

TO THE CENTRAL INVESTIGATIVE COURT
OF THE NATIONAL CRIMINAL COURT

DON JUAN MIGUEL SANCHEZ MASA, Court Solicitor and Solicitor of the President Allende Foundation (Fundación Presidente Allende), of Spanish nationality, CIF G79339693, established pursuant to Decree 2.930/1972 of the Ministry of Education and Science, dated 21 July 1972, recorded as No. 225 in the Foundation Register of the Ministry of Education and Culture, with a registered office at C/Alfonso XII, no. 18-4 izq., Madrid 28014, appears before the Central Court of Instruction of the National Court, and proceeds as follows.

FACTS

Having knowledge of the offenses report dated 1 July 1996 filed in the Investigative Court of Valencia by D. MIGUEL MIRAVET HOMBRADOS, as legal representative of the Progressive Association of Public Prosecutors, against Augusto Pinochet Ugarte, José Toribio Merino Castro, Gustavo Leigh Guzmán, César Mendoza Durán, Fernando Matthei Aubel, Rodolfo Stange Oelckers and others, for acts which can be typified as GENOCIDE (art. 607 of the Penal Code) and INTERNATIONAL TERRORISM (art. 572 Penal Code), by means of the present document and in the exercise of an “actio popularis” as provided for in art. 125 of the Constitution, regulated in arts. 19.1 and 20.3 of the Organic Law of Judicial Power, arts. 101 and 270 of the Law of Criminal Proceedings and in compliance with the requirements of art. 277 and other related parts of that law put forward

CRIMINAL COMPLAINT

This action is brought against the same individuals and based upon the same facts referred to in the said offenses report [presented in Valencia]. The following additions to those criminal acts and individuals accused is for the purpose of emphasizing, and better characterizing, the international dimension of terrorism and massive nature of the crimes against Humanity committed by the defendants, as alleged by the Progressive Association of Public Prosecutors.

FIRST. This criminal complaint¹ is duly brought before the Central Court of Instruction by assignment, that Court being competent to deal with issues exemplifying, pursuant to Spanish penal law, acts of genocide and terrorism, both international crimes being subject to universal jurisdiction. Such jurisdiction is established in this instance by articles 10.2, 24.1 and 96.1 of the Constitution in relation to article 1.5 of the Civil Code; articles 23.4

¹ Criminal Complaint is used as a translation of *Querrela Criminal*. It is an action arising out of a civil wrong which is also an offence, like defamation, and may have consequences under both civil and criminal law. Because it involves a criminal element, proceedings may theoretically be instituted by any citizen though in practice it is usually the victim or his/her representative who prefers the charge with the Investigative Criminal Court (translator’s note).

a), 23.4 b), 23.4 c) and 23.5 of the Organic Law of the Judicial Power, and article 272.I of the Law of Criminal Proceedings, all aforementioned articles being considered in relation to article 27 of the Vienna Convention on the Law of Treaties, dated 23 May 1969 (RCL 1980, 1295 and ApNDL 13520), which established that a party to the Convention "may not invoke the provisions of its domestic law as justification of a breach [by another party] of a treaty," (Sentence of the Supreme Court, Section 2, of 29 March 1993, A.2567).

SECOND. Plaintiff is the Foundation cited above (represented by its President Mr. Joan E. Garcés y Ramón, DNI no. 18848673, married adult, practicing attorney of the Madrid Bar Association, Ph. D in Political Science, with registered office at C/Alfonso XII, no. 18, of this Capital).

THIRD. The names, last names and residences of the defendants are those established in the complaint filed by the Progressive Association of Public Prosecutors.

FOURTH. The detailed description and other details regarding the facts, referred to in article 277(4o) of the Law of Criminal Proceedings cited above, are expressly stated in the complaint filed by the Progressive Association of Public Prosecutor, which is reproduced here in its entirety and amended as follows:

1. The defendants Augusto Pinochet Ugarte, José Toribio Merino Castro, Gustavo Leigh Guzmán and César Mendoza Durán, knowing that on 11 September 1973 the Head of State was to convene a national referendum, ordered that forces under their command attack the Presidential Palace with artillery and armoured vehicles, bomb it from aircraft and assault it with infantry troops, and provoked the violent death of the constitutionally elected Head of State, Dr. Salvador Allende Gossens, within the Presidential Palace while it was burning. Following the aforementioned acts, the defendants assumed control over the Constituent, Executive and Legislative branches thereby imposing a reign of terror that shut down Congress, burned election Registers and libraries, militarized the universities (including the Pontifical Catholic University), suppressed the freedom of information and press, murdered more than three thousand individuals upon the defendants orders, subjected hundreds of thousands of individuals to torture, deprived millions of individuals of their civil, social and economic rights and subjected those same millions of individuals to a regime of economic exploitation through successive States of War, Siege, and Curfew over a period of 15 years.

From the winner of the Nobel Peace Prize, Pablo Neruda, to the most anonymous citizen, the life of every individual was subject to the repression and arbitrariness which was carried out on the defendants orders. In establishing this fact, it is enough to refer to the autopsy performed on doctors EDUARDO PAREDES BARRIENTOS and ENRIQUE PARIS ROA, both detained by order of the defendants, along with 22 other individuals, in the Presidential Palace (see p. 133 of the Rettig Report), all of these individuals having been referred to as "detained-missing" as from 11 September 1973 until the discovery of some of them in 1995 in a mass grave, which revealed that they had suffered torture specified as

follows:

"fracture of the vertebral column, pelvis, wrists, ribs, cranium, fatal burns - with torches and flame throwers - in the thorax, shoulders, throat and parts of the face, which left black marks in the bone structure, including the teeth."

So that the Court, which I have the honour to address, assess the magnitude of the absolute impunity regarding the facts recited, not a single legal proceeding has been invoked so far to determine the cause leading to the violent death of the Head of State nor the deaths of doctors EDUARDO PAREDES and ENRIQUE PARIS.

2. The accused individuals referred to in the preceding set of facts concerted with individuals of equal rank in the Military Authority of Argentina to coordinate and widen the commission of identical acts of terrorism, assassination, illegal detention, torture, kidnapping of minors and disappearances. The Central Investigating Court No. 5 of this National Criminal Court is at present carrying out Preliminary Investigations num. 108/1996 regarding the acts of genocide and terrorism committed in Argentina.

The agreement to commit crimes followed a common pattern, and the defendants used for the purpose of committing those crimes officials under its control (subordinates by hierarchy, organized, obedient and abstaining of political involvement), offences carried out in multiple American and European countries which were financed from the State Budget, the victims of which were, among others, Spanish citizens, as well as tens of thousands of citizens of different countries who were murdered, kidnapped or "detained-missing". The names of thousands of individuals who were murdered or "detained-missing" pursuant to orders given by the defendants are listed in attached Annex 2.

The agreement to commit crimes between the defendants and the members of the Military Authority of Argentina (Investigative Central Court No.5, 105/1996) was assigned the name "OPERATION CONDOR". It is of public knowledge that it was discovered initially by the FBI agent Robert Scherrer, the legal attaché since 1972 to the United States Embassy in Buenos Aires, Argentina, while investigating in Argentina the ramifications of the assassination in Washington, D.C., of Mr. Orlando Letelier del Solar (Minister in the Dr. Salvador Allende Administration of 1970-1973). In his telegram to the Director of the FBI in Washington, D.C., dated 28 September 1976, Robert Scherrer reported the following

"BUENOS AIRES (109-2) 109-9)
To Director (109-12-201) (109-12-207) Priority 204-28
Brasilia Priority 026-28
Madrid Priority 007-28
Paris Priority 601-28
CONDOR
Secret
Foreign Political Matters - Argentina; Is - Argentina;
Foreign Political Matters- Chile; Is - Chile.

On September 28, 1976, a Confidential source abroad provided the following

information

“‘Operation Condor’ is the code name for the collection, change and storage of intelligence: data concerning so called leftists, communist and marxists, which was recently established between cooperating intelligence services in South America in order to eliminate marxist terrorist activities in the area. In addition "Operation Condor" provides for joint operations against terrorist, targets in member countries of "operation condor". Chile is the center for "Operation Condor" and in addition to Chile its members include Argentina, Bolivia, Paraguay and Uruguay, Brazil also has tentatively agreed to supply intelligence input for "Operation Condor". - Members of "Operation Condor" showing the most enthusiasm to date have been Argentina, Uruguay and Chile. The latter three countries have engaged in joint operations, primarily in Argentina, against the terrorist target. (...)

‘A third and most secret phase of "Operation Condor" involves the formation of special teams from member countries who are to travel anywhere in the world to non member countries to carry out sanctions up to assassination against terrorists or supporters of terrorist organizations from "Operation Condor" member countries. For example, should a terrorist or a supporter of a terrorist organization from a member country of "Operation Condor" be located in a European country, a special team from "Operation Condor" would be dispatched to locate and surveil the target. When the location and surveillance operation has terminated, a second team from "Operation Condor" would be dispatched to carry out the actual sanction against the target. Special teams would be issued false documentation from member countries of "Operation Condor" and may be composed exclusively of individuals from one member nation of "Operation Condor" or may be composed of a mixed group from various "Operation Condor" member nations.’

Two european countries, specifically mentioned for possible operations under the third phase of "Operation Condor" were France and Portugal.

A special team has been organized (...) which are being prepared for possible future action under the third phase of "Operation Condor" coordinated locally.

It should be noted that no information has been developed indicating that sanctions under the third phase of "Operation Condor" have been planned to be carried out in the United States; however, it is not beyond the realm of possibility that the recent assassination of Orlando Letelier in Washington, D.C. may have been carried out as third phase action of "Operation Condor". As noted above, information available of the source indicates that particular emphasis was placed on the third phase actions of ‘Operation Condor’ in Europe, specifically France and Portugal. This office will remain alert for any information indicating that the assassination of Letelier may be part of ‘Operation Condor’ action”.

Other examples of "Operation Condor" were the assassination in the Argentine of the President of the Republic of Bolivia - General Juan José Torres Gonzalez - in June 1976, or the assassination in the Argentine in that same year of two Uruguayan parliamentarians, the President of the Chamber of Deputies Hector Gutiérrez Ruiz and Senator Zelmar Michelini.

Before an Investigating Committee of the U.S. Senate, the CIA stated that it had prevented other "Condor" actions in Portugal and France, by alerting the authorities of those countries (ibid.)

The center which provided the inspiration and organization for "Operation Condor" was in Santiago de Chile, under the command of those who are herewith accused.

3. The list of acts of terrorism, and those who were victims of the accused, contained in the complaint of the Progressive Association of Public Prosecutors is added to hereby with the following facts:

- they experimented with kidnapped persons the development of a lethal gas called "SARIN", provoking their death in a cruel and painful manner, according to the confession of the DINA agent William Townley, a crime which is still unpunished,

- Mr. JOSE TOHA GONZALEZ, son of Spaniards, Vice-President of the Republic of Chile, Minister of the Interior and of Defense detained in the Presidential Palace on 11th September 1973, was subjected as from that day to such suffering in the Military School, in the Dawson Island concentration camp, in the Military Hospital and in the Air Force Hospital, as well as in the War School of the Air Force, that his weight fell to 49 kgs. (his height was 1.92 meters) and on the 14th March 1974 his executioners hung him from a closet until he died (pages 498 and 499 of the attached Rettig Report and other sources), a crime which is still unpunished,

- the acts of international terrorism whose coordination and planning were carried out by international concerted actions, such as the so-called "OPERATION CONDOR", include amongst others:

- in Madrid, the planning of the murder of Senator Carlos Altamirano, who had been invited to the Congress of the PSOE towards the end of 1976, as confessed by William Townley before Eric Marcey, US Attorney of Washington DC,

- in Mexico, the attempt to assassinate two people in 1976, according to the confession of the same Michael Townley, who identified them,

- in Argentina, Bolivia, Paraguay, Brazil and Uruguay the carrying out of numerous kidnappings, followed by assassinations and "detentions-disappearances" of tens of thousands of citizens of different nationalities, including children born before or after captivity of their parents (see pages 594 to 602 of the Rettig Report).

LEGAL BASES

I

The argument stated in the offenses report presented by the Progressive Association of Public Prosecutors is taken here as being reproduced in its entirety. In particular, Legal Base No. 6, concerning jurisdiction and the competence of the National Criminal Court

pursuant to articles 23.4.a), b), g) and 23.5 of the Organic Law of Judicial Power.

II

In accordance with article 1.5 of the Civil Code and articles 10.2, 196, 3.1, 13.3 and 93 of the Spanish Constitution, the following legal norms are directly applicable to this proceeding:

1. From the **CHARTER OF THE UNITED NATIONS**, dated 26 June 1945, signed by Spain and Chile, the Preamble and articles 1.3, 55.c, 56 and 62.2.

Article 1.3 [regarding the purpose of the United Nations] states

"To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms all without distinction as to race, sex, language, or religion."

Article 55.c) establishes that [the Members of the Organization have the obligation to promote]

"c) Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion and the effectiveness of these rights and liberties"

Article 56 states, in imperative language, that:

"All Members pledge themselves to take joint or separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."

The International Court of Justice, in its 1971 Resolution concerning Namibia (ICJ Report 1971), states that the Charter of the United Nations imposes on its Members obligations inherent in Human Rights, which are imperative in nature, through which it concludes that *"a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter."*

The subsequent international treaties on human rights are considered as the interpretation and development of the provisions within the Charter of the United Nations. And, therefore, they are binding on the Members and are also obligatory in terms of application to the Members, all in accordance with article 56 of the Charter. Furthermore, in so much as international treaties, they form part of international treaty law and are the source of it.

2. The **VIENNA CONVENTION ON THE LAW OF TREATIES**, dated May 23, 1969, ratified by Chile 9 April 1981, and in particular its

Art. 27: "A party may not invoke the provisions of its internal law as

justification for its failure to perform a treaty."

principle applied in the Supreme Court Sentence of 29 March 1993 (**Alkassar case**, Rapporteur Mr. Ramón Montero),

- in relation to the above cited article 55 of the Charter of the United Nations, article 31 of the Vienna Convention, states:

Art. 31: *"General Rule of Interpretation*

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended."

3. **The UNIVERSAL DECLARATION OF HUMAN RIGHTS**, United Nations General Assembly, dated 10 December 1948, signed by Spain and Chile, articles 3, 9 and 10:

- **Article 3:** *"Everyone has the right to life, liberty and the security of his person."*

- **Article 9:** *"No one shall be subjected to arbitrary arrest, detention or exile."*

- **Article 10:** *"Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."*

These three provisions are applicable assuming: a) illegal detention, as in kidnappings; b) an agreement between the agents of two States for the apprehension of a person without respecting the legal means for such; c) actions done by private persons in service to, or on behalf of, the State.

The provisions in the Universal Declaration of Human Rights from 1948 are binding and are of an obligatory application on the Members as stated in the separate opinion of the Vice-President of the International Court of Justice, Mr. Ammoun, expressed in the Namibia case, ICJ Report 1971, Repertory of the ICJ 16,76. The judgment was supported by a unanimous Security Council in its Resolution from 20 October 1971, and approved by the United Nations General Assembly on 20 December 1971 (by 111 votes to 2, with 10 abstaining).

4. The **INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS**, done in New York, dated 19 December 1966, after its approval by the United Nations General Assembly, of which Chile forms part (Official Gazette 30th April 1977) articles 2, 3, 6, 7, 9, 12 and 13.

Article 2: "1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, wealth, birth or other status"

Article 3: "Each State Party to the present Covenant undertakes:

- a) to ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
- b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
- c) to ensure that the competent authorities shall enforce such remedies when granted.

Article 6: "1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."

Article 7: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."

Article 9: 1: "Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law."

2. "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him."

3. "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial

power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, or at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment."

4. "Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

5. "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation."

Article 12: "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence."

2. "Everyone shall be free to leave any country, including his own."

3. "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order, public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."

4. "No one shall be arbitrarily deprived of the right to enter his own country."

Article 13: "An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefore only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority."

5. THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF CRIMES AGAINST INTERNATIONALLY PROTECTED PERSONS, INCLUDING DIPLOMATIC AGENTS, done in New York, dated 14 December 1973, joined by Spain on 26 July 1985 (BOE 7.02.1986) and Chile on 21 January 1977, the following articles:

Article 1: *"For the purposes of this Convention:*

1. 'internationally protected person' means:

a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in a foreign State, as well as members of his family who accompany him;

b) any representative, functionary or official personality of a State or any functionary, official personality or other agent of an international organization of an inter-governmental character who, at the time when and in the place where a crime against him, his official premises, his private accommodation or his means

of transport is committed, is entitled pursuant to international law to special protection from any attack on his person, freedom or dignity, as well as members of his family forming part of his household;

2. 'alleged offender' means a person as to whom there is sufficient evidence to determine 'prima facie' that he has committed or participated in one or more of the crimes set forth in article 2.'

Article 2: *"1. The intentional commission of:*

a) a murder, kidnapping or other attack upon the person or liberty of an internationally protected person;

b) a violent attack upon the official premises, the private accommodation or the means of transport of an internationally protected person likely to endanger his person or liberty;

c) a threat to commit any such attack;

d) an attempt to commit any such attack; and

e) an act constituting participation as an accomplice in any such attack shall be made by each State Party a crime under its internal law."

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature."

3. Paragraphs 1 and 2 of this article in no way derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of an internationally protected person."

Article 3: *"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set forth in paragraph 1 of article 2 in the following cases:*

a) when the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over these crimes in cases where the alleged offender is present in its territory and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph 1 of this article."

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law".

Article 8: *"1. To the extent that the crimes set forth in article 2 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every future extradition treaty to be concluded between them."*

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may, if it decides to extradite, consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the procedural provisions and the other conditions of the law of the requested State."

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the procedural provisions and the other conditions of the law of the requested State."

4. Each of the crimes shall be treated for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with paragraph 1 of article 3."

6. The **CONVENTION AGAINST TORTURE**, adopted by the United Nations General Assembly, dated 10 December 1984, ratified by Spain on 19 October 1987 (Official Gazette 9th November 1987) and signed by Chile on 23rd September 1987, articles 4, 5 and 8, which state:

Article 4: "1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to any attempt to commit torture and to any act by any person which constitutes complicity or participation in torture."

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature."

Article 5: "1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 4 in the following cases:

a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

b) When the alleged offender is a national of that State;

c) When the victim was a national of that State if that State considers it appropriate"

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article."

3 This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law."

Article 8: "1. The offences referred to in article shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them in the future."

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other

conditions provided by the law of the requested State."

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state."

4. Such offences shall be treated for the purpose of extradition between States Parties as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1."

7. **The CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE**, done in New York on 9 December 1948, (Official Gazette 8th February 1969)ratified by Chile on 3 June 1953.

8. Also applicable to the State of Chile are:

- The **CONVENTION TO PREVENT AND PUNISH ACTS OF TERRORISM**, done in Washington on 2 February 1971, under the auspices of the OAS, as well as

- The **INTER-AMERICAN CONVENTION ON HUMAN RIGHTS**, adopted on 22 November 1969 and entered into force on 18 July 1978, in particular its article 7.

9. The State of Spain is bound by

- The **CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS**, adopted in Rome on 4 November 1950 (Official Gazette 10th October 1979), and in particular its article 5, as well as

- the **EUROPEAN CONVENTION FOR THE SUPPRESSION OF TERRORISM**, entered into force 4 August 1978 (BOE 8.08.1980 y 31.08.1982), in particular its articles 1, 2, 6, 7; 5, 13.

10. The **CRIMINAL EXTRADITION AND JUDICIAL ASSISTANCE TREATY BETWEEN CHILE AND SPAIN**, signed in Santiago, Chile, on 14 April 1992 and ratified 20 December 1994 (BOE 10.01.1995), including the following articles:

Art. 3: *"Crimes included or considered in multilateral conventions of which both countries are a Party is a basis of extradition."*

Art. 5: *"Political Crimes*

"For purposes of this treaty, in no instance shall the following acts be considered political crimes:

a) attempted criminal assaults against the life, physical integrity or liberty of a Head of State, or a member of his family;

b) acts of terrorism; or

c) war crimes, and crimes committed against the peace and security of humanity, in conformity with international law."

Art. 9: *“Mandatory Causes for Refusal Extradition will not be granted:
a) when pursuant to the law of the requesting Party, that Party is not competent to adjudicate the crime which is the basis of the request for extradition;
c) when pursuant to the law of a Party the criminal penalty and punishment corresponding to the criminal act for which extradition has been requested has been annulled.”*

JUDICIAL ASSISTANCE FOR CRIMINAL MATTERS

Art. 28: *“Obligation to Render Assistance*

1. *The Parties mutually agree to assist, pursuant to the provisions of the Treaty, in the realization of investigations and inquiries relevant to criminal proceedings commenced for deeds the knowledge of which is crucial for the requesting Party at the moment assistance has been requested.*

2. *The assistance may be given in the interest of justice, even though the act prosecuted may not be a crime under the law of the Party from which extradition has been requested. Nevertheless, in order to exercise security measures for objects or residential searches, it is necessary that the act for which assistance is requested also be considered a crime pursuant to the laws of the Party from which extradition has been requested.”*

Art. 44: *”Entry into Force and Expiration*

4. *Extraditions requested after the entry into force of this Treaty will be governed by the provisions of this Treaty, regardless of the date of the act committed for which extradition is requested.”*

III

Pursuant to comparative law, the Department of State of the United States has defined terrorism as *“premeditated violence, which is politically motivated and performed by sub-national groups or clandestine agents against non-combatant targets generally for the purpose of influencing those who are observing”* and defined international terrorism as *“terrorism which affects citizens of more than one State”* (**North Atlantic Assembly Papers, Sub-Committee on Terrorism, Final Report**, January 1989, p.2).

IV

The **Report of the Special Investigatory Commission on Disappeared Nationals of Spain in American countries** is attached to this complaint, and was approved by the Spanish Senate on 5 August 1983, thereby qualifying the acts denounced in this Complaint as acts of State terrorism and crimes against humanity.

Also attached in one copy (in two volumes) of the report of the **National Commission on Truth and Reconciliation**, appointed in 1990 by the Government of Chile, known as the **“Rettig Report”**, published in February of 1991, which specifies close to three thousand murders or “disappearances” pursuant to orders given by the defendants or with their consent. It identifies amongst the victims those mentioned in the present complaint and in

the offenses report of the Progressive Association of Public Prosecutors.

The following are identified as **LEGAL MEASURES** which much be taken:

a) those requested in the offenses report filed by the Progressive Association of Public Prosecutors, which we take as having been reproduced here in their entirety,

b) that the following depositions be taken:

b.1) in their capacity as witnesses,

- Mssrs. E. LAWRENCE BARCELLA, EUGENE M. PROPPER and ERIC MARCEY, US Attorneys (Washington, D.C.) who investigated crimes committed by agents of the defendants,
- FBI Agent CASTER CORNICK (Washington, D.C.) who investigated crimes committed by individuals under the authority of the defendants,
- Captain of the Chilean Army ARMANDO FERNANDEZ LARIOS, judged and condemned in the United States for his participation in a terrorist act while acting under the authority of the defendants, and at present a resident in the United States,
- Mercenaries VIRGILIO PAZ and JOSE DIONISIO SUAREZ ESQUIVEL, who are currently serving a twelve year sentence in the United States (Federal Correctional Institution, FCI Road, Mariana, Florida 32446) for conspiracy to murder while fulfilling orders of agents of the Chilean Government pursuant to orders given by the defendants,
- Chilean citizens and residents LUZ ARCE SANDOVAL, MARIANA CALLEJA, MARTIN MELIAN GONZALEZ, JORGE ELEAZAR LAGOS RUIZ, CARLOS HERNAN SANHUEZA, MARIA ALEJANDRA DAMIANI SERRANO, for testimony on the detention, torture and violent death of Spanish citizen D. CARMELO SORIA ESPINOSA,

b.2) the remaining individuals identified in this text and that of the Progressive Association of Public Prosecutors as suspects regarding the acts referred to in the Complaint.

c) that an International Rogatory Commission be directed to the United States General Attorney's Office (in Washington D.C.) in order that he order the corresponding services of the Government of the United States (National Security Agency, DIA, FBI, State Department, CIA) to investigate in their respective archives, and in those to which the US Government has access, as to the information available about the crimes of terrorism, crimes against humanity, murders, kidnappings, detentions "disappearances" and tortures of social and/or political dissidents carried out by the so-called "Operation Condor"; and in particular between 11 September 1973 and April 1990 in Chile, by officials under the authority and discipline of the defendants, and obtain the necessary authorization pursuant to US law for the declassification of results and their delivery to this Court.

d) that an International Rogatory Commission be directed to the Ministry of Justice of Chile requesting a list of legal cases which have been pursued in relation to national crimes and/or international crimes, crimes against human rights, by reason of detention followed by "disappearance", torture, violent death, or murder of Spanish citizens or those of any

other nationality, including Chilean, in the territory of that country or any other, in relation to acts committed between 11 September 1973 and April 1990 attributed to officials or agents of the State of Chile while its Armed Forces and its forces of order were under the command of AUGUSTO PINOCHET UGARTE, GUSTAVO LEIGH GUZMAN, CESAR MENDOZA DURAN, JOSE TORIBIO MERINO CASTRO, as well as under the command of FERNANDO MATTHEI AUBEL and RODOLFO STANGE OELCKERS, as an expression of cases which have been resolved by firm sentences and some degree of compliance with the Sentences, in particular of the judicial proceedings for the victims identified in this criminal complaint and in the previous offenses report of the Progressive Association of Public Prosecutors, that is:

- Father D. JOAN ALSINA HURTOS,
- Mr. JOSE TOHA GONZALEZ,
- Mr. CARMELO SORIA Y ESPINOSA,
- Mr. ENRIQUE LOPEZ OLMEDO,
- Father D. ANTONI LLIDO MENGUAL,
- Ms. MICHELLE PENA HERREROS and her son born in captivity
- Mr. ANTONIO ELIZONDO ORMAECHEA,
- Mr. CARLOS PRATS GONZALEZ and Ms. SOFIA CUTHBERT de PRATS,
- Mr. BERNARD LEIGHTON GUZMAN and Ms. ANITA FRESNO de LEIGHTON,
- Ms. RONNI KARPEN MOFFIT and Mr. ORLANDO LETELIER DEL SOLAR
- DR. SALVADOR ALLENDE GOSENS, DR. EDUARDO PAREDES BARRIENTOS, and DR. ENRIQUE PARIS ROA

e) that an International Rogatory Commission be directed to the US Secretary of State so that the Assistant Secretary of State for Human Rights may provide information to this Court of all the cases of international crimes and crimes against humanity of which Spanish citizens have been victims, or victims of any other nationality who were assassinated or arrested-disappeared in Chile between 11 September 1973 and April of 1990 known to the US Government, and of those assassinated in other countries on orders from agents of the Chilean State in the same years

f) that there be an attachment placed on all assets of the defendants,

g) that international detention orders be issued, for the purpose of putting the individuals responsible for the facts established in the criminal complaint in the custody of the Spanish Judicial Authority,

h) that there be a request, at the correct moment in the proceedings, for the extradition and surrender to Spain of the individuals responsible for the facts established in the Complaint. For this purpose, it is necessary to note that the Criminal Extradition and Judicial Assistance Treaty between Spain and Chile, signed in Santiago, Chile, on 14 April 1992, and ratified on 20 December 1994, does not exclude (pursuant to article 7.1) the surrender of nationals, and therefore the Chilean nationality of the guilty parties should not prevent their surrender so that they may be tried in Spain.

i) Such additional legal measures as may be appropriate

In virtue of the facts presented,

IT IS REQUESTED OF THE COURT: that it consider this written complaint as presented together with the Power of representation which accompanies it and the annexed document, by which there is established a criminal complaint against the individuals listed in the third paragraph, that refers to the individuals listed in the Progressive Association of Public Prosecutors' offenses report; that it consent to institute legal proceedings, that the initial investigations requested in paragraph V be initiated; that it proceed with the detention and imprisonment of the accused defendants in order that they may pay such pecuniary damages and indemnities as the Court may rightfully declare due.

ADDITIONAL DECLARATION: since it is necessary to me for other purposes, I ask that the power of representation be returned leaving sufficient evidence thereof in the record of the proceedings

For this reason,

REQUEST TO THE COURT: that it order that the power of representation be returned leaving sufficient evidence thereof in the record of the proceedings.

Madrid, July 5, 1996.

Dr. Juan E. Garcés y Ramón

Madrid Bar Association member no. 18.774