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THE APPLICATION IN LATIN AMERICA
OF INTERNATIONAL DECLARATIONS AND CONVENTIONS
RELATING TO ASYLUM



A STUDY BY THE
INTERNATIONAL COMMISSION OF JURISTS

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I. INTRODUCTION

1. The International Commission of Jurists, by a decision of its Executive Committee in March 1975, decided to undertake a study on the application in Latin America of the Conventions relating to asylum.
2. The plight of refugees who are seeking to escape from persecution raises one of the major problems affecting human rights at the present day. The problem is one which is to be found in all regions of the world, and each year sees fresh flows of refugees from one country or another, sometimes accompanied by serious violations of the rights of these refugees.
3. The ICJ has been aware for some time, both from information in its possession and from the reports of the United Nations High Commissioner for Refugees to his Executive Committee and to the General Assembly of the United Nations, of the gravity of the violations of the principles of asylum and non-refoulement which have occurred in different parts of the world. In his report to the General Assembly in 1974^{1/}, the High Commissioner summarized the position as follows:

"On the negative side, in a few States located in various parts of the world, many individual refugees were either refused asylum or, once admitted, were forcibly returned to their country of origin, in some cases by mutual agreement between the two countries. In a number of instances known to this Office, this procedure, which is in breach of article 33 of the 1951 Convention, of the Universal Declaration of Human Rights, and of basic principles of humanitarian law, has had tragic repercussions on the fate of the refugees and of their relatives. In one known instance refugees were taken back against their will from their country of asylum to their country of origin by emissaries of the latter. It is regrettable indeed that the favourable record of States which are as a rule prepared to accept large numbers of refugees should be blemished by a number of isolated cases in which the most elementary human rights have been denied to refugees".

Similarly, in 1975 the High Commissioner reported as follows^{2/}:-

"2. In addition to the violations of the principles of asylum and non-refoulement in several countries, there has been, during the period under review, a growing number of acts or threats of violence perpetrated against refugees within the Mandate of UNHCR, including abductions with a view to forcible repatriation and even more serious forms of violence. These acts are in all cases a breach of the rule of law; when perpetrated against persons in a particularly vulnerable position such as refugees, however, they constitute a flagrant violation of the minimum standards of a State's responsibility towards refugees.

...

"4. ... As far as the implementation of the principles of asylum and non-refoulement is concerned, the High Commissioner deeply regrets to

1/ U.N. Document A/9612

2/ U.N. Document E/5688

have to state that there have been, throughout the period under review, serious breaches of this principle, not only in respect of individual cases as heretofore, but also in respect of refugee groups. While a number of states have generously continued to admit new refugees from neighbouring countries, there have also been instances when frontiers were closed in the face of a large influx of refugees".

4. The International Commission of Jurists decided to confine the study to the Latin-American experience. The resources of the ICJ made it impossible to undertake a universal study and Latin America is the region which enjoys the longest tradition of the practice of asylum, and has the most highly developed legal framework in international law relating to asylum. It is also a region which has in recent years seen numerous flows of refugees seeking to escape persecution and the application of the relevant conventions has given rise to many difficulties. Also the ICJ was in possession of detailed information relating to a number of specific individual cases which seemed to provide a useful starting point for a study of this kind.

The frustrated Mission

5. To assist in the preparation of this study, the International Commission of Jurists decided to send a mission of four distinguished international lawyers to visit certain countries in Latin America which, it was believed, had recent and valuable experience of refugee problems.

6. Accordingly, in April 1975 an approach was made to the Ambassadors and Permanent Representatives to the United Nations of Argentina, Bolivia, Brazil, Chile, Dominican Republic, Honduras, Paraguay, Peru and Uruguay. The proposed members of the mission were Fernando Fournier of Costa Rica (Professor of Roman Law, University of Costa Rica; former Ambassador to the UN and OAS; former President of the Latin-American Bar Association); José A. Cabranes of the United States (Legal Adviser of Yale University; former Associate Professor of International Law, Rutgers); Franck Moderne of France (Professor of Constitutional Law, Pau; Director of the Franco-Spanish Institute of Comparative Law); and, as Secretary, Hector Cuadra of Mexico (Professor of Law, Autonomous National University; former staff member of the International Commission of Jurists). The purpose of the mission was explained and a request was made for members of the mission to meet representatives of the government and leading lawyers to discuss the practical problems which had arisen both in general terms and in relation to particular cases of which advance notice would be given. The mission was to start in Argentina in mid-June.

7. One country, Chile, declined to receive the mission, saying it was contrary to its policy to receive any missions to Chile concerning matters relating to human rights unless similar missions had already been sent to the USSR and Cuba.

8. In the case of Uruguay, advice was received that the mission should limit its approach to legal experts outside the government service.

9. At the end of May and beginning of June letters were sent to the foreign ministries of Argentina, Paraguay, Bolivia, Brazil, Peru, Honduras and the

Dominican Republic stating the dates on which the members of the mission proposed to visit these countries (in the order just stated). Particulars of the specific cases which the mission wished to discuss with the government of Argentina were sent to that government on June 2.

10. On June 11 the Brazilian Ambassador in Geneva informed the International Commission of Jurists that the Chief of the Department of Federal Justice would be very glad to discuss general matters with the mission, but could not discuss individual cases as these were considered to be purely internal matters.

11. On June 12, the Argentine Ambassador in Geneva informed the Secretary-General of the International Commission of Jurists that his government would be unable to discuss the specific cases with the members of this mission at a time when his government were still studying the report of an earlier ICJ mission on the situation of defence lawyers in Argentina. (This was a report prepared by Dr Heleno Claudio Fragoso of Brazil following a mission he had made in March 1975 with the knowledge and consent of the Argentine government. The report had been sent before publication to the Argentine government on April 9, 1975). The Ambassador requested that the mission to Argentina be postponed for 14 days. The Secretary-General said that it was impossible to change the itinerary at such short notice. He said he would inform the mission that they should confine their discussion with the government to general matters without going into particular cases. If possible, perhaps one member of the mission would be able to return at a later stage for this purpose. The Ambassador appeared to welcome this suggestion and indicated that he would inform his government accordingly. The Secretary-General informed the Ambassador that Professor Moderne was flying to Buenos Aires from Paris on the following day, June 13, Professor Cuadra from Mexico on June 14 and Professor Cabranes from Washington on June 16.

12. Professors Moderne and Cuadra duly arrived in Buenos Aires where they made contact with certain organisations concerned with refugee problems. They were awaiting the arrival of Prof. Cabranes before approaching the government.

13. When Professor Cabranes arrived at Buenos Aires airport at noon on Monday, June 16, he was detained at the airport by the Federal Police. In answer to questions, he explained who he was and the purpose of his visit. He was then held incommunicado for six hours before being expelled on an aeroplane leaving for Brazil. He was treated with discourtesy and all his papers were examined and photocopied. Repeated requests to be allowed to call the U.S. Consulate or Embassy were denied (in violation of the Vienna Consular Convention). He was told that Professors Cuadra and Moderne had not yet arrived in Buenos Aires, but that if they did, they too would be arrested. When after 4 hours he was told that he would be expelled on the orders of the central office of the Federal Police. He again asked for an explanation of the basis of the expulsion and requested an opportunity to speak with a United States Consul. He was informed that the central office had explicitly denied both requests.

14. On arrival at Rio de Janeiro, Prof. Cabranes telephoned at 3 a.m. on Tuesday, 17 June to Prof. Cuadra in Buenos Aires, telling him what had happened. Professors Cuadra and Moderne decided, in view of this information, that it was impossible to continue their mission. Professor Moderne left by a flight to Brazil at about 1800 hours on June 17. After he had passed through the controls at the airport, he was called back from the passenger lounge and questioned briefly about his visit to Buenos Aires. He was allowed to leave.

15. However, Professor Cuadra, who intended to leave on a later flight to return to Mexico, was arrested and detained by the Federal Police for 2½ days before being expelled on a plane to Colombia. He was held at the headquarters of the Federal Police, in the same building as the Ministry of the Interior. All his documents were removed and studied, and presumably copied. He was questioned at length about the purpose of the mission, the nature of the report it was intended to make, the notes he had prepared on individual cases, his own professional activities and whether he had any connections with political movements in Argentina or elsewhere. He also was not allowed to contact his Embassy or consular authorities. Curiously, he was warned not to attempt to go to any of the other countries which the mission had planned to visit. It is difficult to see what concern this was of the Argentine Federal Police. It may, however, help to explain why on June 19 the International Commission of Jurists in Geneva received a letter from the Brazilian Ambassador withdrawing the former offer to receive the mission and asking the ICJ to "exclude Brazil from its mission".

16. A letter describing what had happened to Professor Cabranes in Buenos Aires was delivered by hand to the Argentine Ambassador in Geneva on June 22, with a request for an explanation of the treatment to which Professor Cabranes had been subjected, and enquiring as to the whereabouts of Professor Cuadra. The International Commission of Jurists had not yet received the courtesy of a reply.

17. It is difficult to believe that the Argentine Ministry of External Relations was a party to this extraordinary and unprecedented treatment of a mission of distinguished jurists, of whose arrival it had been fully appraised. It seems more likely that the decision to expel the mission was taken unilaterally by the Federal Police authorities or the Ministry of the Interior. Be that as it may, the episode gives some indication of the difficulties which may confront refugees who are seeking asylum in accordance with Latin American traditions and conventions.

18. In spite of this setback, the International Commission of Jurists decided to continue with the preparation of its staff study.

The "Right of Asylum" and non-refoulement

19. The granting of asylum is almost universally recognized as a compelling humanitarian duty. Its formulation as a legal right or obligation is still in the stage of evolution. To Latin American jurists belongs the honour of having led the world in developing the legal concept of a right of asylum.

20. Article 14 of the Universal Declaration of Human Rights proclaims that "Everyone has the right to seek and enjoy in other countries asylum from persecution". The only qualification expressed is that "This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations".

21. The Inter-American Declaration of the Rights and Duties of Man of 1948 (which preceded the Universal Declaration by a few months) also proclaims the right, stating in Article XXVII that "Every person has the right in case of pursuit not resulting from ordinary crimes, to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements".

22. In spite of these declarations, very few States are prepared to recognize a legal obligation upon them to grant asylum. Most States consider the grant or refusal of asylum to be a matter within their absolute discretion. In other words, they do not recognize a right in the individual to claim asylum, but rather a right in the State to grant asylum when it chooses to do so.

23. The law relating to asylum draws a distinction between diplomatic asylum and territorial asylum. Diplomatic asylum occurs when a person seeks and is granted asylum in a legation or embassy, or on board a naval ship or military aircraft within the territory of the State from which he is seeking to escape. Territorial asylum occurs when a person reaches or crosses a frontier of another State or is already in another State and seeks and is granted asylum there.

24. Whilst the right of asylum is not universally recognized, there is a general acceptance of the principle of non-refoulement. This principle is recognized not only in various Latin-American conventions but also in the UN 1951 Convention on the Status of Refugees and its 1967 Protocol and in the Declaration on Territorial Asylum adopted by the General Assembly in 1967^{3/}.

25. According to this principle, no-one should be rejected at a frontier so as to be obliged to remain in a territory where he has serious grounds for fearing that he will be subject to persecution; nor should he be returned, or expelled, or compelled to return directly or indirectly to such a territory in such circumstances. In other words, a person who appears to have good reason to fear persecution should not be repatriated against his will. As a corollary, if the country whose protection he is seeking is not willing to allow him to remain indefinitely on its territory, it should allow him transit through its territory, or temporary residence until he can find a country willing to receive him. The protection granted by this principle is a continuing one and applies not only at the time of entry but throughout the period when the person is on the territory of another State. The

3/ General Assembly Resolution No. 2312 (XXII)

principle of non-refoulement, like the "right of asylum", does not apply to persons who are wanted for prosecution for serious common offences of a non-political character.

26. A draft Convention on Territorial Asylum is at present under consideration within the United Nations. This is based upon the U.N. General Assembly Declaration on Territorial Asylum adopted on December 14, 1967. In April and May 1975, a Group of Experts from 27 countries met in Geneva and formulated a revised draft of the Convention.^{4/} The present study is not directly concerned with the new draft Convention, but the fact that it has reached such an advanced stage of preparation is an indication of the growing international interest and sense of responsibility about the institution of political asylum.

27. The present international law relating to asylum in Latin America is briefly reviewed in this study. This is followed by a description of the general situation and policy relating to asylum in the countries under consideration. An analysis is then made of a number of individual cases in which it is believed that violations of the principles of asylum and non-refoulement have occurred. Finally, certain conclusions and recommendations are set out.

28. The International Commission of Jurists wishes to acknowledge and express its gratitude for the advice and assistance it has received in the preparation of this study from a number of latin-american jurists and refugee organisations, as well as from the Office of the United Nations High Commissioner for Refugees. In particular, it wishes to thank Mr Paul Weis, Ph.D., Dr.Jur., former Director of the Legal Division of the Office of the UNHCR for the invaluable help he has given.

Geneva, September, 1975 Niall MacDermot
Secretary-General

II. INTERNATIONAL LAW RELATING TO THE PROTECTION OF POLITICAL REFUGEES
IN LATIN AMERICA

29. There are three inter-related but distinct principles of international law which concern the protection of political refugees, namely asylum, non-extradition, and non-refoulement. Asylum is the refuge from persecution granted by a State to a person who seeks its protection. Non-extradition is the refusal to return a person wanted by another State for criminal prosecution or so that he may serve a sentence already passed upon him. Non-refoulement is the principle that a refugee should not be returned to a country where he is likely to be persecuted owing to his race, nationality, religion or political opinions.

30. It is proposed in this Section to review briefly the law relating to each of these principles in Latin America, and then to examine the concept of the word "political" as used in such phrases as political asylum, political offences, political persecution and political reasons.

ASYLUM

31. Asylum is a practice of great antiquity. Religious in origin it existed as a "right of sanctuary" in Ancient Greece, giving inviolable refuge for persons seeking protection. Traces of it are to be found in Roman law, at first in temples and later, under the Roman Empire, the statues of the emperors and the eagle standards of the legions became places of refuge for acts of violence. After the establishment of Christianity, sanctuary or asylum in churches became a recognized practice. In due course, learned writers such as Grotius and Vattel formulated rights and obligations of sovereigns and States with respect to political refugees and fugitives from justice. In the 19th century those rights and obligations began to be incorporated in extradition treaties, which generally exempted political refugees from extradition. The honour of formulating the first treaties specifically relating to asylum belongs to Latin American jurists.

32. The Institute of International Law adopted at its Bath session in 1950 the following definition of asylum:

"Asylum is the protection which a State grants on its territory or in some other place under the control of its organs, to a person who comes to seek it".^{5/}

This definition covers both territorial and diplomatic asylum.

33. International Law is derived from custom or from international treaties, agreements and conventions, and finds authoritative statement in the decisions of international courts and arbitration tribunals and in the writings

^{5/} 1 Annuaire (1950) p. 167, Art. 1

of leading jurists. Custom, as a source of international law, means a practice which has become generally recognized by States as having the force of law. It is an evolutionary process, and new customs may in time achieve recognition.

Asylum as Customary Law

34. The right to grant territorial asylum derives from the sovereignty of States, under which every State can admit anyone it wishes to its territory. Diplomatic asylum, however, is a limitation on the sovereignty of the country on whose territory it takes place. Accordingly, the right to grant diplomatic asylum, where it exists, must derive either from custom or from international treaties, agreements or conventions.

35. In Latin America, diplomatic asylum has been widely practiced from the beginning of the 19th century in favour of refugees whose life or liberty is jeopardized for political reasons. Some Latin American jurists have claimed that the practice of diplomatic asylum within the continent has developed to the point of achieving the status of customary law. The claim has even been put forward officially from time to time by States, in particular by diplomatic representatives seeking to establish their right to grant diplomatic asylum. However, most of these States have at other times taken the position that the law governing diplomatic asylum is dependent upon pre-existing treaties. This view finds support in the International Court's decision in the *Haya de la Torre* case^{6/} that there was no right of unilateral qualification by a State granting diplomatic asylum except where this was provided for by international treaty. The countries which have been most consistent in recent years in asserting that asylum is sanctioned by customary law are Colombia, Cuba, Ecuador and Guatemala.

36. Even if a right of asylum does not form part of customary law, it can be said that the long and well-established humanitarian tradition of asylum in Latin America constitutes a strongly persuasive factor in favour of granting it. It also explains why this region of the world has been so far in advance of other regions in formulating treaties and conventions dealing with asylum and related subjects.

International Instruments governing Asylum in Latin America

37. The first latin-american treaty recognising the right to grant asylum (both territorial and diplomatic) was the Treaty on International Penal Law, Montevideo, 1889, which still remains in force. In 1911 the parties to the Agreement on Extradition, Caracas, recognised in Article 18 the "institution of asylum, in accordance with the principles of international law". There then followed three treaties on diplomatic asylum (Convention on Asylum, Havana, 1928; Convention on Political Asylum, Montevideo, 1933; Convention on Diplomatic Asylum, Caracas, 1954) and one on territorial asylum (Convention on Territorial Asylum, Caracas, 1954).

^{6/} I.C.J. Rep., 1951, p.71

38. The law and practice in Latin America is also influenced by the general international instruments not restricted to America, the Universal Declaration of Human Rights, 1948, the UN Convention on the Status of Refugees 1951 and the Protocol of 1967, and the UN Declaration on Territorial Asylum, 1967, as well as the American Declaration of the Rights and Duties of Man, 1948, and the American Convention on Human Rights, San José, 1969.

39. The development of international law governing asylum in Latin America is briefly traced in Appendix A, where the relevant articles of the treaties and other instruments are set out or summarised. A table showing the States Parties to the various Conventions will be found in Appendix B.

Summary of Legal Principles of Asylum

40. In any particular situation the precise legal rights and obligations applicable can be ascertained only after examining the relevant legal instruments to which the States concerned are parties (see Appendix B).

41. However, to explain the general nature of asylum as a legal institution the following summary may be made of its usual characteristics:-

(1) Persons who may enjoy asylum

Persons who are in danger of being deprived of life or liberty for political offences, or offences related to political offences or offences committed for a political purpose, or otherwise persecuted for political reasons. In the case of diplomatic asylum, this danger must be immediate, making the need for asylum urgent.

A person seeking refuge who is believed to have committed a common criminal offence with no political element in the case should be handed over directly, if he has sought diplomatic asylum. If he has sought territorial asylum, or if he is simply found on the territory of another State, he is to be handed over only in accordance with extradition procedures.

(2) Place where it may be granted

Within the territory of the State granting it or, in the case of diplomatic asylum, within the territory of the State from which refuge is being sought (either on the premises of a diplomatic legation, at the residence of a chief of mission, on premises established for this purpose where the refugees are numerous, or on the warships or military aircraft of the State granting asylum).

(3) Conditions necessary for the grant of asylum

Those set out in (1) and (2) above

(4) Characterisation of the offence

It is the State granting asylum which unilaterally decides upon the nature of the alleged offence or of the grounds for the intended prosecution and, in the case of diplomatic asylum, determines the validity of the urgency invoked. Accordingly, it is for the receiving State to decide unilaterally whether it will grant or refuse asylum.

(5) Other characteristics of asylum

Asylum is intended to secure a person's safety from persecution rather than his impunity;

- being a humanitarian institution, it is not subject to reciprocity;
- asylum may be granted to any persons who qualify for its protection, without discrimination on grounds of nationality, or any other grounds;
- once it is granted, the person benefitting from asylum may acquire under international conventions a status which carried with it certain rights and obligations:
 - in the case of territorial asylum, the rights and obligations are set out in the 1951 Convention on the Status of Refugees or in the 1954 Convention of Caracas;
 - in the case of diplomatic asylum, the rights and obligations set out in the relevant convention or conventions.

(6) Legal nature of asylum

As has been seen, the right to "seek and enjoy" or "seek and receive" asylum has been proclaimed in the United Nations and American Declarations of Human Rights. Given the present state of international law, however, it is not possible to speak of a generally accepted legal right in the individual to obtain asylum. Rather, international law recognizes a right of States to grant asylum.

As regards territorial asylum, every State has the right to admit within its territory anyone it deems appropriate. Thus a State may admit without any restriction persons persecuted for their beliefs, opinions, political affiliations or for acts which can be considered political offences. This is a power derived from the exercise of national sovereignty. Under the principle of non-refoulement, States which grant asylum are required not to return such refugees to the country in which they are in danger of persecution, and under extradition treaties they are exempted and often prohibited from doing so.

As regards diplomatic asylum, States having diplomatic representatives in the territory of States recognizing the right of diplomatic asylum can grant such asylum to political refugees. The territorial State must then allow the refugee to leave its territory under a safe conduct.

EXTRADITION

Nature of Extradition

42. According to Jiménez de Asua, extradition consists of the handing over by one State to another at its request of an individual accused of, or sentenced for, the commission of a crime and who permanently or temporarily is within its territory, so that the other State (the claimant) can bring him to justice or carry out the sentence already passed upon him. The institution is a very ancient one and is to be found mentioned in treaties between ancient kingdoms centuries before the Christian era.

43. The basis of modern extradition lies in the common desire of the international community to repress crime and to apprehend and bring to justice criminals anywhere in the world. Its purpose is to prevent an individual who has committed a common offence in one State from evading justice by the mere fact of having escaped from the jurisdiction where he committed his offence.

44. The practice of extradition is governed by treaties. Most States are unwilling to return criminals in the absence of a reciprocal treaty or convention, or practice, and there is no legal obligation upon them to do so in international law. There are many bi-lateral treaties governing extradition in Latin America, as elsewhere. This study is concerned only with the multi-lateral treaties or conventions.

45. Where an extradition treaty is in force, persons requested by another State in connection with an alleged offence should not be returned except in accordance with the procedures laid down in the treaty. These procedures, which contain important safeguards for the protection of the requested person, may be of one of three kinds:

- judicial, when the decision whether or not to extradite is vested in judicial bodies;
- administration, when this decision rests with the executive; and
- mixed, when it is made by a combination of both judicial and executive powers.

In no circumstances should a State have resort to expulsion as a means of circumventing the procedures in an extradition treaty.

46. This study is concerned only with the provisions contained in extradition treaties and conventions which entitle the requested State to refuse in certain circumstances to extradite persons who have claimed political asylum. The precise legal provisions applicable in each case will depend upon the relevant treaties or conventions and upon the domestic law of the requested State.

47. A summary of the relevant articles in the multi-lateral extradition treaties in force in Latin America will be found in Appendix "A".

Summary of Legal Principles governing Non-extradition of Political Refugees

48. The usual provisions to be found in extradition treaties governing the non-extradition of political refugees in Latin America may be summarised

as follows.

(1) Offences in respect of which extradition is usually not granted

In general, extradition does not apply to cases of

- political offences;
- common offences connected with political offences;
- common offences committed for a political purpose;
- common offences where the extradition is sought for predominantly political motives.

It may be noted that in addition to political offences, there are various other categories of offence in respect of which extradition is often not granted, e.g. offences which are purely military in character, religious offences (such as sacrilege or offences against worship), and minor offences. Offences such as duelling, adultery and defamation are sometimes also excluded.

(2) Offences in respect of which extradition may be granted

Common crimes; or
certain political offences which are treated as exceptions to the general rule, e.g.:

- attempts against the life or person of a Head of State;
- terrorism;
- crimes against peace, war crimes and crimes against humanity (such as genocide);
- cases in which there are serious grounds for considering that the person sought is guilty of "acts contrary to the purposes and principles of the United Nations".

(3) Characterisation of the offence or the motives for extradition

This is the province, unilaterally, of the requested State, which must, however, take into account pertinent evidence from the requesting State as to the nature of the offence alleged and its motives for extradition.

(4) Conditions for extradition

Once the requested State characterizes the offence as one qualifying for extradition it should grant extradition provided:

- (i) the offence is one known to both legal systems and is of some gravity, (cf. Article 1, para. (b) of the Montevideo Convention on Extradition, 1933, "that the act for which extradition is sought constitutes a crime and is punishable under the laws of the demanding and surrendering States with a minimum penalty of imprisonment for one year").
- (ii) there is in force an extradition treaty between the countries concerned, and the judicial and administrative procedures provided for in the relevant treaty have been complied with. These procedures must not be circumvented by simple expulsion or deportation.

(5) Extradition of nationals of the requested State

Under the Bustamante Code, Havana, 1928, and under Article 2 of the Montevideo Convention on Extradition, 1933, the surrendering State is entitled to refuse to extradite its own nationals, but in this case it must prosecute the offender for the offence alleged against him if the offence is an extraditable one, and communicate the sentence to the requesting State.

NON-REFOULEMENT

Principle of Non-refoulement

49. The principle of non-refoulement is that a refugee shall not be rejected at a frontier or expelled or returned compulsorily to any State where his life or freedom would be threatened on account of his political opinions or activities, or his race, religion, nationality or membership of a particular social group. It applies irrespective of whether an application has been made for the refugee to be extradited.

50. The principle of non-refoulement applies not only to extradition or expulsion directly to the country where the refugee is in danger of persecution, but also to his expulsion to a country from which there is reason to think that he may be returned to the country where he risks persecution. In other words, the prohibition is against direct or indirect return to the country concerned. This point was expressly recognized in Article 3 of the Draft Convention on Territorial Asylum at present under consideration within the United Nations.

Legal Status of the Principle of Non-refoulement

51. This principle is embodied in many treaties and conventions on asylum and extradition. In particular, a clear prohibition is imposed by the 1951 Convention relating to the Status of Refugees (Article 33) and by the Protocol of 1967. In cases covered by these instruments a clear treaty obligation is imposed upon the State parties. In addition, the principle has received such widespread recognition within all regions of the world, as well as at the level of the United Nations, that it can now be said to have matured from a humanitarian principle into a general principle of international law binding upon all States whether or not there is a treaty obligation applying to the particular case.

52. It is no exaggeration to say that the principle of non-refoulement is now universally recognised. It is, for example, to be found in Article 3 of the Nansen Convention relating to the International Status of Refugees, Geneva, 1933; in numerous UN General Assembly Resolutions and in particular in the UN Declaration on Territorial Asylum, 1967; in Article 33 of the 1951 UN Convention relating to the Status of Refugees; in the Final Act of the UN Conference of Plenipotentiaries, 1954, which adopted the Convention relating to the Status of Stateless Persons (the Final Act said it was not thought necessary to include an article on non-refoulement as it was already a "generally accepted principle"); in Article III of the

European Convention on Extradition, 1957, which excludes extradition where a person may be prejudiced or punished on political, racial or religious grounds; in Article III of the legal principles governing the treatment of refugees adopted by the Asian-African Legal Consultative Committee in Bangkok in 1966 ("no-one seeking asylum ... should ... be subjected to measures such as rejection at the frontier, return or expulsion ..."); in Section 9 of the Scheme relating to the Rendition of Fugitive Offenders adopted by the Commonwealth Law Ministers in London in 1966; In Resolution XII of the UN Conference on Human Rights held in Teheran in 1968; in Article II of the OAU Convention governing the Specific Aspects of the Refugee Problems in Africa, 1969, ("No person shall be subjected ... to measures such as rejection at the frontier, return or expulsion ..."); in Article 22 of the American Convention on Human Rights, San José, 1969; and in a number of decisions of the European Commission on Human Rights holding that the deportation of a foreigner to a particular country might in exceptional circumstances amount to "inhuman or degrading treatment or punishment" under Article 3 of the European Convention on Human Rights.

53. A number of learned writers, including Dr Paul Weis, the distinguished authority on refugee law, (to whom the authors of this study are indebted for the information contained in the previous paragraph) have expressed the opinion that the principle of non-refoulement has "now become a rule of international law recognised by civilised nations". The authors of this study respectfully agree with this opinion.

Effect of the Principle on States Unwilling to Grant or Continue Asylum

54. As has been seen, a State is free to decide whether or not to grant asylum to a refugee. What then is the proper course for a State to take which has at its frontier or within its territory a refugee to whom it is not willing to grant or continue asylum, and who may be subjected to persecution if returned? The principle of non-refoulement requires the State in these circumstances to afford the refugee an opportunity of going to another State. This will usually involve granting temporary asylum until the necessary arrangements have been made by the UNHCR or one of the voluntary bodies operating in this field, or by the refugee himself. If necessary, he can be held meanwhile in custody, but this should be resorted to only in extreme cases, where it is absolutely necessary in the interests of national security, as it greatly aggravates the difficulty of finding another country of asylum.

55. States have, of course, the right to expel aliens from their territory who by their acts represent a threat to their security. But even in this case, they should expel a refugee in danger of persecution to some other country willing to receive him, and not directly or indirectly to the country where he may be subjected to persecution.

Treaty Obligations on Non-Refoulement

56. The following American countries have assumed treaty obligations not to return (refouler) political refugees against their will, by extradition or otherwise, under the treaties stated:-

<u>Countries</u>	<u>Treaty</u>
Argentina, Bolivia, Paraguay, Peru, Uruguay	Treaty on International Penal Law, Montevideo, 1889; Arts.15 & 23
Bolivia, Colombia, Ecuador, Peru, Venezuela	Agreement on Extradition, Caracas, 1911; Art. 4
Argentina, Chile, Colombia; Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, United States	Convention on Extradition, Montevideo, 1933; Art. 3
Uruguay	Treaty on International Penal Law, Montevideo, 1940; Art. 20 ⁷
Brazil, Costa Rica, Dominican Republic, Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru, Uruguay, Venezuela	Convention on Diplomatic Asylum, Caracas, 1954; Art. 17
Argentina ^{8/} , Brazil ^{8/} , Chile, Colombia, Jamaica, Paraguay ^{8/} , Peru ^{8/} , Uruguay	UN Convention on Refugees 1951; Art. 33
Argentina ^{8/} , Brazil ^{8/} , Chile, Ecuador, Paraguay ^{8/} , Uruguay.	Protocol of 1967 to UN Convention on Refugees.

THE CONCEPT OF THE POLITICAL OFFENCE

Reasons for distinguishing Political Offences

57. The recognition that political offences are of a different nature to those committed by common criminals has a long history and accords with the common judgment of mankind. It is to be found, as has been seen, in extradition treaties, which exclude from their operation persons wanted in relation to political offences or on political grounds.

58. Recognition of political offences often exists also in national laws, though usually with greater severity towards the political offender. In Latin America much internal legislation provides for harsher treatment of political offenders than of common criminals. The theory behind this is

^{7/} As Uruguay is the only country to have ratified this Treaty, it has not come into force.

^{8/} Subject to a geographical limitation.

that political offenders cause greater harm by endangering fundamental legal tenets such as the security and integrity of the State and its constitutional order. On the other hand, when it comes to deciding the individual sentence, it is common to give the accused the benefit of attenuating circumstances, and one of these may be that he acted "from unselfish motives".

59. It is above all in the international context, in the field of relations between States, that the political offence is treated less severely. This can be explained by the following considerations:

- (a) Humanitarian reasons and the demands of justice tend to protect the individual prosecuted for political offences. It is often felt that in his own country, owing to the climate of political opinion there, he will not benefit from conditions enabling him to be tried and judged impartially.
- (b) generally, a person committing a political offence is considered to act from motives of an altruistic nature and not for selfish reasons; he acts in relation to collective and not individual interests in a desire to bring about social and political change for the benefit of the population at large, or some part of it which he considers as oppressed or unfavourably treated. He is not to be regarded as being in the same category as a common criminal.
- (c) generally, the political offender does not represent a hazard for the State in which he seeks refuge, and may be a useful citizen there.

What constitutes a political offence?

60. A number of different theories have been formulated as to the nature and quality of a political offence.

61. First there is the objective theory. According to this, a political offence is one which violates laws protecting the sovereignty, independence, integrity or security of the State, its internal political order or its constitutional order, e.g. subversion, rebellion, riot, insurrection, attacking the political constitution, espionage, etc. - generally speaking, these offences are contained in penal legislation under the heading of crimes against the State, or fatherland, or against the internal political order. This theory prevailed at the Copenhagen Conference on the Unification of Penal Law in 1935. On that occasion a definition was drafted in the following terms: "Political offences are violations directed against the organisation or functioning of the State".

62. Then there is the subjective theory, which considers primarily the motives and aims sought by the offender. It gives more weight to the psychological elements of the offence. By this means, the field of political crimes is generally widened and includes offences usually considered as common crimes but perpetrated for political ends, e.g. armed assault, theft, illegal seizure or occupation of property, forgery etc.

63. Thirdly, there is the so-called eclectic theory. This takes elements from each of the foregoing. According to this classification, political offenders are those who either

- violate a legal provision protecting the security of the State or internal public order; or
- violate any legal provision which is not political in nature, but where the offence is committed for a political purpose; or
- commit common offences in order to facilitate the commission of a political offence, to cover up a political offence, or to evade justice with respect to a political offence falling within either of the previous categories. These are cases of common offences connected with political offences.

64. Fourthly, there is the predominance theory, developed in Switzerland, according to which the nature of the offence is to be determined according to whether the political or criminal character of the offence predominates.

65. Finally, there are the cases of common law offences which do not themselves have any political connection, but where the requesting State is seeking to obtain the return of the offender for predominantly political purposes or to persecute him for political reasons. It is submitted that these offenders are properly to be regarded as political offenders, since they are in danger of persecution for political purposes.

66. In Latin America all these theories have been advocated at different times and have found expression in the various conventions and treaties which have been drawn up. Having regard to the humanitarian purposes underlying the principle of non-refoulement, it is submitted that the widest interpretation should be given to the word "political" when used in relation to "political offenders", "political crimes", "political reasons", "political purposes", etc.

67. Some writers have sought to draw a distinction between social offences and political offences. They use the term social crimes to cover offences committed for social purposes, such as the unlawful occupation of land by peasants, unlawful strikes or occupation of factories. It is submitted that these are more properly to be considered as one class of political offences, and that political offence embraces all offences connected with the furtherance of some political (including economic, social, cultural or religious) aim.

Exceptions

68. There are, however, certain political offences which, though political in character, are sometimes excluded from the protection afforded by asylum and extradition treaties or declarations. These exceptions would appear to be made on the grounds that the offence in question is of such a nature as to shock the conscience of mankind, or where there is an overriding interest in the friendly relations between States to ensure international cooperation in the suppression of the crime in question. These offences include:

- Crimes against peace, war crimes and crimes against humanity. These would include crimes falling within the Nuremberg Principles approved by the General Assembly of the United Nations, and other international crimes such as genocide, as defined in the International Convention on the Prevention and Punishment of the Crime of Genocide;
- Attempts on the life or person of a Head of State. This is known as the "attempts clause" or "Belgian clause" and appears in a number of Latin American treaties. The exception sometimes extends to members of the family of a Head of State;
- Activities contrary to the purposes and principles of the United Nations. This exception is found in Article 14 of the Universal Declaration of Human Rights and in Article 4 of the U.N. Declaration on Territorial Asylum, 1967;
- Terrorism. Terrorism is a type of political offence which has been in existence since antiquity, but which has witnessed a dramatic extension in recent years. A definition of terrorism is contained in the Geneva Convention of 1937 drawn up under the auspices of the League of Nations and signed (but not ratified) by Latin American States such as Argentina, Cuba, the Dominican Republic, Ecuador, Haiti, Peru and Venezuela. Article 1, paragraph 2, provides:

"The expression 'act of terrorism' includes criminal acts directed against a State whose purpose or nature is to provoke terror in a defined person, group of persons or the public".

Crimes of terrorism are expressly excluded from the category of political crimes only in bilateral agreements on extradition concluded between Paraguay and Germany, Cuba and Italy, and Venezuela and Brazil. In treaties and conventions on asylum no special mention is made of terrorism. The Inter-American Judicial Committee in its study concludes that "to speak specifically of terrorists would offer no advantage, on the contrary it would serve only to give rise to discussions and disputes". Internal legislation in the American States, in large part, makes no mention of terrorism as a separate crime or class of crimes.

III. BACKGROUND INFORMATION RELATING TO REFUGEES IN AND FROM PARTICULAR COUNTRIES

ARGENTINA

69. With a population estimated at some 25 million inhabitants in a territory of 2,800,000 sq km, Argentina is one of the largest and most important countries of South America. It has frontiers with Uruguay, Brazil, Paraguay, Bolivia and Chile and a coast along the Atlantic Ocean.

70. The majority of its population is of European origin, although there do exist some indigenous cores, particularly in rural areas. Thus in the North there are Quechua, Aymara and Mataco populations and, in the South, Patagonians and Tierra del Fuegians ("Fueguinos").

71. As to the political system, the Government is established on a constitutional basis and is of the representative republican democratic type, with the classic threefold division of powers. The State is organised under a federal system with representative bodies in both the federal and provincial governments.

72. For a period of 17 years up to 1973 the country went through a considerable constitutional upheaval and was governed, but for a few brief exceptions, by de facto military régimes. When national elections were held the country returned to constitutional government and on May 25, 1973, Dr Hector Campora became President of the Argentine Republic, representing the FREJULI Party, a Peronist organisation prohibited under the military régime. Shortly afterwards Dr Campora resigned from the Presidency and new elections on September 23, 1973, brought General Juan Domingo Peron (who had been in exile in Spain until June of that year) back to power.

73. The political and economic crisis and an unprecedented escalation of violence, which began in June 1973 with the return of Peron to Argentina, became so acute after his death on July 1, 1974, that the Government decreed a state of siege for the whole national territory on November 6, 1974. Numerous armed bands from both the right and the left, which have not yet been brought under control, have been responsible for a series of political assassinations (numbering already over 500 in 1975 alone) and other acts and threats of violence. These activities have forced considerable numbers of persons to flee the country, including the former President Campora and the former Minister of the Interior, Dr Righi, who now live in Mexico, and former Vice-President Solano Lima, who is now in Spain. Hundreds of Argentinian citizens are presently living as refugees in various countries of Europe and America.

74. In this already highly convulsive situation a massive number of political exiles from Chile arrived in the wake of the events in that country following

9/ FREJULI = "Frente Justicialista de Liberacion": Front for Liberation through Justice

S.3191a

the coup d'état of September 11, 1973. It is estimated that some 15,000 refugees have arrived from Chile and some 5,000 to 6,000 from other neighbouring countries such as Bolivia, Paraguay, Brazil and Uruguay. A little more than half have registered with the Social Action Co-ordinating Committee, a non-governmental organisation which co-ordinates the activities of various groups assisting refugees.

75. During the period from 1973 to the present, the Government's policy towards refugees has undergone considerable fluctuations. During 1973 and 1974 the authorities enabled some of them to regularise their situation in Argentina (the figure 3,500 was put forward). To this end the Government launched an expeditious and simple programme of issuing residence permits to foreigners who arrived in the country before January 1, 1974. In particular, permanent residence was granted to refugees of Chilean origin and in some cases to other refugees who had arrived in Argentina directly from their home country. In general, however, those who were not Chilean and for whom Argentina was a second country of refuge had to seek the right of permanent residence in other countries (cf. statement of President Peron in September, 1973).

76. After the death of President Peron the Government changed the policy of permanently accepting a large number of refugees and sought their re-establishment abroad with the cooperation of other bodies, particularly the UNHCR. They explained that because of the continuing influx of refugees, which added to the country's existing problems for national security, the Government was unable to admit them on a permanent basis and would grant them only temporary refuge and would only consider them "in transit".

77. At present, in the centres and hotels under the control of the High Commissioner alone (6 in the environs of Buenos Aires and 15 in Mendoza) live some 2,000 refugees. By the end of August 1975 the UNHCR had succeeded in placing in other countries 2,127 of those who were in transit in Argentina. The position of those who remain and who benefit only from temporary asylum, not having managed to be accepted by other countries, is daily deteriorating. They have no right to work and are obliged to accept welfare. Above all, however, they live in a vicious circle of fear and anxiety. Of some 10,000 officially registered refugees, 4,500 are in urgent need of being resettled in the reasonably near future by other countries. And there are still an estimated 10,000-11,000 unregistered refugees living in Argentina.

International Instruments adhered to by the Republic of Argentina

78. Of the Latin American instruments concerning political asylum and extradition, Argentina adheres to the Montevideo Treaty on International Penal Law (1889) and the Montevideo Convention on Extradition (1933).

79. It is also a party to the Convention on the Status of Refugees (Geneva, 1951) and the Protocol of 1967. When it signed the Convention it made a reservation under Article 1B pursuant to which it agrees to apply the provisions of the Convention and Protocol only with respect to refugees fleeing because of events "occurring in Europe". The UNHCR has made

representations to the Argentinian Government urging it to withdraw this reservation.

BOLIVIA

80. The country is land-locked with an estimated population of 3,748,000 inhabitants (1966 census), covering an area of 1,098,580 sq km, and having frontiers with Brazil, Peru, Chile, Argentina and Paraguay.

81. More than half its population is indigenous (Quechua and Aymara) and a few groups exist which live on the fringes of civilisation in the wild eastern region around the Amazon and part of the Mato Grosso.

82. As to existing political system, the last national elections took place in 1966. Successive failures of the constitutional system finally resulted in the taking of power by the military régime of General Hugo Banzer Suarez on August 21, 1971 in a bloody coup d'état. The Legislature was dissolved, trade unions can no longer function, political parties have been outlawed and according to a statement by President Banzer in November 1974 there will be no elections before 1980 at the earliest.

83. The Bolivians who left the country because of political repression are to be found, for the most part, in Argentina. Many of these were expelled to Paraguay, but few remained there. A large number of Bolivians went to Chile, but had to leave after the coup of September 11, 1973.

84. Most of the refugees in Bolivia are of european origin, but there are a small number from neighbouring countries such as Peru and Brazil.

International Instruments adhered to by Bolivia

85. Of the Latin American instruments concerning political asylum and extradition, Bolivia is a party to the Montevideo Treaty on International Penal Law (1889), the Caracas Agreement on Extradition (1911) (the "Bolivarian Agreement"), and the Havana Convention on Private International Law (Bustamante Code) (1928).

86. It is not a party to the Geneva Convention on the Status of Refugees (1951) nor to the Protocol of 1967.

BRAZIL

87. With a population of 94,000,000 inhabitants in an area of 8,516,037 sq km, the Federal Republic of Brazil is the largest country of Latin America both in population and in potential. It has frontiers with French Guiana, Dutch Guiana (or Surinam), Guyana, Venezuela, Colombia, Peru, Bolivia, Paraguay, Argentina and Uruguay and has a coast along the Atlantic Ocean.

Its population is of European origin with a strong percentage of persons of African extraction (11% negroes, 26% mixed white, negro and indian) and about 0.5% of its population lives on the fringes of civilisation in the vast jungle regions of the Amazon basin and the Mato Grosso.

88. The State is organised on federal lines, with state and federal governments. On April 1, 1964, a military coup d'état overthrew the government of the elected President, João Goulart. Since then Brazil has been governed by a military régime and no presidential elections have taken place. The President of the Republic is appointed by the Armed Forces, subject to ratification by the National Congress. By the so-called "Institutional Act No. 5" of December 1963, issued by the President, virtually absolute power is vested in the Executive, beyond the control of Parliament and the Courts. This "Institutional Act" makes important alterations to the system established under the Constitution of the country.

89. A considerable number of Brazilians have had to leave the country as a result of political repression during the last 11 years. Some have gone as refugees to European countries, others to Mexico, Cuba and other latin-american countries. Significant numbers have settled in Argentina. Many Brazilians had sought refuge in Chile but had to leave that country after the coup of September 11, 1973.

International Instruments adhered to by Brazil

90. Of the Latin American instruments concerning political asylum and extradition, Brazil is a party to the Havana Convention on Asylum (1928), the Havana Convention on Private International Law (Bustamante Code)(1928), the Montevideo Convention on Political Asylum (1933), the Caracas Convention on Diplomatic Asylum (1954) and the Caracas Convention on Territorial Asylum (1954).

91. It is also a party to the UN Convention on the Status of Refugees (1951) and the Protocol of 1967. Upon adhering to the Convention it made a reservation under Article 1B pursuant to which it undertook to apply the provisions of the Convention only with respect to refugees forced to flee because of events "occurring in Europe". This applies also to the Protocol.

CHILE

92. With an estimated population of about 10,000,000 inhabitants in an area of 741,767 sq km, Chile forms a narrow and extended coastal strip between the Andes and the Pacific Ocean. It has frontiers with Peru, Bolivia and Argentina, and a coast along the Pacific.

93. The majority of its population is of European origin, although there are still some indigenous groups in the South (Araucanos and Mapuches) which form about 5% of the population.

94. As to the existing political system, on September 11, 1973, a military coup overthrew the constitutionally elected Government of Dr Salvador Allende. Since then the country has been governed under a military régime. From the institutional point of view the military "junta" (composed of the Commanders-in chief of the army, navy and air force and by the Director-General of the Carabineers) bestowed on itself all the executive, legislative and constituent powers, and limited the power of the judiciary in important ways (Legislative Decrees of September 13 and 21 and November 16, 1973). Parliament, political parties and trade unions were suspended and education was placed under close supervision. By Legislative Decree No. 527 of June 26 1974 it was provided that the functions of President of the Republic were to be executed by the Chairman of the Junta, General Augusto Pinochet and by Legislative Decree No. 788 of December 2, 1974, re-affirming the constituent jurisdiction of the Junta, it was decreed that Legislative Decrees issued by it would have force of constitutional provisions and as such override any other provisions. Since 11 September 1973 the country has been living under a state of exception ("state of siege", "state of war", "state of emergency"). The military Junta has repeatedly stated that the military must remain in power until "anarchy, Marxism, and petty politicking have been wiped out".

95. All of these events have been accompanied by severe and systematic political repression and suspension of basic human rights.

96. There are four distinct categories of persons involved in the problems of asylum relating to Chile:-

(a) persons not of Chilean nationality who had sought refuge in Chile before the coup d'état in the wake of political persecution in their own countries. Many of them were accompanied by members of their families. It is estimated that at the date of the coup about 10,000 to 12,000 political refugees were living in Chile, 6,000 to 7,000 of whom came from other Latin American countries (particularly Bolivia, Brazil and Uruguay). The rest were from European countries. The problems that have arisen relate to the refugees from other Latin American countries. Directly after the coup many of these refugees, suspected generally of engaging in left-wing activities or having sympathies of a left-wing nature were sought particularly by the police and the military authorities. At least 700 were detained and some murdered in the days after the coup. Two hundred and forty of them were subsequently transferred, owing to the efforts of the UNHCR, to centres established by the latter for them. This situation and the fear which it instilled in foreigners of Latin American origin, caused most of them to seek refuge in foreign missions or refuge centres set up for this purpose by the UNHCR.

In the light of this situation the UNHCR instituted an innovation in the practice of asylum by establishing "safe havens", places where foreigners who wished to or had to leave the country could receive shelter, assistance and protection from the United Nations before their departure. During 1974 six of the "safe havens" were operating with the agreement of the military Junta, and in generally they were respected as places of asylum by the police and the armed forces. In

operating this system the UNHCR received outstanding cooperation from the International Committee of the Red Cross and the National Committee for Assistance to Refugees, a body established by the Roman Catholic, Protestant and Jewish communities.

(b) Chilean nationals who sought and obtained diplomatic asylum in foreign embassies or special places reserved for the purpose. Nearly all of these have been able to leave the country under safe-conduct.

(c) Chilean nationals detained pursuant to the state of siege to whom the military Junta offered their freedom if they left Chile (they were prohibited from returning under pain of severe penal sanctions). This so-called "liberation programme", perhaps more accurately described as banishment, was announced by General Pinochet in a speech on September 11, 1974. Although in such cases the question is not initially one of refugees, it tends to become so on or shortly after their departure from Chile.

(d) Chilean nationals who were abroad at the time of the coup or who have subsequently left Chile by their own means and in respect of whom the Chilean consular authorities refuse to renew the validity of their passports once expired, thus leaving them without papers and forcing them to seek asylum in the country where they are living. No statistics are available of the numbers in this category.

97. Up to the beginning of August 1975 the UNHCR had succeeded in resettling permanently in other countries 4,482 persons (not including those who found temporary asylum in Peru or Argentina). To these should be added about 15,000 Chileans who had to leave their country and who do not fall strictly under the competence of the UNHCR but most of whom have or will become refugees sooner or later after leaving Chile.

98. At the present moment there remain in Chile a few dozen refugees in the single safe haven still open under the auspices of the UNHCR, and others in foreign legations, awaiting safe-conducts and countries to receive them. There are also some 1,500 persons who have requested resettlement abroad for the purpose of reuniting their families. The bodies assisting refugees are tirelessly seeking to have them accepted by countries which will give them permanent residence.

International Instruments adhered to by Chile

99. Of the Latin American instruments concerning political asylum and extradition, Chile is a party to the Havana Convention on Private International Law (Bustamante Code)(1928), the Montevideo Convention on Political Asylum (1933) and the Montevideo Convention on Extradition (1933) (ratified with reservations).

100. It also adheres without geographical reservations to the UN Convention on the Status of Refugees (1951) and to the Protocol of 1967.

DOMINICAN REPUBLIC

101. The Dominican Republic occupies two thirds of the Caribbean island of Hispaniola (the other third being occupied by Haiti) and has an area of 48,442 sq km. It has an estimated population of some 4,000,000 inhabitants, shares a frontier with Haiti, and has a coastline on the Caribbean Sea and the Atlantic Ocean.

102. As to its political system, the Dominican Republic was governed for thirty years by a dictatorial and personal régime under the Trujillo family. In May 1961 Rafael Trujillo was assassinated. From that time on opportunities for democratic government were open but a very turbulent period in the country's history ensued. A provisional Government was established whose main task was to prepare elections for the installation of a constitutional government. These were held in 1962 and Professor Juan Bosch was elected President by a considerable majority. Until then he had been in exile abroad. His Government did not last very long, however, as it was overthrown by a military coup in 1963 which put into power a civilian-military junta presided over by President Real Cabral. On April 24, 1965 a violent popular rebellion against this régime was staged and the return of the Government of former President Bosch was called for. A civil war followed in which two rival governments were set up, a constitutionalist régime under Colonel Caamaño and a National Reconstruction Government under General Imbert.

103. On April 29, 1965, the invasion by the United States Marines took place, a unilateral intervention which was later converted into a multilateral intervention by the Organisation of American States at an urgent meeting of Ministers of Foreign Affairs held in May, 1965, when the Interamerican Peace Force was created as an armed force of the Organisation of American States. The military intervention by 20,000 succeeded in imposing a new provisional government in August 1965. In the ensuing elections in June 1966 Joaquin Balaguer was declared elected and in July the troops of the Interamerican Peace Force withdrew. Joaquin Balaguer was re-elected in 1970 and 1974.

104. The Ministry of Foreign Affairs of the Dominican Republic courteously replied to some questions put to it by the International Commission of Jurists respecting the country's practice on asylum during the last five years.

The following points are taken from its reply:

- The Dominican Republic took in a considerable number of Spanish refugees following the Spanish Civil War (1936-1939) who, after a time, left the country and settled in Mexico.
- It also took in a significant number of persons of Jewish origin, persecuted by Nazism in Europe, who settled in the north of the country where they have established an agricultural and industrial colony. Many of them are still in the Dominican Republic. Some have died and a few have settled in other countries.
- Apart from these two groups there has been no large-scale influx of refugees.
- Even though the Dominican Republic is not at present a party to any of the international conventions on territorial asylum, it has received in its territory as refugees seeking asylum some 360 persons from Haiti in the last five years. They have enjoyed access to employment, health care, and freedom of movement under the same conditions as nationals

of the Dominican Republic.

- The admission of these Haitian refugees has given rise to no problems of public order.
- Persons who have sought asylum in any foreign embassy accredited in the Dominican Republic have been allowed to leave its territory.

International Instruments adhered to by the Dominican Republic

105. Of the Latin American instruments concerning political asylum and extradition, the Dominican Republic is a party to the Havana Convention on Private International Law (Bustamante Code)(1928), the Montevideo Convention on Extradition (1933) and the Caracas Convention on Diplomatic Asylum (1954).

106. It is not a party to the UN Convention on the Status of Refugees (1951) nor the Protocol relating to that Convention of 1967.

PARAGUAY

107. Paraguay has an estimated population of 2,500,000 inhabitants and an area of 406,752 sq km. It is one of the sparsest populated countries of South America. It is land-locked and has frontiers with Brazil, Bolivia and Argentina.

108. Its population is composed of a significant percentage of indigenous peoples, even though the numbers of those who maintain a native culture and life-style are relatively small. The latter are located primarily in the eastern region along the Mato Grosso and in the north around the Chaco.

109. As regards its political system, in 1954 a coup d'état brought to power General Alfredo Stroessner, subsequently named President of the Republic. For the last 21 years the country has, with short intervals not exceeding three months, been under a continuous "State of Siege".

110. A considerable number of Paraguayans (estimated at some 800,000) have had to leave the country, principally for Argentina. This emigration has its causes in economic factors (lack of job opportunities) and political factors (repression, continuance of the state of siege).

111. Most of the refugees in Paraguay are of European origin. There are, however, a number from neighbouring countries such as Bolivia and Brazil. Bolivia has expelled a number of its citizens on political grounds, and has expelled them to Paraguay. Some of these have settled in Paraguay, but most seek resettlement elsewhere.

International Instruments adhered to by Paraguay

112. Of the Latin American instruments concerning political asylum and extradition, Paraguay is a party to the Montevideo Treaty on International

Penal Law (1889), the Havana Convention on Asylum (1928), the Montevideo Convention on Political Asylum (1933), the Caracas Convention on Diplomatic Asylum (1954) and the Caracas Convention on Territorial Asylum (1954).

113. It is also a party to the UN Convention on the Status of Refugees (1951) and the Protocol of 1967. Upon adhering to the Convention it made reservations under Article 1B pursuant to which it undertook to apply the provisions of the Convention only with respect to persons becoming refugees owing to events "occurring in Europe". This applies also to the Protocol.

PERU

114. Peru has an estimated population of 13,300,000 inhabitants in an area of 1,400,000 sq km. It has frontiers with Ecuador, Colombia, Brazil, Bolivia and Chile, and a coast along the Pacific Ocean.

115. More than half of its population is indigenous (Quecha and Aymara) and there are small groups of these people living on the fringes of civilisation in the wild regions of the north and east (at the sources and along the course of the Amazon).

116. As regards the existing political system, on October 2, 1968, a military coup d'état overthrew the government of the elected President, Belaunde Terry, and the Armed Forces took control over the whole country. The new government established the basis for its actions by a "Statute" (Legislative Decree No. 17.063 of October 3, 1968). Pursuant to this Statute the Armed Forces, represented by its leaders (the Commanders-General of the Army, the Navy and the Air Force) set themselves up as a "Revolutionary Council" one of whose powers was to appoint a President of the Republic, (who had to be a member of the armed forces). Further, according to this law, the political Constitution of the country would be valid only "in so far as it might be compatible with the aims of the revolutionary government". The functions of the Executive were to be carried out by the President of the Republic and legislative power (the Legislature having been dissolved at the same time) was to be exercised by the President, acting with the advice and consent of the Council of Ministers, by means of legislative decrees "issued jointly with the members of the Revolutionary Council". General Juan Velasco Alvarado, prime mover of the 1968 coup, was appointed President of the Republic, and he ruled the country until 29 August 1975 when a new coup, described by its authors as an "institutional uprising", handed over this power to the Prime Minister, General Francisco Morales Bermudez.

117. Peru had on various occasions received political exiles from Bolivia. The first massive influx of refugees which it experienced took place from Chile after the coup of September 11, 1973. It is estimated that some 2,800 refugees arrived in Peru after September 1973, the great majority of Chilean origin, even though there were persons of other nationalities (Bolivian, Brazilian and Uruguayan) who had previously sought refuge in Chile.

118. The Peruvian Government's policy was to allow them to enter but only "in transit", granting them temporary asylum while they sought another country willing to grant them permanent residence. By August 1975, 1,923 refugees had been resettled in other countries under the auspices of the UNHCR. The rhythm of departures from Peru in 1975 is now about 60 per month, whereas in 1974 it had reached 191 per month. The situation of those (some 900) still remaining is becoming difficult. They do not have the right to work and have to be given welfare. The uncertainty of their fate is giving rise to serious problems.

International Instruments adhered to by Peru

119. Of the Latin American instruments concerning political asylum and extradition, Peru is a party to the Montevideo Treaty on International Penal Law (1889), the Caracas Extradition Agreement (1911)(the "Bolivarian Agreement"), the Havana Convention on Asylum (1928), the Havana Convention on Private International Law (Bustamante Code)(1928), the Montevideo Convention on Political Asylum (1933), and the Caracas Convention on Diplomatic Asylum (1954).

120. It is also a party to the UN Convention on the Status of Refugees of 1951 but not to the Protocol of 1967. Upon adhering to the Convention it made reservations under Article 1B pursuant to which it undertook to apply the provisions of the Convention only with respect to refugees forced to flee owing to events "occurring in Europe before 1 January 1951".

URUGUAY

121. Uruguay, with a population of 2,760,000 (figures of the 1975 census) and area of 137,000 sq km, is one of the smallest countries of South America. It shares frontiers with Brazil and Argentina and has a coastline on the Atlantic Ocean. Its population is of entirely European origin, there being no indigenous groups.

122. Uruguay has a long tradition of constitutional parliamentary democracy, with the classical separation of the executive, legislative and judicial powers. Until recently it had, with one exception in 1934, been free from authoritarian government throughout this century.

123. For a period after the Second World War Uruguay enjoyed a period of unprecedented prosperity and expansion, but in the late 1960's experienced an economic recession which had serious political consequences. In 1967 emergency powers (known as "prompt security measures") were taken by the government under Article 168, para 17, of the Constitution, and action was taken to suppress certain left-wing parties. In the following year the activities of the Tupamaro urban guerrilla movement led to an intensification of the security measures and an escalation of violence. In 1972 the military authorities began to assert control over the government and in February 1973 a military dominated Council of National Security was

established. This process culminated on June 27, 1973, in Decree 464/73 by which the Legislature was dissolved and press censorship instituted. In the following months the National Confederation of Labour (CNT), a trade union organisation covering virtually all of the country's workers, was dissolved, as were student associations, political parties and groups. The University was brought under government control and all the opposition press was closed down. Under the Constitution presidential elections are due in 1976 but President Bordaberry stated in a speech of September 1974, that those concerned with politics could "put aside any hope of a 1976 election". These events were accompanied by severe political repression, with thousands of arrests and the establishment of military courts to try political cases, at first under a "State of War", and later under the Law of State Security of July 10, 1972.

124. These events led to the departure of thousands of people from the country. Many left for economic reasons, most going to Argentina, but quite large numbers emigrating to countries such as Canada and Australia. In addition, there has been a regular flow of political refugees, most of whom also went to Argentina. About 2,000 had obtained refuge in Chile under the Allende regime, but these left after the coup in September 1973, again most of them going to Argentina. It is impossible to say how many Uruguayan political refugees there are in Argentina. Free movement was possible between the countries without the need of a passport, and many refugees have not registered as such with the authorities. According to the official figures of the Argentine Immigration Office there were in November 1974 some 400,000 Uruguayans who had sought permanent residence status in Argentina. This figure, of course, includes those who came for economic reasons seeking employment as well as political refugees.

125. Although in the past Uruguay was a country of refuge for Brazilians, Argentinians, Paraguayans and Bolivians, today they virtually all have left and the refugees who remain are of european origin.

International Instruments adhered to by Uruguay

126. Of the Latin American instruments concerning political asylum and extradition, Uruguay is a party to the Montevideo Treaty on International Penal Law (1889), the Havana Convention on Asylum (1928), the Caracas Convention on Diplomatic Asylum (1954)(with reservations), and the Caracas Convention on Territorial Asylum (1954).

127. It is also a party to the UN Convention on the Status of Refugees (1951) and the Protocol of 1967.

IV. INDIVIDUAL CASES

128. As was mentioned in the Introduction to this study, the U.N. High Commissioner for Refugees has referred in his reports in recent years to known instances of refoulement of refugees, either by their rejection at the frontier or by their subsequent forcible return to their country of origin. He has also drawn attention to the growing number of acts or threats of violence against refugees which "constitute a flagrant violation of the minimum standards of a state's responsibility towards refugees". These remarks were made in general terms without specifying the individuals or countries concerned.

129. The International Commission of Jurists has for some time been receiving reports of incidents of this kind in Latin America. It was hoped that it would be possible by sending a mission of distinguished jurists to the countries concerned to examine these cases in detail with the governmental authorities. Unfortunately, for the reasons indicated in the Introduction, this has not proved possible.

130. It is proposed, therefore, to set out in this Section, a selection of typical cases in which the facts are reasonably well established. The first group comprises 6 cases involving 13 refugees, set out in date order. They illustrate the violations of the declarations and international law on non-refoulement. The second group illustrates the lack of protection given to refugees against threats and acts of violence, including at times their assassination. As can be imagined, knowledge of the facts of cases such as these spreads quickly among the refugee communities causing profound anxiety and apprehension about their future. Indeed, this would seem to be one of the principal objects of those responsible for these activities.

CASES OF REFOULEMENT

131. Case No. 1 - Dr. Fernando Ballivian Cardoso

Dr. Ballivian is a Bolivian doctor of medicine.

Prior to 1972 Ballivian was sentenced to imprisonment in Bolivia for association with the radical wing of the MIR (Revolutionary Movement of the Left) at the University of San Andres in La Paz. In 1972 there was a mass escape from the prison where he and other political prisoners were detained on the Island of Coati on Lake Titicaca.

Dr. Ballivian managed to escape to Chile where he was granted asylum. The UNHCR representative in Santiago was trying to arrange his resettlement in another country.

On September 14, 1973, he was arrested by the Chilean authorities and on September 16, 1973, was taken to the Bolivian frontier where he was detained and imprisoned. He is still being held in a prison for political prisoners in La Paz.

The UNHCR has been seeking to find a country of asylum for him, but it is not yet clear whether the Bolivian authorities will be prepared to release him.

Comment This appears to be a clear case of refoulement by the Chilean authorities, acting in concert with the Bolivian authorities, in violation of Article 33 of the U.N. Convention on the Status of Refugees, 1951, and the Protocol of 1967, and of Article 3 of the U.N. Declaration on Territorial Asylum, 1967, and of the general law on non-refoulement.

132. Case No. 2 - Joaquim Pires Cerveira (alias Walter de Sousa)
Joao Batista Rita Pereda

Pires Cerveira, aged 42, and Rita Pereda, aged 25, were both Brazilians. Pires Cerveira had for some time been living under the name of Walter de Sousa. He was a Professor of Mathematics, and a former Major in the Brazilian army.

Prior to June 1970, both of them were in prison in Brazil accused of having taken part in guerrilla activities. On June 16, 1970, they were both among the released prisoners who were flown to Algeria in return for the release of the kidnapped Swiss Ambassador to Brazil. They were both exiled by decree, which meant that it was an offence for them to return to Brazil.

Pires Cerveira went from Algeria to Argentina and then to Chile. Two months before the September 1973 coup he returned from Chile to Argentina and was living in Buenos Aires.

Rita Pereda had also sought asylum in Chile, and at the time of the coup in September 1973 he took refuge in the Argentine embassy in Santiago. On November 2, 1973, he left the embassy under a safe conduct and was flown to Parana in Argentina, reaching Buenos Aires on December 2. The UNHCR office were seeking to arrange his resettlement in another country. He was accepted by the Argentine authorities as a refugee "in transit".

According to the wives of the two men, on December 5, 1973, six armed men came to the home of Rita Pereda in Buenos Aires, saying they were looking for arms and books. They went away and returned later the same day with another man who spoke with a Brazilian accent and said that he was from Interpol. (N.B.: This is highly improbable as Interpol is not concerned with political cases.) They arrested (or kidnapped) and took away Rita Pereda and also Pires Cerveira who was there at the time. (They had been together that day to the National Administration of Migration.)

On the matter being reported to the UNHCR local representative, he decided to treat Pires Cerveira, who was not previously known to him, as a prima facie refugee within the UNHCR mandate. He immediately made representations to the Ministry of External Relations asking them to start an urgent investigation into the circumstances of the arrest or kidnapping and into the reasons for the disappearance of the two men, and to ascertain their whereabouts. The Argentine authorities denied any knowledge of what had happened to them.

On December 9, the disappearance of the two men was denounced in the journal "Noticias" by the Guild of Lawyers. This Association made an habeas corpus application on their behalf but the return to the writ was negative.

In January 1974 information was received from a reliable source that both men had been seen in Brazil on the night of 12/13 January, being taken into a prison of the military security authorities in Barão de Mezquita Street in Rio de Janeiro. They had been brought in an ambulance and were in very bad condition, showing signs of having been tortured. The description given was as follows: "They were tied together in a foetal position, their faces were swollen with signs of fresh blood on their heads; they were disorientated and in a state of complete exhaustion."

Confirmation of this was later received from a witness who saw them both in the prison. This witness is a Brazilian now living in Belgium.

In spite of repeated approaches at the highest level, the Brazilian authorities continue to deny any knowledge of the whereabouts of the two men.

Three months after their disappearance the wives of both men, with the assistance of MAASLA (Argentine Anti-Imperialist Movement for Latin-American Solidarity), obtained wide publicity in the Argentine press for their husbands' disappearance.

Radio Porto Alegre of Brazil is said to have published a report in 1975 that both men had been found dead in Bolivia. No confirmation of this has been received.

Comment There appears to be no reason to reject the evidence either of the arrest or kidnapping of these two refugees in Buenos Aires or of their being subsequently seen in a prison in Rio de Janeiro. At the least, this would seem to be a case of refoulement by para-military organisations having close connections with the Brazilian military authorities. If and in so far as any public officials were involved, it was a breach of Article 15 of the Treaty on International Penal Law, Montevideo, 1889, and of Article 3 of the U.N. Declaration on Territorial Asylum, 1967, and of the general law on non-refoulement.

133. Case No. 3 - Carlos Antonio Rodriguez Coronel
Juan Carlos Iparraquirre Almeida
Julio Cesar Saavedra Duarte
Justo Pilo Yanez

All these four men are Uruguayans, who were living prior to May 1974 in Buenos Aires, Argentina, as political refugees under the mandate of the UNHCR.

On May 6, 1974, all four were repatriated to Uruguay against their will by force or deception.

They had been arrested earlier by the Argentine Federal Police. It was later learned that this was done at the request of the Uruguayan police who wanted them returned to Montevideo.

They were asked to sign consents to be repatriated.

Rodriguez refused to sign the consent, and he was placed on an aeroplane on May 6, 1974, being told that the plane was going to Belgium. In fact the plane took him to Montevideo where he was arrested by the police.

Saavedra, Pilo and Iparraguirre all signed the consents under duress. Saavedra was taken first to the police station in Moreno Street in Buenos Aires on April 14, 1974, where he was accused of being an illegal resident (although it is understood that he had a temporary residence permit). He was threatened with being returned to Uruguay. He was then transferred to the prison of Villa Devoto, where under physical and psychological pressures, including threats of death, he signed a back-dated written consent to be repatriated to Uruguay. Pilo and Iparraguirre signed in similar circumstances. All three were put on board a ship for Montevideo and handed over to the Uruguayan police.

A public protest against their expulsion was made on May 8, 1974, by their lawyer, Dr. Leandro Despouy, who is now living in France, and by four Argentinian members of parliament, Hector Sandler, Mariano Lorences, Rodolfo Ortega Peña and Juan Carlos Dominguez (subsequently Ortega was assassinated by the AAA; an attempt was made on the life of Hector Sandler, who is now living with his family in the parliament building in Buenos Aires for protection).

As a result of vigorous protests by the local representative of the UNHCR, the four men were released in Montevideo in July 1974.

In the meantime, while detained in Uruguay, Rodriguez was tortured.

In November 1974, Rodriguez and Saavedra were able to leave Uruguay and obtain "in transit" asylum in Peru. The UNHCR are seeking to arrange re-settlement in Europe.

Comment This is a clear case of refoulement by the Argentine police acting in concert with the Uruguayan police, in violation of the Treaty on International Penal Law, Montevideo, 1889, and the U.N. Declaration on Territorial Asylum, 1967, and the general law on non-refoulement.

134. Case No. 4 - Dr. Abel Ayoroa Argandona

Dr. Ayoroa is a Bolivian lawyer, specializing in labour law and acting for trade union organisations. He is married with 8 children.

He is a former Minister of Labour, and was a leader of the MRNI (National Revolutionary Movement of the Left), which forms part of the Opposition Alliance in Bolivia, together with the Christian Democratic Party (PDC) and the Authentic Revolutionary Party (PRA).

On May 6, 1972, he was arrested and detained for 2 months, accused of having carried out activities which disturbed the social order while acting as legal adviser to a number of important labour organisations.

At the end of October 1972, when a campaign was being mounted by the authorities against labour leaders, he sought refuge with his wife and

daughter in the Argentine Embassy. They were allowed to leave under a safe conduct for Chile on December 17, 1972.

He was given a two year visa to Chile as a political refugee. Nevertheless, on August 26, 1974, he was arrested at his home in Santiago by the Chilean Military Intelligence Service, and detained without trial and without charge. He was held incommunicado for one month, and subjected to torture and ill-treatment (blindfolded with bread and water diet for 16 days, blows, electric shocks).

An intervention was made at a high level by the UNHCR representative in Santiago to the Chilean authorities expressing his concern. The authorities said they would look into the matter, but there was no reason to think he was in any danger.

In spite of this, on September 25, 1974, he was taken in a military plane to Arica under police surveillance and from there brought by train to the Bolivian frontier at Visviri where he was handed over to three representatives of the Bolivian police.

He was then taken to Viacha, near La Paz, where he was held incommunicado in prison for 20 days. He states that he was seen there in poor health by a delegate of the International Committee of the Red Cross.

On October 15, 1974, he was transferred to the police clinic at La Paz for medical treatment. On November 12, he was removed from the hospital, still in poor health, and brought to another prison for political prisoners in La Paz.

He was kept in detention for some months, until the Bolivian authorities agreed to liberate him on condition that he left the country. On February 1, 1975, "La Nación" newspaper reported that Dr. Ayoroa had been deported to Paraguay with 12 other political prisoners in a military aeroplane. The other 12 were labour leaders detained for alleged conspiratorial activities.

After his release he went for a short time to Peru and then returned to Paraguay where he has obtained employment.

Comment This is a clear case of refoulement of a refugee by the Chilean authorities, acting in concert with the Bolivian authorities, in violation of Article 33 of the U.N. Convention on the Status of Refugees, 1951, and the Protocol of 1967, and of Article 3 of the U.N. Declaration on Territorial Asylum, 1967, and of the general law on non-refoulement.

135. Case No. 5 - Floreal Garcia Larrosa
Hector Daniel Brum Cornelius
Graciela Marta Estefanel Guidali
Maria de los Angeles Corbo Aguirregaray de Brum (wife of
Mirtha Yolanda Hernandez (companion of Garcia) Brum)

The above five persons were arrested by persons unknown in Buenos Aires on November 8, 1974, together with Amaral, the 3-year old child of Garcia and

Mirtha Hernandez. The five were reported to have been found dead at a cross road 80 kilometres from Montevideo, Uruguay, on the morning of December 20, 1974. This was the day after the assassination of the Uruguayan military attaché in Paris, Colonel Ramon Trabal. Most people familiar with the case believe that the five were assassinated by way of reprisal. The 3-year old child has not been heard of again.

Garcia (born 1943), Brum (born 1946), and Estefanel (born 1940) were prosecuted and convicted for subversive political activities in 1971. On their release from prison they sought refuge in Chile in 1972, and after the coup in 1973 moved to Argentina.

All the above five persons were living in a house at No. 3872 Sarratea Street at Caseros on the outskirts of Buenos Aires. In the early hours of November 8, 1974, a group of 12 to 15 men came to their house in three green Ford Falcon cars, claiming to be police officers. They forced all the above five persons together with the child Amaral into the cars and drove off. According to neighbours who witnessed the scene, those responsible said they were from the First Brigade of the Federal Police with the support of the police from Caseros and San Martin.

Strenuous efforts to trace them were made by relatives, lawyers, a journalist, and the office of the UNHCR. Enquiries were made at the Ministry of the Interior and at all the police stations and judicial offices, both in the city and province of Buenos Aires. A habeas corpus application was made. An interview was obtained by Graciela Estefanel's mother with the director of the Department for Foreign Cases of the Federal Police. All were of no avail. Everyone denied knowledge of them.

On the morning of December 20, 1974, two communiqués were issued by the Secretariat of the Presidency in Uruguay saying that the bodies of the above five persons had been found 80 kilometres from Montevideo. The communiqués were identical save that the second one omitted a suggestion contained in the first that the victims were linked with the Tupamaros.

The communiqués said that from the cartridges and other evidence found at the spot it was clear that the victims had been executed where they were found. The victims were wearing clothes of Argentine origin. It was said that it was not known when they had "returned" to Uruguay. The communiqués sought to create the impression that the murders were the work of a supposed extreme right wing commando as a reprisal for the murder of Colonel Trabal.

Apart from the circumstances of their arrest, one other very curious fact suggests some more official implication in the affair. According to the communiqués, the bodies were found at 7.30 a.m. Yet newspapers were on sale on the streets in Montevideo at 9.30 a.m. carrying the communiqué which revealed the identity and antecedents of the victims. It is difficult to see how the bodies could have been identified and all these particulars obtained and a communiqué prepared and reproduced in the press within this space of time.

Comment In spite of the official denials, it is hard to resist the conclusion that in this case the three refugees were returned by the Argentinian police to the Uruguayan authorities on or after

November 8, 1974, and that accordingly this is a case of refoulement in violation of the Treaty on International Penal Law, Montevideo, 1889, and the U.N. Declaration on Territorial Asylum, 1967, and of the general law on non-refoulement, leading to their subsequent assassination in reprisal for the assassination of Colonel Ramon Tralal.

136. Case No. 6 - Jorge Valenzuela Soto
Sergio Quintero Celis

Valenzuela, aged 29, and Quintero, aged 26, are Chileans. Valenzuela was leader of the Radical Youth Movement and Quintero of the Socialist Youth Movement at the University of Concepción in Chile. Both were arrested after the coup in September 1973. Valenzuela was detained in a camp at Quirinquino Island for 10 months and Quintero was held in various places for 8 months.

After their release they got in touch with refugee organisations and with their assistance left on November 15, 1974, by air for Argentina. On arrival at "El Plumerillo" airport at Mendoza, they were detained in a prison in Mendoza for nearly a month.

They were threatened with being returned to Chile on November 18, 1974, but owing to an intervention by the local UNHCR representative to the Minister of External Relations, they were not returned at this stage. The UNHCR representative considered that they were prima facie refugees within the mandate of the UNHCR.

However, at 2.00 p.m. on December 12, 1974, they were put on an aeroplane of LAN-Chile and returned to Chile. They were told this was being done at the request of the Chilean Consul, and that they would be met by the UNHCR representative in Santiago (which was untrue).

The local immigration officer said he was acting on the orders of the Ministry of the Interior at Buenos Aires, and claimed that the two men had never been admitted into Argentina.

The Minister of External Relations contended that this was not a case of refoulement but was simply a denial of asylum, which the government of Argentina was entitled to do in the exercise of its sovereignty, within the terms of the refugee conventions.

However, the Argentine authorities agreed to set up a Committee with representatives of the Ministry of External Relations, the National Administration of Migration, the Security Police and the Regional Office of the UNHCR to prevent similar incidents occurring owing to incomplete knowledge of the facts. (It is understood that this Committee has never met.)

Valenzuela and Quintero were arrested by the police at the airport on their return to Chile. As a result of a habeas corpus application it was learned that they were detained in Tres Alamos, Santiago. They were held in detention until September 9, 1975, when they were released to leave for Denmark whose government, in response to a request by the UNHCR, agreed to grant them both asylum.

Comment This case is a clear violation of Article 3 of the U.N. Declaration on Territorial Asylum, 1967. The two men were refugees and were returned to a country where their freedom was threatened on account of their political opinion. If the Argentine authorities contend that the men had never been admitted into Argentina, then their return was a case of "rejection at the frontier". If the Argentine authorities were not prepared to grant them asylum, they should have allowed the two men to proceed to another country and to remain in Argentina until such time as this could be arranged by the UNHCR, who had accepted them prima facie as falling within their mandate. The effect of the refoulement is that the two Chileans, who had left Chile freely and lawfully were arrested on their return and subjected to prolonged detention. It is submitted that this case is a violation of the general law on non-refoulement.

OTHER CASES AFFECTING REFUGEES

137. These cases fall into a number of categories.

(1) Missing Persons

138. These are the cases of those refugees who simply disappear without trace. The largest number of these occurred during the period following the military coup of September 11, 1973, in Chile. Of those known to the local office of the UNHCR, 31 are still missing. A list of these refugees, together with the latest available information about them will be found at Appendix "C". It will be seen that several of them are reported to have been arrested by military or civilian authorities. If, as has sometimes been suggested by the Chilean authorities, they had fled abroad, it is highly improbable that they would not have contacted the High Commissioner's office in the country of refuge. It is possible that some of them were killed and their bodies disposed of without identification in the fighting which occurred in the first few days following the coup, but it is not thought likely that many, if any, of the refugees would have taken part in these hostilities. In any event, the disappearances were not confined to the first few days, but continued after the period when hostilities had ceased, as is illustrated by the following case.

139. Case No. 7 - Mrs Nelsa Gadea Galan

Mrs Gadea is a Uruguayan who was granted asylum in Chile before the coup.

She was working in an enterprise known as KPD-Corvi in Santiago.

On December 19, 1973, she failed to appear at her place of work although she had left a number of her personal belongings there, which would seem to indicate that she was intending to return to work. Nothing further has been seen or heard of her at her place of work or at her residence in Santiago.

A report, thought to be reliable, was received by the UNHCR office in Santiago that she had been arrested under a detention order by the Naval

Fiscalia (Prosecutor's office) in Valparaiso for transgression of the Law on Arms Control. However, the Chilean authorities have repeatedly denied that she is in their custody, and the International Committee of the Red Cross, whose delegates have visited most places of detention in Chile, have not been able to trace her. Eventually, the original informant said that his information was mistaken.

In the early months of 1974 a number of interventions were made with the Chilean authorities by diplomatic missions in Santiago and by non-governmental organisations who were concerned about Gadea's disappearance. It is known that the Chilean police were making enquiries about her at her former residence, but without result.

A "recurso de amparo" (similar to a writ of habeas corpus) was filed on her behalf, but the return was negative and in January 1975 the Judge ordered that the case should be filed unless and until some new information became available.

Authorities in Chile have made conflicting suggestions about her disappearance, namely that she may have left Chile clandestinely to join her husband in Argentina, or alternatively that she had a lover in Chile and that this could be a reason for her not wanting her whereabouts to be known. If either of these explanations were correct, it is inconceivable that she would not have been located by now.

(2) Refugees Arrested and Detained without Trial

140. Since the declaration of a State of Siege in Argentina in November 1974 a number of refugees have been arrested by the authorities and detained without any accusation being made against them and without being brought to trial. The following are two of the cases.

141. Case No. 8 - Senator Enrique Erro

Senator Enrique Erro, born 1912, was a Professor of Philosophy and a journalist in Uruguay. From 1954 to 1971 he was a deputy in the parliament, and he was the founder of the Popular Union in 1962. This party joined the Broad Front and Erro was elected as a Senator for the Front in 1972. In the following year, under pressure from the armed forces, the government demanded the dismissal of Senator Erro and the withdrawal of his parliamentary immunity. The refusal of this demand by the legislature was one of the pretexts for the dissolution of the parliament on June 27, 1973.

Erro then sought and obtained political asylum in Argentina. He was a close friend of the Peronist ex-President Campora, who is now living in Mexico since his life was threatened by the AAA.

On March 8, 1975, Erro was arrested in Argentina and he has since been held in detention without trial. He was first held in Villa Devoto. Following a hunger strike by the political prisoners, in which Erro took part, he was transferred with the other hunger strikers to the special prison for political prisoners at Rawson, some 3,000 kilometres south of Buenos Aires.

Later he was transferred to the Resistencia political prison in the Chaco, in the north of the country near the Paraguayan border.

The prison authorities there have told him that he will be expelled from the country. Apart from some vague and unspecified allegations of violating his right of asylum, no reasons have been given.

142. Case No. 9 - Luisa Paumgarten Deane

Luisa Paumgarten Deane, born 1948, is a Brazilian and the daughter of a Professor of Medicine at the University of Sao Paulo.

In 1969, when on the managing committee of the Association of Students of Higher Education at Sao Paulo, she was arrested and held for a short time for her student activities, in particular for participating in a demonstration against the government.

She was sent by her parents to study abroad, first in Paris, then in Santiago de Chile and then, as from the end of 1971, in Argentina. At the end of 1973, the Brazilian Consul in Buenos Aires refused to renew her passport.

By mid-1974 she had obtained permission to reside in Argentina.

On or about November 20, 1974, she was arrested by the Argentine police in Buenos Aires, together with an Argentinian with whom she was living.

The case was considered by an examining magistrate, who found that there was no case against her and ordered her release on January 17, 1975. However, on being released she was re-arrested the following day and held in detention on an order of the Ministry of the Interior under the State of Siege.

The UNHCR representative in Buenos Aires, who had by this time taken Miss Deane under his protection as a refugee, intervened with the Argentine authorities and eventually obtained their agreement to allowing her to leave the country. In the summer of 1975 she left Argentina for Portugal, where she was re-settled as a refugee.

(3) Refugees Threatened, Kidnapped or Assassinated

143. The worst category of cases are those of refugees who have been victims of violence, kidnapping or even assassination, or threats of violence or assassination. The following are some examples.

144. Case No. 10 - Amarillo Vasconcellos de Oliveira

Vasconcellos is a Brazilian over 50 years of age and a former deputy of the Brazilian parliament.

Prior to the September 1973 coup, he and his wife were living as refugees in Chile. Following the coup they moved in October 1973 to Argentina,

where they were accepted as political refugees.

Early in 1974 Vasconcellos began to be subjected to harassment by people following him in cars, similar to police cars. A habeas corpus application was filed on his behalf to obtain the protection of the court. A few hours later two armed men came to his residence and threatened him with death.

Héctor Sandler, a Deputy of the Argentine parliament, denounced this case to the press on June 25, 1974.

145. Case No. 11 - Daniel Alvaro Banfi Baranzano
Guillermo Rivera Jabif Gonda
Luis Latronica Damonte

These Uruguayan refugees were arrested by persons unknown in Buenos Aires, Argentina, in September 1974, and a few weeks later were found dead near Buenos Aires. As will be seen, there is reason to believe that the AAA (Argentine Anti-Communist Alliance, a right wing para-military terrorist group) were responsible for the arrests, and that both the Argentine and Uruguayan police were implicated. Two other refugees, Rivera Moreno and Nicasio Romero were arrested at or about the same time, but were later released.

Banfi, born in Uruguay in 1950, was at one time detained for a short time in Uruguay for distributing political propaganda. He went to Argentina in November 1972, where he was joined by his wife two months later. They obtained residence permits, and accordingly did not need to claim refugee status.

Jabif, born in Uruguay in 1952, was sentenced to a year's imprisonment in Uruguay for distributing political propaganda and for allegedly having contact with the Tupamaros. After his release in June 1973, he left the country and sought refuge in Argentina.

Latronica, born in Uruguay about 1950, is also said to have been connected with the Tupamaro movement. He fled the country and sought refuge in Chile. At the time of the coup in September 1973, he took refuge in the Argentine embassy in Santiago. He was allowed to leave for Argentina on November 2, 1973. He was registered with the UNHCR office in Buenos Aires, who were trying to help him to settle abroad, as well as with the Argentine National Administration for Migrants. The government of the German Federal Republic had agreed to accept him and he was due to leave for that country at the end of September 1974.

On September 11, 1974, when another Uruguayan refugee living in Buenos Aires, Nicasio Romero, left his place of work at midnight, he found a group of six armed men in civilian clothes waiting for him. They seized him and forced him into a Ford Falcon car (a type of car used by the Federal Police and the AAA). When he tried to resist they struck him with the butts of their guns. The car drove off.

At 2.30 a.m. on September 12, 1974, a group of 7 or 8 armed men demanded admittance in the name of the police, to the apartment of Mr. and Mrs Banfi at Haedo in the Province of Buenos Aires. One of them flourished a blue card,

but no-one was able to read it to verify whether they were police. The men proceeded to arrest Banfi, Latronica (who was staying at the time with Mr. and Mrs Banfi), and another Uruguayan, Rivera Moreno, who was spending the night with them as his wife had been taken to a maternity hospital the previous day for a confinement.

The three men were struck with blows, and threatened. Their assailants said that a certain Andres Correa had admitted that Banfi was one of his comrades in the Tupamaro movement. As the AAA had published a communiqué on September 6 claiming responsibility for the disappearance of Correa, and saying that he had admitted under interrogation his membership of a subversive organisation and had given information about other subversive persons in Argentina, this was a strong indication that the persons effecting the arrests were either themselves members of the AAA or were police working in collusion with them.

The men proceeded to carry out a rigorous search of the premises, without producing any search warrant. When they took away the three men, they removed their identity documents and also took with them books, reviews, and gramophone records of a political character from the apartment.

At the time of the arrest, Banfi said that he recognized one of the men as a Uruguayan police officer. The persons effecting the arrests were very fully informed about all those present, including their work places, their addresses, places they stayed at, and the hospital where Mrs Moreno was confined. Before leaving they said that if the three men "tell everything" no harm would come to them, but that if the Uruguayan police had any outstanding enquiries about them, they would be sent to Uruguay. According to Mrs Banfi, they said they were taking the men to the "Federal Coordination", i.e. to the headquarters of the Federal Police.

At about midday on the same day, September 12, 1974, a group of six armed men went to the home of Jabif's mother in Buenos Aires, stated they were police officers and produced an identification badge. They asked to see Jabif, and when he came, searched him, finding in his pocket a photograph of Latronica which they recognized. They arrested Jabif taking his identification papers and those of his wife. They said they were taking him to the "Federal Coordination" for Jabif to "clear up the situation". They said they would call at Jabif's own home, which was confirmed later by the state of disorder in his apartment.

The disappearance of Banfi, Moreno and Latronica was reported by their families to the UNHCR office in Buenos Aires on September 12, and that of Romero and Jabif on September 15. Immediate and high-level enquiries were made of the authorities, who denied any knowledge of the fate of these persons.

Habeas corpus proceedings on behalf of Banfi, Latronica and Romero were brought before a certain Judge Fasolino on September 14. Two days later, the judge's secretary told the lawyer acting in the case that a positive reply had been received from the town of La Plata (near Buenos Aires). However, upon enquiring there, the Federal Police in La Plata said that there had been a mistake and denied that they had them in their custody. On September 19, Judge Fasolino closed the case saying that the replies had been

negative. Another habeas corpus application was made on September 14 on behalf of Jabif. The result of this was also negative.

On September 14, Romero's parents made enquiries about him with the local police of the district where he was arrested (Commissariat No. 8). They were told he was there and that they could bring him food and footwear. Some hours later they were shown his name on a list. However, they were not able to see him.

On September 19, the families gave a press conference describing the disappearance of all five men. In the following days numerous interviews were had with government and police authorities. In one of these the relatives were told by a senior police official that a Judge M. Luque could enter into contact with the persons who had effected the arrests, and get them released. The families had several interviews with Judge Luque and at one of them Mrs Banfi says she heard Judge Luque say on the telephone to the police at Moreno (on the outskirts of Buenos Aires) "You know very well who I am talking about: tell that band of assassins to release those Uruguayans; I know it's you who have got them".

On October 14, Romero and Moreno were freed, and the families of the other three men were told by the police that they would be freed shortly. The police made no attempt to conceal their participation.

On October 30, the bodies of Banfi, Jabif and Latronica were found in a shallow grave near the town of La Plata. Latronica had 14 bullet wounds. All three showed signs of torture and their faces were disfigured by acid. The families of all three men were questioned by the police. Among the questions put to them was whether Mrs Banfi had recognized the Uruguayan policeman who had taken part in the arrest and search at her apartment. All of them were warned that if they did not leave the country quickly they knew what would happen to them. All of them left as refugees for Sweden on November 7, 1974.

Romero and Moreno, who are also now refugees in Sweden, have said in interviews on Swedish radio and television that they were held in captivity in the same place as the three men who were assassinated. They realized they were in police stations and prisons. They were able to see beneath the bandages over their eyes the uniforms and boots of the police, and the conversation betrayed that those holding them belonged to the police. They spent one night sharing their cell with a drunk. They were twice moved to other places in police cars. One of them was a modern prison (believed to be Ezeiza).

To induce them to reply to questions, Moreno and Romero say they were burnt in the face with cigarettes and were repeatedly given electric shocks, particularly in the genitals. Latronica was given the water torture (repeated plunging of his head in water). The questions were directed to their past political activities in Uruguay and their relations with the left in Argentina.

At the time of their release, Moreno and Romero recognized among those present a senior Uruguayan police officer, Campos Hermida, who told them that their family would be in danger if they talked.

146. Case No. 12 - General Carlos Prats

The murder of General Prats is perhaps the most widely known of all the cases of assassination of refugees.

In October 1970, General Prats was appointed Commander-in-Chief of the Armed Forces of Chile by President Allende after the assassination of General Schneider by extreme rightists. From November 1972 to March 1973, a state of emergency was proclaimed in the province of Santiago following an attempt on his life. In August 1973, he was recalled to the government by President Allende as Minister of Defence. Strongly criticized by the right and respected by the left, General Prats resigned as Minister and as Commander-in-Chief at the end of August.

After the coup on September 11, 1973, he asked the new régime in Chile to be allowed to leave the country, and on September 15, 1973, he left for Argentina where he sought and was granted refuge.

On September 30, 1974, he and his wife were killed by a bomb which exploded in their car as they were returning to their home in Buenos Aires.

147. Case No. 13 - Natalio Dergan Jorge
Ana Luisa Barraza Cautivo

Dergan is a Uruguayan aged 52. In 1968 he was prosecuted and convicted for association with the Tupamaros. On leaving prison in 1971 he sought refuge in Chile. After the coup in September 1973, he sought and was granted asylum in the Argentine Embassy in Santiago together with his companion, Ana Barraza, a Chilean. They were both allowed to fly to Argentina on January 18, 1974. Dergan was given temporary protection as a refugee "in transit".

In November 1974 they were both living at Calle Renacimiento 2064, Villa 25 de Mayo, in Buenos Aires, and they were both registered at the Buenos Aires office of the UNHCR who were seeking to resettle them in another country. They were expecting to leave Argentina in December for Lebanon.

On November 28, 1974, Dergan left home at 10.00 a.m. in order to go to the office of CAREF (Committee for Aid to Refugees) to collect the money which he received periodically from this organisation (as a refugee, he was not allowed a work permit). About 11.00 p.m. he was brought to his flat by a group of men armed with revolvers and machine guns.

They burst in, searched the premises and interrogated both Dergan and Barraza, accompanied by blows. They asked in particular about other refugees with whom they were in contact. After taking or destroying his personal belongings, they left taking Dergan with them, telling Barraza she would never see him again alive, and threatening that if she made any denunciation or enquiries about Dergan she would suffer the same fate as him. They also said that she must leave Argentina within 10 days and that all their refugee friends must leave as quickly as possible, under pain of death. They took with them her cards from the National Administration of Migration and the Federal Police and a card from the Coordinating Commission for Social Action certifying her status as a refugee in transit.

The UNHCR representative made enquiries of the Ministry of External Relations and of the Federal Police about Dergan's whereabouts, with no result. The Federal Police denied having been responsible for his arrest and said they had no information about him.

On December 11, 1974, two weeks after Dergan's disappearance an attempt was made to kidnap Ana Barraza in the centre of the town, but she managed to escape and take refuge in the office of the UNHCR. On December 15, 1974, with the assistance of the UNHCR, she left for Sweden, where she is now living as a refugee.

No information has been received about Dergan and it is feared that he has been assassinated. On January 31, 1975, a corpse was found in Buenos Aires province of a man of his age, but owing to the condition of the corpse it was not possible to make a positive identification.

148. Case No. 14 - Raul Parachnik Feldman

Parachnik Feldman, aged 25, was a Uruguayan refugee living in Argentina as a political refugee.

He was killed on December 25, 1974, during an attack made on the office of MAASLA (Argentine Anti-Imperialist Movement of Latin-American Solidarity) in the centre of Buenos Aires, and his body left there by his assailants.

* * *

V. COMMENTS AND CONCLUSIONS

149. The first conclusion to be drawn from this study is that the tradition and practice of granting political asylum is still very real and alive in Latin America. Under the considerable political upheavals and tensions which have affected the region in recent years, thousands of individuals have been able to escape persecution and find asylum in neighbouring or other countries. One of the remarkable features of this practice is that in some cases refugees have been granted and have enjoyed asylum in countries having close links, and often similar political regimes, to those of the countries from which the refugees have fled. This reflects the profound humanitarian sense which underlies the noble tradition of political asylum in Latin America.

150. As the High Commissioner for Refugees has had occasion to report in recent years, this fine record has unfortunately been marred by incidents, some with tragic consequences, in which refugees have not been able to enjoy the protection which they are entitled to expect in a country of refuge. Refugees have been attacked or threatened with violence, kidnapped and even assassinated by persons appearing to belong to or to have close associations with the security forces of the countries concerned.

151. There have also been some clear cases of return (or refoulement) of refugees in violation of accepted international principles and even of binding international instruments.

152. There is no evidence to suggest that these violations have at any time been authorised at a high governmental level. It would appear rather that they are the result of over-zealous international cooperation between police and security organisations - or their para-police and para-military offshoots - acting either in ignorance of or in defiance of the legal and moral obligations of their countries.

153. The effect of these cases, relatively small in number as they may appear in relation to the total number of refugees, has been profoundly demoralising for other refugees in the countries concerned. It has given rise to widespread alarm and uncertainty about their future, and increasing pressures by them upon the UNHCR and private relief organisations to help them to resettle elsewhere.

154. Following the military coup in Chile on September 11, 1973, acute fears were felt throughout the world about the plight of the many refugees from other latin american countries, probably numbering about 11,000 who had sought refuge in Chile under the previous régime. These fears led to many representations being made on their behalf to the Chilean government by the international community.

155. Many of the refugees, being suspected of left-wing political activities or sympathies, were particularly sought after in the search and arrest operations carried out by the military authorities after the coup. At least 700 are known to have been arrested and some appeared to have been killed in the early days following the coup. In consequence, several hundred of these refugees sought and were granted political asylum in

foreign embassies. In due course, though sometimes after somewhat protracted delays, the Chilean government granted them safe-conducts and allowed them to leave the country. (Many Chilean nationals also sought and were granted refuge in embassies and legations, so that the total number of persons granted diplomatic asylum following the coup exceeded 2,000). Many thousands of other foreign refugees have been able to leave Chile either with the help of the UNHCR and other refugee organisations or by their own resources, openly or clandestinely. The "safe havens" established by the UNHCR ensured protection for many of these while awaiting departure.

156. In general, it should be said that the Chilean authorities have respected the traditions and conventions relating to asylum, as they have at all times asserted that they would. There have, however, been some cases of refoulement, and there remain at least 31 of the known refugees who are still missing and unaccounted for, and some of whom appear to have been arrested by military or police forces in the period immediately after the coup.

157. The other situation which has caused particular concern is that of Argentina. As is well known, there has been a continuing series of political assassinations in Argentina during the last 2 years, causing many hundreds of victims. These assassinations and threats of assassination have been carried out both by left-wing revolutionary movements and by right-wing organisations seeking to counter them. A detailed report, including lists of victims, submitted to the UN Commission on Human Rights in June, 1975, by the Argentine League for Human Rights indicates that the great majority of these murders have been carried out by movements of the right, and in particular by the well known AAA (Argentine Anti-Communist Alliance) which appears to have close connections with the police. Their analysis of the victims of 298 assassinations in the first 5 months of 1975 shows that 70 were unidentified, 38 were of the right and 190 were of the left. In addition there have been some serious cases of refoulement by official and unofficial bodies.

158. This situation has had disturbing and at times tragic consequences for the large refugee community in Argentina, a country which has found itself burdened by a wholly disproportionate number of refugees. Most of them are of left-wing sympathies and come from neighbouring countries with right-wing military regimes. Consequently, the attacks which have been made upon refugees have all been made by forces and movements of the right. A number of refugees have been killed, and others threatened with death unless they leave the country shortly.

159. In these circumstances, it is a matter for the gravest concern that whereas the government of Argentina have taken strong action, and declared their intention to take even stronger measures, against the revolutionary movements of the left, members of the AAA and other groups from the right seem able to operate with impunity. None, or practically none, of them have ever been brought to justice or even arrested by virtue of the special powers under the State of Siege.

* * *

VI. RECOMMENDATIONS

160. In view of what has been said in the preceding section, the following recommendations are respectfully submitted for consideration by the governments concerned:-

- (1) All governments which have not yet done so should ratify or accede to the two Caracas Conventions of 1954, and the UN Convention on the Status of Refugees, 1951, with the Protocol of 1967, and geographical limitations to the ratification of the UN Convention should be withdrawn.
- (2) No person should be refused asylum except by decision of the highest competent authority. In case of refusal, the representative of the UNHCR should be informed and time allowed for him to make arrangements, if necessary, for the person to be resettled elsewhere.
- (3) Detailed instructions and training should be given to all personnel of police and security forces about the provisions and principles of the relevant international instruments and declarations governing the practice of asylum, and in particular the prohibition on refoulement.
- (4) Strict administrative measures should be taken to ensure that these provisions and principles are enforced, and that disciplinary and legal action is taken against those who violate them.
- (5) Energetic measures should be taken to identify, arrest and prosecute those persons who have been menacing, attacking, kidnapping and assassinating refugees.
- (6) Full support should be given by all governments to the efforts of the UNHCR to resettle refugees on a permanent basis.
- (7) Where necessary, "safe havens" should be established in order to protect persons granted temporary asylum and awaiting resettlement.
- (8) Since resettlement within the region presents less difficulties for refugees, the governments of Latin America should in accordance with Article 2 (2) of the UN Declaration on Territorial Asylum, 1967, and in the spirit of international solidarity, consider accepting for permanent resettlement a share of the refugees within the region, so as to lighten the excessive burden now falling upon countries such as Argentina which have granted temporary asylum to large numbers of refugees.



INSTRUMENTS GOVERNING ASYLUM, EXTRADITION AND REFOULEMENT

IN LATIN AMERICA

1. Latin-American Treaties and Declarations on Diplomatic and Territorial Asylum

Treaty on International Penal Law, Montevideo, 1889

A congress which took place in 1867 on the initiative of Peru was the first attempt at regulating and defining the concept of asylum. It was not, however, until the South American Conference on Private International Law in 1889 that a number of treaties were approved, amongst them one on international penal law, in which for the first time legal standards on diplomatic asylum were included.

These are to be found in Title II, Articles 15 to 18 of the Treaty on International Penal Law, Montevideo, 1889. The treaty was ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay and is still in force as between these countries.

Article 15 provides that no offender who has asylum in the territory of a State shall be surrendered to the authorities of any other State except in compliance with the rules governing extradition. As the provisions relating to extradition (see below) exclude political offences from extradition, the effect of this article is to establish for the first time the principle of non-refoulement in a multi-lateral treaty relating to extradition.

Article 16 states the right to asylum in the words "Asylum is inviolable for persons pursued for political offences".

Article 17 recognizes the right to grant diplomatic asylum in legations or vessels of war anchored in territorial waters and states that "Said asylum shall be respected with regard to political offenders". It also provides that the government of the local State shall have the power to demand that the offender be sent away from the national territory in the shortest possible time, and that "The Head of the legation shall, in his turn, have the right to require proper guarantees for the exit of the refugee without any injury to the inviolability of his person".

Agreement on Extradition, Caracas, 1911

This agreement will be considered below in relation to Extradition, but it contains an important general statement on asylum.

This so-called "Bolivarian Agreement on Extradition" was signed in Caracas and later ratified by Bolivia, Colombia, Ecuador, Peru and Venezuela, and it remains in force to the present day. Article 18 recognizes the existence of the institution of asylum: "Except as provided in the present Agreement, the signatory States recognize the institution of asylum, in accordance with the principles of international law".

The legal effect of this recognition has been called into question. According to some experts its effect is nil since it is limited to a simple reference to existing international law. In the opinion of others, however, it has significant legal effect in that:

- (a) it recognizes asylum as a legal institution and not only as a humanitarian practice;
- (b) the institution is recognized as conforming with the principles of international law, i.e., in consonance with the rights accepted by American countries in their collective utterances;
- (c) by accepting the application of principles of international law, it also accepts those derived from international custom.

Convention on Asylum, Havana, 1928

In 1927, the International Commission of American Lawyers in Rio de Janeiro drew up a draft convention which served as the basis for an agreement concluded at Havana on February 20, 1928, by the Sixth International Conference of American States. The following 14 countries are parties to the Convention: Brazil, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay. It was also signed but not ultimately ratified by Argentina, Bolivia, Chile, United States, and Venezuela. Two other countries ratified the Convention but subsequently denounced it, namely the Dominican Republic in 1954 and Haiti in 1967.

This Convention deals only with diplomatic asylum and lays down more precise procedures. Article 1 makes clear that diplomatic asylum must not be granted to "persons accused or condemned for common crimes, or to deserters from the army or navy" and that such persons must be surrendered upon request by the local government. The imperative character of this provision can be explained by the fact that prior to the Convention there was no agreed practice in cases relating to common criminals.

Article 2 provides that diplomatic asylum "shall be respected to the extent in which allowed, as a right or through humanitarian toleration, by the usages, the conventions or the laws of the country in which granted". This implies that it is the laws and practices of the State granting asylum which govern the appropriateness, the offer and the procedures of diplomatic asylum, and not the legislation and customs of the State having local jurisdiction.

Article 2 also sets out a number of conditions governing the grant of asylum. These may be summarized as follows. Once the State in which refuge is sought has qualified the nature and type of the crime and reached the conclusion that the prosecution is political in nature or for the commission of a political offence and that the case is an urgent one, it may grant asylum. Immediately upon granting asylum the diplomatic agent must report the fact to the State in whose territory he is operating. The Government of that State "may require the refugee be sent out of national territory within the shortest time possible". Equally, the diplomatic agent of the State granting asylum can require "the guarantees necessary for the departure of the refugee with due regard to the inviolability of his person from the country" (Art. 2, para 3). This means that the State in whose territory diplomatic asylum has been granted must grant a safe-conduct to the refugee to permit him to leave

its territory without risk of being arrested.

Convention on Political Asylum, Montevideo, 1933

In 1933 another Conference of American States held in Montevideo again considered the question of diplomatic asylum and adopted a Convention which was supplementary to the 1928 Havana Convention and which, in essence, left most of that Convention in force. It was signed and ratified by Brazil, Chile, Colombia, Cuba, Dominican Republic (which denounced it in 1954), Ecuador, El Salvador, Guatemala, Haiti (which denounced it in 1967), Honduras, Mexico, Nicaragua, Panama, Paraguay and Peru. In June 1954, Costa Rica adhered to it also, making a total of 14 countries in which it is now in force.

In Article 1 the cases in which asylum does not apply are better defined, resulting in an extension of the institution. Asylum is not recognized in cases of "those accused of common offences who may have been duly prosecuted or who may have been sentenced by ordinary courts of justice". Thus, it is not sufficient that there exist an accusation of a common offence on the part of the authorities in the State; rather, criminal proceedings must have been launched against the accused or he must have been judged by the regular courts.

Article 2 makes explicit that it will be the State granting asylum which unilaterally is to decide the nature of the alleged offence, i.e., which determines whether the offence is a political or common one. For the first time this principle is clearly established in a written text, and is not left to be decided by interpretation or custom.

Article 3 provides that "Political asylum, as an institution of humanitarian character, is not subject to reciprocity. Any man may resort to its protection whatever his nationality ..." This establishes clearly that there is no restriction as to the classes of persons to whom asylum may be granted. However, any State which does not itself recognize political asylum, can exercise it in foreign countries only within the limits recognized by those countries.

If, as a result of discussions that may have arisen in a case of political asylum, the withdrawal of a diplomatic agent is requested by the local State authorities, he is to be replaced by his Government and "his withdrawal shall not determine a breach of diplomatic relations between the two countries" (Article 4).

The American Declaration of the Rights and Duties of Man, 1948

The 9th International Conference of American States, which was held in Bogotá in 1948, was an event of great importance in the protection of human rights in the continent. From this Conference came the Charter of the Organization of American States and also the American Declaration of the Rights and Duties of Man. Article 27 of this Declaration, which anticipated the Universal Declaration of Human Rights by a few months, declared:

"Everyone has the right in case of pursuit not resulting from ordinary crimes to seek and receive asylum in foreign territory, in accordance with the laws of each country and with international agreements."

This wording was the result of a compromise between those who wished to proclaim a right to asylum vested in the refugee, and a right to grant asylum vested in the State of refuge.

Convention on Diplomatic Asylum, Caracas, 1954

Continuing the progress in codifying asylum on the American continent, two instruments were approved on the occasion of the 10th Inter-American Conference in Caracas, both of even date, March 28, 1954: The Convention on Diplomatic Asylum and the Convention on Territorial Asylum.

The Convention on Diplomatic Asylum covered the same matters as those dealt with in the Havana and Montevideo Conventions, with a number of additional provisions. In some respects it extended the scope of diplomatic asylum. In others it was more restrictive. It was signed by 19 States although ratified by only 12 namely: Brazil, Costa Rica, Dominican Republic (with reservations), Ecuador, El Salvador, Haiti (who denounced it in 1967), Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela.

Article 1 establishes that "persons being sought for political reasons or for political offences" can benefit from asylum. This is a wide definition in that it extends protection even to those sought "for political reasons". On the other hand, Article 3 lays down the limits of asylum, namely that it may be granted only "when the acts giving rise to the request for asylum, whatever the case may be, are clearly of a political nature". Asylum may be granted to any person, whatever his nationality (Article 20).

Article 4 reiterates the point that characterization of the nature of the alleged offence and/or the appreciation of the nature of the reasons for the person being sought are left to the State granting asylum to decide unilaterally.

In various articles, particularly Articles 5 and 6, urgency is mentioned as a condition. This urgency is present when the refugee "is in danger of being deprived of his life or liberty because of political persecution and cannot, without risk, ensure his safety in any other way". Again, it is for the State granting asylum to determine the question of urgency (Article 7).

Article 9 lays down that "the official furnishing asylum shall take into account the information furnished to him by the territorial government", but "his decision to continue the asylum or to demand a safe-conduct for the asylee shall be respected".

The places which can be used for asylum are defined more widely to include the seat of a diplomatic mission, the residences of chiefs of missions or premises provided specifically for the purpose of asylum in cases of numerous refugees, military camps, and war vessels or aircraft, excluding those under repair (Article 1).

Articles 11 and 12 deal with the procedures for safe conducts. Having granted asylum, the State granting asylum may request a safe conduct and the territorial State is obliged to grant it. The territorial State may also require the immediate departure of the asylee from the country, and in this

case the State granting asylum must proceed with the evacuation as soon as the appropriate safe conduct with the necessary guarantees for his safety has been obtained.

The principle of non-refoulement is clearly stated in Article 17: "Once the departure of the asylee has been carried out, the State granting asylum is not bound to settle him in its territory; but it may not return him to his country of origin unless this is the express wish of the asylee."

Provision is also made to the effect that the break-off or suspension of diplomatic relations between two States cannot serve as a pretext for considering the asylum at an end or for the seizure of the refugee (Article 19) and diplomatic asylum is not subject to reciprocity (Article 20).

On the question whether there is a Right to Asylum or Right to Grant Asylum, Article 2 defines the matter by providing that "Every State has the right to grant asylum; but it is not obligated to do so or to state its reasons for refusing it". The Uruguayan delegation expressed reservations to this Article and to the corresponding Article 20 of the Convention on Diplomatic Asylum "since the Government of Uruguay understands that all persons have the right to asylum, whatever their sex, nationality, belief or religion". The Guatemalan delegation also expressed reservations to both articles because there was no declaration that States are obligated to grant asylum "because we uphold a broad, firm concept of the right to asylum". However, as Guatemala did not subsequently ratify the Convention, their reservations retained interest only as historical precedents.

Convention on Territorial Asylum, Caracas, 1954

This Convention is in force for Brazil, Costa Rica, Ecuador, El Salvador, Panama, Paraguay, Uruguay and Venezuela. Haiti, one of the ratifying States, denounced it in 1967. It is the most important inter-American Convention on territorial asylum. An earlier Treaty of Montevideo on Political Asylum and Refuge was drawn up in 1939, but only Paraguay and Uruguay ratified it. It was signed without ratification by Argentina, Bolivia, Chile and Peru.

Article 1 provides that "Every State has the right, in the exercise of its sovereignty, to admit into its territory such persons as it deems advisable, without, through the exercise of this right, giving rise to complaint by any other State". This right extends to persons who in their country "are persecuted for their beliefs, opinions or political affiliations, or for acts which may be considered as political offences" (Article 2).

Article 3 provides that: "No State is under the obligation to surrender to another State or to expel from its own territory, persons persecuted for political reasons or offences." It is to be noted that the principle of non-return, or non-refoulement, is here stated as a right rather than as a duty or prohibition imposed upon the state of refuge. This provision is carried further on a wider international scale by the Convention and Protocol on the Status of Refugees of 1951 and 1967 (see below).

Article 4 states that "The right of extradition is not applicable in connection with persons who, in accordance with the qualifications of the

solicited State, are sought for political offences, or for common offences committed for political ends, or when extradition is solicited for predominantly political motives". The characterization of the nature of the offence, or the motivation of the request for extradition, is left to the requested State.

The practical importance of this Article should be noted. There are many situations in which common crimes are committed for political ends and should, therefore, for this purpose be treated ⁱⁿ the same way as political offences. Also, some countries are reluctant to recognize crimes as political crimes and classify them all as common offences. There are also cases in which the nature of the crime is such that it may be considered either common or political and its true nature can only be determined in relation to the purposes of the offender. There are other cases where, although a common crime was committed, it can be inferred that extradition is requested for "predominantly political motives" or that the person requested is likely to suffer persecution for political reasons. Article 4 enables and requires the requested State to look at the real nature of the offence or the real motive for the request for extradition.

Article 5 helps to clarify a situation frequently arising in practice, by establishing that the mere fact that a person has entered the territory of a State surreptitiously or irregularly does not affect the provisions of the Convention. This is of the greatest importance, because in cases of political persecution persons whose life or freedom is threatened will attempt to seek safety by whatever means are at hand. One of the means, as experience has frequently shown, is to leave their own country clandestinely and enter another country by similar means.

Political opinions expressed by refugees under the domestic law governing freedom of expression in the State of refuge cannot be a ground for complaint by a third State, except when they amount to systematic propaganda inciting the use of force or violence against the complaining State (Article 7).

Similarly, the freedom of association and freedom of assembly of refugees is recognized subject to the same exception (Article 8). However, at the request of the interested State, the State of refuge shall keep watch over, or intern at a reasonable distance from its border "notorious leaders of a subversive movement", or people who have shown a disposition to join such a movement (Article 9). Such internees must be allowed to leave for a third country if they wish (Article 10).

American Convention on Human Rights, San José, 1969

As only two of the required 11 ratifications have been made (Colombia and Costa Rica), this Convention has not yet come into force. It was, however, adopted by virtually all the American States and contains an important statement of the principles of asylum and non-refoulement. It provides in Article 22:

"... 7. Every person has the right to seek and be granted asylum in a foreign territory, in accordance with the legislation of the State

and international conventions, in the event he is being pursued for political offences or related common crimes.

"... 8. In no case may an alien be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his right to life or personal freedom is in danger of being violated because of his race, nationality, or religion, social status or political opinions."

2. Latin-American Multi-Lateral Extradition Treaties and Conventions

The following are the principal multi-lateral extradition treaties and conventions in force in Latin America, all of which make exceptions in the case of political offences. In doing so they, in effect, recognize the right of the requested State to grant asylum in such cases, as well as the principle of non-refoulement under which they are required not to return refugees to countries where they are in danger of political persecution. It is important to note the mandatory terms of the provisions against extradition in political cases.

Treaty on International Penal Law, Montevideo, 1889

Ratified by Argentina, Bolivia, Paraguay, Peru and Uruguay.

Article 23 provides that "Political offences, offences subversive of the internal or external safety of the State, or common offences connected with these shall not warrant extradition". It is for the requested State to determine the character of the offence "according to the provisions of the law ... most favourable to the accused".

Agreement on Extradition, Caracas, 1911

Ratified by Bolivia, Colombia, Ecuador, Peru, Venezuela.

Article 4 provides that the requested State shall not extradite a fugitive if it considers the act on which the request is based to be "a political offence or a related act" or "if the requested person proves that it has been made for the purpose of trying or punishing him for a political offence or a related act". It further provides that no surrendered person "shall be tried or punished for any political crime or offence or any act connected therewith, committed prior to his extradition".

An attempt on the life of a chief of state shall not be considered a political offence or related act.

Convention on Private International Law (Bustamante Code), Havana, 1928

Ratified by Bolivia, Brazil, Chile, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Peru and Venezuela.

This Convention, known as the Bustamante Code from its preparation by the distinguished Cuban lawyer, Dr. Sanchez de Bustamante, was signed in Havana in 1928. Book IV, Title III of the Code deals with extradition. The most relevant articles for the purposes of this study are:

"Article 345. The contracting States are not obliged to hand over their own nationals. The nation which refuses to give up one of its citizens shall try him."

"Article 355. Political offences and acts related thereto, as defined by the requested State, are excluded from extradition."

"Article 356. Nor shall it be granted, if it is shown that the request for extradition has been in fact made for the purpose of trying or punishing the accused for an offence of a political character in accordance with the same definition."

"Article 357. Homicide or murder of the head of a contracting State or of any other person who exercises authority in said State, shall not be deemed a political offence nor an act related thereto."

"Article 378. In no case shall the death penalty be imposed or executed for the offence upon which the extradition is founded."

Convention on Extradition, Montevideo, 1933

Ratified by Argentina, Chile, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, United States.

Article 3 provides that extradition does not have to be granted:

"(d) when the accused must appear before any extraordinary tribunal or court of the demanding State. Military courts will not be considered as such tribunals.

(e) when the offence is of a political nature or of a character related thereto. An attempt against the life or person of the Chief of State, or members of his family, shall not be deemed to be a political offence.

(f) when the offence is purely military or directed against religion."

3. The Universal Declaration of Human Rights, 1948

Article 14 of the Universal Declaration of Human Rights, approved by the General Assembly of the United Nations on December 10, 1948, declares:

"(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations."

It was made clear during the debate in the General Assembly that the words "the right to seek and to enjoy asylum" do not imply a right in the individual to be granted asylum, but they do recognize that once granted asylum he is entitled to be protected in his enjoyment of it.

4. The U.N. Convention Relating to the Status of Refugees of 1951 and the Protocol of 1967

The 1951 International Convention relating to the Status of Refugees has been ratified or acceded to by the following Latin-American countries: Argentina, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru and Uruguay. All these except Colombia and Peru are also parties to the Protocol of 1967.

This Convention consolidates previous international instruments relating to refugees and provides the most comprehensive codification of rights of refugees at the international level. It lays down minimum standards for the treatment of refugees without discrimination. It provides various safeguards against expulsion, and makes provision for a refugee travel document. Among the important provisions to which no reservations can be made are the definition of "refugee" and the principle of non-refoulement.

The Convention applies only to persons who have become refugees as a result of events occurring before January 1, 1951. The Protocol removes this limitation. It is, however, an independent instrument, accession to which is not limited to parties to the Convention.

States adhering to the Convention and Protocol may do so in relation either to all refugees, or only to those who have become refugees as a result of events occurring in Europe. The accessions of Argentina, Brazil and Peru are subject to this geographical limitation.

In spite of these geographical limitations, the Convention and Protocol still have a wide application in Latin America. According to the 1975 report of the U.N. High Commissioner for Refugees to the General Assembly (E/5688 of June 4, 1975, paragraph 141), of the 118,000 refugees in Latin America, 91,000 became refugees as a result of events occurring in Europe.

The definition of refugee in Article 1 includes any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" is outside the country of his nationality (or having no nationality, the country of his residence) "and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country".

Among the many provisions of this Convention, the following are perhaps the most relevant for the purposes of this study:

- A refugee shall have free access to the courts of law, including the same legal assistance as is available to nationals (Article 16).
- Refugees lawfully in the territory of a Contracting State have the same rights to choose their place of residence and to move freely within the territory as other aliens in the same circumstances (Article 26).

- The Contracting State shall issue refugees with travel documents to travel outside the territory, unless compelling reasons of national security or public order otherwise require (Article 28).
- Contracting States may not impose penalties on refugees on account of their illegal entry or presence if coming from a territory where their life or freedom was threatened, provided that they present themselves to the authorities without delay and show good cause for their illegal entry or presence (Article 31).
- Article 32 governs expulsion. A refugee shall not be expelled save on grounds of national security or public order and then only in pursuance of a decision reached in accordance with due process of law, including the right to give evidence himself and the right of appeal. In case of expulsion the refugee must be allowed a reasonable period within which to seek legal admission into another country.
- Article 33 contains a prohibition of expulsion or return (refoulement) to the country from which he has fled. This Article provides:
 - "1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.
 2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country."

The words "expel or return" are important. The word "return" is, it is submitted, wide enough to include the case of a refugee who arrives at the frontier or at an airport of a Contracting State seeking asylum. If the Contracting State is not willing to grant him asylum, it should, where the conditions of this Article are satisfied, permit him to proceed in transit to another country within a reasonable time, or even expel him to another country willing to receive him. It is to be noted that this Article, unlike many others in the Convention, does not speak of "a refugee lawfully in their territory".

5. U.N. Declaration on Territorial Asylum, 1967

In the same year as the 1967 Protocol was passed, the U.N. General Assembly adopted unanimously by Resolution 2312 (XXII) an important Declaration on Territorial Asylum.

After the preambular paragraphs referring to the U.N. Charter and Articles 13 and 14 of the Universal Declaration of Human Rights, the Resolution recommends States to base their practices relating to territorial asylum upon the following principles:

Article 1 affirms that

- (i) "asylum granted by a State, in the exercise of its sovereignty, to persons entitled to invoke Article 14 of the Universal Declaration

of Human Rights ... shall be respected by all other States",

- (ii) the right may not be invoked by persons who have committed "a crime against peace, a war crime or a crime against humanity",
- (iii) it is for the State granting asylum to evaluate the grounds for the grant of asylum.

Article 2 says that where a State finds difficulty in granting or continuing to grant asylum, other States should consider appropriate measure to lighten the burden of that State.

Article 3 makes an important declaration on non-refoulement. "No person entitled to invoke Article 14 of the Universal Declaration shall be subjected to measures such as rejection at the frontier or, if he has already entered, ... expulsion or compulsory return to a State where he may be subjected to persecution." (Emphasis added.) Exceptions may be made only for overriding reasons of national security or to safeguard the population as in the case of mass influx. In such cases the State concerned shall "consider the possibility of granting the person concerned ... an opportunity, whether by way of provisional asylum or otherwise, of going to another State".

Article 4 says that asylees must not be allowed to engage in activities contrary to the purposes and principles of the United Nations.

The importance of this Declaration lies in the fact that it spells out in clear terms the minimum standards implicit in the application of Article 14 of the Universal Declaration of Human Rights and recommends their application by all Member States, whether or not they are parties to the 1951 Convention and the 1967 Protocol.

In particular, it contains a very positive statement of the principle of non-refoulement applying to all persons who (in the words of Article 14) "seek ... asylum from persecution", except "in case of prosecution genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations". This statement makes clear that the principle applies equally to rejection at a frontier as to expulsion or return of a person who has already succeeded in entering the country.

* * *

REFUGEES IN CHILE MISSING SINCE THE COUP OF SEPTEMBER 11, 1973

Name	Country of Nationality	Observations
1. Arcos, Ariel	Uruguay	Disappeared about 11.9.73
2. Barreneche Abril, Omar	Uruguay	
3. Befazzoni Santestevan, Eliana	Uruguay	Wife of No. 28
4. Blanco Castillo, Juan Andrés	Dominican Republic	Disappeared on 18.9.73, having left for Valparaiso
5. Carvajal Moraes, Raúl	Venezuela	Disappeared at Pisagua on 30.11.73
6. Cendán Almada, Juan Angel	Uruguay	Arrested by soldiers at Espoz 2624, Las Condes, Santiago, with No 11
7. De Souza Kohl, Nelson	Brazil	Arrested by Air Force personnel from El Bosque on 15.9.73
8. Estévez Cáceres, Alejandro	Ecuador	Arrested 10.10.73 and taken to police sub-station at Quinta Recoleta
9. Etcheverry Pucci, Carlos Antonio	Uruguay	Arrested on 10.10.73 with Nos. 12 & 30 at Puente Alto
10. Fernández Fernández, Julio	Uruguay	Arrested on 10.10.73 at Avenida España 474 and taken to the School of Parachutists in Colina
11. Fontela Alonso, Alberto	Uruguay	Arrested with No.6 and taken to the Military School and later to the barracks of the Tacna Regiment
12. Fossatti, Luis	Uruguay	Arrested on 10.10.73 with Nos 9 & 30 at Puente Alto
13. Gadea Galán, Nelsa	Uruguay	Disappeared on 19.12.73
14. García, Venecio	Paraguay	Disappeared on 11.9.73
15. García Franco, Dr José Felix	Ecuador	(Hospital worker) arrested and disappeared
16. Gonzalez Arceluz, José Manuel	Uruguay	

<u>Name</u>	<u>Country of Nationality</u>	<u>Observations</u>
17. Leon Bermudes, Atilio	Uruguay	
18. Lesta Santopietro, Francisco Juan	Argentina	Arrested in October 1973 at Pisagua
19. Lopez Lopez, Arazati (alias Korsack, Ricardo)	Uruguay	Arrested at Avenida España 162, Santiago, on 14 or 15.9.73 by soldiers, who accused him of theft
20. Meir, Washington	Uruguay	
21. Pagardoy, Enrique	Uruguay	Disappeared about 11.9.73
22. Pesle Menu de Meril, Etienne Marie Louise	France	Arrested in district of Valpariso
23. Pezzutto Blanco, Alberto	Uruguay	(Printing worker) disappeared 11.9.73
24. Porras Ledesma, Sergio	Costa Rica	Last seen in National Stadium, Santiago, on 8.10.73
25. Roche, Hugo Eduardo	Uruguay	
26. Saavedra Gonzalez, Enrique	Bolivia	Disappeared 15.9.73
27. S---- Brown, Elchin	Peru	Arrested on 18.9.73 by the Sixth Division at Pisagua
28. Viera Evio, Diego	Uruguay	Husband of No. 3
29. Olmo Calvo, Rafael (Calvo)	Venezuela	Disappeared 14.11.73
30. Pouvas Chouk, Juan P.	Uruguay	Arrested on 10.10.73 with Nos. 9 & 12 at Puente Alto
31. Sevilla Barsona, Juan Carlos	Ecuador	Fingerprints taken at National Stadium, Santiago, at midnight on 14.9.73

