province of Concepción and the Lota coal mines, in which he had had occasion to intervene as a CUT provincial officer. They had proved that the attitude of those trade union leaders supporting People's Unity was dictated by the latter's political interests. The witnesses also declared that these leaders failed to carry out the programmes established by agreement between the CUT and the universities, places were allocated. Mr. Vogel said that although he had been CUT Vice-Chairman, he had not been informed or consulted about certain major decisions. For instance, when the CUT joined President Allende's cabinet, he had learnt of that event through the newspapers.

262. When the Commission was in Chile, many people in all walks of life and in various parts of the country confirmed that throughout the country's history, Chilean trade unionism had always been influenced by ideology and party politics. Most of these people were convinced that in recent years the political parties had been interfering more and more in trade union matters. Political dissensions had been increasingly reflected in trade union elections and in the behaviour of many trade unionists. A written statement, signed by the leaders of numerous trade union organisations and submitted to the Commission, asserts that the political leaders of both Government and opposition had endeavoured to use the workers' organisations for other than trade union ends, and had been to a great extent successful in so doing.

263. In their interviews with the Commission, many trade union officers elected before 11 September 1973 and still in charge of their organisations, appointed after the above date, criticised the whole principle of allocating trade union posts following elections based on party politics. As regards the CUT, some witnesses stated that if an officer was for any reason removed from his post, his successor was nominated by his party. In the course of these interviews, the Commission frequently heard statements to the effect that political agitation by certain trade union leaders supporting the erstwhile Government had aggravated dissensions within the trade union movement and created an atmosphere of hostility. Some of these witnesses said that they themselves, or their relatives, had been victimised, through insults or discrimination in the distribution of food, because
they had refused as trade unionists to occupy the factories at which they were employed. The written statement mentioned in the previous paragraph indicates that the COT had been controlled by certain parties, and in October 1972 it had signed an agreement with the Government consisting of members of those same parties renouncing the right to make claims, to strike and to engage in collective bargaining, in exchange for a system of pay adjustments which, because of inflation, was no solution to the worker's difficulties.

264. Employers' representatives made allegations about the methods employed by certain political and trade union groups under the previous régime, especially as regards the taking-over of plant with a view to placing it under state control, and the occupation of farms with a view to their expropriation. They criticised trade union leaders who did no productive work, fomented trouble and disputes of every kind, and put obstacles in the way of collective bargaining. Some employers declared that even in undertakings where the workers had put forward no grievances and had even opposed the transfer to public control, work was constantly being interrupted by representatives of groups in favour of the socialisation of the means of production. Representatives of the national employers' associations said that under the former Government many court rulings based on the right of ownership had not been respected.

265. Various people, not connected with trade union circles, while criticising the excessive rigidity displayed since 11 September and the absence of safeguards, said that, before that date, there had been much activity in connection with the organisation of militias, shock units and other barely legal associations in which certain left-wing trade union groups had been actively involved.

266. On the other hand, certain holders of responsible trade union positions under the Popular Unity Government, interviewed by the Commission on various occasions, said that whatever the political creed of individual trade union leaders, the CUT genuinely represented the whole trade union movement without distinction. They declared that the executive bodies of the CUT had sprung from broadly organised, democratic elections and had been supported at all times by the great majority of workers and their organisations. The Commission heard similar opinions expressed by persons who had been active in the trade union movement at various levels, and also by various serving trade union officers: these persons affirmed that the CUT had concerned itself with occupational matters and the workers' claims. Many of them had apprehensions about the future, feeling as they did that the dissolution of the CUT had deprived the workers of their most effective instrument for defending their interests and their gains.
267. Various items of information and evidence received by the Committee refer to action taken by the authorities with regard to certain trade union organisations, and to the special situation in which such organisations find themselves.

268. There are, first of all, various organisations of agricultural workers which had developed greatly under the Popular Unity Government, namely the National Confederation of Peasant and Indigenous Workers “Ranguil” and the United Confederation of Workers and Peasants, together with the communal unions and provincial federations affiliated thereto. As regards the two confederations, the Head of the Trade Union Organisations Division in the Department of Labour confirmed what had already been stated by the Government, namely that these still retained their legal personality. The Government likewise informed the Committee that the Ranguil Confederation was made up of 23 federations, comprising 251 agricultural workers' unions, which were fully active.

269. The leaders of both organisations testified that their premises had been searched and closed down. The authorities had confiscated all their literature, office equipment, furniture and vehicles. They were accordingly obliged to find alternative premises. The United Confederation of Workers and Peasants, for instance, shares offices with its affiliate, the Valparaíso Provincial Federation. The eight trade union schools owned by the Ranguil Confederation in various parts of the country had also been closed down. The leaders of these confederations stated that they had applied in vain for restitution of the property of their organisations; they had applied, again in vain, for permission to receive the financial contributions provided for by the Agricultural Trade Unions Act, No. 16,625. According to this Act, the resources of federations and confederations are derived from contributions paid by employers, according to how many persons they employ. These contributions are paid in to the Department of Labour, which allocates half the amount received to these organisations, and the other half to the Trade Union Education and Extension Fund. Since 11 September 1973, the two confederations and such affiliated federations as still exist had received nothing from the Department of Labour, nor had they received anything from the Fund for their educational activities.

270. At the level of the communes and provinces, the great majority of unions and federations belonging to these two organisations have ceased all activity, according to the information supplied by the leaders of the two confederations. Their premises have been closed and their property confiscated. In a few instances only, notably in the case of the “Progress” Federation (Talca Province) - a member of the Ranguil Confederation - have these organisations been able to recover a few pieces of furniture and some of their documents. Various sources, including the labour authorities, confirmed that in the different provinces visited by the Commission, almost all the organisations have ceased their activities. In reality, these bodies have not been wound up by administrative or court order, except in rare instances such as the José Bascuñán Zurita Federation, in the Bio-Bio Province (wound up, with its member-unions, by Proclamation No. 36), and the Lautaro and Salvador Allende Federations, in the Province of Llanquihue (wound up, with their member-unions, by Proclamation No. 66) - all of them members of the Ranguil Confederation. The fact that these bodies were dissolved by local military proclamation shortly after 11 September 1973 does not seem to have been recorded by the Department of Labour. As regards the above-mentioned Bio-Bio Federation, Proclamation No. 36 also stipulated that members must join one or other of two federations, under pain of imprisonment. It would seem that very few of the unions or provincial federations belonging to the Ranguil Confederation or United Confederation of Workers and Peasants are making any effort to resume their normal activities, because of the financial and other difficulties confronting them. The representatives of one of these federations said that they were not allowed to enter farms to talk with the workers, and that, in general, the leaders of the communal unions affiliated to the federation went in fear of dismissal and arrest. This was also the view expressed by some of the labour authorities.
271. Referring to these trade union organisations, the Government stated that under the previous regime they had been turned into political tools whose object was to bring about a violent change in the country's institutions. As a proof of this, it submitted the statutes of several agricultural trade union organisations, which stated, for instance, that the peasants were entitled to acquire the skills necessary to achieve political awareness and to take part in the struggle for the "ultimate goal of politics, namely, the taking over of political power" and the building of a new society. The Government also stated that the money which was to have been used for educational purposes had been devoted, with the consent of the previous government, to instruction in class warfare and social revolution. The Government supported these statements by producing various agreements reached by the two confederations with the Trade Union Education and Extension Fund. Among the goals set forth therein was an "increase in the political awareness and class-consciousness of the peasants belonging to the Confederation"; another aim was to ensure that the agricultural workers were given "ideological and political training compatible with the new responsibilities shouldered by the organisation".

272. Certain farmers who owned small or medium-sized farms, when interviewed, referred to the organisations affiliated to the two confederations, and said that these organisations had stirred up artificial disputes with a view to taking over farms and converting them into communal settlements. The fact that farms were frequently taken over was also mentioned by the leaders of other agricultural workers' federations which are still operating and which have different political leanings. These leaders maintained that during the Popular Unity regime they had maintained good relations with the employers, and that, as distinct from the other organisations, their aim was not to take over rural property. Nevertheless, according to a labour inspector who was interviewed, the taking over of farms was at that time a very common practice.

273. As regards the funds which federations and confederations normally received from the Department of Labour, as explained above, the difficulties experienced by the Ranquil Confederation and the United Confederation of Workers and Peasants did not appear to have been shared by other organisations, such as the Peasant Confederation "Liberty" an official of which said that the first two confederations had flourished with the support of the authorities under the previous régime, to the detriment of the other agricultural organisations. Similar information was given by the "President Frei" Provincial Federation of Agricultural Workers, of Cautín, which is affiliated to the confederation known as the "Peasant Triumph" Confederation. According to information provided by organisations belonging to this confederation and the Peasant Confederation "Liberty", the position with regard to funds was different at the level of the communes, where the agricultural unions were in difficulties, since it frequently happened that employers failed to remit, as required by law, the trade union dues deducted from their workers' wages.

274. The Commission mentioned the difficult financial position of the Ranquil Confederation in talks with the Minister of Labour. The latter, referring to the education funds provided for in the agricultural unions' laws, said that as regards the agricultural unions, such difficulties were widespread and that consideration was being given to the problem of the distribution of trade union extension funds. The Minister added that the Government would allot such funds to technical and cultural training, and to non-political trade union education. This would mean the setting up of a new training system which would cover all workers.

275. Leaving aside the agricultural sector, we shall now deal with certain action taken by the authorities with regard to two teachers' organisations, viz. the Single Union of Workers in Education (SUTE) and the National Association of Education Service Employees (ANESE). SUTE was set up mainly for the benefit of teachers, while ANESE catered also for auxiliary personnel employed in education. On 11 October 1973, the Government issued Legislative Decree No. 82, suspending the deduction of trade union dues for the benefit of SUTE, as provided for in section 3 of Act No. 17,515, and freezing 90 per cent of the organisation's funds. The penalty of 10 per cent, as stated, could only be used for essential administrative expenses. By virtue of this Legislative Decree, the Minister of Education appointed a take-over committee, to ascertain within 90 days whether the money spent by the organisation had really been used for the purposes for which the latter had been created. According to the information given to the Commission by the leaders of SUTE, the committee had still not submitted its report, and the organisation was no longer active. Furthermore, a Society of Teachers had been set up which - or so it seems from the information obtained by the Commission - would
replace SUTE. This body, according to the Minister of Labour, would be an occupa-
tional organisation, like those existing for lawyers and other professions. The
assets of SUTE would be transferred to the Society of Teachers.

276. As regards ANESE, the Commission was told that in November 1973 the
Ministry of Education declared that a seven-man board would be set up (three members
of the National Committee and four associates appointed by the Ministry) to
undertake an audit, make an inventory and suggest changes in the statutes and
regulations of the Association. This board was set up in December 1973, with the
additional task of directing and representing the Association. In March 1974, the
board submitted a report to the Ministry, and in June of that year, Legislative
Decree No. 517 was enacted. This latter stated that ANESE had carried on trade
union and political activities contrary to the regulations granting it legal
personality and contrary to its statutes. The management, administration and
representation of ANESE would therefore be taken over by a provisional board (six of
the present members plus three representatives of the Ministry of Education) with
terms of reference as laid down in the Legislative Decree. The Ministry would enact
regulations specifying, amongst other things, the procedure to be followed in
appointing the provisional board. According to the information given to the
Commission by leaders of the Association, these regulations had still not been
enacted, and in the meantime the Association was still represented by the seven-man
board set up in December 1973.

277. Certain problems, notably the granting of legal personality, were
brought to the notice of the Commission by leaders of the National Federation of
Textile Workers (FENATEX) and of the Industrial Federation of Building, Wood and
Building Materials (FIEMC). The leaders of FENATEX said they had complied with the
relevant formalities (assemblies of member-unions in the presence of labour
inspectors, certification of workers' length of service in their undertakings, etc.), but the authorities were demanding, too, that the leaders resign and be
replaced by an executive board made up of the three most senior workers, in
accordance with Legislative Decree No. 198. According to these leaders, it was
impossible to operate a federation in that way; their approaches to the Ministry
of Labour with a view to settling the problem had all proved fruitless. Furthermore,
since the organisation did not possess legal personality, it was unable to collect
union dues deducted under the check-off system, although previously it had been able
to do so, even though it was not officially recognised. The FIEMC leaders, too,
said they were unable to obtain legal personality for their association, the Regime,
enacted by the Ministry of Labour on 1 February 1974, had put a stop to the deduc-
tion of trade union dues. According to them, the premises of the federation had
been searched and the authorities had confiscated documents, office machines and
other property. The authorities had expelled the affiliated Ovalle and Concepción
unions from their premises. Elsewhere, as at Iquique and Valparaiso, neither the
union nor its leaders were able to collect union dues. The Commission interviewed
the leaders of the Valparaiso and Valdivia unions. In Valparaiso it was informed
that there remained two leaders, who, although recognised by the authorities, were
unable in practice to negotiate with employers. In Valdivia, according to some
workers, there remained a single titular leader and efforts were being made to
reconstitute the union, but the workers were afraid to organise.

278. Other information submitted to the Commission in connection with certain
organisations related in particular to the National Federation of Health Workers
(FENATS), the National Federation of Metal Workers and the Chilean Confederation of
Private Employees (CEPCH). As regards FENATS, the Government had supplied a
document signed by a labour inspector on 28 January 1974, according to which the
executive board elected in April 1973 was still functioning. Nevertheless, in
Circular No. 118 of the National Health Service (4 October 1973), all branches of
this service were informed that a new executive committee for the Federation had
been set up. The Commission arranged for an interview with these leaders of FENATS,
but it was only the executive board of the Federation which had told the Commission
that the 17 national leaders who had belonged to Popular Unity parties had been
relieved of trade union responsibilities; most of them had lost their jobs and been
arrested. These persons also said that the officers of the Federation of National
Health Service Professional and Technical Staffs had been removed as well. As
regards the National Federation of Metal Workers, the information provided by its
officers was to the effect that the premises occupied by the Federation had been
searched, but no evidence was found. As regards CEPCH, a special problem arose in connection with the headquarters of this organisation in which,
not present, certain departments of the Ministry of Labour are housed. These CEPCH
offices were in a building put up with the welfare funds instituted by law within
the fund known as the Private Employees' Fund. In this particular building, the Ministry of Labour had occupied several floors under the Popular Unity Government, while CEPCH and other organisations were on other floors. Use of these premises was free. According to the record of proceedings of a meeting of the National Council of CEPCH held in December 1974, the Minister of Labour said that free use of premises belonging to all private employees was unwarranted. He had ordered the Vice-Chairman of the Private Employees' Fund to require the Ministry of Labour (and of the Ministry of Health, housed in the same building as well) to pay a rent for the premises occupied. Hence, said the Minister, the other organisations, too, ought to pay rent for the offices used by them in that building.

279. Lastly, the Commission received information about the Single National Union of Chemical, Pharmaceutical, Laboratory and Allied Workers (SUTRAL), the Single Union of Workers in the Plastics Industry (SUTRAP), and the Single Union of Chilean Electricity Company Workers, all of which were defunct. To replace the last-named organisation, various other organisations had been created since 11 September 1973. According to statements made by the Head of the Trade Union Organisations Department, these organisations had been part of the exclusive unions created under the former government in undertakings or branches of activity where workers' organisations already existed but were not headed by persons belonging to Popular Unity parties. Such exclusive unions had been set up contrary to the law in force, and were intended as a means of exercising political control over the workers. As regards SUTRAL, especially, the Government stated that the officers of the bodies which had been incorporated therein were trying to reactivate the two existing federations, viz. the Federation of Laboratory Manual Workers and the Federation of Laboratory Employees.
DEATH AND EXECUTION OF TRADE UNION LEADERS

280. From the outset of the proceedings before the International Labour Organisation, the complainant organisations have continuously affirmed that large numbers of trade union leaders and militants died following the change of regime which took place on 11 September 1973. The Chilean Government has at no time denied this fact. On the other hand the parties hold opposing views on the question of the number of those who died and the reasons for their death. Before examining these matters, it is appropriate to examine the manner in which, and by what procedure, these deaths came about.

281. The Government of Chile has put forward the argument that the deaths and executions took place in application of the traditional legal system of the country. In fact, it has stated that the emergency legislation, promulgated on 11 September 1973 has its origins in the interpretation of article 418 of the Code of Military Justice which lays down that there is considered to be a state of war mainly ... "when a war exists in fact". It considered that the situation at that time was of such gravity that the state of "internal disturbance" which characterises this situation constituted a "state or time of war". Further, according to the Government, Legislative Decree No. 3 of 11 September 1973 provides by law that the state of emergency existed throughout the entire Republic, and, the Government pointed out, for the Junta to assume the role of Commander-in-Chief of the armed forces in a state of emergency. The same day, by Legislative Decree No. 4, the officers of the armed forces were appointed to take command of the various provinces and departments. On the following day, namely 12 September 1973, Legislative Decree No. 5 put into effect the measures adopted the previous day and authorised the military courts to function in circumstances which would permit the imposition of the penalties established for a time of war by the Code of Military Justice and the other penal laws. Subsequently, although Legislative Decree No. 641, published on 11 September 1974, put an end to the state of internal war and replaced it, for a period of six months, by a state of internal defence, Decree No. 640, published on 10 September 1974, laid down that the penalties provided for in time of war under the Code of Military Justice would continue to be applied under the new situation for so long as the state of emergency was maintained. Consequently, the lifting of the state of internal war in no way altered the previous system as concerns the application of the Code of Military Justice.

282. The Code of Military Justice provides that: "It shall be for the General Commander-in-Chief of the Army ... to exercise full military justice throughout the area occupied by the forces under his command." He may himself, and without any other form of judgment, punish any fault or abuse which he may consider insufficiently grave to constitute a crime; he may order anybody who is in his view responsible for a crime or offence to be proceeded against by the prosecutor, and order the setting-up of military courts; he may also approve, revoke or modify the judgments rendered by such military courts or order that they be carried out. The commanding general and the generals commanding army divisions or corps are also empowered to issue such proclamations as they think fit in the interests of the safety or discipline of the forces under their command. By Legislative Decree No. 8 (12 September 1973), the Junta delegated the above responsibilities to the commanders-in-chief of the army units. The Code of Military Justice provides that in wartime the prosecutor must, in principle, make his investigations into a case within 48 hours. The military court - whose verdict is final - is made up of seven

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1 The full text of article 418 of the Code of Military Justice reads as follows: "A state of war shall exist, not merely when war has been officially declared or a state of emergency proclaimed as by law prescribed, but also whenever war occurs in fact, or when mobilisation has been decreed to this end, even in the absence of an official declaration".

2 Section 74.

3 Code of Military Justice, section 77.

4 Section 180.
officers, one of them, the assessor, being a lawyer. Both the accused and the prosecutor are informed at once of the verdict, which is notified to the commanding officer concerned for approval or modification. As regards the right of defence, the Code entitles the accused to select defence counsel after the charge has been preferred and after the military court has been convened; if he does not do so, any lawyer whose name appears on a list drawn up by the College of Lawyers, may be entrusted with the defence; should he not be available, the prosecutor nominates someone else. The defence counsel is entitled to examine all the evidence available to the prosecutor and can collect such further evidence as he thinks appropriate for the defence of his client. He can also communicate with the accused, even if the latter is being held incommunicado. Apart from the provisions applicable to soldiers, the death penalty is prescribed for any person who brings about the death of a police officer acting in the course of his duties; and for any person who by fire, mine, bomb or explosive destroys a barracks, fortress, arsenal, military store, workshop or factory belonging to the armed forces. Legislative Decree No. 5 reinforces certain penalties provided for in Act No. 17,798 on arms control, and in the State Security Act. By virtue of this Decree, various crimes committed in wartime are punishable by death, notably attempts on the life or person of individuals with a view to disrupting internal security or intimidating the population. The Code of Military Justice lays down that in wartime, death sentences shall be carried out at once, whenever the commanding general or the local commander considers that the crime warrants swift and exemplary punishment.

283. These, accordingly, were the laws which the Government applied. The Commission received, in addition, much evidence and information concerning the functioning of the courts and the rights of defence before these courts. In one of the documents submitted as supporting evidence by the complainant organisations it is stated that the military courts passed sentences of death after very rapid, summary and secret proceedings. This document questioned the independence of these courts, adding that their verdicts are subject to no appeal or review. The Supreme Court stated, in fact, that it was not competent to receive appeals against the sentences pronounced by the military courts. The military authorities alone had the right to modify the penalty imposed by the court, both as regards its severity or as regards the reduction of the penalty. Some of the witnesses put forward by the complainant organisations, notably Mr. Insunza, who had been Minister of Justice at the time of the change of regime, maintained that, in proceedings before military tribunals, the accused enjoyed no guarantees; Mr. Insunza also cited the case of trade union leaders or former leaders from the Lota mine, condemned to death by a military court and executed, even though defence counsel was to have had an audience of the Commander-in-Chief two days later, to appeal for a change in the sentence.

284. The violation of the fundamental rules of the penal law was also referred to by certain witnesses, in particular the violation of the principle that laws should not be applied retroactively. On a number of occasions the Commission was told that the events referred to during trials had frequently happened prior to the legislative decree proclaiming a state of emergency. Certain informants affirmed that the more rigorous punishments laid down by legislative decree after 11 September 1973 for certain criminal acts had been applied retroactively. Finally, lawyers criticised the maintenance of a state of war and the competence of military courts. There was, they felt, no reason why the ordinary machinery of justice should not function normally.

285. As regards the general right of defence of persons brought before military courts following the change in regime, the Commission was told by one

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1 Sections 82 and 83.
2 Section 90.
3 Section 195.
4 Sections 183 and 197.
5 Section 184.
6 Section 416.
7 Section 350.
8 Section 240.
witness at its second session in Geneva that lawyers had been deterred by threats from defending the accused. In one particular instance in which trade union leaders were being tried, a lawyer was said to have been threatened with expulsion from Chile if he continued to conduct the defence. Several people encountered in Chile said that, a short time before the Commission arrived, the accused had for the first time been able to secure legal assistance.

286. In reply to this evidence, the Government stated, as regards the allegations concerning military court procedures, that the accused were judged by courts set up before the events invoked. The Court of Military Justice had been in force since 1926, and in its final version, had been adopted in 1948. On several occasions, the Government stated that it respected the autonomy of the judiciary and that the Supreme Court quite independently declared itself incompetent to consider appeals against the verdict rendered by military courts.

287. The Commission heard evidence that trade union leaders and militants had been executed or had been killed without there having been any proceedings before a court. Three types of procedure were described.

288. In information sent in by the complainant organisations it was also alleged that the Government was using the so-called Law relating to fugitives (Ley de Fuga) to eliminate prisoners who were later accused of trying to escape. Section 374 of the Code of Military Justice lays down that arms may be used against an escaping prisoner of war who does not obey a summons to halt. The complainant organisations and witnesses quoted several instances in which trade unionists lost their lives in circumstances such as these, in particular, Alejandro Flores Pérez, CUT Director in Cautín, and four leaders of the San Antonio Port and Maritime Workers' Unions.

289. The complainant organisations, in submitting this information, also affirmed that prisoners who suffered torture or other inhuman treatment during interrogation had died as a result. At the Commission's second session, a witness mentioned the case of Alfonso Carreño Díaz, a CUT leader for the Ranco area, who had died in circumstances such as these. Mention was also made by another witness at the same session of a former national leader of the Customs workers, Luis Sanguinetti Fuenzalida, who was said to have committed suicide after ill-treatment. When the Commission was in Chile, reference was made to the case (among others) of René Acevedo, a leader of the Valparaiso Building Workers' Union, who was said to have died after release (his body being badly mutilated). Mention was also made of Oscar Bega, a former leader of the Valparaíso Parra Federation (Atacama Province), affiliated to the United Confederation of Workers and Peasants, who was said to have committed suicide while detained in the Chacabuco camp.

290. Finally, according to other allegations, trade union leaders and activists have been executed without first having been brought to trial. Thus, one witness said that an agricultural trade union leader from Chillán, in the Province of Rancagua, had been arrested and shot on the very day the change of regime took place, without any judgment being pronounced against him. One document submitted by the complainant organisations referred to the case of Benito Tapia, Chairman of the El Salvador Miners' Union. In this connection, the Government has stated that Tapia was executed after the military prosecutor had pronounced sentence.

291. The Commission received, in addition, information concerning the reasons for the executions of trade union leaders. Certain witnesses stated that they were killed because they were union leaders. With regard to the leaders of the San Antonio Port and Maritime Workers' Unions it was alleged that they had been executed for having demanded compliance with collective agreements. Concerning the four people in question, one witness said that they had been killed while being transferred, having been falsely accused of trying to paralyse the port of San Antonio. The Government, on the other hand, several times stated that trade union leaders had never been arrested or condemned because of their trade union activities, but that a small proportion of trade unionists had nevertheless been brought to trial for offences committed by them or because they had been activists or terrorists. The Government also stated that, where trade union leaders had met their death or been executed, this was because they had committed criminal acts.

1 By a communication received on 15 April 1975 the Government stated that Alfonso Carreño Díaz was detained at the War Academy and was at the disposal of the Air Force Prosecutor.
against the regime or the common law, and that if certain trade union leaders had died as a result of ill-treatment during detention, such ill-treatment, supposing it were true, would have rendered those found guilty of such a crime liable to penalties.1

292. Finally, the Commission considered it important to find out the extent to which deaths or trade union leaders' executions had taken place after 11 September 1973.

293. The first allegations regarding the death or execution of trade union leaders were submitted to the Committee on Freedom of Association by certain complainant organisations. One of the latter, the World Federation of Trade Unions, had drawn up a list of trade union militants or leaders who, it claimed, had been executed or had died as a result of ill-treatment. The trade unionists in question had been active mainly in ports, mining, teaching and agriculture. At the Commission's second session in Geneva, witnesses brought forward by the complainants mentioned additional names. Some of the witnesses submitted lists of people, who, it was claimed, had lost their lives following the change of regime. The names submitted included those of the leaders of various trade unions, especially those active in ports, railways, customs, public health, agriculture and education. Other witnesses, however, put forward by the Government, stated that a number of the people referred to were at liberty, were under arrest, or had left the country. Various trade union organisations whose representatives were met in Chile supplied the Commission with the names of trade union leaders at various levels who, they stated, had been killed. In particular, 13 regional leaders of the United Confederation of Workers and Peasants had, it was said, been shot and a former national leader had committed suicide following ill-treatment. The National Confederation of Peasant and Indigenous Workers "Ranquil" mentioned the deaths of six of its regional and local leaders; the former general secretary of the Chilean Miners' Federation had been shot and five local leaders killed; the Industrial Federation of Building, Wood and Building Materials Workers claimed that two provincial chairmen had lost their lives after arrest; finally, the Single Union of Workers in Education sent in what it stated was an incomplete list of 14 teachers who had been killed (it was not made clear whether they carried out trade union functions).

294. The Commission received the names of trade union activists and leaders belonging to numerous trade union organisations who were said to have lost their lives after 11 September 1973. Among them were very senior officials of the trade union movement, such as an adviser of the National Council of the CNT and regional official of the CNT, and the national leaders or former national leaders of the Chilean Miners' Federation, the National Port Workers' Federation, the Dockers' Federation, the National Leather and Shoe Workers' Federation, the National Federation of Health Workers, and the National Confederation of Copper Workers.

295. The allegations of the complainant organisations concerning the death and execution of many persons, including trade union leaders, relate mainly to the period between 11 September and the end of October 1973.

296. As stated above, the Commission, at its second session in Geneva, had sent the Government a list of some 110 persons who, according to evidence submitted by the complainants, were among the trade union leaders or former trade union leaders who had been killed or executed.2 The Commission had requested the Government to supply information concerning these persons and, where applicable, submitting the circumstances in which they had died or had been executed, whether they had been tried and, if so, by what court. After the Commission arrived in Santiago, the Government supplied information about 57 of the persons in question; as regards the others, it said that the information provided was too incomplete for identification to be possible, and that there was no record of their being detained or executed. It also declared that certain of these individuals, including some whose deaths it confirmed, had not been trade union officials at the time of the change of régime. In addition, the Government sent further information regarding some of these persons in a communication dated 11 April 1975. From all the information supplied by the Government, it seems that about ten were executed after

1 See also Chapter 12.
2 This list, together with the Government's comments, appears in Annexes 1 and 2.
sentence had been passed by a court-martial or military prosecutor. Such had been the case, for example, concerning Ricardo Hugo García Posada, former head of the CUT Technical Department, Benito Tapia, leader of the El Salvador Industrial Union, Bernabé Cabrera, leader of the Lota Coalworkers' Union, and Isidoro Carrillo, a former miners' trade union leader, former mayor of Lota and General Manager of the National Coal Enterprise. Nine were stated to have been killed in clashes with the armed forces, among them, Luis Almonacid Arellano, General Secretary of the CUT for O'Higgins Province (it had been alleged that he had been killed while his home was being searched). Another case was that of Juan Martínez, a former leader in the Leather and Footwear Workers' Union. Thirteen others were said to have been killed, either in trying to escape from where they were being held, or when the vehicle carrying them had been attacked. The four leaders of the San Antonio Port and Maritime Workers' Union and A. Flores Pérez, CUT Director for Cañon, were also said to have died in circumstances such as these. Nine of these persons had not been executed, but sentenced to imprisonment, detained or exiled. That was the case, for instance, of Osvaldo Tello. In addition, a member of the Commission, while in Chile, was able to meet three of the people concerned, namely, Iván Gordillo Hitschfeld, Pedro Cornejo Fernández and Ethiel Moraga Fuentealba, who were being held in Antofagasta prison, the Tres Alamos camp, and Ritoque respectively. Twenty-two other people, it was said, were at liberty some having left the country of their own accord, another having been expelled. Amongst these were Marcial Cortés Monroy, a former leader of the Chilean Confederation of Private Employees, Orlando Moraga, a leader of the Caltones Industrial Union (El Teniente) and Luis Rojas Valenzuela, CUT General Secretary in Arica. As regards the 60 or so other persons shown in the list, the Government said that there was no record of their being detained or executed, or else that they could not be traced because the information submitted was inadequate. Amongst the former were Ceferino Santis (said by the complainants to have been a CUT official and national leader of the textile workers, Alejandro Rodríguez, a former leader of the National Confederation of Copper Workers, and Víctor Serega, who according to the complaints, had been a member of the CUT Executive Committee. The 33 persons whose deaths were confirmed by the Government had been, according to the complainants, trade union leaders of organisations representing the workers of a dozen different industries, notably ports and shipping, mining, public health and the railways. Six of them had exercised responsibility at various levels of the CUT. All of these persons died between 11 September and the end of November 1973.

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1 One other person, Juan Jiménez, a leader of the CORPO Workers' Association, whose name appeared in the list of detainees supplied by the complainant organisations had, according to the Government, been killed while trying to escape.

2 The Government likewise refers to David Miranda, said to be held at Ritoque. It seems that the information supplied with regard to this trade unionist in fact relates to somebody of the same name. A relative confirmed, for the Commission's information, that David Miranda, former General Secretary of the Chilean Miners' Federation and Director of Industrial Relations at the Chuquicamata mines, had indeed been shot at Calama on 19 October 1973. According to some information, he was executed although he had been condemned only to five years' imprisonment.
297. The complainant organisations alleged that there had been mass detention of trade union leaders in Chile since 11 September 1973. In reply, the Government stated that it had not detained or persecuted trade union leaders, but extremists guilty of illegal activities. As regards the various leaders mentioned in the complaint, including those of the Single Central Organisation of Workers (CUT) and the Permanent Congress of Trade Union Unity of Latin America, the Government supplied information to the effect that some of these sought refuge in foreign embassies and that others are free. Various documents and statements by witnesses submitted by the complainant organisations contain new allegations concerning the detention of leaders, former trade unionists, and militant trade unionists belonging to the CUT, the agricultural sector, the National Health Service, and the metalworking, mining, shipping and teaching sectors, in many cases including the names and trade union functions of the persons concerned. The witnesses who gave evidence on behalf of the Government stated that some of these persons were free and gave known or presumed reasons for the detention of others. Finally, during its visit to Chile, the Commission heard many statements and received written information on the matter and its members had talks with 18 detainees.

298. According to these various sources, several leaders who had held office on the national executive of the CUT at the time of the Popular Unity Government were still detained in December 1974. The persons in question were Polidoro Morales, Alejandro Alarcón, Rolando Vásquez, Pedro Cornejo Fáñez and Luis Salazar, who were arrested in September and October 1973, and Rodemil Yánez and Mario Navarro, arrested in August and October 1974, respectively. It was also alleged that many provincial and local leaders of the CUT had been arrested, 18 of whom were still detained or undergoing sentences of imprisonment or exile in December 1974. The Commission was informed that of the five national federations of agricultural workers, the two with the largest membership in 1973, namely the National Confederation of Peasant and Indigenous Workers "Ranquil" and the United Confederation of Workers and Peasants, had seen many of their leaders at all levels arrested. The presidents of both federations had been arrested and then released shortly after the change in government. The Commission was informed by trade union sources about the imprisonment or exile of six leaders of the United Confederation of Workers and Peasants and about the detention without trial for three months or more of another 40, 19 of whom were still detained in 1974, including 7 who had been offered their freedom if they agreed to leave the country. The Commission was also informed of the detention of about 25 leaders of the Ranquil Federation; most of them had been released after some time, but others had remained in detention for over a year. Other additional information included a statement that at the provincial level of those two federations, 9 of the 11 members of the executive committee of the El Progreso Federation of Talca, affiliated to the Ranquil Federation, had been detained and subsequently released, and that the president had been arrested again in August 1974 for 24 days.

299. Other national organisations some of whose members had been arrested included the National Federation of Health Workers (FENATS). Twelve of its national leaders prior to the change of government were detained for short periods and 3 for over a year; the Chilean Miners' Federation, 5 of whose national leaders had been detained for several months, one of them sentenced to prison and its President, Alamiro Guzmán Ordones, detained since September 1974; the Industrial Federation of Building, Wood and Building Materials for which information was received concerning the detention of 2 national and 10 provincial leaders; the National Confederation of Copper Workers, 11 of whose leaders had been detained; the Single Union of Workers in Education (SUTE), 7 of whose leaders in various parts of the country had been detained; also the National Federation of Metal Workers', the Industrial Federation of Railway Workers and the National Federation of Textile and Clothing Workers. The Commission was also informed of cases of detention for various periods of leaders in other sectors, including the former President of the Maritime Confederation of Chile, Alfredo Montecinos.

According to additional information transmitted by the Government in April 1975, Polidoro Morales had been freed and Luis Salazar was conditionally at liberty.
300. Various sources stated that it was difficult to indicate the number and names of all the leaders of works unions who had been detained at one time or another since 11 September 1973. During the visits made by members of the Commission to establishments in various parts of the country, the representatives of some of the unions there stated that one or more of their leaders had been detained but in most cases had been released again; some of the latter were still carrying out their trade union functions. The representatives of some of the other works unions stated that none of their leaders had been detained.

301. According to information from various sources, most of the arrests took place during the four or five months following 11 September 1973.

302. The Commission heard allegations of a general nature regarding certain aspects of these detentions which concern basic human rights. The witnesses produced by the complainant organisations during the second session of the Commission, particularly Mr. Insunza, and persons heard by the Commission in Chile, stated that many detentions had taken place without respect for the guarantees provided for in the national legislation and in international instruments on human rights. According to these statements, many arrests had been carried out on the basis of simple assumptions or groundless denunciations, or as reprisals for past activities of the persons concerned. For example, reference was made in the latter respect, regarding the rural sector, to trade union activities in support of property expropriations. Many of the statements referred to the fact that it had not been possible to ascertain immediately the certainty for arrest or place of detention, nor to identify the authorities responsible. Mention was made in this connection of the "disappearance" of some of the detainees, including trade union leaders. According to many statements, including those of detainees' relatives, the authorities responsible failed for some time to provide information on the whereabouts of the detainees, or were unable to do so. Regarding the arrests which took place in 1974, one source stated that the "disappearances" had lasted from one to eight weeks. Some of the persons heard by the Commission stated that during these periods the detainees had been questioned and ill-treated by various investigation or intelligence services before an order for their arrest had been issued. The Commission was also informed that pending the initiation of legal action, the detainees had not been allowed to consult a lawyer and that the "amparo" procedure (habeas corpus) which they could normally have invoked to put an end to arbitrary detention had lost all effect due to the interpretation placed by both the governmental authorities and the Supreme Court on the legislation relating to state of siege.

303. The Chilean authorities and particularly the Ministers of Justice and the Interior and the Under-Secretary for War insisted that no trade union leader had been arrested for trade union activities, but for offences such as the illegal possession of arms, participation in confrontations with the armed forces, or because they were extremists. The Under-Secretary for War stressed that real warfare had taken place in the country and that some of the persons described in the complaints as being trade unionists had belonged to armed groups. The Minister of Justice stated that many of the arrests were necessary to prevent terrorism. The Minister of the Interior said that there were two categories of detainees: those who had undergone or were awaiting trial and those who had been arrested on account of the state of siege since they constituted a threat to national security. The persons accused of common law offences appeared before ordinary courts and those detained for violation of laws relating to State security before military courts. Regarding the latter point, the Minister stated out that it is not always possible to initiate legal proceedings immediately as the investigations are lengthy and difficult and the number of arrests had been very large. The Minister stated that those persons who were arrested under the state of siege and who were not considered by the authorities to be a serious threat to national security had been released; but that the others were detained in special establishments designated provisionally by the authorities and different from the prisons used for common law offenders. The Minister also referred to action taken by the Government in consultation with the International Red Cross, the National Committee for Assistance to Refugees (CONARE) and the International Committee for European Migration (ICEM) to enable some of the detainees to leave the country. The Minister stated that of all the detainees arrested during the state of siege a few more than 740 were still in custody; of the first 100 persons who were offered an opportunity of leaving the country 92 had agreed to the proposal, 4 had been released and 2 wished to stay in the country.
304. The Chilean authorities referred to the provisions of Article 72 (17) of the national Constitution to the effect that in the event of declaration of a state of siege the President of the Republic shall be entitled to transfer persons from one district to another or to detain them in their own homes or in places other than prisons or other places for the detention of common criminals. It should be mentioned in this connection that by various legislative decrees issued in September 1973 following the declaration of state of siege, the Government delegated to the military commanders of various areas that the country the exercise of certain powers provided for in the Code of Military Justice and the State Security Act, concerning the maintenance of security and order in the event of war or emergency. Legislative Decree 228 of 3 January 1974 provides that the powers invested in the President of the Republic by the aforementioned article of the Constitution would henceforth be exercised by the governmental junta through decrees signed by the Minister of the Interior. This same legislative decree provided that the detention measures introduced previously by the competent authorities in this manner and the exercise of these powers were in accordance with law and made the Ministry of the Interior responsible for establishing standards regarding the application of the measures.

305. The President of the Supreme Court stressed that all constitutions contain provisions for exceptional situations. He stated that some 3,000 appeals under the "amparo" procedure had been submitted to the judicial authorities since 11 September 1973, only one or two of which had been accepted. The remainder had been rejected on the grounds that the arrests had been ordered by the executive power on its own responsibility, under the legislation in respect of state of siege or because some applications had been presented on behalf of persons who, according to the competent authorities, had not been detained. He added that the Supreme Court had acted in the same way in 1924 and 1932, under similar circumstances, and that its decisions were in accordance with the legislation in force.

306. Regarding the allegations that detainees had been ill-treated, the witnesses presented by the complainant organisations and particularly Messrs. Calderón, Godoy, Prieto and Dr. Jadresic, who had been detained before leaving the country stated that detainees including many trade union leaders had been subjected to various forms of physical or psychological pressure, especially in various places where interrogations were carried out by personnel of the armed forces and in places of detention such as the Chile Stadium and the National Stadium in Santiago. Dr. Jadresic said that he knew that some trade union leaders had been ill-treated in two ships which had been converted into prisons. Some of the witnesses referred to cases of persons who had died or suffered serious injuries as a result of ill-treatment.

307. Many of the trade union leaders who had been imprisoned and who were interviewed by the Commission in Chile stated that during the interrogations which they had undergone at the beginning of their detention, they had received blows or other forms of ill-treatment such as burns and electric shocks. Some said that they had been blindfolded during interrogation and that the psychological pressures had included the ill-treatment of or threats to members of their families. According to these statements, the persons carrying out the interrogations had on several occasions put questions regarding the activities of certain political parties or left-wing movements, the possession of arms or para-military activities, the activities of other persons and trade union activities. The Commission was informed that some of this ill-treatment had been inflicted in the course of the proceedings instituted by the military attorney-general's office; other cases concerned detainees who had not been charged. Some of these leaders said that they had not heard any reply for a long time after they had been interrogated regarding their own situation and that of their families, in the prisons and other places of detention to which they had been moved and where they still were at the time of the Commission's visit.

308. Some persons from trade union circles and others not belonging to these circles nor to the Government referred to the severity of the new authorities during the period following the events of September 1973. In this connection, some of these persons stated their conviction that the ill-treatment could not have been the result of orders given by senior governmental officials nor by senior officers of the armed forces, but more probably this resulted from action taken by persons of more junior status as a means of obtaining information or confessions during the preliminary interrogations. Others stressed, however, that the lack of guarantees had facilitated such abuses.
309. The Minister of the Interior told the Commission that there had been considerable exaggeration regarding the torturing of detainees. They had undergone medical examinations on entering and leaving the place of detention and those who were sick had been detained in military hospitals. He also referred to statements made by the Head of State concerning sanctions which would be applied to persons found responsible for such acts. In this connection, the Commission was shown the text of information published in a Chilean daily newspaper on 21 May 1974 to the effect that the Head of State had said with reference to certain statements by the Chilean bishops that in his opinion such statements tended to generalise isolated cases and that when some junior officers of the armed forces had been accused of excesses the necessary action had been taken; "some members of the national institutions had been punished in accordance with the law". Moreover, according to this article, the Head of State had pointed out that the statements had been preceded by another text in which the statements made had been placed in the setting of a chaotic and war-like situation.

310. Some of the cases referred to military courts involved strike action as will be seen later when this question is dealt with.

311. According to statements made to the Commission, in Chile, by detained trade union leaders, cases were generally referred to the military courts when investigations disclosed acts of violence or violations of penal laws. When there were no such factors to justify a charge, some persons were kept under arrest, something for long periods, while a charge being brought against them. According to the same statements, the trade union leaders detained were generally active in the parties which were Popular Unity supporters.

312. In most of the cases in which the Government provided information regarding action against trade union leaders, the grounds for action were violations of Act 12,927 of 1958, concerning state security or Act 17,798 of 1972, establishing arms control. The former contains penal provisions in respect of acts such as revolt against the government in power, the organisation of private militias or combat groups or similar bodies, the propagation of ideas designed to destroy or overthrow by violence the established social order or the republican and democratic form of government, the destruction or stoppage of services such as the power or water supply, stoppages or strikes in public services or public utility services, or in the activities of industry, transportation or trade, which take place without respect for the law and which affect public order or cause disruption of the public utility services or compulsory services or damage to any of the vital industries. Act 5 of 22 September 1973 provides that in time of war these offences shall be a matter for the military tribunals and, as has already been mentioned, increases the penalties for some of them and some of the penalties foreseen in Act 17,798. The latter prohibits the ownership or possession by private persons of certain types of automatic weapon, explosive devices and other equipment specified and orders the registration of other types of weapon. In addition, the Act establishes penalties for persons who organise, train or encourage the creation and use of private militias or combat groups or similar bodies, organisation or military lines, armed with any of the items indicated. The penalties are applicable to the owners of arms stores, inhabitants of places at which they are located and the persons who provide the premises serving as stores. Generally speaking, the Act makes the military courts responsible for such offences. As already mentioned, during the "war conditions" up to September 1974 and during the state of siege declared for "purposes of internal security" from that date onwards, the summary procedure established by the Code of Military Justice of 1926 for military courts in time of war has been in force.

313. For example, a lawyer provided the Commission with information concerning the application of this procedure in the case of a trade union leader who was accused, along with political leaders, of having participated in a plan designed, according to the accusation, to eliminate adversaries of the previous government. The charges were said to refer also to the organisation of the socialist party, plans to obstruct the gendarmerie and possession of explosives. According to this information, the facts to which the accusation referred had taken place before 31 September 1973. The evidence presented by the prosecutor consisted of confessions which might have been obtained in an improper manner. The Commission was informed that the defence counsel's request that the evidence be produced in court and not merely before the prosecutor, was rejected. Other criticisms heard by the Commission concerning military procedure in time of war related to the short time available to defending lawyers to prepare the defence, the lack of freedom of expression during the hearing, the lack of an appeals procedure and the fact that the legal arguments did not appear to have been duly taken into account by the councils of war. Regarding the power of military commanders to modify the sentence,
a lawyer quoted a case in which a defending counsel had obtained the commutation of the death sentence on a trade union leader accused of various offences; in order to achieve this, he had based his petition on humanitarian considerations rather than on truly legal arguments which, in the defence's opinion, would also have been effective in the course of normal procedure.

314. Mr. Kirkaldy interviewed in Rancagua prison two trade union leaders who had been sentenced to imprisonment: Daniel Mondaca Galvez, who was president of the Occupational Union of Private Employees of the El Teniente Mining Company of Santiago, and Miguel Angel Lee Urzua, former secretary of the El Teniente Occupational Union of Employees of Rancagua and treasurer of the National Confederation of Copper Workers. Both were militant socialists by their own admission. The former stated that he had been sentenced to three years' imprisonment under the Arms Control Act following the discovery of two or three revolvers and a machine gun on a work site and since then, for another reason, to a much heavier sentence which still was not confirmed, in connection with the formation of a para-military group and its participation in the shooting which took place prior to 11 September 1973 between a group of persons in the offices of the Socialist Party of Rancagua and workers of the El Teniente mine on the occasion of a strike. The other detainee said that as one of the persons present in the party offices he had been accused of possessing arms and had been interrogated on that subject as well as on his participation in the shooting already mentioned; he was also accused of instigating the setting up of a guerilla school. He was sentenced to nine-and-a-half years' imprisonment but the sentence was under consideration by the commanding general of the area.

315. Mr. Ducoux had a meeting in Antofagasta prison with Ivan Cordillo, who had been regional secretary of education of the CUT in Antofagasta and was sentenced to 20 years' imprisonment on the grounds that he had been an agitator in the industrial cordons, and Luis Bravo Aranguiquez, former president of a workers' union in that town, affiliated to the Milling Federation, who was sentenced to three years' imprisonment and five years' forced residence following trial for participation in the seizure of an enterprise and the illegal possession of arms.

316. Regarding detainees who had been informed of the charges against them but who were still awaiting trial, Dr. Bustamante i Rivero interviewed two trade union leaders in Isla Teja (Valdivia) prison: Mario Fuentelba Caceres, former president of the Single Union of Neltume in the Woodworking Industry in Panguipulli, and Mario Antonio Madrid Munoz, former president of the Industrial Trade Union of the INMAR plant in Valdivia. The former was arrested on 27 September 1973 in connection with an attempted attack on a police unit and the second on 23 September 1973 for having taken part, prior to 11 September 1973, in a political education course which included, according to the person concerned, political and trade union matters and some theory of a military nature in preparation for the time when the workers might have to defend themselves. The local authorities stated that these two persons could receive visits from their lawyer and members of their families only, but permitted the interview at the request of the Chairman of the Commission in view of the facilities which had been granted to the Commission by the Government.

317. Dr. Bustamante i Rivero and Mr. Ducoux had interviews in Santiago prison with Eduardo Rodriguez Moya, director of the National Leather and Shoe Workers' Federation until 1972 and subsequently managing director of a factory, who stated that he had been prosecuted after the factory was occupied by the air force during the events of September 1973 and 15 small pistols found. These had been purchased for the protection of the factory drivers who sometimes had to transport money. According to this witness, other objects which were claimed to have been found on the spot had been taken there at that time by persons not belonging to the factory.

318. The members of the Commission also spoke to other trade union leaders, some of whom had been detained since the change of Government, and against whom no criminal proceedings had apparently been initiated. Emilio Cisternas Pena, head of the Confederation of Teachers of Concepcion, Jose Salinas Montecinos, secretary-general of a communal union of agricultural workers and provincial adviser of the CUT in Curico, and Ethel Moraq Fuentelba, former president of the Industrial Trade Union in the Sewells Plant and national director of the National Confederation of Copper Workers, were arrested in September or October 1973 and questioned regarding suspected possession of arms and explosives, or plans to assassinate opponents of the former government; Emilio Cisternas also stated that he had been questioned regarding his activities in the CUT. Norman Gamboa, national director of health workers, and
Pedro Cornejo Pañán, who had been a member of the national managing council of the CUT, who had been detained since September and October 1973, said that, in their opinion, they had been arrested for their normal trade union activities and that they had never been notified of any change, a situation shared by other trade union leaders who had been Popular Unity supporters. Alamiro Guzmán Ordenes, who had been exercising his functions as president of the National Mining Federation when he was arrested in September 1974, said that he had been questioned about his contacts with leaders of the Communist Party, instructions received from them for the holding of union meetings throughout the country, and conversations with various federations in connection with the preparation of the memorandum for submission to the ILO and the Minister of Labour requesting recognition of the right to strike and to bargain collectively. Claudio Alemany González, leader of the teaching sector, who was arrested in October 1974, said that he had been arrested in connection with the possession of a car which, according to the authorities, belonged to the Communist Party, a statement which had proved to be debatable; according to him, he had been questioned regarding his trade union activities prior to 11 September 1973. Jacinto Nizar and Jorge Montes Moraga said they had not been trade union leaders when they were arrested in July 1974. The former had been a member of the rural commission of the Communist Party and had collaborated with the Ranquil Federation in the organisation of rural workers; the latter had been spokesman for the Communist Party since 1957; they both stated that they had been questioned regarding activities of a political nature.

319. The Commission was informed by the Government or by the persons concerned that some of the detainees were on a list of persons who would be released provided that they agreed to leave the country. These included Pedro Cornejo Pañán, Emilio Cisternas Peña and Norman Gamboa, mentioned above. The latter left the country a few days after meeting the members of the Commission. The Commission heard statements from various sources to the effect that this procedure placed the persons concerned before the alternative of detention for an indefinite period or the abandonment of their own country, with all the problems which the latter choice involved, including the question of work. In these circumstances the said sources questioned the value which could be attributed to the consent obtained from those involved. The authorities stated that they had discussed the application of this procedure with representatives of the International Red Cross Committee, the Intergovernmental Committee for European Migration and the National Commission for Assistance to Refugees.

320. The annex to this report contains information supplied by the Government of Chile concerning the list of approximately 120 trade union leaders or former leaders who figure amongst those whose arrest had been alleged by the complainant organisations and which, as has already been mentioned, had been transmitted to the Government by the Commission during its second meeting. As reported in the preceding chapter, the Government also informed the Commission, on the basis of the list which had been presented, that some of the trade union leaders who were supposed to have died were detained or had been sentenced to imprisonment or were exiled.

321. Out of approximately 230 leaders or former leaders shown on these lists the Government, while indicating that some were not leaders or were not recorded as such, stated that 54 (consisting of 11 who were supposed to have died and 43 to be detained) had been sentenced to imprisonment or were banished, or were detained pending trial, or held under the state of siege, or were confined to certain areas.

322. The Government stated that of the 54 persons, 13 had been sentenced to terms of imprisonment for violations of the Act respecting State security or arms control. In the case of Luis Contreras who, according to the complainant organisations, was organiser secretary of the CUT in the province of Talca, the Government said that he had been arrested on 11 September 1973 for an attack on a police unit together with a terrorist commando. They had been accused of violence against police who were on duty (causing death), the theft of war materials and violation of the Arms Control Act, and had been sentenced to life imprisonment. The other persons belonging to the group had been sentenced, according to the information provided by the Government, to 500 days of imprisonment in one case, 3 or 5 years in several cases, 12 years in the case of Francisco Alarcón, under-secretary of the CUT for the province of Magallanes, and 20 years in that of Iván Gordillo, CUT leader in Antofagasta.

323. The Government stated that six of the persons arrested had been banished to various parts of the country, adding that in several cases banishment had been ordered by a military court or as the result of action taken under military law for violation of the State Security Act.
324. Also according to the reply from the Government, another seven had been charged and were being held pending trial.

325. In 19 cases, the Government stated that the persons had been arrested under the State Security Act or legislation respecting the state of siege or, in one case, for being "an anti-social element" but did not indicate whether trial action had been initiated against them.

326. The Government also stated that in nine cases the persons were confined to certain areas and that most of them had been moved to places other than their normal place of residence.

327. Finally, with reference solely to the 120 or so leaders or ex-leaders appearing as detainees on the list submitted to the Government, the latter informed the Commission that 43 were detained, as already stated above one was conditionally at liberty and 48 were, or had been, freed, some of whom having left the country voluntarily or following their liberation. Twenty-three did not appear as detained or executed, and in certain other cases the information provided was inadequate to permit the persons concerned to be traced or identified.
328. In various allegations and in supplementary evidence, the complainant organisations referred to the dismissal of trade union leaders, and to breaches of legislative provisions designed to prevent abuses of this kind, which are contrary to freedom of association. According to these allegations, the aim of these dismissals and other similar action described below was to get rid of a large number of trade union leaders who belonged to certain political groups and who had been active in the defence of the workers' interests. Repeated references were made to Proclamation No. 36, which authorised the dismissal of workers classed as extremists or agitators and to Legislative Decree No. 32, according to which, in the event of dismissal for any of the reasons set forth therein, the provisions relating to trade union freedom contained in sections 10 and 11 of Act No. 16,455 (i.e. the need to get prior permission from the courts before dismissing trade union officials) would not apply. It was alleged, too, that Legislative Decree No. 32 punished with dismissal such activities as involvement in collective disputes which had occurred before the change of régime, and failure to turn up for work because of arrest. As regards employees of the State or state-owned undertakings, it was affirmed that by virtue of Legislative Decrees Nos. 6, 22 and 98, which declared that such persons were to be considered as temporarily employed only and which announced that the civil service was to be reorganised, trade union officials were dismissed without restriction.

329. By a letter dated 28 January 1974, the World Federation of Trade Unions supplied a copy of Circular No. 243 from the Ministry of the Interior to the governors of provinces and districts. This stated that, as an interim measure, the executive committees of certain community organisations, including the so-called Juntas de Vecinos and the gremios (this latter expression does not include trade unions subject to labour law but does include associations of employees in the public sector) would remain in office for two years from 1 October 1973, unless the governor considers that they ought to be replaced in whole or in part, in which event the members of the organisations concerned would submit a list of candidates whose appointment the authorities could accept or reject. Furthermore, this same circular for the Ministry of Labour will propose the replacement of trade union executive boards which have been militant in support of political parties now outlawed. Subsequently, the complainants supplied a copy of Circular No. 51, issued by the Ministry of the Interior in March 1974, interpreting Legislative Decrees Nos. 6, 22 and 98 and explaining that the idea behind them had been to get rid of Marxists in the civil service. Generally, too, it was alleged that because of the changes which had taken place in the country and the action taken by the new Government, many trade union officials had been obliged to give up their union posts and leave the country. Others had been forced to leave their homes and no one knew where they were. This was the case, in particular, of the officials of the provincial and local organisations affiliated to the Ranquil Confederation and the United Confederation of Workers and Peasants, and to trade union officials in the building industry.

330. Information of a more specific kind related to the dismissal of trade union officials active in certain branches of the economy or in certain trade unions. Thus, the Trade Unions International of Chemical, Oil and Allied Workers alleged that more than 60 per cent of the national officials, together with some local officials, of the Single Union of Workers in the Plastics Industry (SUTRAP) had lost their jobs. It was likewise said that in November 1973 the chairman, the secretary and one member of the executive committee of a union of Santiago parking-lot employees had been dismissed.

331. The Government declared that no specific action had been taken against trade union officials as such, but only against workers guilty of certain kinds of offence. It added that 75 per cent of the trade union leaders still held their offices. In additional information supplied on 10 September 1974, the Government said that only a week after taking over, the Junta had, in Proclamation No. 36, appealed to the workers, explaining the chaotic situation the country was in and the measures that were needed to surmount it. The Proclamation had called on people to

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1 See the note to paragraph 213.
go back to work, explaining that any dismissals would be made according to the law, and emphasising that all true workers would be welcomed back. The Government also emphasised that the reasons for dismissal set forth in Legislative Decree No. 32 (4 October 1973) referred more specifically to illicit activities already penalised under Act No. 16,455 and other enactments, similar to the legislation existing in other countries; Legislative Decree No. 198 (29 December 1973) had been enacted for the settlement of certain problems which had arisen within the trade union movement, and fully respected trade union rights. The Minister of the Interior told the Commission, during the latter's stay in Chile, that the afore-mentioned Circular No. 243 had been issued because under the previous régime the trade union movement had been excessively political in character; however, that circular had been replaced by Legislative Decree No. 198. Circular No. 51 had been issued in reason of the need for staff cuts in an over-manned civil service, in which many people had been devoting all their time to political activities. Only those guilty of violence or of resistance to authority had lost their jobs, and other circulars had made it plain that nobody was to be dismissed for his political ideas alone. The Minister referred, as well, to Legislative Decree No. 534 (22 June 1974), laying down criteria for staff cuts in state-run services, institutions and undertakings.

332. Before proceeding further, it may be useful to consider in greater detail the changes introduced by various enactments promulgated after 11 September 1973 as regards the special protection against unwarranted dismissal extended to trade union officials under Chilean legislation. By virtue of section 11 of Act No. 16,455 (1966), the workers concerned, i.e. staff delegates, trade union leaders and officials, and candidates for such posts, cannot be dismissed without prior permission from the Ministry of the Interior. This provision applied only if the conditions governing justified dismissal, as set forth in the Act, are met. Should he decide against dismissal, he must order the immediate reinstatement of a suspended trade union leader; in exceptional cases, should circumstances so dictate, he may approve the dismissal, with payment of suitable compensation and allowances up to the end of the period of security of tenure, i.e. as regards the trade union officials referred to in section 379 of the Labour Code, for up to six months after cessation of trade union duties, unless dismissal follows flawlessly from the facts of the case. Furthermore, the special protection against unwarranted dismissal referred to in section 100 of the Civil Service Regulations guarantees security of tenure during the holding of trade union office and for six months thereafter for officials of the National Association of Public Employees (ANEF), the National Association of Employees of State-controlled Undertakings (ANATS), the Single Union of Workers in Education (SUTE), and the bodies affiliated to ANEF and ANATS. Proclamation No. 36, applicable to all state undertakings, productive activities and services, which authorised the dismissal of extremists, saboteurs, delinquents, activists and agitators, contained no reference at all to trade union immunities, although it did lay down that dismissals must be made in accordance with legislation enacted or to be enacted. According to information gathered by the Commission, this proclamation remained in force in the private sector up to the promulgation of Legislative Decree No. 32 (4 October 1973). The new reasons for dismissal listed in the latter were worded in such a way that dismissal could be carried out because of events which had happened previously. No limit was set to the retroactive effect. The Legislative Decree also laid down that in such circumstances, trade union immunity could not be invoked, and set up special tribunals to consider complaints lodged by anyone dismissed after 11 September 1973 - that is to say anyone, including trade union officials - provided that should an appeal be accepted, the person concerned should at once be reinstated, although it did make provision for settlement by agreement between the parties, in which event the decision has to be ratified by the special tribunal. Legislative Decree No. 198 (29 December 1973) laid down that Act No. 16,455 ("as subsequently amended", which would seem to cover the clause in Legislative Decree No. 32 on withdrawal of trade union immunity in cases of dismissal for any of the reasons listed in that enactment) applied to members of trade union executive committees, made up when necessary by inclusion of the most senior workers. As regards the judicial procedure to be followed, it was not until October 1974, when Legislative Decree No. 676 abolished the special tribunals, that trade union officials could once more appeal against dismissal or suspension to the labour tribunals in the normal way.

333. As regards exceptions made for the civil service and state undertakings, it should be pointed out that Legislative Decrees Nos. 6, 22 and 98 and Legislative Decree No. 193 (17 December 1973), setting up special commissions to consider appeals against dismissal, did not refer to section 100 of the Civil Service Regulations, concerning the security of tenure of trade union leaders. Moreover, Legislative Decree No. 369 (13 March 1974), applicable to community and functional organisations, i.e. to the gremios as well, authorised district governors, in
certain circumstances, to request the resignation of members of the executive committees of such organisations and to appoint replacements. Later, by Circular No. 214 (12 September 1974), the Ministry of the Interior reminded governors that the Civil Service Regulations recognised the existence of associations and organisations similar in character to the gremios in the public and semi-public sectors, and provided their officials with certain safeguards. In view of the fact that no enactment had specifically abolished or suspended these provisions, the Circular asked the authorities to give the requisite instructions to ensure that these rights were duly recognised. It added that under Legislative Decree No. 349, the terms of reference of the gremios in force on 11 September 1973 were prolonged until 1 October 1975. This Circular made no reference to the power previously bestowed on governors by Legislative Decree No. 349 to request members to resign.

334. At the Commission's second session, Mr. Moder, a government witness, said that with regard to dismissals based on Legislative Decree No. 32, it was for the special tribunals set up by that enactment to decide whether or not anything illegal had been done. In answer to a question put by the Commission, the witness said that as he saw it, the detention of a trade union official would not in itself provide adequate grounds for the assumption that anything illegal had been done which might justify dismissal. He did, however, say that he was not informed about any jurisprudence established by such tribunals. He added that in accordance with the Labour Code, one condition for holding trade union office was that the candidate should have no criminal record and should not, at the time of standing for office, be subject to proceedings. In Chile, a labour magistrate who had presided over a special tribunal said that the reasons given in the Legislative Decree as warranting dismissal related to acts of political extremism, such as the illegal take-over of undertakings, the destruction of material and illicit strikes. Furthermore dismissal simply because a worker had not - because of arrest - turned up for work would be a very typical instance of unwarranted dismissal.

335. According to statements made by this same magistrate, and by another who had been chairman of a special tribunal in another part of the country, Legislative Decree No. 32 made no change in the principle whereby the burden of proof lay squarely on the employer's shoulders. Even though the Legislative Decree laid down that decisions could be taken without a hearing, the worker's right to a defence was in practice guaranteed, and indeed the parties could appeal to the Supreme Court. In this particular respect, the government representative told the Commission that the Supreme Court had accepted an appeal and ordered the reinstatement of a trade union official dismissed by the Valparaiso Central Bus Company. With regard to the special commissions set up for the public sector by Legislative Decree No. 193, the Commission received information from various sources in Chile that the summary procedure followed by these commissions generally did not afford sufficient opportunity for the submission of evidence and proper review of cases.

336. Both at its second session and during its stay in Chile, the Commission heard many statements about the way in which dismissals had been carried out in practice.

337. The witness Mr. Figueras said that immediately after 11 September and before the issue of Legislative Decree No. 198, trade union officials suspected of holding left-wing ideas had been expelled from office and dismissed from their jobs. In Valparaiso, one of the first steps taken by the new director of the state-owned Chilean Port Enterprise was publicly (at a press conference) to attack those trade union officials who had failed to proclaim their support for the new authorities. Mr. Toro, and also three other national leaders of the Port Employees' Federation, had lost their jobs at the instigation of other officials in the same organisation.

1 See paragraph 213.

2 As regards action of this kind taken by the Government by virtue of the state of emergency, reference should be made to a verdict rendered by the Supreme Court in 1958, according to which a worker's absence due to a change of residence ordered by the authorities was not grounds for denouncing a contract of employment; it had to be proved that such change of residence was due to conduct for which the worker was to blame. (See J. Díaz Salas: Legislación Social, Volume IX, Santiago, 1960, p. 154.)

3 For further details about the procedures adopted by these special tribunals and commissions, see the Report of the Commission of Inquiry, op. cit.
who had also been appointed at the previous elections held in 1972 and, the witness felt, regarded themselves ever since 11 September as the victors. The witness Mr. Toro declared that as a result, the National Executive Committee had found itself without half its members. The Committee set about its task upon being recognised by the undertaking, i.e. without the holding of elections. According to these same statements, five of the nine leaders of the Valparaiso Port Employees' Union (the biggest organisation in the Federation), including the chairman, had been expelled; this had also happened to the chairman of the Iquique Association, while in San Antonio and Arica similar methods had been used. In this connection, the witness stated that between 20 and 30 September 1973, lists of persons dismissed had been issued, headed by the names of employees and workers' union leaders; no special reason was given. At the same time, although there were vague references to the needs of the undertaking or to the plight the country was in, as the witness saw it, it was enough to have been a trade union leader to leave oneself open to the charge of having been politically active, i.e. the charge brought against those dismissed. As regards appeals against dismissal, the witness said that on the announcement that an appeal to the management would be permissible, he had lodged his own, but had been careful not to turn up in person lest he be arrested. In any event, none of the people dismissed at the same time as himself had been reinstated. The witnesses Mr. Negino, Mr. Morris and Mr. Guzmán gave information about the dismissal of leaders of trade unions in the health services, the customs, and the metallurgical industry, respectively. Another witness, Mr. Velásquez, said that among the peasants, trade union leaders who had lost their jobs had been issued with a certificate stating that they had been dismissed for political reasons, or because their continued employment was a threat to the undertaking, and for that reason they had been unable to find work elsewhere.

338. Various government witnesses said that in their particular industries or organisations, there had been no dismissals as a punishment for political activities. Some of them, referring to particular trade union leaders deprived of office in their organisations, affirmed that this had been done because they had been guilty of illegal actions, as a result of which either they had been arrested, or had been punished by the executive authorities of the undertakings concerned, or had themselves decided to resign from trade union office, or had left the country. Thus, Mr. Rios Arias declared that nobody had been dismissed because of trade union activities, either in the shipping or in the port industry, although in this latter, according to information submitted, dismissal had in certain instances been pronounced as a punishment for offences provided for in the regulations governing public employment in Chile.

339. Another witness, Mr. García Reyes, said that in the branch of industry with which he was familiar, and more particularly in the FENSA concern, there had been no dismissals for trade union activities. On the other hand, he did say that trade union leaders who possessed arms and had used them as a threat, had been dismissed after 11 September. Under the People's Unity Government, the undertaking had been taken over by the authorities because of an illegal conflict promoted to that end by politicians and trade union leaders; after the take-over, the undertaking had manufactured arms. After 11 September, the undertaking had harboured anti-tank missiles among other weapons. The witness Mr. Seenz mentioned various irregularities committed in industrial undertakings taken over by the State under the People's Unity Government. Thus, the political activities of certain groups opposing the recruitment of technical staff belonging to other parties had disorganised production. These groups had actively encouraged indiscipline towards supervision and were also guilty of constantly stopping work so as to be able to attend political demonstrations. He stated that in the United Breweries Company, of which he was the manager, neither trade union leaders nor rank-and-file workers had been dismissed since 11 September.

340. Various other witnesses put forward by the Government testified that in their particular organisations trade union leaders who had supported the previous Government still held office. Thus, one witness, Mr. Vogel, said that the Railway Industry Federation had a nine-man national executive committee; six of these members had been active in the People's Unity parties. Three vacancies had been filled at the last congress in 1971. Another witness, Mr. Medina Galván, gave the names of certain copper-industry trade union leaders who had supported the previous Government and still held office, although there were others who had resigned. On the other hand, according to this witness, a leader of the trade union Coya y Pángal, whose name he gave, having encouraged a clash with the authorities on 11 September, had lost his job. The witness Mr. Briceno Molina said that the unified workers' trade union in the Pacific Steel Company at
Huachipato had elected an eleven-man executive committee only a few days after 11 September; it had included two socialists, two communists and a radical, all parties which supported the Popular Unity Government. According to this witness, one of the two communists in question was later arrested for having travelled abroad under an assumed name, while the two socialists had left the country. One of them, according to the witness, had been questioned by the authorities in November 1973, after which he had rejoined his union and then left the country. He added - and the Commission heard this statement several times from representatives of the union concerned - that the remaining eight persons were still in office.

341. During its visit to Chile, the Commission was informed by various trade union sources, with regard to the dismissal of union leaders, that in most cases these measures concerned leaders who were members of Left-wing parties and movements, although members of other parties were also affected. For example, a union leader in a Santiago company who claimed to be a Christian Democrat, was dismissed on 25 September 1973, by virtue of Proclamation No. 36, while the factory was under a military supervisor, but was later reinstated in his job and in his union post. It was also indicated by union sources that the dismissals of trade union officials of higher-level organisations had not been carried out uniformly, so that in some industries they had been dismissed from their jobs, and also forced to resign from their union posts, while in other industries no such measures had been taken, even against Left-wing leaders. With regard to the National Federation of Metal Workers, it was stated that the majority of its 32 national leaders had been dismissed, as were many leaders of primary unions; with regard to the National Federation of Building, Wood and Building Materials, the national executive committee were said to have been dismissed from their jobs; with regard to the Industrial Federation of Building, Wood and Building Materials, the Commission was informed that the leaders of primary unions had been forced to resign so that new executive committees could be established in accordance with the provisions of Legislative Decree No. 198. In the case of the National Confederation of Copper Workers, it was reported that seven national leaders had lost their jobs.

With regard to the Chilean Miners' Federation, it was asserted that the executive committees of certain primary unions, including some in the Lota coal-mining region had been replaced by order of the authorities shortly after this federation had held a national conference. During its visit to Lota, the Commission learned from union sources that in the majority of the five mines owned by the National Coal Enterprise in that region, the leaders elected before 11 September 1973 continued in their union posts (three leaders in some unions, five in others) and that the three-member executive committees of several industrial unions had been appointed in accordance with Legislative Decree No. 198. According to these sources, in the Lota industrial union the term of office of the previous executive committee had expired before 11 September 1973 and the current executive committee was appointed in July 1974, for which purpose a list of 90 of the most senior workers had been studied, some of whom were unable to fill the posts because of their age or lack of education. Eventually, a worker with union experience was appointed president. It was also reported that some leaders of these trade unions had been forced to resign, although in one union the leaders appointed in their place had been unable to sustain discussions with the workers. In October another Arancio executive committee consisted entirely of former leaders that he was to take charge of the union again. In another union, after 11 September 1973, the leaders had been asked to resign, but before the period of notice expired they were informed that they were to continue in their posts.

342. With regard to the shipping and docks sectors, which have been mentioned previously, representatives of the Chilean Port Authority stated in Valparaiso that on 12 September 1973 the manager met the leaders of the workers' federations and asked them not to take part in politics nor to commit acts of violence. They added that the manager had afterwards inquired into the staff's participation in violent political activities, and found that some had even attended schools of guerilla warfare. According to the same statements, those who had taken part in activities of this kind were dismissed or resigned of their own accord, but those who were dismissed could appeal to an internal committee of the Authority or one of the special committees instituted by Legislative Decree No. 193; of a total of 5,000 workers, 620 were dismissed and of those who appealed to the internal committee, 200 were reinstated. The Commission was informed by some union sources that during the first few weeks after 11 September the employers (i.e. including shipowners) tried to take steps against the leaders, but this situation was rectified when Decree No. 198 was issued, which bound the employers to recognise previously elected leaders. With particular reference to dockers, other union sources indicated that six members of the executive committee of the National Federation of Port Workers had been dismissed. They also stated that in some cases the employers justified their
actions by claiming that the employees dismissed had been terrorists; however, according to these sources, when this was disproved other charges were brought against those who had been dismissed. With regard to the Chilean Seamen's Confederation, whose former president is still a member of the executive committee of the Antofagasta Dockers' Union, the Commission heard two conflicting versions, from different union sources, concerning the end of his term as president of the Confederation. Both versions seemed to attribute this primarily to disagreements between different sections of the union.

343. In many other interviews with union leaders in different regions, and also during visits to undertakings, the Commission was informed that in some primary unions, usually occupational unions, no leaders had resigned or been dismissed; in other unions of all kinds one or more leaders had been forced to resign from their union posts, although they had been allowed to keep their jobs, and in some others leaders had left their union posts because they had been dismissed from their jobs, had been arrested, had resigned or had left the area. The explanations offered to the Commission varied according to the source. Some informants stressed reasons such as the sectarian attitudes of certain leaders in the previous period, which in some cases had led to victimisation and insults, both at work and elsewhere, against leaders who refused to take part in certain acts such as the occupation of factories. Others referred to previous actions such as participation in political groups for the purpose of pressure or agitation, which had made it impossible for certain leaders to maintain their position after the change of regime had taken place, and these leaders had therefore had to abandon their union posts, and sometimes even leave the region. Mention was also made of cases of leaders who had used their posts in the government service to organise population surveys for the purpose of political surveillance, or to form clandestine clinics with supplies taken from hospitals.

344. Other trade union representatives, however, informed the Commission that many leaders had been dismissed immediately after the change of regime, simply for their political ideas or because they had been the most active defenders of the workers' rights. According to these sources, some employers, particularly in the agricultural sector, had proclaimed that the unions no longer existed. In one area it was also stated that in the building industry, when men were being laid off because production was at a standstill, the union leaders were the first to be dismissed. A document drawn up by leaders who had held important positions in the trade union movement during the Popular Unity Government asserted that the trade union immunities were a dead letter. According to the same document, union leaders were frequently dismissed arbitrarily, falsely accused of being extremists, terrorists or saboteurs, or even for no specific reason.

345. During the interview held by the Commission with representatives of national employers' organisations in Santiago, the president of the Confederation of Industry and Commerce stated that no "political" dismissals had taken place. The president of the National Professional Union of Construction Employers stated that paramilitary organisations had existed in that industry. The president of the National Mining Society emphasised that many Marxist leaders working in that industry had not been dismissed. Among other problems which, according to these statements, had had adverse effects on production under the former regime, the employers' representatives mentioned the occupation of factories. The president of the National Agricultural Society pointed out, with regard to the occupation of large estates, that the owners had on many occasions taken legal proceedings and won their cases, which, in his opinion, demonstrated the illegality of the action. In the provinces, the representatives of the employers' organisations in a number of industries made similar statements. Some, although not eliminating the possibility that in certain cases injustice may have been done, insisted that both the labour inspectors and the special tribunals and military authorities had often tried to settle disputes in a spirit of conciliation, favouring compromise solutions, in order to avoid consequences which would be detrimental to certain leaders against whom justifiable charges had been brought.

346. In general, the labour inspectors indicated that political agitators had been dismissed. One inspector explained that what was meant by the term dismissal for political reasons was the dismissal of persons actively involved in the occupation of factories or acts of sabotage. Another inspector stated, on this point, that, in practice, it was difficult for employers to prove participation in acts of violence or illegal strikes. Various sources pointed out that many appeals against dismissal had ended with a settlement whereby the worker left the firm in exchange for his statutory compensation. With respect to the part played by the
representatives of the armed forces in the special tribunals, some sources pointed out that these representatives generally supported the decisions of the labour judge or labour inspector. One inspector also stated that the presence of the military representative meant that decisions based on inaccurate facts could be avoided, as the intelligence service had access to information on the activities of union leaders and other workers.

347. In the public sector, the leaders of the National Association of Employees of State Undertakings (ANEF) stated that in June 1970, 21 members of the national executive committee of this organisation had been elected, including nine Communists and Socialists who had not, however, played an active part in the activities of ANEF. After the change of regime, they added, one of these nine leaders, who was a member of the central committee of the Socialist party, went into hiding and another, who was employed in the presidency of the Republic, was dismissed from his post. The leaders of ANEF likewise referred to measures which had been taken against certain leaders in the public sector, mentioning, for example, one man who was indicted, but in whose case the Minister of Justice had undertaken to close the proceedings, and the case of the president of the postmen's union who had been dismissed by virtue of Decrees Nos. 6 and 22 but was reinstated after six months of negotiations by ANEF with international support.

348. Additional information was supplied by sources which were independent of the Government or of workers' and employers' organisations. This information included, for example, a list of the names and union posts of 75 leaders, mostly of primary unions, who were dismissed from their jobs mainly between September and December 1973 and a smaller number who were dismissed in the first few months of 1974. In the majority of these cases it was stated that the dismissals had taken place under Legislative Decree No. 32; in some cases it was stated that the reasons given were certain provisions laid down in Act No. 16455, for example, one referring to dishonesty, offensive behaviour or serious immoral conduct (section 2, paragraph 2, of the Act) and, in some cases, one referring to the needs of the firm, establishment or service (section 2, paragraph 10); finally, in a certain number of cases, it was simply stated that notice of dismissal was given verbally. Similar information was supplied about 71 leaders of organisations of civil servants and employees of state undertakings who had been dismissed, including, for example, leaders in such sectors as health, the university, electricity services, some banks and some ministries. Some of the same persons interviewed also expressed opinions of a general nature, for example, that at first the employers had tried to dismiss political activists and some trade unionists who were too active. Thus, according to one spokesman, in some cases active union leaders, who did not belong to Popular Unity parties, were dismissed, while certain "Marxist leaders" remained in their posts. Another, referring to the dismissal of workers in general, stated that until February 1974 these measures were taken for political motives, for example under charges of political activism or for taking part in the occupation of factories, but he added that at the time when these events took place it was, in practice, impossible not to take part when a factory was being occupied.
The Commission attempted to make an estimate of the total number of persons holding trade union office throughout the country on the eve of the change of regime. In a communication addressed to the Committee on Freedom of Association in February 1974 the Government stated that as at 10 September 1973 there were 6,677 trade union organisations with some 34,000 officials. Persons who held high trade union office during the Popular Unity regime estimated that there were 36,000 officials in the public and private sector organisations affiliated to the CUT, that is to say 130 federations and confederations and more than 7,000 basic organisations. The difference between these two sets of figures could be accounted for - in part at least - by the officials of public workers' organisations who are not included in the data provided by the Government.

According to the information supplied by the Government 75 per cent of the present executive committees are the same as those which were in office on 11 September 1973. For his part, the Minister of Labour and Social Security stated that 75 per cent of the current officials already held their trade union offices before the change of regime. These data are disputed by former leaders of national trade unions interviewed in Chile who estimated the proportion of officials deprived of their posts at much higher than 25 per cent.

The Commission attempted to collect as much information as possible on the changes in the executive organs of trade union organisations in the wake of vacancies which occurred for a variety of reasons (death, arrest, exile, disappearance, dismissal, resignation from work or trade union office, prohibition of the exercise of trade union responsibilities).

Out of 60 or so basic trade union organisations interviewed by the Commission in Chile and in respect of which it obtained specific information about the position of their executive bodies, some 20 were led by full executive committees made up entirely of persons elected prior to 11 September 1973; the executive organs of 30 or so had been altered to some extent by the fact that one or more offices had become vacant or that some executives had been appointed; and about 10 of them had three-man executive committees entirely composed of persons appointed after the change of regime. In other words, in one-third of the cases, the executive committees had not changed, but in half of them there had been partial changes and in 17 per cent, total changes. In respect of these same 60 or so trade union organisations, it appeared that the executive committees of industrial trade unions had suffered greater changes than those of occupational trade unions.

Some of the federations and confederations interviewed in Chile supplied the Commission with information on the position of their basic organisations. The Chilean Miners' Federation, for example, stated that out of its 80 affiliated basic trade union organisations 13 had had their entire executive committees removed from office. The National Federation of Metal Workers declared that the total membership of the executive committees of its 140 affiliated organisations had fallen from 700 to 420. The Chilean Confederation of Private Employees estimates that there has been a 25 per cent decrease in the number of its officials throughout the country. In the agricultural sector the Confederation Ranquil referred to the position of a great many regional officials who no longer carry out their functions because they have been arrested, have disappeared or have been banned from holding trade union office. The United Confederation of Workers and Peasants pointed out that almost all the local trade unions have ceased to operate, more often than not because of measures directed against the trade union leaders. In the public sector the leaders of the SUTE declared that out of its 2,000 officials 1,200 were subjected to penalties, including a high proportion of dismissals. Former leaders of the FENATS pointed out that 1,560 basic officials out of a total of 2,350 had been discharged from their trade union offices, as had 39 out of a total of 63 regional officials. The executive body of the Chilean Port Enterprise indicated that there were 49 trade union officials in this sector for the whole of the country whereas before the change of regime there were just over 100.

Out of all the confederations and federations interviewed by the Commission, there was only one - the Peasant Confederation "Liberty" - in which all
the seats on its executive committee were filled by persons elected before 11 September 1973. All the others had to undergo major or minor changes in their executive organs for a variety of reasons. Some of the federations and confederations had been subjected to changes affecting almost half or more than half of the seats on their executive committees or councils. This was the case with the National Federation of Textile and Clothing Workers in which 5 out of 33 leaders still retained their offices; with the National Association of Education Service Employees in which 10 out of 13 officials had been discharged; with the National Federation of Metal Workers in which most of the 32 officials had been dismissed; with the National Association of Public Employees in which 6 out of its previous executive had been dismissed and one arrested; with the National Customs Employees' Association in which 7 of the 14-member executive committee had resigned or been dismissed; and with the National Port Workers' Federation in which only 8 of the 15 members of its executive committee were left. Furthermore, former national trade union officials referred to the position of the National Federation of Health Workers in which the 17 members of its executive committee who supported the Popular Unity movement had all been relieved of their trade union duties; of the Federation of Service Station Workers in which all its officials had been dismissed; of the Federation of National Health Service Professional and Technical Staffs in which all its officials had been removed from executive office; of the Association of Professors and Employees of the University of Chile which had an executive committee of 15, 9 of whom supported the Popular Unity movement and in which 7 of the latter had been dismissed and 2 banned from engaging in trade union activities; of the National Confederation of Commercial Workers in which only 3 of its former committee were left; and of the Association of Chilean Postal and Telegraphic Employees which had a new 2-man executive committee.

355. Legislative Decree No. 198 of 10 December 1973 lays down the rules designed to enable the vacancies that had occurred in the executive committees to be filled. Proclamation No. 28 issued in September 1973 had prohibited "the holding of elections of any kind, whether they be political or that of trade unions, students, etc." The Proclamation also laid down that "vacancies which already exist and vacancies which will occur in future, should be filled in accordance with the instructions given by the competent representative of the military Junta". As was pointed out in paragraph 221 above, Legislative Decree No. 198 extends the terms of office of the executive committees in existence on 11 September 1973 and lays down that vacancies must be filled by members of the organisation having greatest seniority and actively concerned up to the minimum number required by the law or by the by-laws covering the executive committee. Legislative Decree No. 198 also stipulates that the same rules shall apply to future vacancies and vacant offices in unions, federations and confederations and that where disputes as to seniority arise, the question shall be settled by the Provincial Labour Inspectorate. Likewise, if new trade unions are formed, the most senior workers shall be appointed as members of the executive committee.

356. Legislative Decree No. 349, dated 4 March 1974, concerning, inter alia, workers' organisations in the public sector, extends the terms of office of their executive committees until 1 October 1975. Furthermore, it provides that if one or more members of the executive committee shall be permanently prevented due to physical or mental inability or any other reasons from performing their functions, and if the executive committee does not meet the quorum required for its meetings, the member or members lacking shall be appointed by the governor of the region from among the members of the organisation. The governor may also call for the resignation of a member or members of the executive committee at any time on the grounds that particular legislative provisions have been infringed and immediately appoint replacements. If the person concerned does not submit his resignation within the specified time limit the governor must issue a decree dismissing him from office. Ministry of the Interior Circular No. 214 respecting public workers' organisations, dated 12 September 1974, repeats the provisions of Legislative Decree No. 349 in respect of the appointment of members of executive committees which lack a quorum. It specifies, however, that these appointments may be decided by the intendent or the governor who shall seek the advice of the head of the department after asking the organisation to submit a list of three names.

357. The Government stated in the additional information supplied to the Commission that the standards laid down for executive committees by Legislative
Decree No. 198 are designed as a stop-gap measure to regularise the position of executive committees which have come to the end of their term of office or which are not at full strength. The Secretary of State for Labour pointed out that, unlike all other types of organisations, an objective standard has been laid down for filling vacant seats on the executive committees of trade unions. This has enabled persons to be appointed out of the whole range of political ideologies. He added that appointments are only made by the Minister of Labour in cases where the seniority rule cannot be applied and that this, he says, has only happened on two occasions. The Minister of Labour specified that the legal machinery in force restricts the number of seats on the executive committee to the minimum. In this connection, he stated that there were too many trade union officials and that it was advisable for their numbers to be reduced to a reasonable figure. He also indicated that the replacements have to be approved by the authorities and that he himself had confirmed the appointment of Marxist officials. Finally, the Minister indicated that elections could possibly be restored at the beginning of 1976 but he specified that this statement did not constitute a promise.

358. In their allegations concerning the elections of trade union officials the complainant organisations mainly referred to the provisions of Legislative Decree No. 198 and stated in particular that they constituted a violation of the right of trade union organisations to elect their officials in full freedom. Some witnesses produced by the complainant organisations at the Commission's second Session also referred to the prohibition on elections and the appointment of the most senior workers to the vacant offices. One of them pointed out that the workers nominated are obliged to accept the office for which they were selected or suffer penalties.

359. According to what the Commission was able to learn, the trade union officials who were appointed after 11 September 1973 were mainly the most senior workers. In some cases, however, this selection criterion was not followed either because the most senior workers had refused to perform trade union functions, or because other persons had been intentionally selected. Former trade union officials interviewed in Chile stated that the authorities appointed members of executive committees with the agreement of the employers. These appointments, they added, are made by selecting the most senior workers who do not stand in the way of the interests of the undertakings. Several provincial labour inspectors, however, pointed out that Legislative Decree No. 198 was strictly applied in their own areas and one of them stated that the labour inspectorate restricts itself to verifying the appointee's seniority but that it cannot object to appointments if they comply with the standards laid down by the Legislative Decree.

360. The Commission noted various instances of vacancies being filled by appointments made by the respective organisations themselves. The executive of the Chilean Confederation of Private Employees (CEPCH), for example, was re-formed before the promulgation of Legislative Decree No. 198 and all changes were made in accordance with the by-laws and the authorities notified. According to its officials, the CEPCH is one of the few organisations in the private sector not to have applied Legislative Decree No. 198 in this connection. The executive committee of the Industrial Federation of Railway Workers appointed the new officials called upon to fill the vacant offices. Likewise, the new executive committee of the National Confederation of Copper Workers was filled by internal appointments subsequently approved by the labour inspector. The members of the National Customs Employees' Association put forward the names of officials who were then approved by the authorities. An identical procedure was followed by the executive committee of the National Association of Public Employees. In the case of the Association of Postal and Telegraphic Employees a new provisional two-man executive body was appointed in November 1974 by a meeting of presidents of regional associations and approved by the Director of Postal Services. Former officials questioned the validity of this decision, mainly on the grounds that only a few regional presidents were present at the meeting. Finally, the Commission was assured that some trade union executive bodies had been appointed by the authorities. This was the case with the Single Union of the Chilean Electricity Company whose new officials were appointed by the administration after consultation with the intelligence services and with the Federation of National Health Service Professional and Technical Staff whose executive committee is now entirely composed of members appointed by the authorities.

361. Almost all the trade union officials interviewed by the Commission - including the majority of those appointed under Legislative Decree No. 198 - expressed the hope that steps would be taken as rapidly as possible to enable a return to free and secret elections for trade union office.
362. The Commission also heard certain statements concerning the facilities granted to trade union officials to enable them to perform their functions. The Minister of Labour and Social Services brought up the relevant provisions of Legislative Decree No. 198 and specified that previous legislation had not laid down any regulations in this connection. As was indicated in paragraph 223 above, Legislative Decree No. 198 provides that the employers must give trade union officials the necessary permission to take time off from work and fixes the limits of such authorised time off according to the size of the organisation in terms of membership or the geographical area covered. As far as public sector organisations are concerned, Ministry of the Interior Circular No. 214 lays down that the officials of these organisations shall be authorised to take time off when this is necessary for the performance of their functions. During its visit to Chile the Commission found that these provisions are generally complied with both at the basic trade union level and at that of the federations and confederations. However, some organisations stated that the facilities granted were not as great as before the change of regime. The officials of the National Federation of Textile Workers, for example, stated that they are not allowed as many hours off as are provided for in the collective agreement they had signed. The National Confederation of State Bank Unions pointed out that permission was only granted for ten hours off per week whereas previously its officials used to devote themselves full time to trade union business. The Industrial Federation of Railway Workers stated that only a limited amount of time off was granted its officials: four days a week for the president, two days for the vice-president and a few hours for the remaining officials. The Chilean Miners' Federation pointed out that its officials were not given the chance to visit its affiliated organisations. On the other hand, in some cases - the ports in particular - the trade union officials carry out their activities on a full-time basis.

363. Finally, the Commission was assured that in some cases the executive bodies of trade union organisations experienced difficulties in carrying out their duties mainly because of financial problems and obstructions in collecting contributions from their members. As was indicated in Chapter 10, these difficulties mainly affect the Confederation Ranquil, the United Confederation of Workers and Peasants, the Single Union of Workers Education, the National Federation of Textile and Clothing Workers and the Federation of Building, Wood and Building Materials. The Chilean Miners' Federation declared that the contributions of its affiliated organisations did not reach it. Similarly, the National Federation of Metal Workers indicated that it was experiencing financial problems and that the contributions still being paid by some of its basic unions were insufficient. However, apart from the various cases mentioned above, the organisations interviewed generally agreed that they regularly received their members' contributions - generally by check-off - and that they had free use of their funds.
364. In communications sent to the Committee on Freedom of Association, some of the complaining organisations had alleged that the Government of Chile was guilty of a breach of the right of assembly. They referred to Proclamation No. 36 on 18 September 1973, Circular No. 243 issued by the Ministry of the Interior in September 1973, and Legislative Decree No. 198 (10 December 1973). The allegations relating to the provisions of the latter dealing with restrictions on the right of assembly have been repeated in further information supplied to the Committee by the complainants.

365. As indicated earlier, Proclamation No. 36 laid down that trade union meetings must take place outside working hours.

366. Circular No. 243 issued by the Ministry of the Interior imposed certain restrictions on the operations of various organisations, including trade unions. It stipulated that meetings must be held outside working hours, but were forbidden during the curfew; that the agenda, with information as the place and date, had to be brought to the notice of the police at least 48 hours in advance, and that the police authorities had to nominate a policeman to attend the meeting as an observer, to ensure that questions of concern to the organisation were discussed, to the exclusion of any political issue. The circular also stated that failure to comply with these provisions would lead to suspension of the organisation concerned, without prejudice to the liability of individuals. It was, however, made plain that these restrictions were temporary only, until such time as things returned to normal.

367. With reference to this circular, the Minister of the Interior told the Commission that it had been issued because, under the previous régime, the trade union movement had become extremely political, and an endeavour was being made to get purely trade union activities going again. The clause requiring a policeman's presence was not applied to trade unions, and in any case the circular had been superseded by Legislative Decree No. 198 (10 December 1973).

368. The Minister likewise said that the restrictions on the right of assembly imposed in Circular No. 243 were designed to put a stop to subversive meetings. Before 11 September 1973, certain trade union leaders did not work at all, a state of affairs the Government had found intolerable; hence the clause requiring trade union meetings to be held outside working hours.

369. Legislative Decree No. 198 deals with the right to hold assemblies and meetings. There are three conditions to be met before such assemblies can be convened during a state of war or emergency. They must be assemblies at which information only is given, or assemblies to discuss internal matters only. They must take place outside working hours, and the place and agenda must be notified in writing to the nearest police unit at least two days in advance.

370. In answer to the allegations concerning the right of assembly, the Government made special reference to section 44(12) of the Constitution, which lays down that the law can suspend or restrict the right of assembly if imperatively necessary for the defence of the State, the constitutional system and public order. The Government added that such restrictions were becoming gradually less severe and that, in fact, trade union problems were being discussed at numerous meetings. Legislative Decree No. 198 in fact marked a step forward in relation to what had gone before.

371. As regards the public sector, a circular dated 17 November 1973, issued by the Secretary of State for Public Works, dealt with meetings of the executive committees of the organisations of workers employed by the Secretariat. It required such organisations to inform the authorities, at least a week in advance, of the place and date of the meeting, how many people would attend, and the questions to be discussed. On 4 March 1973, the Government promulgated Legislative Decree No. 349 regulating various organisations, including those of workers employed in the public sector. This legislative decree stipulates that meetings to be held by the executive committees or assemblies of such organisations to discuss questions of interest to the latter must take place in accordance with the rules laid down by the Ministry of the Interior. Should those rules not be complied with, the Ministry of the Interior can suspend the organisation for as long as it considers necessary.
372. On 12 September 1974, the Ministry of the Interior issued Circular No. 214, which, as regards the right of assembly, stated that the leaders of organisations of public sector workers could not convene meetings during working hours. The executive committee must inform the governor or intendant of its intention to convene a meeting at least 48 hours in advance, supplying details of the date, place and agenda. The authorities so informed are empowered to forbid the meeting if they think fit.

373. In taking evidence from witnesses in Geneva, and during interviews in Chile with representatives of trade union organisations, the Commission heard a great many statements about the actual position as regards meetings.

374. The evidence suggests that Legislative Decree No. 198 is not being uniformly applied as regards the kind of information which has to be supplied to the police. Furthermore, there are certain discrepancies between the statements made to the Commission as to whether or not prior official authorisation and the presence of policemen at meetings are necessary.

375. As regards the kind of information to be supplied to the police, some unions declared that they gave information only about the date and place of the meeting. However, most trade union leaders said that they had, in addition, to supply the agenda as required by Legislative Decree No. 198. One leader of the Industrial Federation of Building, Wood and Building Materials told the Commission that the names of the speakers had to be supplied in advance as well. According to this organisation, to hold an unauthorised meeting was to invite arrest. Certain trade union organisations, on the other hand, some of them nation-wide, told the Commission that they held meetings without informing the authorities at all.

376. During his talks with the Commission, the Minister of Labour and Social Welfare emphasised that the obligation to inform the authorities in advance was not an application for authorisation. However, the great majority of the trade union leaders encountered took the line that in practice prior authorisation was essential. Representatives of the Industrial Federation of Building, Wood and Building Materials said that the authorities reserved the right to grant authorisation or refuse it. Usually, trade union leaders informed the authorities that they intended to convene a meeting, and awaited a favourable reply from the authorities, or the return of the communication bearing an official signature. Most of the trade unionists questioned said there were no refusals. The Commission did come across one or two cases in which primary agricultural organisations experienced difficulty in organising meetings, but such difficulties, it seems, were surmounted by recourse to the provincial authorities.

377. As explained above, Circular No. 214, issued by the Ministry of the Interior, empowers the authorities to forbid meetings held by public service workers. In this connection, the Commission was informed that the engine-drivers' union, an affiliate of the Industrial Federation of Railway Workers, had been refused permission to meet ever since March 1974. Again, in connection with public services, the Commission took cognizance of a letter dated 19 November 1974 from the Director of the Chilean Port Authority to an intendant, about application for authorisation of a meeting to be held by the National Council of the Port Workers' Federation. In this letter, the Director expressed himself in favour of the meeting, on the ground that a member of the executive committee would be attending. A copy of a summons to attend the National Assembly of the Industrial Federation of Railway Workers, brought to the Commission's notice, declared that the meeting had been authorised by the military authorities and the management of the undertaking. According to this same summons, the authorised meeting had been granted on condition that all the requirements laid down in the proclamations were strictly complied with; there were to be no elections, and it was forbidden to discuss or take up political matters. Meetings might not go on after eight p.m. On the other hand, the leaders of the National Association of Public Employees told the Commission that they experienced no difficulty whatsoever in organising meetings.

378. The Commission was told on a number of occasions, notably by representatives of a majority of the federations and confederations interviewed, that representatives of the army or police attended meetings, or at least some of them. Some organisations said that the practice had been general in the first few months following the change of government. The leaders of a plant union told the Commission that they suspected that representatives of the authorities mingled with the workers at meetings, and one labour inspector said that such representatives sometimes attended incognito, so as to make sure that matters unconnected with the workers' interests were not discussed.
Some organisations declared in this connection that it was dangerous to organise meetings, even if only for consultative purposes. The Industrial Mining Federation mentioned certain instances in which the officers of local unions had been changed by the authorities shortly after a national meeting. One agricultural organisation said that it sometimes asked for the authorities to be represented, so that there might be no misunderstanding.

As regards the kind of questions discussed at meetings, the head of the Trade Union Organisations Department in the Department of Labour said that "informatory meetings" meant meetings at which anything of relevance to the workers as such or as trade union members, and anything of relevance to the management of a union, could be discussed. In this same connection, the leaders of the Maritime Confederation of Chile said that general meetings could only be "informatory", and there could be no discussion of the points taken up. Moreover, some federations said that speakers had to keep strictly to the agenda notified to the authorities beforehand.

During its stay in Chile, the Commission observed that in practice some national organisations convened meetings of their officers at various levels to discuss occupational and trade union matters. Thus, the national council of the Confederation of Chilean Private Employees (CEPCH), meeting in June 1974, had discussed certain problems, especially pay, welfare activities, trade union activities, unemployment and social security. Trade union officers from the Pacific Iron and Steel Company supplied the Commission with a copy of the conclusions reached by a meeting of the trade union leaders of this company, at which problems of pay had been especially discussed and it had been decided to convene a national congress to set up an organisation comprising all the company's employees. The Confederation of Copper Workers held a consultative assembly in October 1974 and has been requested by the Minister of Labour and Social Welfare to report what conclusions were reached there.

As regards meetings held by trade union executive committees, most leaders interviewed by the Commission said there were no restrictions and such meetings could be freely held.

Most of the trade union officers interviewed said that one of the major aspirations of the Chilean workers was a return to freedom of assembly, and expressed the hope that steps in that direction would be taken by the authorities. In this connection, the Minister of the Interior has declared that decrees will be progressively enacted to allow a progressive return to normal.
CHAPTER 16

COLLECTIVE BARGAINING. THE RIGHT TO STRIKE

384. By virtue of Proclamation No. 36, enacted on 18 September 1973, the submission and consideration of collective demands were suspended. The same applied to action taken in connection with collective disputes. Conciliation boards, tripartite wages committees, the Central Joint Committee on Wages (except in so far as it acts as an appeals tribunal), and all other similar bodies, were suspended. The Proclamation likewise halted trade union activities in connection with such matters, and decreed that collective or informal agreements, arbitration awards and other instruments were to continue in force. A few days later, Legislative Decree No. 43 laid down that all rules relating to the determination or adjustment of wages, salaries, bonuses and the like (in the public sector as well as in private enterprise), together with the machinery for automatic adjustment of pensions and minimum wages, were suspended. The Government justified such action by emphasising the seriousness of the economic position, especially the high rate of inflation, although stating that the measures taken were of a temporary nature.

385. Collective bargaining having been suspended, the right to strike was also suspended. In this respect, the Minister of Labour and Social Welfare informed the Commission that in accordance with the relevant legislation, already in force, strikes were permissible only if collective bargaining had led to no agreement. Furthermore, a state of emergency had been proclaimed, and as long as it lasted recourse to the strike weapon could not be allowed.

386. To cope with the steadily rising cost of living, the Government then enacted a series of legislative decrees granting bonuses and payment of wages in advance, plus adjustments in wages and salaries. Among these enactments were the following: Legislative Decree No. 97 (22 October 1973), granting bonuses in the public sector and in private enterprise; Legislative Decree No. 256 (8 January 1974), granting anticipated readjustment for workers in private industry; Legislative Decree No. 275 (14 January 1974), readjusting earnings and laying down standards for wage fixing in private industry as from 1 January 1974 (this same decree likewise prolonged all collective agreements — except with respect to earnings and other cash benefits — until 31 December 1974, and suspended the workings of the conciliation boards for the whole year); Legislative Decree No. 314 (11 February 1974), offering an advance on an increase in earnings and pensions; Legislative Decree No. 446 (1 May 1974), adjusting wages in the public sector and in private enterprise; Legislative Decree No. 507 (6 June 1974), granting a bonus to be set off against future readjustments; Legislative Decree No. 550 (29 June 1974), which adjusted wages in the public and private sectors as from 1 July; and Legislative Decree No. 627 (28 August 1974), granting a bonus to every worker.

387. In this same period, the Government enacted various other regulations concerning earnings and benefits. Mention should perhaps be made of Legislative Decree No. 249 (31 December 1973), by which a single wage scale was laid down for civil servants and employees of public bodies; Legislative Decree No. 37 (4 February 1974), regulating the unified family allowances system; and Legislative Decree No. 346 (4 March 1974), laying down further rules for the fixing of wages and salaries in the important copper-mining industry. More especially as regards Legislative Decree No. 249, the Minister of Labour explained to the Commission that the result had been to reduce the enormous differences which had existed between the highest and lowest wages paid. Previously, the ratio had been 20 or 25 to 1; now it was 7 to 1. On the other hand, according to evidence given before the Commission by certain witnesses, notably Mr. Figueroa and Mr. Merino, the unified wage scale imposed by this Legislative Decree had operated to the detriment of numerous officials and employees in public bodies.

388. In October 1974, the Government adopted a new system for the adjustment of wages and salaries in the public sector and in private enterprise. Legislative Decree No. 670 (1 October 1974), besides decreeing a general readjustment of wages, including pensions, and imposing a new minimum wage, introduced a system whereby readjustments were to take place automatically every three months, on dates fixed in advance. Under this system, all earnings are increased by an amount proportional to the rise in the official consumer price index during the preceding period.
389. When, in January 1974, Legislative Decree No. 275, mentioned above, was enacted, the Government provided for the creation during the year of tripartite advisory boards for individual industries to study wage trends and conditions of employment and to make proposals in connection therewith. This scheme was described in Legislative Decree No. 670, which stipulated that by joint order of the Ministry of Labour and Social Welfare and the Ministry of Economic Affairs, Development and Reconstruction, wages could be set at a level higher than that resulting from automatic quarterly adjustments, for the benefit of certain categories of workers and certain undertakings, areas of production or branches of activity, when conditions so warranted. Thus, the tripartite boards were established as specialists and research institutions, to undertake studies for the benefit of collective bargaining. To this end, the Ministry of Labour may set up tripartite advisory boards, in which the unions, together with associations of employers or businessmen, are represented, along with the Government itself, with a view to studying economic conditions and trends in the particular industry, undertaking, branch, etc., and to submitting proposals concerning maximum and minimum wages, benefits, and conditions of employment. Undertakings have to provide these boards with all relevant information and give the necessary facilities to the representatives of the workers and employers operating therein. The workers' representatives have the same status as trade union officials. The Ministry of Labour is free to reorganise these boards whenever necessary.

390. On 26 November 1974, Decree No. 826 was issued laying down rules for the operation of these tripartite advisory boards. The latter were to be made up of four workers' representatives (two salaried employees and two wage earners), four employers' representatives, a Government representative, and a secretary, all the representatives to have a deputy. The workers' and employers' representatives were to be appointed by the Ministry of Labour from lists of candidates submitted by the trade union organisations and employers' associations. Should it prove necessary to replace one or more Employers' or Workers' representatives permanently, it would be for the Ministry to nominate the new members. To this end, the Ministry would be free either to ask for new lists of candidates or to appoint somebody whose name appeared in the original lists. In dealing with matters of concern to wage earners, the four wage-earner members would sit in the board, and a similar system would apply with regard to the representatives of the salaried employees. Decisions within the boards would be taken by a majority vote. The chairman's vote would be equivalent to four others, and in the event of a tie would be decisive. Orders issued by the Ministries of Labour and Economic Affairs, Development and Reconstruction on the basis of agreements reached in the boards, would be binding on all employers and workers in the area, undertaking, branch, etc., concerned. The decree laid down that the tripartite advisory boards would operate as long as collective bargaining remained suspended.

391. On 12 December, seven tripartite boards were set up to deal with the following activities in private enterprise: printing, paper, textiles, lubricants and fuels, building, installation and maintenance of lifts, and insurance.

392. During its stay in Chile, the Commission tried to obtain information about the way in which the suspension of collective bargaining had worked in practice. In fact such bargaining, in the sense ordinarily given to the term and following the procedure laid down in the Labour Code, does not take place. Nevertheless, in many undertakings the unions are able to have talks with the employer about such things as conditions of employment, welfare arrangements, marginal benefits, problems arising from application of the wage adjustment decrees, etc. The unions have on a number of occasions secured wage increases e.g. for the officers and men of the merchant marine, for certain kinds of agricultural worker during harvest time, and for the employees of the cotton-spinning concern Manufacturas Sumar, S.A. Leaders of the National Confederation of Copper Workers said that talks had been held with representatives of the management on labour matters; sometimes, such talks dealt with wage incentives, and increases were occasionally granted as a result. Nevertheless, according to the information given to the Commission, no general wage negotiations were undertaken. The Minister of Labour and Social Security supplied the Commission with copies of two agreements which had been concluded recently, with participation by the labour authorities. These agreements were reached between Manufacturas Sumar, S.A. and the union concerned (wage increases and payment of a bonus), and between the Pacific Steel Company and the unions concerned (action to be taken on instructions from the Department of Labour concerning wages incentives). More generally, a representative of the Valdivia Manufacturers' Association told the Commission that, despite the ban, the unions were putting forward claims, although on an informal basis.
393. Furthermore, apart from claims for improvements, the unions are continuing to make demands of employers with regard to workers' individual complaints, and as regards the application of laws or regulations. However, some trade union leaders complained that little satisfaction was obtained from managements, or that managements and senior staffs were prone to act out of a spirit of revenge. These leaders, if they failed to get satisfaction, appealed to the labour inspection authorities and also to a certain extent to the provincial labour offices. This aspect is dealt with more fully in the next chapter of this report.

394. As regards strikes, information given to the Commission concerning the first few months following the change of régime revealed that strikes on a small scale had indeed taken place, for instance in various parts of the El Teniente copper mine, at the El Algarrobo iron mines, in the coal mines, on the railways, amongst bakery workers, etc. One complaint made to the Committee on Freedom of Association referred to a strike (November 1973) in the firm which was engaged in building the Santiago underground. According to the Government, of the 157 workers dismissed for striking, 143 had later been re-employed. Of the 14 others, only one had appealed to the labour courts. According to the newspaper El Mercurio of 10 February 1974, Juan Zlipiño González Gómez, an official of the National Ships' Crews' Association, had been arrested in Puerto Montt for urging the crew of a motor vessel to strike because the management had taken on non-unionised workers. This person had been handed over to the military courts. The newspaper La Tercera for 23 May 1974 reported that eight workers in the Moller Pérez Cotapos Company, Arica, had been sentenced to 541 days' hard labour for causing a stoppage of work in December 1973 as a protest against low wages. They had been sentenced by the military court for breach of section 11 of the State Security Act. As regards the four leaders of dockers' and sailors' unions at San Antonio, mentioned in Chapter 11, who had died on their way to prison, they had been arrested in November 1973 for having opposed compliance with certain provisions which they claimed ran counter to the collective agreement in force.

395. During its stay in Chile, the Commission noted that the ban on strikes seemed to be generally observed, since a breach of this ban was punishable under the State Security Act.

396. The Minister of Labour and Social Welfare, in talks with the Commission, repeated certain opinions he had already expressed about collective bargaining and strikes. Workers had an inalienable right to put forward demands and go on strike if no agreement was reached. But at that particular juncture, to open the door to collective bargaining would merely give further impetus to inflation. The Minister pointed out that, at 31 December 1974, inflation would be running at the rate of 364 per cent for that year which, according to him, would be considerably less than it had previously been. By 1975, it was hoped to cut the figure to 50 or 60 per cent and if successful in this, the Government might again authorise collective bargaining.

397. In talks with the Commission, trade union leaders usually expressed the view that the right to collective bargaining ought to be recognised once more. While some maintained that they were seriously worried by the absence of such bargaining, others were of the opinion that the economic situation being what it was, some restrictions were inevitable. Nevertheless, even amongst the latter, it was felt that the restrictions could not be maintained indefinitely, and there was a wide measure of agreement that collective bargaining was an essential weapon in the defence of workers' rights.
CHAPTER 17

RELATIONS BETWEEN THE TRADE UNION ORGANISATIONS AND THE AUTHORITIES

398. The Commission collected information and heard evidence concerning the relations between the authorities and the trade union organisations, with particular reference to the purpose and manner of operation of the Offices of Labour Affairs created in May 1974, the co-ordinating committees established in the offices of the provincial governors and on contacts between the trade union organisations and certain authorities, especially the Ministry of Labour at national level and the labour inspectorates at regional or provincial level.

399. As indicated above, Decree No. 314 of 4 May 1974 set up in each province a Committee for Labour and Welfare Studies, comprising specialists in the field who were appointed by the governor and the Provincial Inspector of Labour. These committees were under the chairmanship of an officer of the armed forces. The committees were given a dual function: that of publicising the labour standards issued by the authorities and that of informing the latter about labour problems. In addition, the Decree in question created Offices of Labour Affairs composed mainly of a civil and a military adviser to the governor, to serve as executive secretariats to the committees and official spokesmen for the authorities with the workers and to maintain contact with employers and workers.

400. During the Commission's second meeting in Geneva, various witnesses referred to the committees and offices created by Decree No. 314. Mr. Figueroa, for instance, stated that there was a National Office of Labour Affairs directly subordinate to the junta and that as a result of the creation of this body trade unionism had been replaced by vertical machinery set up by the military powers. The same witness said that if claims were not submitted to these offices in suitable terms, their authors were accused of insulting the military authorities. Mr. Godoy considered that the committees for labour and welfare studies constituted an organic body set up to replace the regular organs of labour administration such as the provincial or departmental inspectorates.

401. Mr. Moder said that these committees had only an inforamatory and advisory role and that they did not perform the functions of labour courts or the labour directorate. Mr. Rios Arias said that their task was to co-operate in the solution of urgent problems.

402. During its visit to Chile, the Commission collected a large amount of information on the functions performed in practice by these bodies, particularly during interviews with officers or former officers of the armed forces in charge of the offices and with certain trade union leaders. The head of one of the provincial offices told the Commission that there was a central office of labour affairs in Santiago to which the regional offices were subordinate. The latter received instructions from the central office, consulted it and sent it monthly reports on their activities. According to statements made by the officials responsible for them, the main task of the offices of labour affairs was to maintain relations with local trade union leaders, to obtain information from them regarding labour problems and to inform them about new legislation or the plans of the authorities. The official in charge of the Valparaiso office said in this connection that the offices of labour affairs provided a means of establishing contacts between trade union leaders and the various authorities, as was formerly done by the CUT and the political parties. The offices also received complaints concerning the slowness of administrative procedures and endeavoured to eliminate these difficulties. In addition, some of them had organised seminars for trade unionists. The official in charge of the office of labour affairs at Rancagua stated that it was planned to set up a trade union school in that province and that a reply on that matter was awaited from the Central Office of Labour Affairs. Most of the heads of these offices stated that the responsibilities of the offices differed from those of the Labour Inspectorate, whose task was to deal with legal questions. A regional labour inspector stated that, in the event of complaints, the Office of Labour Affairs did not intervene until the third stage, i.e., after discussion between the complainants and the employers and study of the matter by the Labour Inspectorate. The heads of

1 See paragraph 229 above.
the offices also said that the offices of labour affairs generally settled the matters referred to them to the advantage of the workers.

403. The Commission noted that contacts between the offices of labour affairs and the trade union organisations usually took place at provincial level. The leaders of factory unions told the Commission that they referred complaints to these bodies. On the other hand, most of the federations and confederations met in Chile stated that they had no relations with the offices of labour affairs. Some of them even said that they objected as a matter of principle to the existence of such bodies. Some trade union leaders considered that they constituted a sort of "parallel administration", whilst others accused them of being bodies under military control. The Peasant Confederation "Liberty" considered that the offices were useful as they provided a means of "channelling" the problems and wishes of the workers.

404. The Commission had an opportunity of meeting, on several occasions and in various parts of the country, trade union leaders who were members of labour co-ordinating committees. Although not specifically provided for in Decree No. 314, these committees, composed of union leaders from various sectors, had been set up in many provinces. However, in Linares, one member of the Commission was told that employers' representatives sat on the committee for this province. Most of the heads of offices of labour affairs stressed the importance they attached to the existence and activities of these committees. Provincial authorities and regional labour co-ordinators emphasised the complete independence of the committees vis-à-vis the Government and the offices of labour affairs. This statement was reiterated by the members of the committee for the province of Concepción. They said that the co-ordinators dealt with all the problems except those relating to pay. They supervised the application of agreements and transmitted complaints from workers to the Labour Inspectorate and the offices of labour affairs. Each co-ordinator possessed a pass issued by the authorities giving him access to all undertakings in the sector he represented. One of them said that co-ordinators were performing the functions previously carried out by the CUT. Most of the persons whom the Commission interviewed stated that they had been nominated by a general meeting of their organisation. Some served full time. In Antofagasta, for example, four co-ordinators (two for the private sector and two for the public) were authorised by the governor to devote all their time to union duties.

405. Decree No. 852 of 12 December 1974 suspended the committees for labour and welfare studies and the offices of labour affairs, and replaced them by a National Labour Co-ordination Committee and provincial committees. The preamble to the Decree indicated that matters concerning labour relations must be centralised within the Ministry of Labour and Social Welfare and that channels of communication whereby the Government could keep itself informed of the difficulties affecting these relations and receive suggestions from all sectors must be kept open. The Decree provided that the National Committee should be under the chairmanship of the Minister of Labour and Social Welfare or the Secretary of State for Labour and be composed of national leaders of union federations or confederations and national leaders of organisations of workers in the public sector. The provincial committees include, in addition to the leaders of the workers' organisations, an officer of the armed forces, nominated by the governor, and also the provincial labour inspector who normally acts as chairman. The provincial committees study workers' problems and recommend solutions to the Minister of Labour and Social Welfare. They are required to keep themselves informed of measures adopted by the Government and the purposes for which they were adopted, and inform the workers of them. It was pointed out that these committees did not deal with individual problems, which are a matter for the labour authorities. As the relevant Decree was promulgated during the Commission's visit to Chile, the Commission was unable to obtain information regarding the role and activities of the committees in practice. It noted from the text of the Decree that these committees correspond to a large extent, as regards both their composition and responsibilities, to the co-ordination committees described in the previous paragraph and are responsible to the Ministry of Labour and Social Welfare. Shortly after its adoption the Supreme Decree No. 852 was repealed by Legislative Decree No. 3 of 9 January 1975 which maintains the system, already described, of co-ordination committees, but sets up, in addition, departmental co-ordination committees, provides that trade union representatives may be removed by the Minister of Labour, and assigns the chairmanship of the provincial and departmental co-ordination committees to an officer, on active service, of the police or the armed forces, the respective labour inspectors remaining as ordinary members thereof.
406. Regarding relations between union organisations and the Ministry of Labour or its provincial offices, the Commission found that the factory unions often referred claims or complaints to the Labour Inspectorate, usually after the breakdown of discussions with the employers. Some inspectors said that they served as conciliators and that agreement was always reached. The Labour Inspectorate is consulted in both individual and collective cases and in various fields such as the interpretation of collective agreements, leave of absence for union leaders, or the alignment of pay rates on those of undertakings in the same sector. At the national level, several federations and confederations referred to their contacts with the authorities, particularly the Ministry of Labour. The Chilean Confederation of Private Employees (CEPCH) and the Confederation of Copper Workers said that they had been able to meet the Minister of Labour or the Minister of Mines, sometimes at his invitation, in order to put forward claims or explain the wishes of workers. The leaders of the CEPCH also referred during their talks with the Commission to the communications which their organisation had sent to a member of the government junta and the Minister of Economy regarding pay adjustments and rising living costs, and to the Minister of Labour notifying him of the workers' concern regarding working hours in commerce. Some organisations referred to the successes obtained as a result of their meetings with the Minister or his representative. As a result of its representations to the authorities and findings issued by the Directorate of Labour, the Single Union of the Pacific Steel Company, for example, succeeded in having the productivity bonus incorporated in basic pay. In the public sector, the National Association of Public Employers (ANEF) said that it had discussed union problems with the Minister of Labour and pay problems with the Minister of Finance. The Industrial Federation of Railway Workers referred to an approach made to the Minister of Transport to obtain an end-of-year gratuity. On the other hand, some organisations informed the Commission of difficulties which they had encountered in obtaining meetings with the authorities or the failure of their action with the Ministry. For example, the Industrial Mining Federation wants to participate in the discussion of labour policies which, according to it, is not permitted at present. The leaders of the National Federation of Textile and Clothing Workers stated, in connection with the granting of legal personality to their organisation, that their approaches to officials of the Ministry of Labour had been unsuccessful, as these officials did not consider themselves competent to deal with the matter or felt that they did not have time to study the question. The Ranguil Confederation, which had already had meetings with officials of the Ministry of Labour, had, on several occasions, asked to be received by the Minister, but no reply had been received.
CHAPTER 19

THE NEW DRAFT LEGISLATION ON
TRADE UNION ORGANISATIONS

Main provisions

407. During its visit to Chile, the Commission received from the Government the draft of a legislative decree on trade union organisations drawn up by the Study Committee on the Labour Code, the text of which is appended to this report. According to information provided by the Minister of Labour and Social Welfare, this text, the main provisions of which are set out in Appendix III of this report, will serve as a basis for the definitive legislation which may be adopted in May 1975.

408. Having provided that workers and employers without any distinction whatsoever have the right to establish without prior authorisation, to join or to withdraw from organisations of their own choosing (article 1), the text defines trade union organisations as institutions for mutual co-operation between those concerned in production, whose fundamental and continuing object shall be to promote the economic and social progress of their members, assist the economic and social development of the community and participate in the machinery established for that purpose. Trade unions which contravene these rules will be considered as acting contrary to the spirit and the letter of the law (article 2).

409. Two types of union may normally be created: works unions, which may be set up in any enterprise having more than 300 workers provided that this is decided by an absolute majority of the personnel by secret ballot conducted in the presence of a representative of the labour inspectorate; this decision is binding on all workers of the enterprise (article 6); and sectoral unions established at the provincial level, which must have at least 100 members representing at least 25 per cent of the workers in the sector in question (article 8). If the workers decide to set up a works' union, they may not set up nor join a sectoral one (article 6). In addition, it is possible in certain specified cases and with the authorisation of the Ministry of Labour and Social Welfare to set up other types of union (article 10).

410. Employers' and workers' organisations have the right to form federations and confederations and to join them or withdraw from them (article 11). Federations, which may be regional or national, are established by a decision of 25 per cent of the unions belonging to a given branch of economic activity (article 12). Similarly, the establishment of nation-wide confederations requires the agreement of 25 per cent of the federations belonging to a given sector of economic activity within the country (article 13). The draft decree precludes, implicitly but definitely, the establishment of a central union or unions for organisations of workers in different sectors of the economy.

411. Organisations representing both workers and employers are prohibited; however, there must be collaboration between the two categories of organisation and they may decide to undertake activities jointly (article 15). Furthermore, workers' and employers' organisations are forbidden to interfere directly or indirectly in each other's activities (article 52).

412. An employers' or workers' organisation obtains legal personality merely by depositing its deed of constitution and statutes with the labour inspectorate (article 16). Employers' and workers' organisations will normally be constituted in the presence of a representative of the labour inspectorate (article 17).

413. The draft provides that trade union organisations shall be managed by an executive committee composed of between five and nine persons, as stipulated in the draft, according to the membership of the union (article 20). It also establishes certain conditions for eligibility for membership of the executive committees, with particular reference to occupational status, age, nationality, education and police record (article 22). Furthermore, persons occupying certain functions, such as that of minister or political party leader, are debarred from standing for trade union office and the performance of union functions (articles 23 and 24). Officers are elected by the members by compulsory, direct and secret ballot in accordance with an election system guaranteeing the representation of minorities (articles 25 and 27). Terms of office may not be less than 18 months or more than 3 years, but re-election
is authorised. Only the presidency is limited to two complete and consecutive terms of office (article 28). Candidates for office in a trade union organisation enjoy security in their jobs from the time of their nomination until the day of the election and may in certain cases be entitled to paid leave for the purpose of pursuing activities associated with their candidatures (article 29). Trade union leaders also enjoy job security extending six months beyond the end of their term of office (article 39). Employers must grant them leave of absence of between four and ten hours a week depending on the size and geographical scope of the organisation (article 30). One or more of the officers may by decision of the general meeting devote all or part of his or their time to trade union affairs and, in this capacity, be remunerated by the organisation (article 32). The draft text also enumerates certain grounds on which officers may be removed by decision of the members. These relate mainly to infringements of laws, regulations or statutes and failure to comply with decisions adopted by the competent authorities or the organs of the trade union (article 43).

414. Regarding the supervision of trade union organisations, the draft provides that they must produce any information which the labour administration may demand (article 18). In particular, the administration of trade union funds by the executive committee in accordance with the annual budget approved by the general meeting may be verified by the Labour Administration on its own initiative or at the request of any interested party. For this purpose the labour administration may scrutinise the organisation's bank accounts (article 49). The text also establishes minimum trade union dues and provides that employers must deduct such dues at source at the request of the executive committee. Workers who do not belong to a trade union pay a minimum contribution to be passed on to the union of their choice or be divided between the unions in the enterprise or in the economic sector (article 45).

415. The draft decree prohibits anti-trade union discrimination both at the time of engagement of a worker and during his employment (article 52).

416. The text sets out grounds for the dissolution of a trade union organisation. These relate mainly to lack of conformity between legal requirements and the organisation's rules, infringement of the legislative decree concerning trade union organisations, the number of members (if membership remains below the stipulated minimum for six consecutive months) and repeated acts of interference. Dissolution of a union by judicial order may be demanded by a majority of members, an organisation concerned or the head of the Labour Directorate (article 54).

Comments of the International Labour Office

417. In the communication transmitted to the Government of Chile at the end of its visit, the Commission, having regard to the fact that the Government expected to promulgate draft legislation at an early date, proposed that the International Labour Office study the text of the draft decree and transmit to the Government the comments presented by the competent bodies of the ILO in the case of similar legal provisions examined by such bodies in the exercise of their functions.

418. In accordance with this proposal, the Office prepared a document containing these comments, which also relate to a provision of a draft bill concerning collective bargaining and collective labour disputes, which had also been communicated to the Commission by the Government. In addition, the Office prepared separate technical comments on the draft text concerning collective bargaining. These various comments were addressed to the Chilean Government by communications dated 28 January and 14 March 1975, respectively. The comments on the draft bill relating to trade union organisations are as follows:

Article 2. This article is open to various interpretations and might mean, in particular, that the unions must be subordinated to the requirements of the Government's economic and social policy, especially when it refers to trade union organisations as "institutions for mutual co-operation between those concerned in production", one of whose fundamental objects is to promote economic progress and to participate in the machinery established for that purpose and when it declares that any trade union organisation which directly or indirectly contravenes those purposes is to be considered as acting contrary to the spirit and letter of the law. A strict interpretation would appear likely to infringe Article 3 of Convention No. 87, which recognises the
right of workers' and employers' organisations to organise their own programme of activities, the authorities abstaining from any interference which might restrict this right or impede the lawful exercise thereof.

(Cf., for example, Sixth Report of the Committee on Freedom of Association, Case No. 11, paras. 100-102; 113th Report, Case No. 266, paras. 39-54.)

**Articles 5 to 9.** The provisions in these articles are especially relevant in the light of the principle laid down in Article 2 of Convention No. 87, according to which employers and workers have the right to establish and join organisations of their own choosing (the principle recognised in article 1 of the draft decree).

These articles lay down various rules limiting the free choice of the type of organisation which may be established: they exclude organisations for workers in a particular occupation (only works' unions or sectoral unions are permitted); the authorisation of the Ministry of Labour is required to form unions for subdivisions within an industry or which are based on a territory larger than a province or on a district or area less than a province; once it has been decided to set up a works' union, the workers in the enterprise concerned may not take part in the establishment of or join a sectoral union; works' unions may be established only in enterprises employing more than 300 workers. In addition, the minimum number of workers required for the establishment of an organisation is relatively high and may be an obstacle to the formation of workers' and employers' organisations.

The Committee of Experts has at various times commented on statutory provisions which in one form or another impose restrictions on the structure and composition of employers' and workers' organisations and the minimum number of members necessary to form such organisations. The Committee's observations are to be found in its general reviews and in the observations and direct requests which it has addressed to particular governments.


Cf. also: Committee on Freedom of Association: 48th Report, Case No. 191, para. 72; 49th Report, Case No. 221, paras. 233 and 234; 54th Report, Case No. 179, para. 156; 79th Report, Case No. 393, para. 145; 143rd Report, Case No. 771, paras. 109 and 110.)

**Articles 6 and 17.** As regards the presence of a representative of the labour inspectorate at the meetings and ballots held to decide upon the establishment of a trade union organisation, as required by these articles, it will be recalled that the Committee of Experts has pointed out that the right of meeting is fundamental to the free exercise of the right to organise, and that employers' and workers' organisations should have the right to meet freely in their own premises, without the necessity for previous notification of the authorities, without their authorisation and without the authorities being present. With particular reference to the supervision by a labour inspector of elections in workers' and employers' organisations, the Committee has pointed out that, even if a provision of this nature is intended to prevent conflicts arising, intervention by the administrative authorities may appear arbitrary; to ensure the impartial and objective conduct of proceedings, supervision should where necessary be exercised by the appropriate judicial authorities.

(Cf. Freedom of Association and Collective Bargaining, op. cit., paras. 133 and 96 respectively.

Also: Committee on Freedom of Association, 50th Report, Case No. 240, para. 40; 52nd Report, Case No. 239, para. 192; 112th Report, Case No. 385, para. 73.)
Articles 11 to 14. The provisions of these articles, which refer to the formation of federations and confederations, come within the scope of Articles 5 and 6 of Convention No. 87, according to which workers' and employers' organisations have the right to establish federations and confederations of their own choice. With reference to the restrictive character of legislation allowing only one central body to be set up for a whole country, the Committee of Experts has pointed out that there is a somewhat contrary situation in which the law may prohibit the establishment of a national confederation for workers in different industries. The Committee has also considered it contrary to the principles of the Convention to prohibit the federation of agricultural workers' organisations with other workers' organisations, the federation of public servants' organisations with organisations of the private sector, or the establishment of federations composed of organisations representing different industries. Another restriction relating to federations or confederations not in harmony with the Convention is the requirement of a minimum number of organisations or federations to set up secondary or tertiary organisations.


Also, for instance: 85th Report of the Committee on Freedom of Association, Case No. 335, para. 460; 108th Report, Case No. 506, paras. 225 and 226.)

Articles 18 and 19. These articles relate to control of the internal affairs of trade union organisations, in particular to the management of the organisation's funds, by the labour administration authorities. The Committee of Experts has stated that application of the provisions relating to federations' and employers' organisations' rules to the internal management of the organisations should be a matter primarily for the members, the principles laid down in Convention No. 87 do not preclude an external review of the internal affairs of an organisation where there are allegations that activities have contravened the law (which itself should not infringe the principle of freedom of association) or the organisation's rules. However, in order to ensure impartial and objective proceedings, such control should be exercised by the judicial authorities. Legislation conferring on the administrative authorities an absolute discretionary right to investigate the internal affairs of a trade union organisation would not be in conformity with the principles of the Convention.

Specifically with respect to control by the Government over trade union funds, the Committee of Experts has said that this should normally be confined to the periodic presentation of accounts, as has been provided for in many countries. If the authorities have the discretionary right to conduct investigations or call for information at any time, there is a danger of interference in the internal affairs of workers' and employers' organisations which may limit the safeguards of Convention No. 87. Investigations should be limited to dealing with exceptional cases, where they may be justified by special circumstances, where, for instance, irregularities may be suspected on the evidence of the annual accounts or are alleged by members of the organisation. The Committee considered that there are certain guarantees against undue interference where the official appointed to exercise supervision enjoys some degree of independence from the administrative authorities and where he is himself subject to the control of the judicial authorities. Such guarantees do not always exist when supervision is exercised by the labour administration services or where there is no judicial control. The general principle regarding judicial control of the internal affairs of workers' and employers' organisations is of special importance in connection with the administration of their property and the management of their funds.


Cf. also, for instance: 83rd Report of the Committee on Freedom of Association, Case No. 399, paras. 285-287; 95th Report, Case No. 448, paras. 143 and 145; 116th Report, Case No. 385, para. 187; 118th Report, Case No. 559, paras. 178 and 179.)
The Committee of Experts has expressed the opinion that legislation requiring all union leaders to be workers in the enterprise or the industry which the organisation serves might endanger the guarantees provided for in Convention No. 87. In fact, in such cases, the laying off of a worker who was an organisation official might deprive him of the right to occupy his post and so affect the freedom of action of the organisation and its right to elect its representatives freely, and even encourage acts of interference by employers. Moreover the requirements in respect of the employment of officials might especially affect some categories of qualified persons such as retired workers. The Committee considered that to bring the legislation restricting access to posts in an organisation to persons employed in the activity concerned into line with the principle of freedom of election of organisation officials, it would be necessary to make the provisions in question more flexible by permitting the candidature of persons previously engaged in that branch of activity and to remove the requirements of employment in that branch for a fairly large proportion of union officials. This would appear to be of special importance where organisations are constituted for large undertakings, or for a branch of industry, or where federations or confederations are concerned.


A provision under which the members of a trade union organisation have been required to vote in the organisation's elections has been held to be incompatible with Article 3 of Convention No. 87.


A provision laying down a minimum subscription for the members of a union may prove difficult to reconcile with the guarantees of Convention No. 87.

(Cf. Freedom of Association and Collective Bargaining, op. cit., paras. 101 and 102.)

The comments on one of the provisions of the draft bill on collective bargaining and collective disputes are as follows:

(Title IV. Resumption of work and compulsory arbitration)

Under this article, the Government may order a return to work in the case of strikes affecting "the economic or social interests of the people". The Committee of Experts has pointed out, with respect to provisions allowing the authorities to forbid strikes if in their opinion a strike would prejudice public order or the public interest, or might be detrimental to economic development, that provisions drawn up in such broad terms might be applied in very diverse circumstances instead of being confined to cases of real emergency, and might therefore be an obstacle to the free exercise of the right to organise.

(Cf. Freedom of Association and Collective Bargaining, op. cit., para. 110.)
420. When transmitting these comments to the Government, the Office pointed out that they should not be taken as prejudging any observations that the competent UN bodies may be called upon to express in connection with these texts in the course of their regular proceedings; on, for example, the provisions concerning the conditions governing candidature for an official position in a workers' or employers' organisation (articles 23 and 24 of the draft decree on Employers' and Workers' Organisations), the functions of the president of such an organisation (article 28), the consequences of the removal from office of an official of an organisation (article 44); the allowed exceptions to the rules on interference permitted for certain persons or bodies (article 53) and the provision that only the Inspector of Labour may be heard in judicial proceedings relating to one of the causes of the dissolution of an organisation (article 54(a)).

Changes introduced in the draft legislation

421. Shortly before the adoption of the present report the Government transmitted to the Commission the text of a draft Labour Code which was to be submitted to the Inter-Ministerial Council for Social Matters for examination. Book II of the draft Labour Code contains the provisions already set out in the previous draft trade union legislation but with certain modifications, the most important of which, as well as the other relevant provisions, are summarised below.

422. Trade union organisations are defined in the new text as institutions which collaborate in the integration of the means of production in a just and strong society and whose basic and permanent aim is to further the economic and social progress of their members and defend their legitimate interests in encouraging economic and social development and the progress of the community (article 216). The new text restricts the possibility of setting up works unions: workers' trade unions may only be constituted by branch of economic activity; the setting up of works unions will be subject to authorisation by the Minister of Labour and Social Affairs, which authorisation may be granted only in the case of existing enterprises in which more than 300 workers are employed and which may be considered, because of their attributes, as being analogous to a branch of economic activity. A minimum of 65 per cent of the workers in the enterprise can put an end to the existence of this type of union. The works unions must be constituted and must function with a minimum of 25 per cent of the workers in the enterprise (articles 219, 220 and 221). As regards trade unions constituted by branch of activity, the minimum percentage of workers necessary to form a union and function as such is to be determined by the Minister of Labour and Social Affairs every two years. An appeal against his decision may be made to the labour judge (article 222). In order to become leader of a trade union it is necessary, inter alia, to work in the enterprise or branch of activity, or have retired within the 24 months prior to the election. This latter condition is only required if the enterprise has been in existence for less than two years (article 236). The election of leaders is only valid if not less than 55 per cent of the members have taken part in the election. Members of the unions constituted by branch of activity may elect a representative in enterprises having more than five workers. As regards the removal of trade union leaders by the members, the new draft provides that such a step can be taken without any reason being given, provided that two-thirds of the members vote therefor (article 256). Two new reasons for the dissolution of a trade union organisation are envisaged: viz., less than 55 per cent of the members having participated in three consecutive elections, and participation in illegal strikes or work stoppages. The provisions of article 54(a) of the previous draft (reasons for dissolution) no longer appear in the new text. Other similar provisions now appear as regards the composition of trade union organisations (article 230); these provisions no longer provide, as in the previous draft, that the judge will only hear the labour inspector in cases of appeal to the labour judge against an objection by the labour inspector to the rules of the union.

423. The new draft lays down that freedom of association for public servants is regulated by the same provisions, but with certain exceptions (article 269). The provisions concerning works unions are not applicable to public servants and each ministry or department of State shall be considered to be a branch of economic activity (articles 270 and 271). Trade union representatives shall not benefit from

1 The text of the provisions in question appear in Annex IV.
immunity (fuero) as laid down for other trade union organisations (article 275). The members of the armed forces, the carabineers, the intelligence services, the prison services and officials and workers in services which are essential to national security, as designated by the Ministry of National Defence are not permitted to constitute unions (article 276). Trade union organisations of public servants shall not have the right to collective bargaining (article 277).

424. As regards strikes, they are prohibited in activities necessary to national security or to the economy of the country, such activities to be determined by Presidential Decree (article 313). Strikes may also be suspended by Presidential Decree in activities which concern the safety or social or economic conditions, or which are harmful to the community, or a part thereof, or which affect the security of the country (article 335).

425. In the transitional provisions which appear at the end of the draft Code, a period of six months from the date of publication of any regulations required by the Code to be issued is provided within which the trade union organisations shall bring their rules into line with the new provisions. In addition, it is laid down that the right to form works unions may be exercised within one year from the date of publication of the regulations. When the above-mentioned time limits have expired, trade unions which have not conformed to the new provisions shall be dissolved. From the date of adoption of the Code the activities of existing trade unions will be limited to preparing their dissolution, amalgamation or integration with other trade union organisations, and no new members may be admitted except for the sole purpose of transforming the union. The provisions on collective bargaining, strikes and arbitration which appear in the new draft Code will only come into force once the economic situation permits the parties to negotiate freely, but in any event, not before 1 March 1976. The President of the Republic shall fix, by decree, the dates of application which may differ according to the different regions in the country. Lastly, it is provided that while Legislative Decree No. 198 of 1973 remains in force, the nomination of trade union leaders which should be made under the new Code shall be subject to the provisions of the Legislative Decree.
The Commission received a communication dated 25 February 1975, sent by members of the last National Council of the CUT. It was asserted in this document that in November and December 1974 thousands of people, mostly workers, were arrested in weeding-out operations among the working populations of Santiago. Hundreds of salaried and wage-earning employees had also been arrested in the country’s most important undertakings for having defended their rights and complained about the injustice of their employers. The names were mentioned, by way of an example, of 14 employees of the firm of Feresa who had been arrested and tortured or who are missing, one of them having been murdered. It was also stated that many women workers, mainly from Concepción, La Serena-Ovalle and the southern part of the country, had been arrested and transferred to the “Tres Alamos” prison camp and the Academy of Air Warfare. It was still not known where 130 workers and trade union officials, including some holding office at the national level, were imprisoned, and the appeals filed on their behalf under the (habeas corpus) procedure had been rejected by the courts. The communication also mentioned the names – some of which had already been communicated to the Commission – of about 20 trade union officials who were being kept in custody without trial and against whom no charges had been proved. Many of the prisoners – particularly those who had refused to agree to leave the country – were being tortured. The communication also expressed concern about the promulgation of a National Security Code to operate in times of peace or war or during a state of emergency, its purpose being to legalise the repressive action being taken against the Chilean trade union movement.

The communication then referred to information disseminated by the Chilean Government to the effect that 75 per cent of trade union officials had remained in their posts since the coming to power of the present Government. This claim was refuted by the authors of the communication, who cited as examples the cases of certain union officials declared by the Government to be still in their posts when, in reality they have been dismissed, arrested and in one case shot (the officials in question being Héctor Rojo Alfaro, Treasurer of the San Antonio Dockers’ Union, to whom the Fugitives Act was applied, and Arturo Vargas Vargas, Isidoro Misichea and Lindorfo Ramirez of the Industrial Union, Maria Elena Office). Reference was also made to the situation of certain national trade union organisations, some of whose officials had been arrested, dismissed or removed from office and replaced by government nominees: Cooper Confederation, Industrial Railway Federation, National Federation of Health Workers, Banking Federation, Chilean Maritime Confederation, National Association of Postal and Telegraphic Workers and National Association of Public Employees. The communication referred to the Single Union of Education Workers, some of the unions affiliated to which had been declared to be suspended, and to the foundation of the College of Teachers, whose executive committee had been appointed by the Minister of Education. The communication gave the names of some 30 primary unions, mainly in the textile industry and mining, most of which had been deprived of all their leaders as a result of their arrest or dismissal. It was also stated that 750 union officials at the National Health Service and more than 100 officials of the Postal and Telegraphic Workers’ Association had been dismissed.

Referring to the declaration handed to the Commission at the end of its stay in Santiago¹, the authors of the communication claimed that this document had been drawn up at the Ministry of Labour and sent to the intendants for compulsory signature by “supposed” union officials. It was further pointed out that only 300 trade unions out of a total of 7,000 supported the Junta, that 12 national federations out of 130 signed the declaration and that of a total of 36,000 union officials, the Government had been able to force into signing only 634, most of whom had been appointed by the authorities.

¹ See above, paragraphs 149 and 262.
429. Going on to refer to the laws and regulations which the Government has promulgated or the forthcoming adoption of which has been announced, the communication stated that, far from being beneficial to the workers, the reform of the Labour Code, the Social Statute of the Enterprise and the National Security Code pared away the benefits they had acquired and infringed their rights and freedoms, imposing upon them yet greater sacrifices. The right to submit claims, to bargain collectively and to strike would not be allowed to be exercised until the Government had succeeded in reducing inflation to a minimum. These rights had been suppressed and not suspended, as the Government claimed. Mention was also made of the issuance by the Under-Secretariat of Labour on 9 January 1975 of Decree No. 3, which instituted labour co-ordination commissions at the national, provincial and departmental level. According to the communication these co-ordination commissions were designed to legalise infringements of the rights of the workers. The Minister of Labour could appoint their members and decide the number of officials who would belong to them. Furthermore, the members could be removed at the discretion of the Minister, and it was compulsory for them to attend meetings, and pass on information to the workers about the measures taken by the Government. It was also claimed that these commissions would be unable to deal with specific problems of concern to the workers, nor should they have any power to take decisions. As concerns the tripartite boards set up for certain industries, the communication observed that they were purely consultative and that when a vote was taken the representative of the Ministry of Labour, who acted as chairman, was entitled to four votes. Lastly, the communication gave a general picture of the country's economic and social situation.

430. On 23 April 1975 the International Confederation of Free Trade Unions forwarded a communication accompanied by a document drawn up by the external committee of the CUT. Recalling some of the recommendations made by the Commission at the end of its visit to Chile, the document of the CUT pointed out that none of these recommendations was observed; in fact, on the contrary, the document continued, the military junta has maintained and strengthened its policy of violating economic and social rights. In this connection, mention was made in the document of the prolongation of the state of emergency, the number of political and trade union prisoners, estimated at 12,000, the opening of new prison camps, torture, the arrest each week of an average of 600 persons, the continued torture of prisoners and arrest of trade union militants and leaders, and measures of reprisal taken against leaders who had given information to the Commission in Chile. In this regard the document cited the cases of Pedro Cornejo, national leader of the CUT, whose departure from the country had been postponed, Humberto Vergara Munoz, arrested after giving evidence before the Commission, Ariel Mancilla, provincial leader of building workers in Santiago, both of whom were arrested in March 1975. It was then pointed out in the document that, the rate of inflation being as it was - namely 60 per cent for the first three months of 1975 - collective bargaining was suppressed indefinitely. Finally, reference was made in the document, to the economic and social situation of the country and the drop in the purchasing power of the workers, and to the numerous dismissals and closures of enterprises which gave rise to unemployment officially stated at 10 per cent but which was really of the order of 20 per cent.

Communications relating to certain trade union officials

431. The Commission received communications from some of the complaining organisations referring to trade union officials said to have been killed or to be in custody. As agreed at the Commission's second session, the names of these persons were communicated to the government with a request to supply information concerning them.

432. In a communication dated 13 December 1974, the World Federation of Trade unions referred to the arrest of Mario Navarro, a member of the National Council of the CUT and a former Secretary of the WFTU, Claudio Alemany, an official of the SUTB, and Luis Padilla, a trade union official and also a former Secretary of the WFTU.

433. On 29 January 1975, the Trade Unions International of Chemical, Oil and Allied Workers sent a communication giving information about the death in October

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1 See above, paragraph 127.
1974 of León Javier, President of the Industrial Union SHYF NURGA de SUTRAP, and the arrest and imprisonment of two trade union officials: Patricio Stuardo, Assistant General Secretary of SUTRAP and President of the Staff Union at the firm of Mariaino, who was first kept in custody for 52 days after being arrested in January 1974, and arrested again in October 1974 at Pudalme1 Airport when about to leave the country, and Vicente Aguayo, an employee of the GEKA Laboratories and an active member of SUTRAI, who was arrested for the second time in December 1974 and is imprisoned at the Chilean Air Force hospital.

434. The Trade Unions International of Workers of the Building, Wood and Building Materials Industries, for its part, referred in a communication dated 14 February 1975 to the case of two missing officials of the Chilean affiliate of the International: José Baeza, missing since July 1974, and Arturo Aguilera, missing since September 1974.

435. The Government supplied information about the three persons mentioned by the WFTU in a communication dated 11 February 1975. According to this information, Claudio Alemany was one of the 200 persons allowed by the Government to go to Mexico, while Mario Navarro was under detention at Hitoque for having engaged in unlawful activities unconnected with his trade union functions, by virtue of Emergency Decree No. 655, issued by the Ministry of the Interior, exercising the powers vested in it in view of the state of siege proclaimed in Chile. As regards Luis Padilla, the Government stated that there were three persons bearing this name: Luis Padilla Ballesteros, who had been at liberty since 27 December 1974, Luis Padilla Greelt, who had been at liberty since 18 October 1974, and Luis Padilla Padilla, who was under detention at Copiapó by virtue of the powers vested in the government in view of the state of siege.

Communications relating to certain persons who have been in contact with the Commission

436. As already stated, the Governing Body requested the Government for an assurance - subsequently given - that no persons who had been in contact with the Commission during its visit to Chile would for that reason be subject to coercion, sanctions or punishment at any time. In addition, at the opening of the hearings in Geneva, the Commission stressed the importance it attached to the protection of persons attending and giving evidence at these hearings from having any form of sanctions imposed on them as a result.

437. A number of communications have been received referring to measures said to have been taken with respect to persons who had been in contact with the Commission. The World Federation of Trade Unions sent a communications dated 10 February 1975 in which it alleged that reprisals had been taken against Jorge Montes, one of the persons under detention interviewed by a member of the Commission. According to the WFTU, this person had been transferred to the military prison on Quiriguina Island as a punishment for the statements had had made.

438. In a communication dated 19 February 1975, the International Confederation of Free Trade Unions announced the arrest of Humberto Vergara, permanent adviser to the United Confederation of Workers and Peasants, after the departure of the Commission, before whom he had given evidence as a witness in Chile. The WFTU sent a further communication on 27 February 1975, likewise referring to the arrest of Humberto Vergara, and specifying that he had been arrested in mid-January because of the fact that he had given evidence before the Commission. The WFTU also mentioned the case of another person interviewed by a member of the Commission in Chile - Mrs. Graciela Alvarez, legal adviser to the imprisoned trade unionists, who was arrested on 14 February 1975 and is now in the "Tres Alamos" camp.

439. On 4 March 1975, the International Confederation of Free Trade Unions sent a communication referring to Mrs. Janine Miguel, substitute for the ICFTU representative at the Commission's second session. A few days after that session started frequent raids began to be made on her home in Santiago and threats were made to its occupants, as well as to her legal adviser. The National Intelligence Directorate (DINA) took possession of the building for the use of military personnel.

440. The text of these communications was transmitted to the Government for comment.
441. In its communication of 15 March 1975, the Government supplied information about two of the persons mentioned above. After pointing out that Jorge Montes was not a trade union official and that the Commission itself had already indicated that he was allowed to be interviewed because his case had been specifically mentioned during the hearings in Geneva, the Government stated that he had been transferred to "Tres alamos" for climatic reasons.

442. As concerns Humberto Vergara, the Government stated that he had been arrested under the powers conferred by the state of siege — without its even being known that he had been interviewed by a member of the Commission — on the ground that he was carrying on activities prejudicial to national security, putting to use in so doing the training he had received in Cuba in 1972.

443. In a later communication dated 11 April 1975, the Government reiterated this information and declared that the measures taken were in no way intended as reprisals and that it had complied with and recognised the undertaking it had given to the Commission.

444. In a communication dated 2 April 1975, the Government stated, with regard to the case of Mrs. Janine Miquel, that the information given in the complaint was very vague and did not suffice to enable the matter to be investigated. The Government, therefore, requested certain additional information in order to be able to give a specific reply. The terms of this communication were made known to the ICFTU.

Communications from the Government with respect to the preliminary observations made by the Commission

445. In the document handed by the Commission to the Minister of Labour and Social Welfare at the close of its visit to Chile, which contained certain preliminary observations on the matters before it, the Commission also stated that it would be glad to examine any further communication which the Government might wish to submit between then and 15 March 1975, commenting on the Commission's recommendations and informing it of any relevant measures which might have been taken or might be contemplated, and that the Commission would formulate its final conclusions in the light of any such further indications and of the situation prevailing at the time of drafting its final report.

446. By a communication dated 12 February 1975, the Government supplied drafts of a legislative decree concerning the Social Statute of the Enterprise and of a legislative decree concerning Vocational Training for Workers, as well as a copy of a press release giving an account of the activities of the Minister of Labour so as to inform the unions directly of the amendments to the law that the Government was introducing in the labour field. The workers' and employers' organisations have been invited to furnish their observations on these texts.

447. The draft decree concerning the Social Statute of the Enterprise provides that every undertaking must supply the workers on its staff with the information necessary to enable them to form a precise opinion as to its functioning, organisation, management and prospects, and make arrangements for consultation so that the workers may make suggestions with a view to improving its administration. With this end in view provision is made in particular for the setting up of works committees and for the inclusion of representatives of the various groups of workers and a union representative. These committees are to be set up in undertakings with more than 100 employees; in undertakings with more than 25 and fewer than 100 employees a committee may be set up if the majority of the workers so request. Undertakings with a councilor board of directors must appoint to it a representative of the workers, with the right to vote. The draft decree on vocational training for workers, for its part, stipulates that undertakings must carry out specific training programmes for their workers, assuming responsibility for the technical, administrative and financial aspects involved. The works committees must have a say in the planning and evaluation of the programmes and ensure that they are properly carried out. Responsibility for promoting, rationalising, co-ordinating and supervising these activities will lie with the National Vocational Training Council, and they are to be financed through a National Vocational Training Fund.
In a lengthy document dated 15 March 1976 the Government made observations and supplied further information in relation to the preliminary remarks already conveyed to it by the Commission. This document began with a description of the political situation in Chile which led up to the military takeover of 11 September 1973, and explained the course of action followed by the armed forces and the police at that time and the reasons for their seizure of power: "the serious social and moral crisis which the country is undergoing; the incapacity of the Government to control the existing chaos; the constant increase in the number of paramilitary groups trained by the Popular Unity parties, which will inevitably bring the people of Chile into a state of civil war" (First Proclamation of the Government Junta). The document went on to refer to the economic situation under the previous regime, and to the measures taken since 11 September 1973, the results achieved and the economic policy followed by the Government.

The document then discussed the Government's labour policy during this transitional period, pointing out that in the First Proclamation it is specified that "the workers may rest assured that the gains they have achieved so far in the economic and social fields will not be affected in their essentials". The terms of this statement, continued the document, have been respected and are still being respected. However, due to the situation created by the extremists and the economic conditions inherited by the Government - particularly the high rate of inflation - certain measures had to be taken such as the suspension of collective bargaining and the right to strike, the extension of the term of office of trade union executive committees and the establishment of special procedures for the termination of employment relationships in both the public and private sector.

Nevertheless, stated the document, the Government, aware that a policy of economic stabilisation cannot neglect the needs of the workers, took a number of statutory measures, with effect from 1 October 1973, designed to offset the increase in the cost of living. In this connection the Government referred, inter alia, to the establishment of the Single System of Family Benefits and the adoption of Legislative Decree No. 670, which introduced a system of automatic adjustments of salaries, wages, pensions and allowances and provided for the setting up of tripartite advisory boards, competent to recommend increases higher than those resulting from the automatic adjustment procedure. So far, such boards had been established and were functioning in the following activities: private sector of the printing industry; papermaking; lubricants and fuel; textiles; building; the construction and maintenance of lifts; pasta products manufacture; banking; clothing manufacture and laundry establishments. Approximately 500,000 workers, or 16 per cent of the labour force, are employed in these branches of activity. The Government stated that the basis for the work of these boards - on which representatives of employers and workers sit side by side with those of the Government - would be negotiations between employers and workers after proper study of the facts of the situation. It could, therefore, be said that this was an indirect method of authorising collective bargaining. The existence of these boards would enable workers in the future to acquire a greater understanding of the situation in their respective undertakings or branches of activity against the time when collective bargaining was fully restored.

After referring to other provisions adopted with respect to remuneration and benefits, and to the extension of the collective agreements and arbitration awards in force in 1973 until 1 March 1976, the document stated that under Legislative Decree No. 851 of 11 January 1975 the Ministry of Labour was empowered, on its own initiative or at the request of the persons concerned, to extend the application of conventions, arbitration awards, collective agreements or decisions of tripartite boards to workers not covered by these instruments because they were not union members. This provision had already been implemented three times.

As a consequence of the suspension of the right to submit claims, the right to strike had been suspended as well, for reasons of national security and the internal economic situation. Employers were likewise denied the right to resort to lockouts.

The document went on to refer to the temporary suspension of trade union elections as a result of the state of siege. After summarising the provisions of Legislation Decree No. 198 respecting trade union executive committees, and the procedure to be followed to fill vacancies, the document stated that to meet any special cases that might arise, section 9 of this legislative decree empowered the Minister of Labour to issue supplementary regulations to cover the situations in question. At the request of the workers concerned such regulations had been issued in several cases, and in practice this amounted to a genuine election process, since
the workers themselves proposed the members of their executive, without it being necessary to apply the seniority rule.

454. As concerns trade union meetings, the document insisted that under Legislative Decree No. 198 it is required to give prior notice to the authorities, but not to request their permission or authorisation. In practice not only information meetings but also full-scale meetings and ordinary and extraordinary congresses had been held, and matters discussed recently had included the draft legislative decree concerning the Social Status of the Enterprise and vocational training for workers.

455. The document reviewed the provisions enacted with respect to termination of employment in the private sector, stating, in particular, that following the establishment of special tribunals under Legislative Decree No. 32, the military courts - which had been empowered to try such cases under the state of siege, which was of the same importance as a state of internal war - were no longer competent to hear cases of dismissal on any of the grounds specified in the Legislative Decree - ground relating to acts designated as misdemeanours in the Act respecting the Internal Security of the State. These provisions governing dismissal were intended, not to punish the holding of political opinions, membership of a trade union or the performance of trade union activities, but solely to prevent acts prejudicial to the security of the State. Referring to the provisions assigning a temporary character to the posts of workers in the public sector, the document stated that the machinery of government had been infiltrated by elements whose principal concern was to carry on activities prejudicial to the security of the State. Under Legislative Decree No. 15 special commissions had been set up to examine appeals filed by persons who considered that they had been wrongfully dismissed. In any event, the national Constitution stated that the nomination of public officials and the dismissal of persons employed by the public administration, in accordance with the legislation governing the department concerned, was a function reserved to the President of the Republic. The document added that the new legislation to be promulgated shortly should not give rise to any objections.

456. This new legislation was enacted subsequent to the preparation of the document, and the Government forwarded the text to the Commission: Legislative Decree No. 930 of 17 March 1975. This instrument begins by repealing Legislative Decrees Nos. 6 and 22 and section 3 of Legislative Decree No. 98, which placed public service personnel on a temporary footing (except for employees of the judicial authorities and at the Controller-General's Office), as well as Legislative Decree No. 193, which set up the special commissions. It goes on to prescribe (as a new section 2 of Act No. 16455, respecting the termination of contracts of employment) the following additional just causes for terminating the contract of employment, applicable both in the private sector and in the public sector. The activities specified are deemed to be prejudicial to the security of the State:

1. commission of unlawful acts which prevent workers from going to work, or performing the duties assigned to them;
2. offences against property on the premises of the undertaking;
3. commission of acts which result in the destruction, depreciation in value or damaging of working materials or tools or articles produced, or merchandise;
4. directing or participating actively in an unlawful interruption or stoppage of operations, whether total or partial, in undertakings or at workplaces, or wrongful detention of persons or retention of property;
5. inciting others to destroy, render unusable or shut down public or private installations, or participating in acts resulting in damage to such installations;
6. participating in bringing into the country, manufacturing, storing, transport or delivering, for any reason whatsoever, any type of arms without appropriate authorisation;
7. commission of one of the offences specified in Act No. 12927, respecting the security of the State, or in the amendments to that Act, or in Act No. 17798, respecting the control of arms, or in the amendments to that Act.

The document appears to refer to this cause as constituting "interference with freedom of work". See also paragraph 215 of this report.
457. Trade union officials dismissed for one of these causes could claim entitlement to immunity from dismissal (fuero sindical). Workers dismissed in the private sector could appeal to a labour court. In the public sector, under the terms of this legislative decree, employees who were not governed by the Administrative Statutes could also appeal to a labour court. In the case of officials who were governed by these Statutes, the provisions of the Statutes relating to disciplinary action to remove officials from their posts were applicable, and the legislative decree contained provisions concerning the initiation of the appropriate administrative proceedings. The legislative decree also repealed certain provisions of Legislative Decree No. 32 which were still in force, with the result that the whole of this decree was now inoperative. As concerns the special commissions established under Legislative Decree No. 193, they would continue to function until they had completed the cases now before them and those due to come before them in relation to dismissals prior to the date of publication of Legislative Decree No. 930, and for which the time limit for filing an appeal had not yet expired.

458. Reverting to the document submitted by the Government - it went on to review the provisions in force concerning stoppages of work in undertakings and collective dismissals, and concerning severance pay, stating in conclusions that in both the public and private sectors dismissals may have been attended by abuses and frequently by injustice, these being an unavoidable accompaniment of the extraordinary events through which the country has lived and an inevitable consequence of human limitations. Today, it was hoped to restore the procedures which were in force prior to 11 September 1973 for the protection of those so affected, with the necessary changes to take into account both the security of the State and the rights of the workers. In any event, any acts of discrimination that may have been committed by the governmental authorities had never been directed against trade unions as such nor based purely on grounds of political opinion.

459. The document went on to refer to the proposed revision of the labour legislation, especially as concerns the Labour Code, social security, the Social Statute of the Enterprise and the provisions governing vocational training. The amendments in question should come into force simultaneously, thus bringing to an end the transitional period.

460. With regard to trade union organisations, the document stated that the legislation in force gave rise to the development of large numbers of trade unions, and the appointment of large numbers of trade union officials, without regard to the actual structure of the country's labour force. In addition, it facilitated the development of disputes within individual undertakings, and such disputes became so numerous that the mediation arrangements became completely ineffective. In addition, the principle of the single works union with compulsory membership was inconsistent with ILO Convention No. 87. Furthermore, these unions could form federations and confederations without being subject to any requirement that there should be some affinity between the constituent organisations. Consequently the reform of the legislation sought (i) to avoid the development of trade unions in excessive numbers; (ii) to prevent the development of small unions, which cannot given proper protection to their members; (iii) to prevent the appointment of trade union officials in excessive numbers; (iv) to move the scene of collective bargaining away from the framework of the individual undertaking in order to achieve more uniform levels of pay and to avoid the disturbances which usually occur while collective bargaining is going on. Trade unions would be able to form federations and confederations, but only within the same branch of activity. The right to organise would also be recognised in the public sector.

461. Collective bargaining, as a result of the proposed reforms, would be a matter for unions at the undertaking level, or for unions of workers in the same branch at the provincial level, though the scope of bargaining may be extended to cover two or more provinces if the parties agreed. If a settlement could not be reached, all the workers would vote on the best proposal put forward by the employers or by the mediator. If they rejected the proposal, they would be allowed to call a strike or to ask for the matter to be submitted to arbitration; in the latter case the employers must accept referral to arbitration. Strikes would not be allowed in sectors of activity of vital importance for national security or the country's economic stability. In these sectors compulsory arbitration would be the rule.

462. The last part of the document referred to trade union activity and human life and freedom. After claiming that the political infiltration of Chilean trade
unions had been clearly proved, the document stated that a suicidal resistance was offered to the armed forces and the police, in the hope that the paramilitary brigades which had been in training for some time would fall upon the troops, and that there would be split in the security forces. However, this example, which was leading the country into civil war, was emulated by few, and practically no resistance was encountered outside the capital. The document went on to state that the repression might have appeared excessively severe in comparison with the feeble resistance encountered. But it had been possible for the Government to observe the scale on which war material had been distributed, the organisation of the paramilitary forces, the fanaticism of the leaders of these extremist movements and the cold-blooded indifference of the groups of foreign agitators. Proof of the above was said to be found in the attitudes in which certain leaders still persisted, in contempt of their own lives and those of their compatriots. It must be recognised—continued the document—that the state of internal hostilities which was officially declared on 11 September 1973 had in fact begun years earlier, with class hatred and internal warfare in which both extremists and members of the security forces lost their lives. It was for these reasons that the Government had to show absolute determination in its policy of maintenance of order with all the tough measures—detention, convictions and even executions—which that determination implied. However, the situation had gradually been becoming less tense, because the present Government was seeking national reconciliation and reconstruction, which could only be achieved in an atmosphere of peace and unity. It was to be emphasised that throughout the period of repression—during which cases of injustice or abuse may well have occurred from time to time—every attempt had been made to avoid direct action by having recourse to courts martial, which acquired competence as courts when a state of internal hostilities was declared. At the same time, from the beginning the Government respected the principle of the right of asylum, which Chile herself had continually invoked and practised.

463. Turning to the situation of individual trade unionists, the document began with an assurance that the foregoing remarks on the repression were not intended to belittle the latter’s significance in any way. The life of every man was sacred. Freedom was a right, and any constraint upon freedom was a deprivation of that right. But the legislation of every country in the world contained provisions whereby the political community could defend itself when its existence was threatened. And Chile was on the brink of the abyss—of destruction. The document then referred to the paragraph in the preliminary comments made by the Commission dealing with the imprisonment or bringing to trial of trade unionists, stating that there were grounds for thinking that the Commission referred to these subjections in the belief that they had been applied to the persons concerned because the latter were trade unionists. The document pointed out in this respect that the Government believed that it had given sufficient evidence that the imprisonment or sentencing of trade union leaders had been and still was the consequence of activities alien to the functions of trade unions, harmful to public order or of a political character.

464. The document stated that since the proceedings in respect of Chile began, innumerable lists of purported trade union leaders who were alleged to be dead or in prison had been submitted. The Commission therefore drew up two lists, one of trade union leaders who, it was claimed, had been killed or executed, containing 110 names, and another of 120 trade union leaders or former leaders who had allegedly been arrested. The document went on to state that there will be no question here of juggling with figures; as had been said earlier, the life of every man was sacred and for every man freedom was a right. However, it was a fact that many of the 230 people mentioned in these two lists had never been trade union leaders. And there were approximately 25,000 trade union leaders in the country. This meant that the two lists would have comprised less than 1 per cent of the total number, even if all those named had been trade union leaders—which was not the case.

465. The conclusion was obvious, stated the document, and it was in line with what the Government of Chile had repeatedly stated in the past, namely that no genuine trade unionists had been killed, or sentenced, or imprisoned. Those who had died, either in the fighting or by sentence of a court, or who had been imprisoned were extremists who had infiltrated the Chilean trade union movement or politicians who were seeking—or who were still seeking—to utilise the trade union movement for party ends, in this particular case for purposes of or at a time of armed resistance.
PART VI

CHAPTER 20

CONCLUSIONS AND RECOMMENDATIONS

466. Chile has not ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which, accordingly, has no binding effect for this country. However, by its membership of the International Labour Organisation, Chile is bound to respect certain number of general rules which have been established for the common good of the peoples of the twentieth century. Among these principles, freedom of association has become a customary rule above the Conventions. As the Committee on Freedom of Association of the Governing Body indicated in a report approved by the latter at its session in March 1952, in connection with trade union rights, "the function of the International Labour Organisation in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice". The Committee further indicated that, in fulfilling its responsibility in the matter, it must not hesitate to discuss in an international form cases which are of such a character as to affect substantially the attainment of the aims and purposes of the ILO as set forth in the Constitution of the Organisation, the Declaration of Philadelphia and the various Conventions concerning freedom of association.

467. The Government of Chile agreed to the case being referred to the Commission, and facilitated, especially during the visit of the Commission to Chile, the investigations which it considered necessary to undertake.

468. Having thus defined the legal framework in which the Commission has carried out its task, the Commission, which has now completed its work, must now set forth its conclusions and formulate its recommendations, thus discharging the function of conciliation which was also entrusted to it.

469. The events which occurred, starting on 11 September 1973, have brought about far-reaching changes in Chile and a complete reversal of the situation which prevailed in the country before that date. It is obvious that the country was, and still is, deeply divided. It is not, however, the task of the Commission to express an opinion on the causes which led to these events, nor upon the appropriateness of the decision to effect these changes. These are highly controversial political issues which are outside its competence.

470. Both the Government and the witnesses on its behalf, as well as the many persons interviewed in Chile, insisted on the need to bear in mind, in appraising the events that have occurred since 11 September 1973, the situation which existed in the country immediately prior to that date, and which was said to have profoundly disrupted the life of the nation and to have accounted for the change of regime. The Commission must insist in this connection that, whatever this situation may have been, its terms of reference are to investigate the various allegations of infringement of freedom of association and civil rights, as they affect the exercise of trade union rights, since the change of regime as well as the consequences which the change had on freedom of association. It will take earlier events into consideration only if they have a direct bearing upon the measures taken by the Government in regard to the various aspects of freedom of association involved in this case.

471. The events in Chile have had a profound impact upon public opinion, and upon all trends of thought in the international trade union movement, irrespective of their political leanings or ideologies. The complaints presented to the ILO contain grave accusations not only of infringement of trade union rights but also, and in particular, of infringement of basic human rights pertaining to the lives, personal safety and freedom of many trade unionists.

472. It is clear that the real intention behind the change of regime was to bring about a drastic change in the situation as it had developed under the Popular Unity Government. The action of the new Government could not fail to have a profound impact upon the trade union movement, a substantial proportion of whose
leaders - and in particular those at the head of the Single Central Organisation of Workers - were members of Popular Unity parties. The Commission has analysed the various items of evidence at its disposal, bearing in mind also the large number of trade union officials and organisations affected by measures taken by authorities at different levels. It is clear from all this evidence, viewed as a whole, that one of the aims of the Government has been to eliminate or prevent any large-scale opposition to its policy on the part of trade unions or of large numbers of their leaders.

473. The Commission will now examine separately each of the measures taken by the Government on these matters, as well as various aspects of the present situation as concerns trade union activities.

Dissolution of the Single Central Organisation of Workers of Chile (CUT)

474. The arguments put forward by the Government as justification for the dissolution of the CUT referred to its dependent position vis-à-vis the State, the links which bound it to the parties which gave their support to the previous Government - in which a number of its leaders held ministerial posts - its intentions of implanting Marxism-Leninism in the country and the fact that its national leaders held office as the result of rigged elections, all of which had caused the organisation to become an instrument for political rather than trade union ends, serving interests which conflicted with those of the workers.

475. As proof of its assertions the Government referred, in particular, to the decision taken in May 1973 by the Interministerial Council for economic matters - of which the President of the CUT, at that time Minister of Labour, was a member - to centralise wage policy by putting an end to free collective bargaining. From various sources came references to agreements concluded between the CUT and the Government, including one whereby the organisation renounced the right to bargain collectively and the right to strike. It was also alleged that, with regard to certain collective disputes, the interests of the workers had been impaired as a result of the attitude taken by CUT officials holding government posts.

476. The links then existing between trade union officials and political parties are a fact which is not denied by anyone, and moreover such links were long-standing in Chile and were reflected in union election results. This situation was strengthened yet further by the electoral procedure adopted by the Sixth Congress of the CUT (1971), according to which the lists of candidates for election to the National Council and to the provincial councils had to be sponsored by a party, or by a political group or by a minimum of 30 trade union leaders. In addition, it was stipulated in Act No. 17594 of December 1972 that the by-laws of the CUT should provide for representation among its leadership of all the various ideological trends which made up the organisation. The relationships between the parties and trade union officials were thus formally maintained, with the risk that these officials would become excessively dependent upon their parties and that the trade unions would become increasingly involved in politics - a risk which should moreover be viewed within the context of the increased political involvement which affected the whole country during the Popular Unity regime. It should be mentioned that Act No. 17594, which recognised the legal existence of the CUT, nevertheless stipulated that it should not be used for party political or electoral ends. Links similar to those between the trade unions and the parties existed between the CUT and the Government, from the time that several of its leaders were appointed to ministerial posts, subsequently resuming their trade union functions.

477. The CUT's Declaration of Principles of 1968 stated that the organisation was not apolitical and that it was engaged in a campaign of demands based on the principles of class, at the same time preserving its independence vis-à-vis the Government and the political parties.

478. All this raised the problem of whether the CUT, on account of its relationships with the parties and the Popular Unity Government, had been perverted and had deviated from the purposes proper to a trade union organisation to such an extent that it could no longer be considered as an organisation mainly for furthering and defending the interests of the workers.

479. It cannot be denied that since the majority of its leaders belonged to Popular Unity parties, the CUT was one of the Government's firmest supporters.
However, facts such as the conclusion of agreements with the Government, or the appointment of trade union officials to ministerial posts, would not in themselves be sufficient grounds for concluding that an organisation has become a mere political instrument. The yardstick in such circumstances would be the degree of independence the organisation maintains in practice in order to perform the functions proper to it and faithfully represent the interests of the workers in dealing with the public authorities and the parties.

480. In the first place, it is a matter for the workers themselves to decide whether their leaders represent them loyally and, should it be necessary, to take appropriate action as provided for in the by-laws, or take the matter to court, or even remove the leaders in question from office, if they think fit, at the next union elections.

481. The official results of the elections in the CUT held in 1972, show a majority of votes in favour of the leaders belonging to the Popular Unity parties. In this way the workers would appear to have reaffirmed their confidence in these leaders at least up until that time. Nevertheless, these results were challenged by three of the various party trends participating in the elections, though they finally decided to accept them in the interests of the unity of the trade union movement.

482. The Commission considers that, generally speaking, the fact that trade union organisations engage in certain activities of a political nature or maintain relations with political parties is not incompatible with the principles of freedom of association. The absolute prohibition of such activities or relations would be not only contrary to these principles but unrealistic in practice. Trade unions may well wish to express publicly their opinion concerning the economic and social policy of a government or of certain parties, and may even wish to support a party in the interests of achieving their own objectives in the economic and social field. Nevertheless, they should guard against misusing such a faculty by going beyond their terms of reference in order to promote essentially political interests, nor should they discriminate against workers on political grounds.

483. The Commission feels bound to emphasise the importance in this connection of the resolution adopted by the International Labour Conference in 1952 concerning the independence of the trade union movement. This resolution states in its preamble that the relations between the trade union movement and political parties will inevitably vary for each country, and that any political affiliation or political action by trade unions depends on national conditions in each country. Nevertheless, in order to protect the freedom and independence of the trade union movement, the resolution considers it necessary to lay down certain essential principles, which are as follows. Where trade unions, in accordance with the law and practice of their respective countries and at the decision of their members, decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country. Governments, for their part, in seeking the co-operation of trade unions to carry out their economic and social policies, should recognise that the value of this co-operation rests to a large extent on the freedom and independence of the trade union movement as an essential factor in promoting social advancement and should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of a trade union movement because of its freely established relationship with a political party.

484. The Commission considers that, from the point of view of the general principles, the repression of any excesses or abuses in which trade unions might indulge in connection with their political activities or their relationships with political parties should be a matter for the judicial authorities. This rule forms part of a broader principle, proclaimed on countless occasions by the competent bodies of the ILO, to the effect that respect for freedom of association does not prevent outside control of the acts of a trade union where these acts are alleged to infringe the law or the rules of the organisation, but that in order to guarantee impartiality, this control should be exercised by the judicial authority. It is also the task of this authority to intervene when an election is challenged, or to order the dissolution of a trade union. There is indeed a risk that any intervention by administrative authorities, or even by the executive power, in such cases may appear to be arbitrary, whatever the terms of the national legislation
might be, whereas the best means of safeguarding the rights of all concerned, and in particular the right of defence, is by impartial and objective legal proceedings before the competent courts of law.

485. In the specific case now under consideration, the Commission cannot disregard the exceptional situation created in Chile by the change of regime. Nor can it disregard the fact that the previous legislation permitted dissolution of trade unions by decree. The Commission, however, in the light of the foregoing considerations, concludes that the dissolution of the CUT by government decision was not in conformity with the principles of freedom of association.

Situation with respect to certain trade union organisations

486. It is evident from the analysis of the information compiled by the Commission that certain organisations in agriculture and the teaching profession have been particularly affected by the change of regime.

487. In the agricultural sector, the Confederation of Agricultural and Indigenous Workers "Ranguil" and the United Confederation of Workers and Peasants remain legally in existence and have their executive committees, but they have been deprived of their premises and other assets, and no longer receive the union dues provided for in the Agricultural Trade Unions Act, No. 16625 of 1967. The great majority of their provincial federations and their unions at the commune level have ceased to function, and a number of these organisations have been dissolved by proclamations issued by the military authorities. These two confederations and their affiliated organisations, although still in existence, have been rendered practically inoperative. Their position is quite different from that of other agricultural workers' organisations such as the Peasant Confederation "Liberty", which are carrying on their normal activities, subject to the general restrictions imposed by the Government.

488. Both confederations (Ranguil and the Confederation of Workers and Peasants) and their affiliated organisations were supporters of the Popular Unity Government. But, in addition to this, the Government claims that they, like other trade unions, had become political instruments designed to be used for bringing about a change in the institutional order by violent means, and it supports this claim by citing certain passages in the by-laws of these organisations which refer to the attainment of "the ultimate goal of politics, namely the taking over of power", as well as their educational programme, the stated objectives of which include, for instance, the bringing about of an improvement in the "level of political awareness and class consciousness of the peasants belonging to the Confederation", and "ideological and political training compatible with the new responsibilities shouldered by the organisation". Lastly, the Commission has been informed from various sources that organisations affiliated to both of these confederations were responsible for the seizure of many agricultural properties.

489. The Commission considers that, in order to determine whether an organisation has deviated from its assigned purposes, it is necessary to examine its activities in practice. As regards the training courses, the Commission is of the opinion that it is for the organisations to decide upon the trend they are to follow, on the understanding that such activities must not be used to encourage recourse to violence. Participation by peasants' organisations in the violent takeover of agricultural properties, on the other hand, was a flagrant breach of law and order. The Commission considers that the Government and the local authorities should have dealt with these matters by identifying the persons responsible and bringing them before the courts, without going so far as to dissolve the unions by means of military orders or prevent the two confederations in question and their affiliated organisations by any other means from lawfully carrying on the activities specifically assigned to them in the trade union field.

490. In the teaching profession, the Single Union of Workers in Education (SUTE) and the National Association of Education Service Employees (ANES) are being run by Government-appointed supervisory committees, and neither of them is able to engage in any really effective trade union activity. The reasons given in the case of the SUTE are based on the need to verify whether the union's investments were consistent with its aims and purposes. As for the ANES, it is claimed that it was engaged in trade union and political activities in contravention of the law and of its own by-laws. In the case of the SUTE, it appears to be the Government's intention to replace this union by a College of Teachers.
491. The Commission is of the opinion that the supervisory committees appointed for both these organisations could have submitted their reports in the period which has elapsed, and that in any case it is for the courts to decide what action is to be taken upon these reports, with due respect for the right of the organisations concerned to be heard in their own defence. These organisations should be given the opportunity to normalise their position without delay, and in this connection the Commission feels bound to express its concern at the action it is proposed to take with respect to the SUTE, since, in accordance with the general principles of freedom of association, it is for the teachers themselves to decide what organisation they consider appropriate to further and defend their interests, and to become members of it.

492. The Commission has also analysed the information compiled with respect to various other organisations which have been affected by certain measures or have had to face particular difficulties. The National Federation of Textile and Clothing Workers (FENATEX) and the National Federation of Building, Wood and Building Materials (FIEMC) have been unsuccessful in obtaining legal personality, and their right to collect union dues through the check-off system has been suspended. The premises of the FIEMC were raided and the authorities seized documents and office equipment; affiliated unions in the provinces, have been evicted from their premises, or their leaders have been denied recognition by their employers, or it is impossible for them to collect dues from their members. In the case of the National Federation of Metal Workers, too, the union's premises were raided and furniture and office equipment seized. The National Federation of Health Workers (FENATS) has lost all its national officials who belonged to Popular Unity parties, and the new executive committee failed to keep the appointment made with the Commission. The Confederation of Chilean Private Employers (CEPCH) is no longer able to occupy its former premises and is in the course of negotiating with the Government in this regard.

493. In the opinion of the Commission these various situations show that there have been specific cases of infringement, obstruction or prevention of the exercise of trade union rights which the Government should have remedied, or to which it should have helped to find a solution.

494. As concerns the allegations made with respect to three other organisations - the Single National Union of Chemical and Pharmaceutical Laboratory and Allied Workers (SUTRAL), the Single Union of Workers in the Plastics Industry (SUTRAP) and the Single Union of Chilean Electricity Company Workers - which have ceased to function, the Commission notes that they formed part of the series of so-called "single" unions which were founded under the auspices of the previous Government, but without respecting the laws in force. However, the legal provisions in question were, and still are, restrictive from the point of view of the principles of freedom of association.

Death or execution of trade union officials

495. It is an established fact that many trade union officials or former officials died or were executed since 11 September 1973. It appears from the information supplied and the evidence that they died either by execution, with or without trial, or in application of the law concerning fugitives, or as a result of torture inflicted upon them or in other circumstances. These events occurred between 11 September 1973 and the end of that year. Among the dead are persons who held trade union office at various levels, including senior officials of federations, an adviser of the National Executive of the CUT and regional officers of the CUT. The Government, for its part, maintains that in no case were these officials sentenced on account of their trade union activities, but because they had committed an offence or had engaged in terrorist activities.

496. In order to obtain more detailed information in relation to these allegations, the Commission drew up a non-exhaustive list of 110 persons alleged to have been killed or executed and asked the Government to supply information about them, including, where possible, the circumstances in which they had died or been executed. The Government indicated that, of this total, 11 persons were under detention or had been deported, 22 were at liberty or had been freed, some of them having left the country of their own accord or having been banished, and about 50 were not listed as being in custody or as having been executed, or the particulars furnished were insufficient to enable them to be located. On the other hand, the Government confirmed the death of 33. Of these persons, according to the Government, nine had died in clashes with the armed forces, ten had been executed and 14 had died while attempting to escape or in similar circumstances.
497. The Government denies that trade union leaders were executed because they were trade unionists or because of their trade union activities.

498. As regards the trade union leaders condemned by the military courts, the Commission noted the summary character of the procedure, the absence of adequate guarantees for the defence of the accused, the non-existence of any right of appeal and the retroactive application of the state of war and of certain penalties that had been increased.

499. The Commission also noted the large number of trade union officials who, according to the Government, were put to death in pursuance of the so-called Fugitives Act. In addition, the Commission cannot pass over in silence the cases of death as a result of the tortures inflicted, since the information available on the subject, as will be seen later, substantiates the allegations made to this effect. Other cases of officials or former officials executed in special circumstances have been mentioned in the relevant chapter of this report.

500. In the absence of elementary safeguards, and in the absence of any information from the Government concerning the reasons for most of the deaths, the Commission considers that the Government has failed to prove that these deaths took place for reasons other than that these persons were trade unionists or that they exercised trade union activities. Even though there may have been widespread confusion in this initial period, all these circumstances show that the safeguards required to ensure respect for human rights in relation to personal safety were severely impaired, with all the irreparable consequences that have resulted from this situation in the case of an appreciable number of trade union officials.

Arrest and detention of trade union officials

501. The Commission had already, in its preliminary observations, mentioned the large number of trade unionists who had been arrested immediately following the change of regime; that the prolonged periods of detention of trade unionists without trial were continuing, even though the number of these was reduced; and, finally, that the lack of normal legal safeguards and procedures gave cause to fear that some trade unionists might have suffered abusive or unwarranted treatment or penalties. Much information has been furnished concerning the large-scale arrest of trade union officials at various levels, mainly in the four or five months following 11 September 1973, but also more recently. In a number of these cases officials were arrested, interrogated and then released, while in others they were arrested again later. There are officials who are still in custody although arrested in September or October 1973, including some who held office in the national executive council of the CUT. According to the Government, in no case were officials arrested on account of their trade union activities, but because they had committed offences such as the unlawful possession of weapons, had taken part in clashes with the armed forces or were extremists. However, the Government itself recognises that it is possible that the repressive activities which took place may at times have been unjustified or even abusive.

502. The officials or former officials arrested may in fact be divided into two major categories: on the one hand, those who have been brought to trial and sentenced, or against whom proceedings are pending, mainly on charges of having infringed the State Security Act or the Weapons Control Act (such cases are tried by military courts), and on the other hand, those who are under detention by virtue of the state of siege, either for interrogation purposes or because they are deemed to constitute a threat to national security.

503. As in the case of the allegations relating to the death or execution of trade union officials, the Commission drew up a non-exhaustive list of 120 persons who had been arrested and asked the Government to supply information about them. According to this information, 48 were at liberty or had been freed, some having left the country of their own accord or after being freed, 23 were not listed as being in custody or as having been executed and in the case of the others the particulars furnished were insufficient to enable them to be located. On the other hand, 54 officials or former officials, including some who had originally been on the list of the dead or executed, were serving prison sentences, had been banished to various parts of the country after being tried, were awaiting trial or were under detention by virtue of the state of siege or confined to a place, generally elsewhere than their usual place of residence. A third of these were being detained without trial.
504. Except in one case, the Government's information did not specify the grounds on which these officials or former officials had been placed in one of the situations described. The Commission interviewed six detained officials and one former official falling into the first of the categories mentioned above. They had been sentenced, in some cases, to extremely severe penalties or prosecuted as a result of a variety of accusations brought against them, and which according to their statements, related to such acts as an attempted attack on a police station, participation in political and trade union education courses including military theory intended to meet the requirements of self-defence, "intellectual instigation" towards the creation of a school of guerrillas, the discovery of some arms in an enterprise run by the person concerned, the taking part in an exchange of gunfire during a strike, the taking over of an undertaking and agitation within the industrial cordon. The majority of these acts had been committed prior to 11 September 1973. The Commission also interviewed seven detained officials in the second category; five of them had been arrested in September or October 1973, and two in September or October 1974. No charge had been formally laid against any of these officials, who were detained at the pleasure of the Executive Power and had no opportunity to file an appeal or to seek legal advice. Some of these officials and others in this category were named on lists of persons who could be set at liberty on condition that they agreed to leave the country.

505. The officials serving sentences or prosecuted had been, or were being, summarily tried by military courts, on which the Commission has already commented.

506. There are other important aspects to be taken into account in connection with these detentions. One of them, of the utmost gravity, concerns the disappearance, in some cases without trace, of persons arrested by the authorities and who cannot be identified. As regards those persons detained, it is impossible to obtain news of these persons, some of whom are trade union officials, until several weeks later, when the authorities recognise the arrest and issue the appropriate warrant. In the meantime these people are subjected to interrogation. Any appeals made to the Supreme Court under the *aparato* (habeas corpus) procedure in respect of such persons are rejected, as the competent authorities state that they are not listed as being in custody. Furthermore, an appeal under the *aparato* procedure is held to be irreceivable in the case of detentions ordered by the Executive Power by virtue of the state of siege.

507. The other aspect - even more serious - is that of ill-treatment. The Commission has received detailed particulars directly from a number of trade union officials who have been subjected to physical coercion, in some cases causing severe injury from the after-effects of which they are still suffering. Information in the same vein has also been supplied from various sources considered by the Commission to be trustworthy, including eyewitnesses who gave evidence in Geneva and others in Chile.

508. Just before the close of its final session, the Commission received from the Government of Chile the text of the Legislative Decree concerning the protection of legal rights in procedural matters, published on 2 May 1975, Section 1 of which provides: "For as long as a state of emergency remains in force, the bodies responsible for supervising the normal course of national activities and for maintaining the national institutions shall be required, when taking into preventive custody, by virtue of the powers vested in them, persons against whom there are reasonable grounds for suspecting that they may endanger national security, to inform the next-of-kin of the said persons of their arrest within 48 hours. Persons arrested by the bodies mentioned in the preceding paragraph shall not be held in custody for longer than five days, within which time limit they shall be released or placed at the disposal of the competent court, or of the Minister of the Interior in cases involving the application of exceptional powers or of the state of emergency, together with a written report on the available evidence. The subjecting of detained persons to unlawful forms of coercion shall be punishable in accordance with Article 150 of the Penal Code or Article 330 of the Code of Military Justice, as appropriate." 

509. Trade union officials, like everybody else, have a duty to respect the law and they are not entitled to any immunity if they break it. Nevertheless, the Commission considers that the lack of adequate safeguards has made it possible, and is still making it possible for trade union officials to be victimised by unjust

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1 See, in this connection, paragraph 539.
decisions, and has allowed many of them to be subjected to unwarranted treatment. This lack of safeguards is likely to create a feeling of insecurity and even of fear which cannot fail to affect the exercise of trade union rights.

Dismissal and resignation of trade union officials

510. The information compiled reveals that many trade union officials have been dismissed from their jobs, and are thus no longer able to perform their trade union functions. But while, on the one hand, it is alleged that these measures were taken to oust officials belonging to Popular Unity parties or those who had most strongly championed the interests of the workers, on the other hand it is claimed that these officials were dismissed for justified reasons, and in particular for having committed unlawful acts such as the occupation of undertakings or the destruction of equipment, for having devoted their time to political agitation, pressurising and bullying the workers, or for having defied the authorities since the change of regime. Most of these dismissals took place between September and December 1973, and a smaller number in the early months of 1974. The Commission was informed that, in addition to the dismissals, the authorities, on a number of occasions, brought pressure to bear on officials to make them resign their trade union office.

511. First of all, as regards the question of membership of a Popular Unity party being taken as grounds for dismissal, the Commission considers that this factor has been influential or decisive mainly in the case of certain organisations in the public sector. Nevertheless, it is also clear from the information received that this ground was not invoked in a uniform manner in the public sector or in the private sector. Some trade union officials who were members of these parties are still in their jobs and in their trade union posts today, even in the case of organisations which have lost several of their leaders on this ground. As for the question of the grounds invoked for dismissal, it should be pointed out that, in the public sector, it has been possible under Legislative Decrees Nos. 6, 22 and 98 to relieve of their duties large numbers of civil servants and employees without any reason being given. In the private sector, in addition to the grounds for dismissal specified in the former labour legislation, Legislative Decree No. 32 provided for other specific grounds, which in themselves may be deemed to be justified grounds for dismissal. Nevertheless, this decree allows such grounds to be invoked also in respect of acts committed in the past, without limit of time, so that a trade union official could be dismissed not only for having participated in the organisation of artificial disputes and then in the occupation of an undertaking, but also for having played a leading role, at an earlier date, in a strike which was genuinely of an occupational character, although illegal for other reasons (the most frequent kind of strike in Chile). This decree made it possible to impose sanctions on trade union leaders and workers in respect of disputes which had long since been terminated, sanctions to which they may not have been subjected - for political or other reasons under the previous regime. It also facilitated the taking of reprisals by some employers.

512. To protect trade union officials against arbitrary dismissal the existence is necessary of adequate provisions, together with a procedure, offering full guarantees, for supervising the application of these provisions, and for remedying the situation where necessary. Now, in the public sector, the immunity from dismissal to which officials of certain organisations were entitled (fuero sindical) was, in practice, suspended for several months as a result of the new provisions adopted by the Government. In the private sector, the fuero sindical was explicitly declared to be inapplicable in cases of dismissal on the grounds specified in Legislative Decree No. 32. Furthermore, the Government set up two new types of bodies to hear complaints with respect to dismissals, namely the special commissions in the public sector and the special tribunals in the private sector. One of the features of both types of bodies is the inclusion among their members of a representative of the armed forces. The other members are, in the case of the special commissions, the governor of each department and a representative of the service employing the claimant, and in the case of the special tribunals, the competent labour judge and a labour inspector. As far as the special commissions are concerned, neither their composition nor their procedure provided adequate safeguards. As for the special tribunals, the military member's lack of experience in dealing with labour disputes appears to have been largely offset by the contribution made by the judge and the labour inspector, the military member generally associating himself with the opinion of one or the other of these. Many
of the cases ended in a settlement whereby the dismissed worker was paid the compensation due to him by law, but there appear to have been relatively few cases of reinstatement. Although the special tribunals, which were abolished in October 1974, did revoke a certain number of unjust dismissals, these bodies, and to an even greater extent the special commissions, which have since been abolished, are an anomaly from the viewpoint of the proper administration of justice.

513. There is no doubt that in a number of cases the acts alleged to have been committed by certain trade union officials did constitute justifiable grounds for dismissal. Nevertheless, viewing as a whole the information available, and bearing in mind the remarks made above, in particular as concerns the large number of union officials dismissed and the cases of officials personally forced to resign, the Commission is convinced that both authorities and employers have also used this machinery to rid themselves of union officials who belonged to the former regime or who were, in their opinion, excessively truculent in the performance of their duties.

514. A large number of trade union leaders have been eliminated through their death, execution, detention, dismissal, resignation from their jobs or from trade union office, or prohibition from holding such office, or they have gone into exile or disappeared. The Commission has attempted to assess the extent to which this has affected the composition of trade union executive committees. The Government has stated that 75 per cent of the present leaders were already in office on 11 September 1973. This number has been challenged in trade union circles in opposition to the Government, where it is considered that the figures for trade union leaders who have been removed from office in one way or another are far higher.

515. As regards some 60 primary trade unions, concerning which the Commission received precise information, it noted that one-third of these unions still had their former executive committees, half had committees whose membership had been partly changed, either because some seats had been left vacant or because new officials had been appointed to replace the former ones, and the remainder, i.e. almost 20 per cent, had completely different committees. As for the federations and confederations interviewed, only one still had its former executive committee at full strength, while those of the others had been changed to a greater or lesser degree. In some from half to nearly all the members of their executive committees or councils had been replaced.

516. Although there are 35,000 trade union posts throughout the country, the Commission does not have sufficient data to enable it to give exact figures as to the number of trade union posts becoming vacant for various reasons as a result of the change of regime. However, on the basis of the information outlined above and that analysed in the relevant chapter, the Commission believes that the proportion is clearly higher than that stated by the Government, and may even be double that figure.

Trade union activities

517. Since 11 September 1973 the normal activities of trade union organisations, both as regards their internal management and as concerns the furtherance and defence of the interests of the workers, have been considerably restricted. The Government has stated that these restrictions are temporary.

518. Trade union elections are prohibited. Under the legislation applicable to the private sector, posts becoming vacant for various reasons as a result of the change of office of executive committees has been extended, and it is a general rule that any vacancies which may occur have to be filled, up to the minimum number required by the law or the by-laws to keep the organisations functioning, by the union members with the longest service in the industry, occupation, activity or sector in question. The same general rule is applied to any new organisations formed. In the public sector, under the terms of provisions adopted in March 1974, vacancies had to be filled through the appointment of members of the organisation by the governor of the department, and from September 1974 onwards by the intendant or the governor, after consulting the competent chief of service and on the basis of a list of three names submitted by
the organisation. As far as the private sector in particular is concerned, the rule of seniority has generally been observed, exceptions being made when the longest-serving workers were not suitable to the organisations or declined to serve for various other reasons. In some cases special criteria have been laid down to deal with this kind of situation.

519. Restrictions were imposed upon trade union meetings a few days after 11 September 1973 by virtue of certain provisions whereby the police authorities had to be notified both of the subjects to be discussed and of the date and place of the meeting, so as to enable those authorities to send an observer to ensure that only matters within the competence of the organisation in question were discussed. In December 1973 provisions were adopted which are still in force, and under the terms of which trade union meetings must be purely for information purposes or confined to discussion of internal matters, and the police authorities have to be notified of their agenda and the place where they are to be held. In the public sector similar provisions are in force, it being specified that the authorities may ban meetings if they think fit.

520. These provisions are enforced with a severity which varies according to the organisation and the authority responsible. There is nevertheless a very widespread belief among trade union officials that the giving of notice to the authorities of the holding of meetings is more than a mere formality and implies that it is necessary to obtain prior authorisation. As a rule, but not always, the meetings are allowed to be held; a representative of the authorities may or may not be present, though this practice is less frequently observed than it was in the first few months following the change of regime. Meetings have to comply with the provisions in force as concerns their nature and their subject matter, but several organisations have been allowed to debate matters of importance in the social field.

521. The submission of claims to employers and collective bargaining are strictly prohibited. The right to strike is non-existent, and any flouting of the ban on it may lead to the imposition of penal sanctions by the military courts for infringement of the State Security Act. The Minister of Labour and Social Welfare has repeatedly declared that these are inalienable rights and that their exercise is only suspended because of the country's economic situation, and in particular the high rate of inflation. The Government expressed the hope that it would be able to reduce this rate to 50 or 60 per cent in 1975, in which case it could allow collective bargaining again. In October 1974 an automatic system of quarterly wage adjustments was introduced, and provision was made for the setting up in certain cases of tripartite advisory committees which could recommend the fixing of pay rates higher than those resulting from the automatic adjustments. Since December 1974 several of these committees have been appointed for various activities in the private sector. In practice the trade unions, as well as submitting claims to employers on behalf of individuals, do manage in some undertakings to discuss on an informal basis labour matters of a more general nature, obtaining in some cases improvements in certain fringe benefits and occasionally in remuneration as well.

522. As concerns relations between the trade unions and the authorities, it should be pointed out that in May 1974 it was decided to set up provincial labour affairs offices attached to each provincial administrative authority, with an officer or retired officer of the armed forces in charge. The functions of these officers were to keep permanently in touch with trade union leaders and employers in order to transmit to them information on the measures adopted or planned by the Government in the labour field, as well as to receive information from these leaders and employers concerning the problems confronting them, find a solution to them if possible, bring them to the attention of the competent authorities, etc. In certain cases these offices organised seminars for trade unionists. The views of trade union leaders on these offices diverged, since while some considered them to be useful and beneficial, others did not keep in touch with them or were openly hostile to them. In December 1974 the labour affairs offices were replaced by another system consisting of a national co-ordination committee and provincial co-ordination committees attached to the Ministry of Labour and Social Welfare. The task of these committees is to examine labour problems and propose solutions to them, and to receive information from the Government to be passed on to the workers. They are composed of trade union officials at different levels. The chairman of the national committee is the Minister, and the provincial committees were to have been chaired by a provincial labour inspector, their membership also including an officer of the armed forces. In January 1975, however, it was decided that their chairmen should not be labour inspectors, but officers of the armed forces within the police. The legislative decree also provided for the setting up of departmental co-ordination committees and laid down that trade union representatives can be removed from office by the Minister of Labour.
523. Operating alongside these committees are the labour inspectorates, to which trade union leaders frequently turn for advice in finding a solution to the individual and collective problems which arise in undertakings and which cannot be resolved directly with the employer. Lastly, at the national level, various federations and confederations have the opportunity to meet ministers to discuss with them the problems affecting the workers in their sectors. However, in the case of some other major organisations they consider that these relations are unsatisfactory owing to the attitude of the authorities.

524. The Commission noted that, except for certain sectors, a large number of primary organisations continued to exercise activity to some extent mainly in the field of welfare and the day-to-day functioning of the enterprise. As regards federations and confederations, only a few actually submit claims to the authorities. The Commission has examined the various restrictions imposed on trade union activities, and has also consulted trade union leaders as to the kind of changes they would like to see in connection with the various aspects under consideration. On the basis of all the information and viewpoints compiled, including those expressed by those officials most favourably disposed towards the present Government, the Commission has come to the conclusion that there is a general feeling that there should be a return to normal as soon as possible in the trade union and industrial relations field. To achieve this it is considered necessary that the Government should recognise in law and in practice the right to elect trade union executive committees in full freedom, so that the workers may choose for themselves the leaders they wish to represent them, and these leaders may have the feeling that they are performing their functions with a legitimate mandate from their members; the right to hold meetings without hindrance in order to discuss freely problems and economic and social demands; and the right to bargain collectively and to strike, so that trade unions may effectively further and defend the rights of the workers.

525. It will soon be two years since the coming to power of the present regime and the events which cause such a profound upheaval in the life of the country, and the Commission considers that the time has come for steps to be taken to put an end to the serious infringements of the principles of freedom of association and to ensure respect for the civil liberties which are essential to the exercise of trade union rights, and without which the very concept of such rights is meaningless, as the International Labour Conference emphasised in 1970. In view of the particular situation created in Chile with the change of regime, and taking account of all the circumstances involved in the case, it would be impractical simply to seek to return to the situation as it was on 11 September 1973. The Commission considers that it is more appropriate to formulate, for the future, precise recommendations which may help to ensure the development of free and independent trade union organisations.

526. The Commission noted, in Chile, a strong desire on the part of most trade union leaders to see the activities of their organisations revert to their rightful pattern, with the lifting of the present restrictions. These restrictions affect, on the one hand, the internal activities of trade unions, and, on the other hand, the activities in which they should engage for the furtherance and defence of the interests of the workers.

527. The Commission was informed that the Government is putting forward an extensive plan of legislative reform in labour matters, including mainly the reform of the Labour Code, social security and collective bargaining and the statute on vocational training of workers. It was also informed that the social statute for undertakings had been adopted. As regards security of employment the Commission noted with interest that the temporary status of workers in the public sector has just been ended and the special commissions, which had been criticised by the Commission, have been abolished.
528. With regard to the strictly trade union aspect, the Commission received in Chile a copy of a preliminary draft of trade union legislation prepared by the Study Committee on the Labour Code, and in accordance with a suggestion made by the Commission, the International Labour Office communicated to the Government certain comments which are reproduced in the relevant chapter of this report. However, in a document dated 15 March 1975 transmitted by the Government containing a large amount of information and observations on the preliminary observations of the Commission, no mention of these comments is made. The Government confines itself to describing the main purposes and provisions of the draft. The Commission has observed that the provisions dealing with trade unions in the new Labour Code, the text of which was transmitted to the Commission towards the end of its last session, are essentially the same as those in the preliminary draft, and that only in a very few cases - such as that of the definition of trade unions and the allowing of retired workers to serve as trade union officials - have the comments made by the Office with respect to the preliminary draft been taken into account. The Commission has also observed that, on a number of matters, including the right to strike, the provisions of the draft Labour Code, when viewed in the light of the principles of freedom of association, are even more restrictive than those contained in the texts previously examined by the Office. Furthermore, Legislative Decree No. 198 remains in force for the time being, as a result of which the ban on trade union elections and the restrictions on trade union meetings remain. Lastly, it is stated that all trade union activities are to be suspended other than those confined to the reorganisation of trade unions so as to bring them into conformity with the provisions of the new Code.

529. The Commission urges the Government to re-examine the draft trade union legislation and to take due account of the comments which were transmitted to it and of the principles set forth therein, in order to ensure that this legislation will guarantee to the workers unhindered enjoyment of their trade union rights in accordance with the guidelines offered to the Government by the Commission itself at the close of its visit to Chile.

530. The Commission recommends the Government to adopt without delay new trade union legislation which, in order to be in conformity with the principles of freedom of association enshrined in the Constitution of the International Labour Organisation, and in order to be able to ratify, as the Government stated was envisaged, the freedom of association Conventions, which contain very clear provisions on this question, should recognize, in particular, the following principles:

First: The right of workers, without distinction whatsoever, including public servants, to establish organisations of their own choosing. The implementation of this principle calls for the avoidance of all restrictions which limit freedom of choice as to the type and number of organisations the workers desire to establish, in the case both of primary trade unions and of federations and confederations capable of forming organisations for different occupations, activities or industries.

Secondly: The right of workers to establish organisations without previous authorisation, and without participation by the authorities in the constituent procedure.

Thirdly: The right of organisations to hold meetings free of control by the authorities, in order to discuss freely the matters relating to internal administration and to the defence of the interests of their members.

Fourthly: The right of organisations to elect their representatives in full freedom, without restrictions as to the number of terms of office, and to decide for themselves matters relating to the removal from office of officials by the members.

Fifthly: The right of organisations to organise their administration without interference by the authorities.

Sixthly: The right of organisations to enjoy full guarantees as to facilities for their defence if the question of their suspension or dissolution should come before the courts.

531. With regard to certain specific trade union matters examined in this report, the Commission recommends the Government to adopt measures with a view to -
First: returning to trade union organisations the assets to which they have a legitimate claim;

Secondly: removing the difficulties obstructing the obtaining of legal personality by trade union organisations which have applied for it, including in particular the National Federation of Textile and Clothing Workers (FENATEX) and the National Federation of Building, Wood and Building Materials (FIEMC), so as to normalise their position, in particular, as regards the question of the collection of union dues;

Thirdly: ending the takeover of the Single Union of Workers in Education (SUTE) and the National Association of Education Service Employees (ANSEE);

Fourthly: normalising the financial situation of the Confederation of Agricultural and Indigenous Workers "Ranquil" and the United Confederation of Workers and Peasants, and making it possible for these confederations and the organisations affiliated to them to resume their trade union activities;

Fifthly: avoiding any discrimination between trade union organisations, especially as concerns the recognition of their officials as competent to perform the functions assigned to them.

532. As concerns the co-ordination committees, they must not be allowed to be used as a means of channelling the activities of trade unions. The Commission recommends that these committees be converted into tripartite advisory bodies, presided over by an official of the Ministry of Labour and composed of representatives appointed freely by the organisations of workers and employers.

533. With regard to the dismissal of trade union officials, the Commission recommends the Government to take such measures as may be necessary to enable officials who consider that they have been wrongfully dismissed, and whose cases were dealt with by the special commissions, or who were unable to appear at a given time before the special tribunals or commissions, to apply to the competent ordinary courts for the review or examination of their cases.

534. With regard to the activities of trade union organisations in the sphere of industrial relations, the Commission has already referred to the strong desire generally felt in trade union circles for collective bargaining to be resumed as soon as possible. The Commission is fully aware of the seriousness of the economic situation in Chile, the effects of which are felt particularly keenly by the workers, whose wages are clearly low. In these circumstances, the Commission emphasises that the restriction on collective bargaining, as an exceptional measure, should not be prolonged beyond a reasonable period, and once again expresses the hope that the practice of collective bargaining will be resumed without delay. In the meantime, the Commission recommends the Government, but only as a temporary measure, to generalise the setting up of tripartite advisory committees composed of representatives freely elected by their organisations, with a view to making improvements, sector by sector, in the remuneration resulting from the general automatic adjustments, and in all cases of wage fixing or adjustment to take particular account of the factors essential to any real improvement in the standard of living of workers and their families.

535. As regards the right to strike, the Commission considers that the provisions of the draft Labour Code are construed in very general terms and could lead, in practice, to considerable restrictions of this right. The Commission recommends the Government to re-examine the provisions on this question concerning which the Office has already transmitted its comments to the Government.

536. In addition, a general prohibition of political activities undertaken by trade unions to promote their specific objectives, would be in contradiction with the principle of freedom of association. However, if the unions, in accordance with the wishes of their members, undertake activities of this kind, it is important that such activities should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions irrespective of political changes in the country. Governments, for their part, should not attempt to transform the trade union movement into an instrument for the pursuance of political aims, nor should they attempt to interfere with the normal functions of trade unions because of their freely established relationship with a political party.
537. Lastly, the Commission notes that, in accordance with the appeals made on various occasions by the International Labour Conference, the Government envisages the possibility of ratifying the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Commission recommends the Government to continue its examination of the matter and to take the necessary steps to apply these Conventions both in law and in practice.

538. The implementation of these recommendations, while it will contribute towards the normalisation of the trade union movement, will not suffice to ensure the free exercise of trade union rights. Many trade unionists will continue to be pursued by a feeling of constraint, and even of fear, until they are assured that there will be respect for the human rights which are essential to the normal pursuit of trade union activities, and in particular the right to freedom and personal safety, and to protection from arrest and arbitrary imprisonment, the right to a proper trial before an independent and impartial court, and freedom of opinion and expression.

539. In connection with the foregoing, the Commission, before leaving Chile, had formulated recommendations which it transmitted to the Government. The Commission notes with interest that the Government has just promulgated certain provisions, as indicated above in paragraph 508, by which certain guarantees are laid down for the benefit of persons detained. Nevertheless, the Commission wishes to reiterate its various recommendations and again requests the Government to consider the adoption, as a matter of urgency, of specific measures for their implementation.

540. The Commission had pointed out that it would be highly desirable to give priority to certain objectives, namely the release or bringing to trial of the trade unionists in custody under procedures which provide full safeguards of defence and impartial judgment; the guaranteeing of the right not to be arrested except in accordance with the ordinary criminal procedure; and the guaranteeing of protection against all forms of ill-treatment during detention, through the issuance of special instructions prescribing effective penalties. Such measures, and indeed any review of sentences already pronounced, or the application of clemency, or even an amnesty, would certainly help to restore that climate of normalcy which is one of the main conditions for the effective exercise of trade union rights and for the development of the whole country in the years ahead.

541. In conclusion, the Commission wishes to recall once again the importance it attaches to the fact that the persons who were in contact with the Commission, both during the hearings in Geneva and during its visit to Chile, should not, at any time, be subjected to any coercion, sanction or punishment as a result of such contact.

542. In view of the importance of this case, which raises serious issues of freedom of association and human rights as they affect the exercise of trade union rights, and bearing in mind the special interest taken in it by the International trade union movement, the Commission recommends the Governing Body, exercising the power vested in it by article 19 of the Constitution, to invite the Government of Chile to inform the Director-General, in such manner and at such time as the Governing Body shall deem appropriate, of the position of its law and practice in regard to the matters dealt with in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and more specifically on the different matters examined by the Commission. In this way, the Governing Body and the other competent ILO bodies may follow any developments in the situation and the effect given to the recommendations of the Commission.
The Commission had already pointed out that the Chilean people are passing through one of the most difficult periods in its history. When a nation has suffered deep wounds and divisions, its unity cannot be restored in a day. The restoration of normalcy must be the task of the Chileans themselves. This restoration necessarily involves the disappearance of any feeling of constraint and the restoration of respect for fundamental human rights to its rightful place. The trade unionists who were imprisoned should be released or, if accused of crimes, tried by the ordinary courts. Only in this way will the conditions necessary for the effective restoration of freedom of association be fulfilled.

Geneva, 8 May 1975. (signed) José Luis BUSTAMANTE i RIVERO, President.

Jacques DUCOUX.

H.S. KIRKALDY.

Postscript

Having signed this report, the members of the Commission wish to express to the Director-General of the International Labour Office, and to the members of the staff of the Office who were associated with the Commission in its work, their warm thanks for all the help which they have received at all stages of the proceedings.
ANNEX I

TRADE UNION LEADERS OR FORMER LEADERS ABOUT WHOM THE COMMISSION REQUESTED INFORMATION FROM THE GOVERNMENT

A. Leaders or former leaders who, according to the complaining organisations, were killed or executed

1. According to the Government (or other sources indicated) the following were executed:

ARANEDA, Vladimir, a former miners' trade union leader; according to the Government, he was not a union leader. Executed on 22 October 1973 after being sentenced by court-martial at Concepción.

ARQUEROS, Mario, former secretary of the saltpetre workers' union. Prosecuted in Case No. 6-73 (military authorities, Antofagasta) and executed on 18 October 1973.

BARRIENTOS, Werner José, CUT youth leader, Valdivia. Tried in Valdivia (Case No. 1323), condemned to death by court-martial on 2 October 1973, and executed.

CABRERA, Bernabé, a leader of the Lota coalminers' union. According to the Government, there is no record of his having been a trade union leader. Executed on 22 October 1973 after being condemned by court-martial in Concepción.


GARCIA, Ricardo, a trade unionist, and former head of the CUT technical department. According to the Government, this must be Ricardo Hugo Garcia Posada. Prosecuted (Case No. 385-73) by the military authorities at El Salvador and executed.

LIENDO, José Gregorio, secretary of the Panguipulli Peasants' Union. According to the Government, was an extremist known as Commander Pepe, in command of an armed band. Prosecuted by the Valdivia military authorities for breach of Act No. 17,798 (section 8), condemned to death by court-martial on 2 October 1973 and executed.

MIRANDA, David, former general secretary of the Miners' Federation. The information submitted by the Government relates to somebody of the same name, under arrest in Ritoque. A member of the family confirmed that Miranda, industrial relations manager at the Chuquicamata Copper Mine, a former FINM leader, was shot in Calama on 19 October 1973.

RUZ DÍAZ, Juan, a customs-officers' trade union leader at Iquique. Prosecuted by the local military authorities as one of the top men in the AGP movement which was preparing an armed rising and an attack on the armed forces. Sentenced by court-martial on 29 October 1973 and executed on 30 October 1973.

TAPIA, Benito, a leader of the El Salvador industrial union (copper mines). Sentenced by the Copiapó military prosecutor and executed.

VALENZUELA FLORES, Alexis, a leader of the CUT at Tocopilla. Indicted by the local military prosecutor and executed in accordance with the sentence passed.

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1 The information about the trade union duties performed has been supplied by the complainants.
2. According to the Government, the following were killed in clashes with the armed forces:


CHAMORRO, Hernán, a railway trade unionist, but not, according to the Government, a trade union leader. Killed in October 1973.


MARTINEZ, Juan, former national leader of the leather and footwear workers' union. Killed in October 1973.

MONSALVE, Ariel, a railway trade unionist.

RODRIGUEZ, José Eusebio, secretary in San Antonio. According to the Government, was not recorded as being a trade union leader. An agitator and an extremist, killed in a clash with the armed forces on 14 September 1973.

SALAZAR, Teobaldo, leader of teaching staff and employees at the University of Chile, Santiago. Killed in October 1973.

VIVANCO, Ramón, a railway trade unionist.

3. According to the Government, the following died in attempts to escape, or in similar circumstances:

ALVAREZ, Guillermo; JIMENEZ, Armando; NUNEZ, Samuel; ROJO, Hector; maritime workers' leaders, San Antonio. Killed on 22 September 1973, when armed extremists attacked the vehicle in which they were travelling.

BACCIARINI ZORRILLA, Raúl Enrique, a port workers' leader, San Antonio. Killed on 24 September 1972 while attempting to escape.

BRAVO AVRAREZ, Fidel, a port workers' leader, San Antonio. Killed on 24 September 1973, while attempting to escape.

DONOSO, Manuel, a leader of the Arica school-teachers. Mortally injured in a motor accident during his transfer to Pisagua.


FLORES PEREZ, Alejandro, CUT director of trade union affairs, Cautín. Detained for breaches of the State Security Act in the Tucapel Barracks; killed on 2 October 1973 while attempting to escape.

GUZMAN, Marcelo, trade union secretary, National Health Service. Shot on 3 November 1973, attempting to escape from Pisagua.

JARA RIOS, Eliseo, a trade union leader, Victoria. On 27 October 1973, while events were being reconstructed by the authorities at the California Ranch, he tried to escape and lost his life.

MATELUNA GOMEZ, Daniel, a CUT leader, Temuco. Detained, for a breach of the Weapons Control Act, in the Tucapel Barracks, and killed on 2 October 1973 when attempting to escape.

NEHEGMAN, Lecar, secretary of the National Health Service, Temuco. According to the Government, not registered as a trade union leader. Arrested for a breach of the Weapons Control Act and killed on 25 November 1973 while trying to escape from the Tucapel Barracks, where he was held awaiting trial.
4. According to the Government, the following have been sentenced, detained or exiled:

BARROS, Eduardo, former CUT secretary, San Antonio. Sentenced in Case No. 40-73, military prosecutor there, for a breach of Act 12,927, and now exiled to San Fernando for three years.

CORDOVA, José, a port workers' leader, Iquique. According to the Government, this must be José Córdova Cancino, an "anti-social element" held at the Iquique penitentiary.

CORNEJO FAUNDEZ, Pedro, national secretary of the Peasants' Union. Detained but appears in the list of those who will be released by virtue of certain conventions (International Red Cross, International Committee for European Migration, COMAR).

GORDILLO HITSCHFELD, Iván, a CUT leader, Antofagasta Province. In Case No. 20-73, heard by the First Military Court at Antofagasta, was sentenced to twenty years' imprisonment for a breach of the State Security Act. Now in Antofagasta prison.


MARTINEZ MOLINA, Héctor, a peasants' leader. Being prosecuted by the Second Military Prosecutor, Santiago.

MORAGA, Ethiel, a leader of the Sewells (El Teniente) industrial union. Being held at Ritoque, awaiting trial.

ORELLANA ABARCA, Manuel Jesús, a CUT leader at San Francisco de Mostazal. Condemned to five years' imprisonment for a breach of Act No. 17,798; held in Rancagua prison.

TELLO, Osvaldo, chairman of the Chuquicamata industrial union. Sentenced to 500 days' imprisonment (Case 21-73) by the military court at Calama.

VARGAS, Arturo, chairman of the industrial union at the Maria Elena Saltpetre Pans. According to the Government, this must be the chairman of the SOQUIMICH union, sentenced to three years' exile by the Antofagasta military court. Serving his sentence in Salamanca.

5. According to the Government, the following are at liberty:

AGUILA, Onofre, national secretary, Retired Seamen's Union. On 10 October 1974, freely left the country for Argentina.

AVILA VELAZQUEZ, Juan, a peasants' leader of the Pangapulli forestry complex. Arrested on 19 September 1973 for presumed participation in an armed attack on the police stores at Meltune. Released by virtue of a stay of judgment on 11 October 1973.

BADILLA, Ambrosia, a peasants' leader, Cautín. According to the Government, thus must be the Ambrosio Badilla Vasey who in September 1973 freely travelled to Argentina.

CORTES MONROY, Marcial, a leader of the Chilean Private Employees' Federation.

GARAY, Samuel, a trade union secretary in Valdivia.

MASARELLO, Vitalio, chairman of the miners' union at San Pedro de Atacama.
MORAGA, Orlando, leader of the Caletones industrial union (El Teniente). Seems to have left for Italy in October 1974.

OYARZUN, Pedro, a railway trade unionist. At liberty in Puerto Montt.

RIFFO, Juan, chairman of PFNATS, tenth health area.

ROJAS, Luis, general secretary of the CUT, Arica area.

SANTANA, Raúl, leader of the CUT provincial council in Osorno.

TORRES GOMEZ, Carlos R., a CUT leader, Cautín Province.

VALENZUELA, Juan, a leader of the industrial union at the Pedro de Valdivia saltpetre works.

6. According to the Government, there is no record of the following having been detained or executed:

ACEVEDO, Alfredo, a railwaymen's trade unionist.

AILIO, José, a peasant leader, Cautín Province.

ALARCON, secretary of the Pedro Léon Gallo agricultural workers' union.

ALVAREZ, Santiago, a CUT leader, Coquimbo Province.

ALVAR, Luis, CUT trade union secretary, Coquimbo Province.

ASTORGA, Freddy, secretary, CUT youth section.

AVILA, César, provincial leader, Osorno teachers' union.

BARRIA, Pedro, CUT youth leader, Valdivia.

BURGOS, Aníbal, activist from Lautaro. The Government presumes that he is in Argentina.

BASTIAS, Juan, a CUT leader, Temuco. According to the Government, this must be the Julián BASTIAS REBOLLEDO who has sought asylum in the Netherlands Embassy.

CALABRAN, Claudio, provincial leader of the education workers.

CARRASCO, Pedro, a peasants' leader from Alicahue.

CARRERO, Alfonso, a CUT leader, Quínoa area.

CARRERO, Ramón, a CUT youth leader, Cautín.

CARVENO, Ramón, youth secretary.

CASTILLO, Hernán, a leader of the telephone employees.

CIAVIDO, Orlando, chairman of the fishermen's unions.

CHAVES, Juan, a student leader and CUT secretary in Cautín (youth section).

DÍAZ, Sergio, CUT general secretary, Iquique Province.

ESPINOZA, Patricio, a SUTE leader, Lota.

FLORES, Nelson, an INDAP unionist.

HADD, Julio, trade union secretary, Cautín-Lautaro.

HUANANTE ROCHA, Francisco, trade union relations officer, Valparaíso.

HUENTELAF, Félix, a CUT leader, Cautín Province.
LOPEZ, Leopoldo, a leader of the fair and market salesmen.

MAMANI, Luis, a leader of the public employees, Calama.

MAUREIRA, Sergio, a peasants' leader, Maipo Island.

MELLADO, Juan, a peasants' leader from Santa Bárbara. The Government refers to a "Juan Bautista Mellado".

MONTECINOS, Carlos, general secretary, Peasants' Provincial Council, Coihueco, Ruble Province.

MUNOZ, Omar, a CUT leader, Coquimbo Province.

NAHUELCOI (brothers), peasant leaders, Cautín Province.

NORAMBUELA, Luis, CUT general secretary, San Antonio Area.

PINTO VIEL, Guillermo, formerly a trade union secretary.

PURRAN, Guillermo, a Mapuche peasant leader, Santa Bárbara.

RAMIREZ DEL PRADO, Robinson, CUT general secretary, Ruble Province.

RODRIGUEZ, Alejandro, former chairman of the Copper Workers' Confederation.

SANTIS, Ceferino, a CUT leader and national textile-workers' leader.

SERAEGA, Victor, a trade unionist and a member of the CUT executive committee.

SOBARZO, Javier, a trade union delegate in Santiago.

URRUTIA ACEVEDO, Cleofe, a leader of the Chillán Taxi-Drivers' Union.

VALDIVIA, Luis, a leader of the Calama public employees. According to the Government, this might well be the Luis Valdivia Carrasco, who in 1944 was chairman of the Calama bakers' union.

VIDAL, Alex, a member of the Valdivia regional council.

VILLALOBOS, C., chairman of the Chuquicamata Voluntary Action Committee. This man, according to the Government, must be Carlos Villalobos.

VILLALOBOS, Luis, former trade union leader of the Chuquicamata clerical workers.

YANEZ, Manuel, a port workers' leader. The Government says that it has no record of his being a trade union leader.

7. According to the Government, it has been impossible to trace the following from the data supplied:

AVILA MARQUEZ, Roberto, a railway trade unionist.

CASTO, Radí, a railway trade unionist.

COPEDDES, Arturo, a railway trade unionist.

FARIAS (brothers), leaders of the "Pesquera de Chile" union, San Antonio. Not recorded as among the San Antonio fisherman's trade union leaders.

GONZALEZ, Manuel, a railway trade unionist.

MORALES, José, railway trade union leader, San Bernardo Arsenal.

MORILLO, José, a railway trade unionist.

SILVA, Jose, a railway trade unionist.
6. With regard to FERNANDEZ, Jorge, the CERA peasants' leader at Nehuentue, the Government says that he was not a trade union leader but a student, and died before 10 September 1973, in a clash among civilians, while he was carrying grenades with a view to taking over a farm in Nehuentue.

B. Leaders or former leaders stated by the complaintant organisations to have been detained

1. According to the Government, one of the persons detained was killed:

JIMENEZ, Juan, a leader of the CORFO workers' association, killed on 3 October 1973, when trying to escape from Pisagua.

2. According to the Government, the following were sentenced to imprisonment:

ALARCON, Francisco, CUT general vice-secretary, Magallanes Province. A political agitator, according to the Government. Prosecuted by the naval authorities in Punta Arenas (Case 23-73) and condemned to twelve years' penal servitude, which he is serving in La Serena prison.

CIFUENTES TORRES, José Luis, CUT general secretary, Bio-Bio Province. Prosecuted in Los Angeles for a breach of Acts 12,927 and 17,798, and sentenced to five years' penal servitude. His name has been put forward for emigration.

CONTRERAS, Luis, CUT organisational secretary, Talca Province. Held on 11 September 1973 for having played a part in a commando raid by extremists on police stores, and sentenced to life imprisonment, which he is now serving in Talca. Accused of assaulting the police, causing death; theft of war material, and breach of the Weapons Control Act.

LARA, Adolfo, former leader of the Sewells industrial union, El Teniente. Prosecuted by the O'Higgins military authorities for a breach of Act 17,798, and sentenced to five years' penal servitude. Is in Rancagua prison.

LEE, Miguel Angel, a leader of the Copper Workers' Confederation. Prosecuted by the Rancagua military authorities. (According to other information received by the Commission, was sentenced to nine years and six months' imprisonment.)

MARINO, Luis, a leader of the Machali municipal employees' union, now serving a five-year sentence in Rancagua for a breach of Act 17,798.

MONDACA GALVEZ, Daniel, former leader of the Santiago combined union of the El Teniente Mining Co. Prosecuted by the O'Higgins military authorities for breaches of Acts 12,927 and 17,798, and is now serving a three-year sentence in Rancagua prison. (According to additional information obtained by the Commission, he was thereafter sentenced to a further 11 years for another crime, both sentences are to run concurrently.)

SOTO, Jorge, a FENATS leader from Osorno. Prosecuted (Case No. 151-73) by the Osorno military authorities for a breach of Act 17,798, and now serving a five-year sentence in Osorno prison.

3. According to the Government, the following are detained, exiled or under house arrest:

ALEMANY GONZALEZ, Claudio, teacher and SUTE activist. Detained at Puchuncavi under Act 12,927. Appears in a list of persons whose exit from Chile is being negotiated.

ALARCON, Alejandro, a textile workers' leader and former CUT national official. Detained in Puchuncavi. Name appears among those of persons who may be leaving the country.
ARAYA, Lorenzo, CUT general secretary, Antofagasta. Prosecuted for a breach of Act 12,927 and sentenced to three years' exile in Mulchén.

AROS, Jaime, leader of an industrial union, El Teniente. Transferred to Limache and under house arrest.

ARREDONDO, Luis, director of a clerical workers' union, El Teniente. Transferred to Chillán and under house arrest.

BRAVO, Juan Bautists, CUT provincial secretary, Concepción. Held at Puchuncaví for a breach of Act 12,927.

BARRAZA, Juana, a trade union leader from the Social Development Corporation, a body about which the Government disclaims any knowledge. This may be the woman known as Juana Enriqueta BARRAZA CELADA, tried on 3 October 1974 and held in San Antonio.

CAVIESES, Manuel, chairman of the "Ultima Hora" workers' union, and appears in the list of persons about whose exit from Chile negotiations are proceeding.

CERECEDA, Lautaro, chairman of the National Association of Tax Employees. Held at Puchuncaví, and appears in the list of those about whose exit from Chile negotiations are proceeding.

CISTERNAS PÉA, Emilio, a leader of the Concepción CUT provincial branch. Held in Puchuncaví pending trial.

CORNEJO FAUNDEZ, Pedro, a CUT national leader. Held at Tres Alamos, Santiago (mentioned already in Part A).


GACITUA, Yolanda, a Copiapó health workers' leader, held for a breach of Act 12,297. She has been exiled to Vallemar.

GAJARDO, Germán, under-secretary, CUT, Chillán. Was in Chillán, under military supervision, up to 31 December 1974.

GONZALEZ, Juan Elpidio, a leader of the national seamen's association. Held in Chin-Chin prison.

GONZALEZ, Mario, a copper workers' trade union leader, Chuquicamata. Exiled to southern Chile.

GUERRERO, José, a leader of the Machali municipal employees' union. Under house arrest.

GUTIERREZ, Luisa, a leader of the Machali municipal employees' union. She is now in Chillán, under house arrest. Has been authorised to leave the country.

GUZMAN ORDENES, Alainro, chairman of the National Mining Industry Federation. Held at Ritoque for a breach of Act 12,927.

HERRERA, Juan, chairman of the Bernardo O'Higgins Peasants' Federation. The Government supplied information about one Juan Francisco Herrera Cabrera, tried for a breach of Act 17,798, whose appeal for permission to leave the country was granted, and about a certain Juan Herrera Sánchez, treasurer of the Martinez de Rozas agricultural workers' union, whose name does not appear among those detained or executed.

IBARRA, Luis, former leader of the Caletones union, El Teniente. Has not been registered as a trade union official for the last eight years. Transferred to Vallemar and under house arrest.

KRUHN, Heriberto, CUT organisational secretary, Concepción. Held at Puchuncaví, and appears in the list of those about whose exit from Chile negotiations are proceeding.
LIBERONA, Victor, a leader of the Copper Workers' Confederation. Subject to house arrest in Tocopilla.


MADARIAGA, José, chairman of the El Surco peasants' federation, Colchagua. Held in San Fernando prison under Act 12,927.

MARDONES, Guillermo, a Cholguán trade union leader. Held in Chillán, and prosecuted by the Nuble military authorities.

MARIN, Manuel, chairman of the Coya-Pañal union, El Teniente. Transferred to Collipulli under house arrest.

MONTES, Jorge, former leader of the Chilean Teachers' Union. The Government says that he had been a member of parliament since 1957 and a senator since 1969. Held at Ritoque.

MORALES, Polidoro, a CUT national leader. Held at the disposal (Case No. 8-74) of the Air Force Prosecutor.

NAVARRO, Mario, a former WFTU secretary and CUT national councillor. Detained at Ritoque by virtue of the state of emergency.

NAZAR, Jacinto, of the Ranguil National Peasants' Confederation. Does not appear to be registered as a trade union official. Held at Ritoque by virtue of Act 12,927.

ONATE, Rolando, a trade union leader, Cholguán. Held in Yungay prison, prosecuted by the Nuble military authorities.

PEIFORD, Isabel, secretary of the fishermen's union. Imprisoned at Pisagua.

QUINTANA, Juan, former leader of the Copper Workers' Confederation. Held at Rancagua.

RODRIGUEZ, Arnaldo, a SUTE trade union leader, Teno. Held in Curicó by virtue of the state of emergency.

RODRIGUEZ MOYA, Edmundo, a former national leader of the leather and footwear workers' union. Prosecuted under Case No. 197-74.

SALINAS MONTECINOS, a peasants' trade union leader, Teno. Held at Ritoque.

ULLOA, Armando, CUT general secretary for the Province of Magallanes. Held at the disposal of the Punta Arenas military court (Case No. 21-73).

VALDES, Juvenal, a former leader of the Lota miners' union. Held at Tres Alamos under Act 12,927.

VASQUEZ, Rolando, a CUT national leader. Exiled to the south.

VENEGAS, Hernán, a CUT leader, Nuble. In Chillán prison under Act 12,927.

ZULJEVIC LOVRIN, Leopoldo, a Valparaiso trade union leader and former superintendent of customs. Held at Ritoque by virtue of the state of emergency.

4. According to the government, the following are at liberty:

AGUILERA, Maria, leader at the El Salvador Hospital.

AREVALO, Maria, a peasants' trade union leader, Arauco.

BRAYO, Heriberto, CUT leader for the Quillota area. Left Chile of his own free will on 28 February 1974 for Buenos Aires.
BRAVO, Maria, a leader of the workers' association at the University of Chile.

CARRASCO, Luis, an ASMAR trade union leader, Talcahuano.

CONTREIRAS, Arturo, a leader of the Steel Workers' Federation, Talcahuano.

CONTREIRAS, Omar, secretary, Port Workers' Federation.

CUADRA SALDIAS, Brunilda, secretary of the fishermen's union, prosecuted by the Iquique military authorities. Exiled for six months to Linares.

CHANDIA, Rosa, a leader of the El As factory union.

DIAZ, Mario, CUT secretary, Iquique.

ESPINOSA, Leoncio, an EQUITER union leader, Talcahuano.

EYAGUIRRE, Alberto, director of the Association of Employees of the Sindicatura de Quiebras (Bankruptcy Office). At present in Sweden.

GONZALEZ, Abel, chairman of the INACAP single union.

GONZALEZ, Mario, chairman of the Hirmas textile mill union.

GONZALEZ, Salatiel, a SUTE leader at Rancagua.


GUTIERREZ, Luis, former CUT vice-secretary, Ruble. Granted a stay of proceedings in Case No. 36-73, brought by the Ruble military prosecutor.

GUZMAN, Luis, a leader of the Copper Workers' Confederation. According to the Government, in 1969 held office in that Confederation. Now works in Valparaiso, in the El Teniente Mining Co.

HAUSTEINS, Enrique, a worker, chairman of the Schwager Coal Miners' Federation; a former Governor of Coronel.

HERRERA, Herminio, a leader of the Ranguil Peasants' Confederation.

IBANEZ, Oscar, former CUT national leader.

LINEO, Laura, Arica health workers' leader.

MICILLANCA, Hoel, a leader of the Valdivia regional fishermen's federation.

MONTECINOS ACEVEDO, Alfredo, chairman of the Chilean Maritime Confederation. At present not occupying this post. Now head of the Stevedores' Union, Antofagasta, in which city he normally works.

MONTOYA, Estanislao, a SUTE leader in Concepción.

MUÑOZ, Hernán, CUT leader, Melipilla area.

NUNEZ, Pedro, former chairman of the INACAP single union.

OJEDA, Juan, national leader of the health workers.

OLIVEROS, Manuel, head of the CUT provincial council, Linares. Acquitted in Case No. 12-73.


RIQUELME, Sara, a leader of the Hoescht Chemical Workers' Union. The Government says that she does not appear as a trade union official in this concern. The woman in question must be Sara Riquelme Fuentes, who is at liberty.
ROJAS, Glasfira, union official, Clinic No. 5, Santiago.

SANCHEZ, Iván, CUT general secretary, Osorno Province. At present at liberty in Entre Lagos.

SANHUEZA, Osar, chairman of a union at Lota.

TORRES, Orlando, chairman of the Luchetti industrial union.

VENEGAS ZAMORA, Datan, a leader of the National Customs Officers' Association.

VILLALOBOS, Sergio, chairman of the Ranguil Peasants' Confederation.

VILLENA, Luis, a leader of the Copper Workers' Confederation.

ZAMORA, Germán, a leader of the Melipilla health workers. On 11 August 1974, left for Frankfurt.

ZAMORANO, Adolfo, a PENATS leader.

According to the Government, there is no record of the following having been detained or executed:

ACEVEDO, Juan, leader of a peasants' union, Machali.

ALARCON, Eliseo, leader, building workers' union.

ARAVENA, Edelmiro, national leader, building workers.

AVILES, Enrique, trade union leader, Cholguán.

CASTILLO, Manuel, secretary to the Transport Workers' Union.

CRUCES, Armando, a leader of the Elecmetal Union. On 3 November 1973, left the firm of Electro-Metalúrgica, S.A.

ECHEVERRIA, Roberto, chairman of the Federation of Agricultural and Forestry Workers.

GONZALEZ, Filadelfia, union official, Clinic No. 5, Santiago.

GONZALEZ, Isidoro, SUTE chairman, Concepción.

IRRAZABAL, Luis, leader of the peasants' union, Machali.

LARA, Osvaldo, national leader, Building Workers' Union.

MACIA, Anselmo, a leader of the Electricians' Federation, Puerto Montt.

MILLAPE, Antonio, chairman of the Mapuche National Peasants' Confederation.

OJEDA, Sonia, a health workers' leader, Chillán.

PAINE, Domingo, an employees' leader, Rural Educational Institute.

PALAVICINO, Luis, a SUTE leader in Rancagua.

PEDREROS, Robinson, a worker, supervisor in the union of the Canteras Lonco Company, Concepción.

PEREZ, José, a leader of the Ralco union, Concepción.

POLANCO, David, a CUT national leader.

POVEDA, Simon, a trade union leader, Cholguán.

URIBE, Yolanda, a health workers' leader, Concepción.
VELIZ ARAYA, Pedro, national leader of the Miners' Federation.

WILDE, Ricardo, chairman of the CMPE union, Valdivia.

6. According to the Government, the data provided were inadequate to enable the following to be traced:

CASTILLO, Eva, chairman, industrial union of the Miss Universe Co.

MORAZA, Luis, senior accountant, El Teniente.

SALAZAR, Luis, former CUT national leader (according to information from another source received by the Commission while in Santiago, he was detained in October 1973 and is in Santiago Penitentiary).
ANNEX II

TRADE UNION LEADERS OR FORMER LEADERS ABOUT WHICH THE COMMISSION REQUESTED INFORMATION FROM THE GOVERNMENT

Additional information communicated by the Government

A. Leaders or former leaders who according to the complaining organisations were killed or executed

1. According to the Government the following have been detained or exiled:


CARREÑO, Alfonso. The Government has traced Alfonso Carreño Díaz. Detained and at the disposal of the Air Force Prosecutor at the War Academy.

2. According to the Government the following are at liberty:

CARREÑO, Ramón. The Government has traced Ramón Antonio Carreño. At liberty.


LOPEZ, Leopoldo. The Government has traced Jaime Leopoldo Lopez Avila. At liberty.

MARTINEZ, Hector. The Government had informed the Commission that Hector Martinez Molina was being prosecuted. He has been deported and left for Paris on 22 February 1975.


MORAGA, Ethiel. The Government had informed the Commission that he was being detained pending trial. He was released on 10 March 1975.

MUNOZ, Omar. The Government has traced two people bearing this identity: Omar Americo Munoz Carreño, who has not been and is not being detained, and Omar Ovidio Munoz Figueroa, who is also at liberty.

VILLALOBOS, Luis. The Government has been able to trace Luis Armando 2nd Villalobos Caceres. At liberty since 26 September 1973.

B. Leaders or former leaders stated by the complainant organisations to have been detained

1. According to the Government the following were arrested or imprisoned:

BARRAZA, Juana. The Government had informed the Commission that Juana Enriqueta Barraza Celada was being prosecuted. At present she is serving a six-year sentence in the Santiago reformatory.
2. **According to the Government the following has been discharged conditionally:**

SALAZAR, Luis. The Government has been able to trace Luis Salazar Valle. He was discharged conditionally by order of the prosecutor of the 1st Naval District on 26 November 1974.

**According to the Government the following are at liberty:**

AYO, Juan Bautista. The Government had informed the Commission that Juan Bautista Bravo Bravo was detained in Puchuncavi. He was released on 30 December 1974.

CAIRESES, Manuel. Left Chile on 16 January 1975.

KRUHN, Heriberto. Heriberto Moises Kruhn Ahumada left Chile on 24 February 1975 for Germany.

MORAGA, Luis. The Government has traced Luis Moraga Catalan. At liberty.

MORALES, Polidoro. The Government had informed the Commission that Polidoro Morales Aguirre was being detained and held at the disposal of the Air Force Prosecutor (Case No. 674). Released on 24 July 1974.

SALINAS, José. José Salinas Montecinos was released on 31 December 1974.

ZULJEVIC LOVRIN, Leopoldo. Left Chile on 11 January 1975.

4. **The Government supplied additional information on the following detained persons:**

ALEMANY, Claudio. Name put forward for emigration to Mexico.

CISTERNAS, Emilio. The Government had informed the Commission that Emilio Cisternas Peña was being detained. His name has been put forward for emigration to Mexico and has been placed on the deportation list.

NAVARRO, Mario. Being held at Ritoque for illegal activities not connected with his trade union.

RODRIGUEZ, Arnaldo. Arnaldo Rodriguez Hormazabal has been put forward for emigration to Mexico.

VALDES, Juvenal. Being detained in the Santiago penitentiary.
Workers and employers without any distinction whatsoever and without previous authorisation shall have the right to establish, to become or to cease to be members of, such trade union organisations of their own choosing, subject only to the law and to the rules of those organisations.

Trade union organisations shall be institutions for mutual cooperation between those concerned in production; their fundamental and permanent mission shall be to promote the economic and social progress of their members, support the economic and social development of the community and participate in the projects and machinery established for that purpose.

Trade unions which directly or indirectly in their organisation, their purposes, or their internal proceedings or external actions, contravene the foregoing shall be considered as acting contrary to the spirit and letter of the law.

The principal objectives of trade union organisations shall be:

1. To encourage the development of relations between workers and employers on the basis of justice and mutual respect;
2. To seek the improvement of living and working conditions in their particular enterprise or branch of economic activity;
3. To seek the economic and social advancement of their members and defend their common interest;
4. To take part in and represent the workers and employers in the machinery for collective negotiations; to enter into collective labour agreements, see to their implementation and defend the rights deriving from them;
5. To represent the workers in connection with their rights under individual contracts of employment when so requested by their members. The right to claim the remuneration stipulated in the contracts is a matter for the workers themselves;
6. To be vigilant over the implementation of the labour and social security laws, to bring infringements before the administrative or judicial authorities, to appear at any hearing where a fine or other sanction may be ordered and in general, to represent any social interest compromised by a failure to observe the laws for the protection, improvement or participation of workers or employers, or any similar provisions, this either jointly with or independently of the State Services concerned;
7. To take part in and represent workers and employers in regional economic and social development bodies or such public institutions or entities as may be prescribed by the law;
8. To constitute legal entities for the purposes of the due performance of any of the economic and social objectives mentioned in this article, or for the social welfare of workers or employers and their families, and take part in any machinery set up for such purposes and represent workers or employers before such bodies;
9. To promote full employment and take part in arrangements for finding jobs;
10. To see the establishment or improvement of occupational risk prevention or protection schemes; to take part in and represent workers and employers in such schemes;

Officials of the central or local services of the State Administration have, under article 1 of this Draft Bill, the right to organise; for which purpose, appropriate regulations will be issued. The only exceptions shall be the members of the armed forces and of the prison and criminal investigation services.
(11) to set up and take part in services to provide technical, legal, educational and cultural services, to promote socio-economic advancement, mutual societies and the like; and

(12) in general, to carry on all activities directly related to the purposes herein set forth or which may subsequently be added, such as are not forbidden by the law.

**Article 4.** No authorisation shall be required by married women or minors to become members of a trade union, to protect their rights or fulfil their responsibilities as trade union members, or to take part in the administration of any workers' or employers' organisations to which they belong, either directly or indirectly.

**Article 5.** Workers may organise in works' unions or in unions established for a branch of activity.

In either case, more than one union may be set up, provided the requirements of articles 6, 7 and 8 of this Legislative Decree are observed.

**Article 6.** Works' unions may be set up in any enterprise having more than 300 workers, provided this is decided by at least an absolute majority of the undertaking personnel, by direct and secret vote in the presence of a representative of the competent Labour Inspectorate or of a Commissioner for Oaths, in the manner set out in article 17 of this Legislative Decree.

Such an agreement shall be binding on all the workers of the undertaking.

If a works' union is set up, the workers of that undertaking may not take part in the establishment of, or join, a union established for a branch of activity.

**Article 7.** The setting up of a works' union, or more than one, must be decided upon by at least 25 per cent of the workers in that undertaking.

**Article 8.** The workers belonging to the same branch of economic activity may organise a union within a province.

The minimum number of workers who may set up such a union, and the minimum number of members for such a union to continue to function, shall be 100; such number shall represent at least 25 per cent of the workers in the same branch of activity in the same province.

The Labour Board shall each year determine the number of workers constituting the minimum percentage stipulated in the preceding paragraph. For the purpose of that reckoning, workers in that industry who have agreed to set up works' unions as specified in the previous article shall not be counted.

**Article 9.** Employers' unions may be set up by and continue to function with a minimum number of members equivalent to 25 per cent of the employers in a given branch of economic activity within a province.

**Article 10.** The Ministry of Labour and Social Welfare may authorise the setting up of organisations by employers or workers engaged in a division or a subdivision of a given branch of economic activity and/or which are based on an area extending beyond a province or on a district or area less than a province, where the complexity of that particular industry, the need for association or the circumstances or characteristics of the province, district or area so require.

**Article 11.** Employers' and workers' organisations shall have the right to form federations (which may be associated in confederations) with other like organisations, and may join or withdraw from such federations or confederations.

**Article 12.** Federations may be regional or national. Their establishment shall require the agreement of at least 25 per cent of the unions belonging to a given branch of economic activity within the region or in the country.

**Article 13.** Confederations shall be nation-wide. Their establishment shall require the agreement of at least 25 per cent of the federations belonging to a given branch of economic activity within the country.
Article 14. Workers and employers may belong to only one organisation, organisations to only one federation and federations to only one confederation.

The penalty for a worker or employer who is a member of more than one union shall be a fine of up to the amount of the annual subscription to the union in question.

Without prejudice to the foregoing provisions, the membership last taken up shall be considered to cancel any previous membership. If affiliation was simultaneous, or if it cannot be determined which was the last, all shall be considered void.

Affiliation to more than one federation, in the case of a union, or to more than one confederation, in the case of a federation, shall constitute grounds for the dissolution of the union or federation.

Article 15. The establishment of organisations representing both workers and employers is prohibited. This without prejudice to the co-operation there should be between them, and joint activities which workers' organisations and employers' organisations undertake together.

Article 16. Subject to the provision in article 54(a) of this Legislative Decree, employers' or workers' organisations shall be considered to be legally constituted and to enjoy legal personality upon deposition of the deed of constitution and rules of the organisation with the appropriate Labour Inspectorate.

Article 17. Employers' and workers' organisations shall be constituted in the presence of a representative of the appropriate Labour Inspectorate. If no representative is appointed, or if approval of the constitution of the organisation is withheld beyond 30 days from the date of application to the Labour Inspectorate, application may be made to a Notary Public, Clerk of Justice or Civil Registrar, who shall act as a Commissioner for Oaths.

Article 18. Employers' and workers' organisations shall be conducted in accordance with their rules of association, the present Legislative Decree and any pertinent regulations; they shall be subject to supervision by the Labour Service and must produce any information which the Service demands.

Article 19. The rules of employers' and workers' organisations shall not contain any provision restricting the membership or withdrawal of workers or employers or unions or federations which comply with the requirements of articles 6, 7, 8, 9, 10, 11, 12, 13 and 14 of this Legislative Decree.

Article 20. Trade union organisations shall be managed by an executive committee with five members and two further members for every thousand members of the organisation beyond the first five hundred, up to a maximum of nine.

Article 21. The executive committee shall represent the organisation generally and in any legal proceedings, save when the requirements of the Code of Civil Procedure, article 8, are applicable to the President.

Article 22. A member of the executive committee shall be required to be:

(a) a member of the organisation, or of an organisation affiliated to the federation or confederation, as the case may be;

(b) a worker in the undertaking, or employed in the industry, or an employer in the industry, for the 12 months preceding the election;

(c) a national of Chile. However, a foreigner whose spouse is or whose former spouse was Chilean, and who has resided in Chile for more than five years, disregarding any temporary absences, may be elected to the executive committee;

(d) able to read and write;

(e) at least 18 years of age;

(f) not under sentence for or charged with any criminal offence.
(b) two months, in the case of candidates for office in a federation or confederation.

Candidates must carry out the activities appropriate to their candidature outside their normal hours of work.

Nevertheless, where it is necessary for those activities to be pursued in places more than 50 kilometres from the place where the candidate normally carries out his duties, he shall be entitled to request leave from his employer for 30 per cent of the periods referred to in items (a) and (b) of the first paragraph to this article, with full pay.

An officer seeking re-election to office shall not enjoy the rights provided by articles 30 and 32 of this Legislative Decree during the periods referred to in the first paragraph of this article.

Article 30. Officers of trade union organisations must fulfil their obligation to perform their normal duties to their employers during the ordinary working hours of the undertaking.

Nevertheless, employers shall be required to grant such officers leave of absence from their work where necessary to fulfil their official duties away from their place of work. Leave to be granted for that purpose shall not exceed:

(a) four hours a week for an officer of an organisation with up to 500 members;
(b) six hours a week for an officer of an organisation with more than 500 members;
(c) ten hours a week for an officer of a federation or confederation.

Time not taken during any week may not be carried over to another week, save in the case provided in item (c), in which case time may be accumulated for up to four consecutive weeks. However, in special cases officers may agree that any one or more of them may take the whole of the time allowed weekly for all of them.

The time limits indicated in the foregoing paragraphs may be exceeded in cases where the officers are convoked by the public authorities, who shall certify in writing the time taken for such convocation.

The periods of leave above referred to shall for all legal and contractual purposes be regarded as working time.

The Labour Inspectors shall certify the status of officers of workers' or employers' organisations and the periods of leave appropriate according to the rules set out in the first paragraph.

Trade union activities within the place of work shall take place out of working hours, except meetings arranged in advance with the employer, which may take place during working hours.

Article 31. Individual or collective agreements, or resolutions of arbitration tribunals or tripartite committees purporting directly or indirectly to modify the rights set forth in the preceding article shall be null and void.

Article 32. The assembly of a trade union may agree, subject to its conforming to the procedure laid down in the rules of the union, that one or more of its officers shall devote all or part of his or their time to trade union affairs or the interests of its members.

The time which the officer, whether worker or employer, devotes exclusively to the affairs of the organisation or its members shall be decided by that trade union organisation. The officer shall for such time be paid the remuneration decided by the assembly, which shall not be less than he would have received for working in the undertaking involved.

Remuneration paid to officers from the funds of the organisation shall be subject to all taxes and deductions prescribed by the law. Charges payable by the employer shall be paid by the trade union organisation concerned. The social welfare institutions shall be paid the contributions due and shall provide the corresponding benefits.
The assembly of the trade union may in no case authorise the whole or part-time service of an officer as referred to in the first paragraph for more than one officer for each 100 members.

Article 33. Officers of federations or confederations may devote the whole or part of their time to the affairs of those organisations, subject to the provisions of the first three paragraphs of the preceding article.

Article 34. Officers to whom articles 32 and 33 apply shall not enjoy the leave provided for in article 30 of this Decree-Law.

Article 35. In cases where for special reasons it is impossible to apply the rules set out in articles 29, 30, 31 and 32 to the particular circumstances, the Minister of Labour and Social Welfare may issue such further rules as he thinks fit, by an appropriate directive.

Article 36. The officers shall be entitled to such subsistence allowances, travelling expenses and any other expenses as the rules and regulations of the organisation provide, with the previous approval of the assembly.

Article 37. Expenditure incurred by trade union organisations for the full or part-time services of their officers in the organisation's affairs, or for the items referred to in the preceding article must be approved by the assembly of the organisation concerned and be shown in the budget and balance sheet.

Article 38. Payment of the whole or part of the expenditure incurred by workers' organisations for the items referred to in the preceding articles by undertakings or by employers' organisations is forbidden. The same prohibition applies to payment by the workers or their organisations for such expenses incurred by employers' organisations.

Article 39. During his period of service as officer, the worker retains the right to his employment, and his employer may not give him notice until six months after his service as officer comes to an end, save where it may be terminated by resignation or reprimand or on other disciplinary grounds as provided for in the rules of the organisation concerned.

Article 40. Notwithstanding the provisions of the preceding article, the employment of candidates for office and of elected officers may not be terminated otherwise than in accordance with the provisions of articles 10 and 11 of Act No. 16,455, without prejudice to the provisions of articles 4 and 5 of Decree-Law No. 32, 1973.

If the Court decides upon the provisional suspension of a candidate for office or an officer, the Court's decision shall state whether or not his capacity for candidature or for office in the organisation concerned is affected.

If the decision orders the suspension of a defendant's or the defendants' capacity for candidature or for office, such suspension shall take effect immediately and the procedure for his or their replacement according to the rules of the organisation shall be begun forthwith.

If the decision orders the suspension of the capacity of such a number of officers as to prevent the organisation continuing to function in conformity with the law or with its rules, the Court shall specify in its decision the provisional arrangements for its administration.

Article 41. The lists of candidates for office and of elected officers shall be communicated in writing to the head of the undertaking or published on three consecutive days in a newspaper of the capital of the province according to whether an undertaking organisation or a provincial industry organisation is concerned.

If the industry organisation is to cover an area less or greater than a province, as provided in article 10 of this Legislative Decree, the authorisation issued shall determine the manner whereby the lists of candidates for office and of elected officers shall be made known.

In the case of federations, there shall be a single publication in a newspaper of each of the provincial capitals concerned.
In the case of cofederations, the publications referred to in paragraph 1 shall be in a Santiago newspaper.

The candidates for office and elected officers shall enjoy the rights specified in articles 39 and 40 of this Legislative Decree from the date of despatch of the communication to the head of the undertaking or of first publication above-mentioned.

Article 42. Members of industry organisations may elect one delegate in each undertaking having more than five worker members and in addition, an alternate, where there are 15 or more.

The provisions of article 28, paragraph 1, of this Legislative-Decree shall apply to those delegates.

Trade union delegates shall enjoy security against dismissal in accordance with articles 39, 40 and 41 of this Legislative Decree.

Any reprimand of a trade union delegate must be approved by the workers of the particular undertaking affiliated to the union concerned and shall take effect as provided in the next article. Approval of such reprimand shall have the consequences set forth in article 44 of this Legislative Decree.

An officer or officers of a trade union who were workers in an undertaking shall be considered to be trade union delegates for the purposes of paragraph 1 of this article.

Article 43. Trade union officers shall be subject to reprimand in such manner as may be provided in the organisation's rules.

The following shall be grounds for reprimand:

(a) infringement of the provisions of this Legislative Decree or any regulations made under it or of the rules of the organisation;
(b) any act liable seriously to prejudice the organisation or its members;
(c) any failure to comply with legal obligations, or obligations incurred under any regulations, or under the rules of the organisation, in connection with the organisation;
(d) any grave failure to comply with the requirements of any laws or regulations other than this Legislative Decree;
(e) any failure to comply with the resolutions, decisions, orders or other communications of the competent authority; and
(f) any grave failure to comply with the agreements or decisions adopted by the competent organs of the trade union organisation concerned.

In all cases, the reprimand must be adopted by an absolute majority of the members having the period of membership required under article 26 of this Legislative Decree of the organisation concerned in secret ballot. If the reprimand affects two or more officers, the members shall vote on the substance of the reprimand in one ballot but shall vote separately as to its application or rejection in respect of each officer.

Provision shall be made in the rules of the organisation for the right of any person accused to be informed of the complaint made against him, of the facts alleged and the evidence therefor, and of the manner in which he may exercise his right to defend himself. He may not be denied access to any documents, books of account, records or any form of evidence whatsoever in the possession of the organisation and which may be necessary for his defence.

Article 44. If the reprimand is approved, the officer shall forthwith quit his post. He may not again be a candidate for that office at least until after the time representing two full terms of office has elapsed since the date the reprimand was approved.

Notwithstanding that the reprimand may be addressed to one officer only, all the officers of the organisation shall be required to be re-elected in conformity
with the provisions of article 25 of this Legislative Decree. However, if this situation should transpire within six months of the date upon which their terms of office would be complete, the officers shall be elected for a full term.

Article 45. The ordinary and any special dues to be paid by the members of a trade union organisation shall be prescribed by the rules.

Employers must at the request of the executive committee of the trade union organisation deduct such dues, and any sums in respect of pecuniary sanctions imposed on its members by the organisation, from the members' pay.

The minimum total subscription to be paid by each worker shall not be less than 0.5 per cent of the taxable pay he receives from his undertaking.

The worker or employer who does not belong to a trade union shall nevertheless pay this minimum amount, which shall be passed on to the works' union or to the industry union as the worker may decide, provided that he might legally belong to it. If he does not designate any organisation, the subscription shall be divided between the unions of the undertaking concerned, or between the industry unions within the province, in proportion to the number of their members in each case. If in either event there is only one appropriate organisation it shall receive the whole amount.

The employer must pay to the organisation concerned both his dues and those deducted from the workers' pay within the time allowed for payment of the social charges.

Subscriptions deducted from workers' pay and not handed over at the proper time, together with the dues payable by the employer to the organisation concerned, shall be debited or paid, as the case may be, after being duly adjusted in conformity with the appropriate regulations, in proportion to the rate of pay. In either case the employer shall pay interest at the maximum rate legally chargeable.

Without prejudice to the foregoing, any employer who repeatedly fails to pay over the subscriptions deducted from his workers' pay within the time prescribed in paragraph 5 of this article shall be penalised in the manner and on the terms prescribed by the law for non-payment of social charges.

Article 46. When a worker ceases to be a member of a trade union organisation his subscription shall be adjusted to be in accordance with the preceding article as from the month following communication of his ceasing to be a member.

Article 47. Trade union dues shall be wholly the responsibility of the worker and the employer and it is therefore prohibited for any other person or entity to discharge them.

Article 48. Trade union organisations may hold investments and incur expenses, in accordance with their rules, which they shall account for in their budgets.

Article 49. The administration of trade union funds is the responsibility of the executive committee which shall deal with them for the purposes of the organisation in accordance with the annual budget approved by the assembly.

The officers shall answer for any negligence in their administration and, without prejudice to any criminal responsibility, shall be jointly and severally liable to make good any damage caused by any agreements entered into, unless they took no part in them or consistently opposed them.

The Labour Administration may of its own initiative or at the request of any interested party carry out an investigation to determine whether the investment or the administration of the funds of the trade union is in accordance with the rules prescribed by this Legislative Decree, any regulations made thereunder and the organisation's rules, and whether the officers have acted within their powers.

For this purpose the Administration may investigate any accounts trade union organisations may have with banks or other financial establishments, irrespective of any existing legal restrictions or any that may be brought into force in the future.

The Administration may likewise begin any legal proceedings and appear as party therein, without being required in any penal case where it would otherwise have been necessary to cite a complainant.
Article 50. Any member of the trade union shall be able to examine the union's books of account, in the form prescribed by the regulations or rules, without prejudice to the duties of the Audit Committee which must be set up under the organisation's rules.

The Audit Committee may engage any professional assistance it considers necessary for the performance of its duties, or call upon the help of auditors in the Labour Service.

Article 51. The assets of a trade union organisation shall be the property of the union and not, in whole or in part, that of the members.

The funds of the union shall be utilised only for purposes and objects specified in this Legislative Decree and in the organisation's rules.

In the event of a trade union being dissolved, its assets shall be transferred as may be provided in the rules. If no provision is so made, the Ministry of Labour and Social Welfare shall decide which trade union organisation shall benefit.

Article 52. Any requirement that a worker shall be a member or not of a trade union shall be forbidden, nor may any worker be dismissed or prejudiced in any manner whatsoever for membership of a trade union or for taking part in a union's activities. Any act of whatever nature intended to induce an employer to become a member of any particular employers' organisation, or to cease to be a member, or which might relate to or prejudice him in any manner whatsoever on account of his membership of an organisation or his participation in an organisation's activities shall likewise be prohibited.

Furthermore, any interference by any trade union organisations in any other organisations, or by persons or bodies outside such organisations, either directly or through the organisation's agents or members, as regards their establishment, their finances or their functioning, or in their internal administration, shall be forbidden.

The following in particular shall be considered acts of interference: any attempt to promote the establishment of trade union organisations under the influence of another organisation, or financially or in any other way supported by another organisation, with the object of bringing such organisation under its control, or the like acts performed by any outside persons or bodies other than such workers' or employers' organisations.

Any act of the nature defined in the preceding paragraphs shall be punished by a fine of up to five times the amount of the guaranteed minimum annual wage for every worker or employer affected by the acts in question, or for every worker or employer member of a trade union organisation guilty of such interference, or having been the victim of such interference, if committed by persons outside or bodies other than workers' or employers' organisations.

For a second or further offence, the fine shall be double that amount.

If repeated acts of interference are committed by a trade union organisation, it shall be dissolved.

Article 53. The provisions of the preceding article shall not apply to any persons or bodies legally established for the purpose of promoting the formation of trade union organisations, assisting in their financing, administration, extension, or pursuit of such organisations' objectives, or which in general are complementary to the activities of workers' or employers' organisations.

Article 54. The following shall be grounds for the dissolution of a trade union organisation:

(a) failure to amend the rules of the organisation to conform to the legal requirements, within the space of 60 days from the date of being required by the competent Labour Inspectorate to do so, the said Inspectorate being empowered so to require within 30 days of the date of the rules of the organisation being deposited.

Pending the observance of such a requirement, the application of the rules in question shall be suspended, this without prejudice to the right of the
organisation, within the first of the time limits mentioned above, to apply to
the competent Labour Judge for his decision on the legality or illegality of
the rules attacked. The Judge shall briefly and summarily decide the matter
at a single hearing, where only the Labour Inspector shall be heard;

(b) any grave infringement of the provision of this law;

(c) any cause prescribed in the rules of the organisation;

(d) any diminution over a period of six consecutive months in the number of
members below the number specified in articles 6, 7, 8, 9, 12 or 13 of this
Legislative Decree;

(e) belonging to more than one federation or confederation;

(f) repeated acts of interference committed by a trade union organisation.

The majority of the members of any trade union organisation or the Labour
Administrator may apply for a judicial order dissolving the organisation for any of
the causes listed in this article.

Article 55. The dissolution of a federation or a confederation shall not
entail the dissolution of any of the trade union organisations which are members
thereof.

Article 56. The Labour Judges shall hear any action instituted to require
compliance with the rules set forth in this Legislative Decree and shall proceed in
accordance with the provisions in the Labour Code, Title I, paragraph II(A).

Article 57. The application of the fines referred to in this Legislative
Decree shall be subject to the procedure specified in Act No. 14.972.
Trade union organisations are institutions which collaborate in the proper integration of the means of production in a just and co-operative society and whose basic and permanent aim is to further the economic and social progress of their members and to defend their legitimate interests in encouraging economic and social development and the progress of the community. Consequently such organisations which contravene these principles as stated above, whether directly or indirectly, and whether in their structure, aims, or internal or external modes of procedure, shall be considered in breach of both the spirit and the letter of this Act.

Trade unions of workers may only be established by branch of economic activity.

Notwithstanding the foregoing, the Minister of Labour and Social Welfare may, in respect of undertakings already in existence and employing more than 300 workers and which, in view of their particular characteristics, may be considered analogous to branches of economic activity, expressly authorise the establishment of a trade union within such undertaking.

The establishment of trade unions within undertakings, as provided for in the second sentence of the preceding section, shall be requested of the Minister of Labour and Social Welfare by at least an absolute majority of all the employees of the undertaking. Such majority shall be determined by direct and secret ballot in the presence of a Commissioner for Oaths who shall be a representative of the appropriate labour inspectorate or, in his absence, of any of the officers mentioned in section 231 in such form and under such conditions as the Regulations shall determine.

The agreement shall be binding on all of the workers of the undertaking in question.

Upon authorisation of the formation of the trade union organisation within the undertaking, the workers therein shall not take part in the establishment of trade unions by economic activity nor shall they be members thereof.

When a worker takes up employment in the undertaking his membership in the union of which he was a member shall automatically cease and he may only belong to one of the unions within the undertaking.

Notwithstanding the foregoing, and even when the unions have been constituted in the form set out in the following section, the majority of the workers in the undertaking concerned, which shall represent at least 65 per cent of them, may agree to put an end to the existence of the undertaking's trade unions and shall in consequence be free to join the trade unions described in section 222. Such an agreement shall be irrevocable.

Once the establishment of a trade union within the undertaking has been authorised, it shall be constituted and operated by a number of workers representing not less than 25 per cent of those employed in the undertaking in question.
Workers belonging to the same branch of economic activity may organise a union within a province.

The minimum number of workers who may establish such a union, and the minimum number of members for such a union to continue to function, shall be 100. Such number shall represent at least 25 per cent of the workers in the same branch of activity in the same province.

The Labour Board shall each year determine the number of workers constituting the minimum percentage stipulated in the preceding subsection. For the purpose of such determination, workers in that branch of economic activity who have agreed to establish unions within undertakings as specified in the previous section shall not be counted.

An appeal against such a determination lies before the Labour Judge in the respective provincial capitals within 30 days. Such appeals shall conform to the procedure laid out in Chapter ... of Book IV.

Trade union organisations shall deposit their constitutions and by-laws with the appropriate Labour Inspectorate. The latter shall have 45 days in which to formulate such comments thereon as it may deem appropriate. The trade union organisations may bring their by-laws into conformity with these comments or appeal within 15 days to the competent Labour Judge who shall hand down a decision as to the propriety or impropriety of the same.

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Upon the expiry of the 45-day period referred to in the previous subsection and the by-laws having been brought into line with the comments made by the Labour Inspectorate, or the latter having been judicially declared to be improper, the respective trade union organisation shall be deemed to be in possession of corporate status and, as of that time only, it may validly operate.

The objections of the Labour Inspectorate shall be deemed to have been set unless the Inspectorate makes any further objections within five days after receiving the revised instruments taking into account the previously formulated comments.

Once a trade union organisation has acquired corporate status, the Labour Inspectorate shall make this known. It shall be made public by two notices, one published in the Official Gazette on the first and fifteenth days of the appropriate month or the nearest subsequent working day, as the case may be, and the other published in one of the daily newspapers of the provincial capital having the greatest circulation in the case of trade unions and in the case of federations or confederations, in the daily newspapers having the widest circulation in each of the provincial capitals.

A member of the executive committee shall be required to be:

(a) a member of the organisation, or of an organisation affiliated to the federation or confederation, as the case may be;

(b) a worker in the undertaking, or employed in the branch of economic activity, or retired from employment in the same, or an employer in the undertaking, for the 24 months next preceding election. This requirement does not hold for undertakings which have been in existence for less than two years;

(c) a Chilean national. However, a foreigner whose spouse is Chilean or who is a widow or widower of a Chilean spouse and who has resided in Chile for more than five years exclusive of temporary absences, may be elected to the executive committee;

(d) able to read and write;
(e) of at least 21 years of age. If, however, the imposition of this requirement would prevent the establishment or operation of a union, the Labour Board may reduce the age required to 18 years;

(f) not have been tried or sentenced for any criminal offence, whether felony or misdemeanour, such incapacity continuing during the time taken by the proceedings, the serving of the sentence or the period of limitation prescribed in the Criminal Code (section 105).

Section 240. The by-laws shall determine the duties of the officers and the manner of their election.

Nevertheless, the system of election of officers shall guarantee the due representation of minorities, pursuant to the terms of the Regulations.

The election of the officers of a trade union organisation shall in any case be by direct and secret ballot of the workers or employers affiliated directly or indirectly thereto. Only workers or employers who have been listed as members of the organisation for at least the six months next preceding the election shall be entitled to vote.

The election shall be void and of no effect if fewer than 55 per cent of the members of the respective organisation do not participate in the voting.

Section 255. Members of organisations representing a branch of economic activity may elect one representative in each undertaking having more than five worker members and, in addition, an alternate representative, where there are 50 or more worker members.

The provisions of section 242(1), as well as subparagraphs (b), (c), (d) and (e) of section 237, shall apply to such representatives.

Trade union representatives shall benefit from security against dismissal in accordance with the provisions of sections 252, 253 and 254 and shall only be granted leaves of absence in the circumstances set out in section 244(4).

It shall be the duty of the trade union representatives to maintain the connection between the trade union officers and the worker members of the respective undertakings.

Any vote of censure of a trade union representative must be approved by the workers of the particular undertaking affiliated to the union concerned and shall take effect as provided in the next section. Approval of such a vote of censure shall have the consequences set forth in section 257.

An officer or officers of a trade union who were workers in an undertaking shall be considered to be trade union delegates for the purpose of subsection 1 of the section.

In the case of unions established pursuant to sections 220 and 221, and in all such factories or branches of the undertakings in question in which at least one officer of each union does not work, the worker members of the union lacking a representative may elect a delegate pursuant to the terms of subsection 1.

Section 256. Trade union officers shall be subject to censure in such manner as may be provided in the organisation's by-laws.

Grounds for censure are:

(a) infringement of the provisions of this Code, any regulations made hereunder or the rules of the organisation;
(b) any act liable seriously to prejudice the organisation or its members;

(c) any failure to comply with legal obligations or the obligations incurred under any regulations, or under the by-laws of the organisation, in connection with the trade union organisation;

(d) any serious breach in compliance with the provisions of Acts or Regulations other than the present Code;

(e) any failure to comply with the resolutions or decisions issued by the competent authority; and

(f) any failure to comply with the resolutions or decisions issued by the appropriate trade union organisation.

The vote of censure must be approved by the absolute majority of the membership of the respective trade union organisation having the period of membership required under section 240(4). The vote of censure may also be issued without the grounds being expressed but in such cases that approval of such a vote of censure requires the affirmative vote of two-thirds of the membership. If the censure concerns two or more officers the members shall vote respecting each of them on a single ballot, voting for the adoption or rejection of the censure in respect of each of them.

Provisions shall be made in the by-laws for the right of any person to be censured to be informed of the complaint made against him, of the facts alleged and the evidence therefor, as well as the manner in which he may exercise his right to a defence and he shall have free access to all documents, books of account, records or any form of evidence whatsoever in the possession of the organisation and which may be necessary for his defence.

[...]
Section 270. The provisions of sections 220 and 221 shall not apply to such organisations.

Section 271. For the purposes of the provisions of this Chapter, each Ministry and the services associated with it shall be deemed to constitute a branch of economic activity. Consequently the percentage mentioned in section 222 shall be calculated with regard to the total staff of officers of each Ministry including its associated services.

In cases of decentralised units, their classification as branches of economic activity shall be as determined in the regulations.

Section 275. The delegates referred to in section 255 shall not benefit from the immunity set out in the third subsection of section 255.

Section 276. The members of the armed forces, the police, the intelligence services, prison services, persons employed in the judiciary and officials and workers in services which are designated as essential to national security by the Ministry of National Defence, are not covered by the provisions of the present Book II and, in consequence, cannot establish trade union organisations or join them.

Section 277. The trade union organisations referred to in the present Chapter shall not have the right to bargain collectively concerning conditions of work or any other economic or social aspect relating to the work of its members and consequently the provisions of Book III of the present Code shall not apply to them.

[...]

BOOK III

CHAPTER IV. STRIKES

Section 313. Notwithstanding the rejection by the workers or by the employers of the proposals put to a vote, no strike may take place in activities necessary for national security or economic stability of the country.

The Minister of Labour and Social Welfare shall on the basis of the report of the Ministry of National Defence determine by Supreme Decree which activities are to be covered by this section.

Within the ten days following the rejection of the proposals put to a vote, the bargaining committees shall proceed with the appointment of a board of arbitration which shall settle the dispute in accordance with the provisions of sections 321 et seq., the only exception being that in such cases the board of arbitration shall consist of three members, two of whom shall be appointed from amongst those appearing on the national list mentioned in section 322 and the third being appointed by the Minister of Labour on the proposal of the three Ministers of Economy, Development and Reconstruction.

If the appointment of the arbitrator nominated by the Minister of Labour should not take place within the period of time mentioned, this arbitrator may be replaced by a third person chosen from amongst those who are on the national list referred to above.

[...]
First paragraph concerning suspension of strikes

Section 335. If a strike takes place in activities which affect the safety, social or economic conditions of, or are harmful to, the community or any part thereof, or which affect the security of the country, the Government may order the suspension of the strike by Supreme Decree stating the reasons therefor.

All workers shall return to work under the conditions prevalent at the point in time when the work stoppage occurred.

If it be necessary to hire workers to give effect to the suspension of the strike, they shall be treated in the same manner as the workers engaged in the dispute.

[...]

TRANSITIONAL PROVISIONS

Section 3. Occupational trade unions, associations of public servants and other corporate bodies composed of workers or employers on the basis of their labour within a branch of economic activity, may bring their by-laws into conformity with the provisions of Book II of this Code within six months calculated from the publication of the Regulations, provided that they shall have the minimum number of members required by law.

Section 4. The right granted in section 220 of this Code may only be exercised by workers in already existing undertakings and subject to the provisions set out in that section, within a period of one year calculated from the date of publication of the Regulations.

Within the same period of time trade union organisations formed of workers in an undertaking may make use of the right set out in the previous section.

Section 5. Upon the expiry of the periods set out in the previous sections, the trade unions which have not brought their by-laws into conformity with the provisions of the present Code shall be dissolved.

Nevertheless, beginning on the date of proclamation of the present law, the activities of presently existing trade unions shall be limited to preparations for their dissolution, amalgamation, modification or integration in other trade union organisations, as the case may be, and they may not receive new members except for the purposes of the transitional activities mentioned above.

[...]

Section 10. The provisions of Book III of this Code shall enter into force once the economic situation permits the parties to negotiate freely and, in any case, not before 1 March 1976.

The President of the Republic shall fix by decree the date of entry into force, and may fix differing dates for the various regions of the country.

Section 11. While Legislative Decree No. 198 of 1973 remains in force, all appointments, which should be made under this Code, shall be subject to the provisions of that Legislative Decree.

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1 i.e., Provisions concerning collective bargaining, strikes and arbitration.