
CONFERENCE

Translated by John Bell

“THERE IS NO TOMORROW WITHOUT YESTERDAY” AN ANALYSIS OF PRESIDENT LAGOS’ PROPOSAL ON HUMAN RIGHTS*

José Zalaquett

In the following pages we reproduce the talk that Jose Zalaquett gave in the Centro de Estudios Públicos (the Centre for Public Studies) about the proposal on human rights announced by President Lagos in August 2002. At the same time we have included the opening words from the Director of the Centro de Estudios Públicos, Arturo Fontaine Talavera, and the conversations that took place with the public at the end of the conference.

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He directed the Legal Department of the Commission for Co-operation for Peace in Chile (later known as the Vicaria de la Solidaridad). After being expelled from the country in 1973, he joined Amnesty International, where he later became Assistant General Secretary and President. He joined the Comisión Nacional de Verdad y Reconciliación (the National Commission for Truth and Reconciliation) between 1990 and 1991, and later on the Mesa de Diálogo sobre Derechos Humanos (the Round Table for Dialogue regarding Human Rights) from 1999 to 2000. He recently advised President Lagos on drawing up the proposal on human rights “There is no tomorrow without yesterday” which is the theme of this conference.

*Conference given at the Centro de Estudios Público on the 26th of August 2003. This is a transcript of the conference and the conversation with the audience that followed.

In the documentary section of this edition the text of the initiative on human rights proposed by President has been included.

In his talk, Jose Zalaquett refers to the contents of the government's initiative, putting it in the context of the debate over human rights not only in Chile but world wide. The author puts forward the idea that the theme of "reconstruction" or "revision" has become one of the great ethical topics of our time during the past decades. At the same time he explains here the objectives of "preventing" and "making amends" which the expression "never again" refers to and he talks about the problems involved in the recognition of truth, pardon and justice.

ARTURO FONTAINE TALAVERA: Good evening and welcome to the Centro de Estudios Publicos. The theme that has brought us together today is one that worries us a lot. It is a serious theme that goes back a long way, and one in which Jose Zalaquett has had a very special participation.

I believe that the theme of human rights occupies a large part of Chilean history. From the Right and from the Left there was, in a manner of speaking, a loss of perception as to what democracy means, which very probably brought about the military coup. One only has to read what was written at that time. One part of the Right, at least, was very fired up by the idea that there was a certain ungovernability that had to do with democracy or with the form that democracy had adopted, which was translated into a series of restrictions or obstacles that prevented the possibility of governing. There was also a kind of yearning, hope and search for a strong, charismatic and authoritarian man who could, for once and for all, impose order: a kind of father figure, severe and hopefully just, but definitely authoritarian. A series of people were thinking along those lines. In intellectual circles there was, in some way, a devaluation about what democracy meant, partly because they had had it, and partly because Chilean had an old democratic tradition and had no knowledge or real experience of what it was like to lose those rights.

On the side of the Left, we know that there was something analogous. Marxist influence was more or less strong and I think the idea existed in a good part of the Left that rights were in fact a formality and that democracy was a kind of dictatorship disguised by the bourgeoisie. In part this was because there was no real appreciation of the rights that they had and also partly because they did have them and took them for granted. Obviously there was an intention to create a socialism with a democratic face but there were those inside the Left who understood that this democratic face was only a facade, a vestibule or an entrance hall and that really, later on, there would come a State in the style of those that were truly socialist, like Cuba or the USSR of that period.

In this fight there were internal contradictions, because the Left, in one way, valued democracy but at the same time believed that their rights were purely formal ones and applauded those regimes that ignored them. On the other hand, there were those of the Right who longed for authoritarianism and those who were horrified at the idea that Chile could go the way of Cuba, because they had the impression that there was no respect for human rights over there —even though they didn't use that expression. They criticised Cuba and Communism in general because there were no “rights” or “liberties” or justice there.

In other words, before the 1973 coup, the link with the tradition of liberties that had been an essential part of the foundation of the Chilean republic was being lost. I believe that this is part of what has to be understood as background to the theme that we are discussing today.

I would say that the experience of the military regime in the field of human rights had a powerful effect on all of us. Obviously in the first place on the victims themselves and their families and later on in general for everyone. Because even though, as in my case, we were not victims, we lived with a general sensation that all those rights and liberties that we had could only be exercised if the government and its security forces permitted it. I have the impression that all the rights and liberties, such as there were, that we exercised were like a favour, like a kind of concession which could be taken away at any moment. There were very uncertain ones.

The feeling of living dependent on a favour that had been granted to us and which could be withdrawn at any moment was a general one and I believe that this has affected our capability a little for listening and understanding when the theme is being discussed today.

I should like to present Jose Zalaquett in a somewhat unusual way, because he, apart from being a great jurist who has dedicated himself to the theme of human rights with such tenacity, responsibility and integrity, is also an aesthete. So I wanted to bring along a piece of a poem by Oscar Hahn, a hard poem, but one that has to do with the theme that we are here today to discuss and that Jose had dedicated the greater part of his life to. I would have liked Oscar Hahn himself to have read it but it is not possible as I believe that he flew to Iowa just today. It's a piece of a poem called “Hueso” (Bone):

It's curious the persistence of bone
 Its obstinacy in fighting against dust
 Its resistance to becoming ashes
 Flesh is cowardly,

It resorts to the scalpel, to ointments and other masks
 That only serve to make up the face of the dead.
 Later or earlier flesh will become dust
 A castle of ashes scattered by the wind.
 One day the pick-axe that is digging into the earth strikes against
 something hard
 It is not a rock or a diamond
 It is a tibia, a femur, some ribs
 A jaw that once spoke and is now going to speak again.

I believe that it is going to speak again thanks to people like Jose Zalaquett. Few people have contributed more in Chile to making sure that we know the truth, we recognise it, we carry out justice and we begin to construct the ethical bases of a society respectful of human rights.

The idea in this meeting is that Jose, for about 30 minutes, talks about President Ricardo Lagos' proposal regarding human rights and afterwards, in a second part, we will have the opportunity to ask questions, make observations, criticisms etc. I shall now leave you with Jose Zalaquett.

JOSE ZALAUQUETT: Good evening. Many thanks, Arturo for your words and for the invitation to speak about President Lagos' proposal "There is no tomorrow without yesterday". What I should like to do in the initial part of this talk is to refer to the contents of the proposal, putting them in the context not only of the debate that has been carried out on the subject in our own country but also in the context of developments internationally during the past few decades on questions regarding political ethics. Today we are accustomed to talk about globalisation when referring to what used to be called "internationalisation" and those who are shocked at this sometimes forget that the world has been in a constant state of unification, of overcoming communal, territorial and group frontiers. Examples of this abound and go back to time immemorial, from the traffic that used to use commercial routes and imperial conquests, passing through religions that aspired to carry the word beyond their own communities and finally, entering the 21st century, to the formation of international organisations of political parties or unions. In the contemporary age we have grown accustomed to transnational businesses and international inter-governmental organisations, such as the United Nations, or regional ones, such as the Organisation of American States. And in recent years the instantaneous flow of information or capital, at planetary level, seems every time more and more natural to us. I don't think I need to go on expanding this.

But sometimes we forget that globalisation also embraces other dimensions in human terms. Together with the internationalisation of activi-

ties and organisations that represent interests and concentrations of power, including predatory ones, there is also a universality in the most noble aspects of humanity, such as ethical concerns and justice. However these processes are not without difficulties. We probably wouldn't want a judge like Garzon to be the Adam of a progeny of "global judges", but maybe we would like to make use, let's say, of 60% of his ADN: keep the strength and the zeal for justice but not the love of being in the spotlight.

On the other hand we must keep in sight that there has always been debate during the gestation of principles, international rules and accords that appear immutable and esteemed today. We only have to think about the debates that took place during the Age of the Enlightenment regarding the ideas of political ethics which seem unquestionable today. So we must learn to look further than the controversial points that separate us today and try to find the sediment of a deeper current, one that will last longer and form the basis of a shared political ethic.

Having said this, I should like to add that it might be enlightening—albeit somewhat simplistic—to refer to the lives of nations, and particularly to the life of democratic regimes, taking into account the image of the mythical cycle of birth, life, death and resurrection. Democracies have a *foundational* moment, a time that is partly historic and partly mythical. The fathers of the country (in the United States they talk precisely of the Founding Fathers) have acquired a legendary stature which certainly exceeds anything to do with their real life: moreover whatever they did or left doing in those fundamental moments has a symbolical force which is projected into the future for many generations to come.

After the *foundational* time, we can talk about an epoch of "life" in the system, in the sense of a *sustainable functioning* of a democratic regime, where it has to suffer, as is normal, thousands of crises and tensions that are inevitable in the daily life of societies: nevertheless, institutions and rules, as well as social agreements and practices, allow these problems to be confronted within the rules and limits of the system and they do not necessarily lead to its breakdown or collapse.

However, political regimes also confront moments of *terminal breakdown*, which are eventually followed by times of *reconstruction* or *democratic rebuilding*. For example, let us think about the periods of rebuilding in Chile after the crisis of the Civil War of 1891 or the years 1925-1932. Or let's think about that famous speech at Gettysburg, that great battlefield of the American Civil War, when Abraham Lincoln spoke about the rebirth of the Republic that the Founding Fathers had created 87 years previously.

The idea of needing to reconstruct co-existence after a serious breakdown is very ancient. Nevertheless, up to a short while ago, there was no internationally accepted theory about what we know today as a transition to democracy. The period or time for democratic rebuilding or reconstruction is different from the foundational moments, the sustainable functioning of the system or its crisis or terminal breakdown.

In effect, regarding the first phase, the *foundation of the republic*, the writings of the thinkers of moral philosophy during the time of the Enlightenment, the liberal or bourgeois revolutionaries at the end of the 18th century, the examples of various Constitutions and political science obviously give us abundant examples for understanding the fundamentals of a democracy, even if we might disagree with some of the details.

As regards the *sustainable functioning* of a democratic regime we have rules that go from the principles of popular sovereignty, the separation of powers, the rule of Law and other fundamental rules of Public Law to the constitutional guarantees in respect to individual rights, which we know today as human rights.

As far as *times of crisis* are concerned there are in existence, as from the 19th century, international legal laws that regulate armed conflict (the Geneva Conventions and other agreements to do with International Humanitarian Rights). There are also international conventions on human rights that regulate martial law and other emergency measures.

But up to 30 years ago there was no theory or international vision about *rebuilding or reconstruction* such as we know today. And why has this vision emerged precisely in the last 20 years? It is not as though there were never any breakdowns in societies previously or any need to reconstruct co-existences that had been broken. History is full of serious crises, failures and attempts to forge a civilised co-existence over the ashes of some political disaster.

The theme of democratic rebuilding and reconstruction has emerged in the last couple of decades because with the process of the globalisation in public opinion, which has been happening since the 70's, there is already a wide consensus on the need to respect human rights. This process of internationalisation really took off in the period following the 2nd World War, the judgements at Nuremberg and Tokyo, the reconstruction of Europe and Japan, the "never again" implicit in the Charter of the United Nations and in the Universal Declaration of Human Rights of 1948 as well as the Geneva Conventions of 1949. In the years following 1948, the initiatives as far as human rights and affiliated matters were concerned consisted of the creation of rules and regulations and international institutions. Such measu-

res came from governments, from the United Nations or from regional organisations like the Organisation of American States and the European Council. Thus, at that stage, the principal international actors in addressing human rights were governments and inter-governmental organisations.

Later, from the 70's onwards, a new international figure came on the scene: the average citizen, like you and me. There suddenly arose movements of people who wanted to participate in affairs that weren't only concerned with trade union advances or personal interests but collective ones. And they wanted to participate in them not as a way to get power but as an expression of interests and values that were shared among citizens in general and that crossed frontiers. This was a new phenomenon: the globalisation of public opinion or civic activism. For example, Amnesty International, the principal non-governmental organisation for human rights, has more than two million members, made up of ordinary everyday people. Other international non-governmental movements and organisations take up different themes of common interest or civic ethics such as the environment or consumer rights. This civic activism, which dates back to the 60's, has been extended. Its latest manifestation is fight against corruption undertaken by organisations like Transparency International, which has echoes of Amnesty International in its name.

This new international conscience and activism had already advanced quite considerably when the transition in Argentina came about in 1983. Later on, with the thaw that was produced by the dismantling of the structures of the Cold War in the 80's, a series of transitions to democracy began that had to do with the necessity for confronting the problem of democratic reconstruction, not as a matter about human rights of time ("Stop Killing" "Stop Torture") but as a need to face up to a past which was weighing down the present, affecting it seriously, and which could jeopardise the future.

Argentina was the first great precedent for this problem of the transition to democracy and the business of human rights. Before the Argentine case there was a swallow that failed to make a summer, which was Greece in 1974, with the fall of the Colonels regime, a case that presented many of the problems regarding truth and justice that were to appear later.

After Argentina, in the last 20 years and in different continents, there have been almost thirty cases of the ending of civil wars and dictatorships that have been followed by attempts for democratic construction or reconstruction. All these examples have been the object of a lot of analysis and comparative studies.

In South America, apart from Argentina, we can mention the cases of Uruguay, Chile and Bolivia (the latter focused on the crimes attributed to the military government of Garcia Meza): in Central America, El Salvador, Guatemala and Nicaragua. More recently, in our hemisphere, we can add the examples of Peru, Mexico and Panama.. Tomorrow there will probably be Cuba and Colombia. We can also think of cases elsewhere in the world, such as Northern Ireland, Central and Eastern Europe, Sri Lanka and the Philippines as well as examples from the African continent, headed by South Africa but also including Chad, Ethiopia, Uganda, Ghana, Sierra Leone etc.

The theme of the reconstruction or re-establishment of democracy, after a period characterised by the violation of human rights, war crimes and other atrocities, runs though the world as one of the principal contemporary questions in political science, human rights and collective and historical memory. It is, without a doubt, one of the great ethical themes of our time and, like every doctrinaire vision or rule which is still in the process of being forged and which is so new and recent, it gives rise, to a large extent, to positions that are both conflicting and controversial. But it is also leaving a sprinkling of agreements which, I believe, will endure.

What are these agreements? I am going to try to summarise and paint a picture of the growing moral consensus that is not purely theoretical but also practical. Within this picture, to which the Chilean experience has contributed tremendously, I will refer to the policies that have been applied in our country.

The picture or scheme is the following: the ultimate ethical objective of a period leading to the re-establishment of democracy is to forge a political order that is just, viable and sustainable —the most just and sustainable possible— based on the experience and debris of a recently divisive and criminal past of war and dictatorship, a past made up of different situations that has led to the breakdown of the political system and civilised co-existence. Given that this is the objective, it is not only the past that weighs on the present and could mortgage the future which is of interest but also the ability to manage the political viability of the present so as it can gradually give way to the future to which it aspires. This is a task that falls fundamentally upon governments and other political actors, but that also involves society as a whole.

From this ultimate ethical objective there arise two more precise objectives, as far as a past of crimes and atrocities is concerned: prevention and repair. It is essential that the crimes do not occur again. The phrase “never again” has become the emblematic symbol that summarises these

aspirations. It is a phrase that goes back to the times of the Holocaust in Europe and which, being evoked a short time ago by the Commander in Chief of the Chilean Army, has a very considerable effect. This “never again” means precisely to confront the past as a form of prevention: we do not want this to ever happen again. And the second more precise objective is to repair the evil that has been done, as far as it can be repaired.

There is a whole arsenal of possible measures to attain these aims. Sometimes these measures can be summarised by one of the following expressions: truth, recognition, justice, redress, reconciliation. These terms have become common enough in public debate and sometimes they are brandished like slogans. Many people refer to the “struggle against impunity”, wanting to emphasise in this way the need for justice.

What measures are applied and how and when they can come about is very important. Let me explain: in these times of re-establishing democracy, what one does or does not do is not a minor thing but plays a major role in defining the future. So, in the light of this, the most important is to begin with the truth. Why? Because in almost all these cases there is a double truth. What is that truth? One that concerns events that can never be justified. For example, torture and the enforced disappearance or murder of unarmed prisoners or those who have surrendered.

On the other hand there are other repressive measures that international law permits, if they are strictly necessary to confront situations which affect the life or security of the nation. In these cases authoritarian governments in general do not deny measures such as administrative detention or restrictions on civil liberties but argue that they are indispensable to confront the serious risks facing their country, even though this is not the case. For example, all the world knows that during the genocide carried out in Rwanda a curfew had to be declared because thousands of people were being murdered. In a case like that nobody would say “they are cutting off the freedom of people to move around”. Everyone in the world would also understand that in such a case it would be necessary to detain several people or agitators to calm the situation down. On the other hand, if a state of siege or some other unconstitutional regime is declared for 10, 20 or even 30 years, as has happened in our region in countries like Colombia, Paraguay or here in Chile, it is clear that in these cases we are dealing with a pretext that gives legal flexibility for those governments to carry out their own authoritarian interests.

But torture, the murder of prisoners or enforced disappearances are absolutely forbidden by international laws. And so, when governments practice them, they don't intend to justify their actions but simply deny

them. These rules regarding actions that are absolutely forbidden reflect ethical principles that all the world has made their own —“internalised” as we say today— and have begun to form part of what we can call a positive and valid international morality.

When facing inescapable moral rules all of us are susceptible, in one way or another, to a reaction which psychologists know as “denial”. When we have a potential conflict between a really pure loyalty and a monstrous event —we can think of a child abused by his parents for example— we wipe the event out or deny it. This is an attempt to resolve the conflict. From Neruda, who used to praise Stalin, to the successive waves of unconditional loyalty practised by some sectors of the Latin American left towards Castro, the Sandinistas, the rebels in Chiapa and now (to a lesser extent) towards Chavez,, via the justifications of the Right —from the Fascist Right in Germany and Italy to the dictatorial rightist regimes in our continent— everywhere and at every time, when there is this conflict between deep loyalties and basic ethical principles, we block out or deny anything that could threaten the former.

This has certainly happened with those who supported the Chilean military regime. But it has also happened to us on the Left with respect to our historical responsibilities which were many and serious. In the spirit of rapprochement which has gradually been coming about in recent years, sometimes we even hear of people who are basically centre-right —let’s say liberal— toning down their comments their comments as regards the gravity of this political responsibility of the Left. On the other hand some of us who were part of the Unidad Popular government have made a somewhat harsher analysis. I think that the design behind this project was, consciously or unconsciously, to arrive at a socialist system and not simply a social-democratic one. And even though in some way the great majority of us who were part of the project had the feeling that it wouldn’t work, we also thought that millions of people really did believe in the essential goodness of the socialist revolution and so “I must be wrong and not them”: At heart, the illusion was that the winds of history would push us to a good port, however erratic the helmsman.

Thus, from the difficulties of the Left to recognise their historical and political responsibilities, which they began to admit from 1979 onwards —although there is still a lot more to recognise— to the enormous difficulties of the supporters of the Pinochet regime to recognise the evidence of the massive crimes that were committed, we see overwhelming examples , in our own country, of this universal phenomenon of denial.

So, the *truth* about events of transcendental ethical importance which have been denied, a truth that has been revealed in an irrefutable way, is of fundamental importance in these processes of transition. We are not dealing with an Orwellian truth dictated in the manner of an elder brother that expresses an interpretation, theory or dogma, but a purely factual truth that has important ethical consequences. Where there gas chambers or not? Was there or was there not a practice of making people disappear? Was there or was there not torture? All this can be established factually.

This truth, revealed in a credible and solemn manner, rips apart the veil of secrecy and social denial, and throws light upon the table. About what? About the crimes that have been denied. Because of this, in Chile, those crimes that have been denied like the disappearances, the political assassinations and the torture, had to be dealt with by a commission for truth.

After periods of a profound breakdown in democracy, global or historical truth cannot simply spring out of judicial investigations and individual criminal proceedings, whose proposition is to establish the innocence or guilt of certain people involved in certain crimes. Such investigations and proceedings are not necessarily co-ordinated and take a long time: even more their judgement and purpose are not aimed at arriving at an ethical narrative of historical significance. To this end truth commissions have been created and established in very different continents. But, as is obvious, these institutions do not themselves guarantee that the desired result can be achieved. A recent study of 21 Truth Commissions that have been created in different countries came to the somewhat sober conclusion that only five of them could be considered to be successful. The Chilean Commission¹ has been the most successful up to now, because it has complied with its mandate and thirteen years later no one has refuted the events detailed in the Rettig Report. The findings of the Commission for Truth and Reconciliation have become accepted not only by the families of the victims and the

¹ The National Commission for Truth and Reconciliation, also known as the Rettig Commission, was created in April 1990 on the initiative of President Patricio Aylwin. It was made up of Raul Rettig Guissen, Jaime Castillo Velasco, Jose Luis Cea Egaña, Monica Jimenez de la Jara, Ricardo Martin Diaz, Gonzalo Vial Correa and Jose Zalaquett Daher. Its aim was to try and establish the truth about the grave violation of human rights during the military regime: to gather together information that would enable the individual victims to be identified and to establish their fate or whereabouts: to recommend measures as to redress and responsibility and to recommend legal and administrative measures to impede and prevent any new and serious abuses of human rights. Almost one year later, on the 12th of March 1991, the Commission published their final report, which later became known as the Rettig Report. An extract of the core parts of the Report, as well as the reactions of the Armed Forces and the Police towards it, were included in *Estudios Publicos*, No. 41 (1991).

lawyers for human rights, but also throughout the political spectrum, including the UDI, the military (via their participation in the Round Table for Dialogue²) and the right wing press. We now talk openly about “detainees who disappeared” and not about “detainees who are presumed to have disappeared”. The figure of around 3,500 victims of the agents of the military dictatorship or of political violence, out of which some 3,200 have detailed cases, is now no longer up for discussion. And it is also not disputed that the great majority of these were crimes, including the 90 cases mentioned in the Rettig Report of victims attributed to armed groups opposing the military regime.

Truth Commissions must be official (which does not mean “official” in terms of towing the government line) because even though the truth can also be known through other means —via the works of playwrights, poets and historians, for example, or the gradual social creation of shared memory and oral history— what concerns the whole community has to be written down, articulately, in the annals of the nation: it has to be put down in a serious manner and made public.

This is the sense that lay behind the Commission for Truth and Reconciliation proposed by President Aylwin. Very astutely, he named eight people, four of whom had originally supported the military coup and four of whom had been opponents of the military regime. The fact all these people had come to a unanimous conclusion, apart from the exacting nature of the work itself —forgive me that I refer to it in those terms because I was one of those involved— made acceptance of the report easier. Initially the Rettig Report was accepted by the political and social world but not by the Armed Forces. General Pinochet rejected it. Afterwards came the terrible assassination of Senator Jaime Guzman and discussion was frozen. But in the beginning it was circulated a lot.

The Armed Forces came to recognise the abuses to human rights years later, with the Round Table for Dialogue which was instituted on the

² The Round Table for Dialogue on Human Rights was formed on the 21st of August 1999 during the government of President Eduardo Frei Ruiz-Tagle. It was made up of a group of people who included, among others, representatives from the Government, the Armed Forces and the Police and religious and moral institutions. Its principal objective was to propose measures that would contribute towards determining the fate or whereabouts of detainees that had disappeared. The final plenary session of the Round Table for Dialogue took place on the 12th of June 2000, the occasion when the text of the declaration of the table was agreed and which was later known as the Round Table for Dialogue Agreement. The complete text of the Agreement was published in *Estudios Públicos* No. 79 (2000) together with interviews with the lawyer Pamela Perreira and Brigadier General Juan Carlos Salgado, both members of the Table for Dialogue, and the article by Jose Zalaquett “The Round Table for Dialogue on Human Rights and the Process of Political Transition in Chile”.

initiative of the Minister Perez Yoma, in 1999, during the government of Frei Ruiz-Tagle, and which concluded its deliberations in 2000, during the present government of Ricardo Lagos. This recognition opened a floodgate that was followed later on by other declarations until we arrived at the “never again” of the Commander in Chief of the Army, General Juan Emilio Cheyre, last June³.

In this way we have *a known and recognised truth regarding violations to human rights*, including, I repeat, a number of terrorist acts or assassinations that can be attributed to those who violently opposed the military regime.

A second important measure for confronting the past is *redress* for the damage caused. The redress can be material or symbolic, individual or social. It can also be benefits of a distinct type, such as educational, medical attention to overcome the scars left by repression etc. In Chile this type of compensation or redress is put at the disposal of families of all the victims included in the Rettig Report and in the complementary one, issued by its successor organisation, the Corporation for Redress and Reconciliation. All the families of the dead victims are receiving pensions, modest not miserable ones as has been said, of a maximum of about \$280,000 Chilean pesos per month. For some, this is not a great deal of money but it’s more than many families in Chile receive. In accordance with the recent proposal of President Lagos, these pensions will go up around 50% and other benefits for the families will also improve.

As to the other types of compensation, exiled politicians have received benefits regarding customs duties , so as to help them re-integrate into the country, and in certain cases, loans to start businesses. Compensation has also been awarded to politicians who were dismissed either from posts in public administration or state run concerns. Up to now these benefits have been granted to approximately 87,000 people. This is the most numerous group of people who have received compensation and with the new law which extends the expiry date for applying for such benefits, the figure could reach to more than 100,000. Moreover compensation has been awarded to those political parties that had suffered expropriations during the military regime.

³ The declaration of “never again” from General Juan Emilio Cheyre, head of the Army, was made on June 18th 2003, in the city of Antofagasta, during a tour of the principal military garrisons in the north of Chile. General Cheyre took this in referring to the Army, that “we have given concrete proofs that human rights must never be violated again”. With respect to the coup of September 11th 1973, he manifested his wish that there would be no repetition of “a political crisis such as the one that divided us: never again the inability to control this crisis, and never again the crimes, the terrorism and the violence”. (Radio Nederland, www.rnw.nl/informarn/html/act030617-chiledh.htm).

The present proposal of President Lagos also talks about “symbolic and austere” redress for those who were political prisoners or victims of torture and a commission has been established to verify which people would qualify.

There is a serious problem with respect to those who have been tortured because, given the methods generally employed, the torture left physical traces only on a very few of the cases, and the psychological consequences are, generally, indistinguishable from those that stem from other forms of repression. Experts have told us that it is extremely difficult to distinguish one from the other. Because of this, to make a complete catalogue with the names of people who were tortured —“you were tortured and you weren’t”— is a task that is virtually impossible. One way of dealing with this is to say that political prisoners, for the very fact of being prisoners, should receive compensation in accordance with the length of the period they were denied liberty: in this manner you cover both those who were tortured and those who weren’t. But, in addition, if someone has a permanent disability as a consequence of torture, from a certain level upwards, they should receive additional attention or compensation.

Redress also includes symbolic measures, apart from the individual ones I have referred to. In Chile these have taken on various forms, from the pardon that President Aylwin publicly asked for, ensuring the continuity of the state, to the erection of a wall with the names of the victims, the construction of a Peace Park in the Villa Grimaldi (the ex quarters of the DINA), as well as a hundred plaques and monuments throughout the country that have not been given much publicity.

Aside from truth, recognition and redress there is also *justice*. Naturally the situations in which the victors emerge triumphant from a war are inclined towards injustice, by the very nature of things, because there is no system of accountability or counterweight to their power. The only countries that has been in situations like these in the last thirty years have been Nicaragua, in the years after 1979, Afghanistan from 2001 and Iraq this year. All others have been situations much more ambiguous, with military stalemates after long civil wars or transitions to democracy where the forces of the old regime still conserve considerable political or military power.

If we look at these types of political transitions we find a paradox. When someone has all the power that in theory or on paper is necessary to carry out everything that is morally needed, it produces the risk that they will abuse this power. So while the more power the new government has to do what it should do, the more the risk is that it will do what it shouldn’t. This paradox cannot be easily resolved. We have to quite definitely accept

that in talking about a transition to democracy and confronting a past full of violations of human rights there are solutions, but we cannot hope for optimum results.

Having said this, the most difficult solutions to implement are certainly those to do with justice. In order to decide the content of the ethical and legal obligations of the State to administer justice for violations of human rights, it is necessary to ask oneself about the possibility and extent of a pardon. To this effect, the age-old theories of the great religions or humanist traditions come to our aid.

Contrary to what others have maintained, the collective pardon, of the community or of the country is never freely given. The *individual pardon*, heart to heart, is and is rightly celebrated as a great virtue: because of this it is demanded as an ethical obligation, even though it has undeniable moral merit. Nevertheless, the *pardon of the community*, whether it be from a church or a state, is only granted when the perpetrators recognise that they behaved badly, declare the truth, express a commitment never to do so again and are willing to make amends.

This is the same in all traditions. For example, if someone calls on a Catholic priest and the following conversation takes place: “Father, I ask for your absolution”. “For what?” “I can’t tell you”, the conversation is obviously not going to go any further. The same would happen if the person confessed to the evil he had committed but declared that it was in fact well done or that he was going to do it again.

Why does the basis for a social or community pardon require all the steps we have mentioned, from truth to redress? Because the idea of the pardon is to reinforce the structure of the moral rules of the community. Later, when someone who takes a beam or a brick from the structure returns to the place, cements it back and makes it firm again, through his repentance, his resolve not to do the same thing again and his willingness to make amends, he is thereby forgiven.. But if he stubbornly persists in maintaining an attitude of denial and rebellion, he is punished. It has been this way, with a few variations, in all the great religious traditions, from time immemorial. The pardon of the community has the sense of strengthening values that have been transgressed. An individual pardon, on the other hand, springs from the nobility of a heart to heart experience and here we can talk about something that is freely given. The pardon of the community and the individual pardon are two entirely different things, even though they are often confused.

The international community, after the 2nd World War, developed a theory of pardon saying that there are unforgivable crimes. What are these

crimes? The idea has finally been agreed that they fall into two categories: *crimes against humanity* (including genocide) and *war crimes*. The latter, the most serious transgressions to the rules of war, are established in the Geneva Conventions and the other agreements of International Humanitarian Law. On the other hand, the definition of crimes against humanity has taken a long time to evolve and has finally managed to be consolidated and elaborated in the Statute of Rome of 1998, which established the International Criminal Court and which came into force last year. According to this treaty, a number of acts are considered as crimes against humanity (such as assassinations, torture, deportations etc), as long as they form part of a systematic or massive attack against the population and are premeditated.

Such war crimes and crimes against humanity cannot be subject to legal principles or to amnesty. In reality the “non-amnesty” principle does not have expressly textual support in International Law, but the increasingly uniform interpretation of international organisations engaged in the protection of human rights is that the obligation that International Law imposes on states to investigate, prosecute and punish certain very serious crimes implies that such unlawful actions are not subject to amnesty.

So, how can we analyse what happened in Chile in the light of what has just been said? What happened is that certainly crimes against humanity were committed under the aegis of the DINA⁴: there can be very few doubts about this. This illegal organisation was set up to exterminate determined categories of people, especially those militants considered to be the most dangerous in three of the main political parties —the Communist Party, the Socialist Party and the MIR— and in fact murdered several hundreds of them. There was a policy that was centralised to that end. Whether this can also be applied or not to the crimes of its successor organisation, the CNI, is subject to discussion but crimes can certainly be attributed to the DINA. Thus, if there is no doubt that crimes against humanity were committed by agents of the military regime, not *all* the crimes committed were of this nature.

In our country these crimes of the DINA were covered by the Amnesty Law of 1978, with the exception of the assassination of the ex Chancellor Orlando Letelier, which was carried out in 1976. Nevertheless there is still no firm legal line from our tribunals as to the interpretation of this

⁴ The DINA (the National Intelligence Office) was officially created in June 1974, under the command of Colonel Manuel Contreras until its dissolution in August 1977, when it was replaced by the National Information Centre (the CNI). Colonel Contreras, promoted to General after the DINA was dissolved in 1977, was sentenced to seven years in prison in 1995 for the assassination in 1976 of the ex Chancellor Orlando Letelier in Washington, D.C.

amnesty. What is happening is that the great majority of judicial investigations and trials regarding the cases of those who have disappeared have remained open while it has not been established, with any certainty, the fact of death and information about the death from the legal point of view .

Judicial action regarding these cases and its effectiveness increased enormously after recognition of the crimes was achieved by the Round Table for Dialogue in 2000, to the point that the best known lawyers in this area say that in the last two years there has been more judicial activity than in the previous ten years. This is due to the nomination of judges dedicated exclusively to these cases and, furthermore, to the upheaval caused by the Armed Forces in recognising what happened. Even if the report that they handed over has not been able to be corroborated and errors have been found in it, the recognition itself has shaken consciences. In any case, there have been a lot of advances in recent years, as one discovery leads to another and the tangle of cases starts unravelling.

In Chile, contrary to what is thought outside the country, including by those people who are relatively well informed, there has been more justice done than any other country in a comparable situation. I am not talking about cases like Nicaragua, where thousands of people passed before popular tribunals after the fall of Somoza and before the war against the “Contras”, or about other situations of a complete military victory of one side over another, but about situations, like the Chilean one, that suppose a greater degree of ambiguity in the relationships between political forces during the transition period. In Chile around 40 people have been imprisoned for violations of human rights and around 250 are still being submitted to justice, in one legal procedure or another.

If we look at the years that have passed since the beginning of transition in Chile, certain measures have made others possible. The truth that was made public by the Rettig Commission acted as a kind of ice breaker, making advances possible in areas that had seemed impenetrable. Years before, in 1978, the military government carried out a plebiscite so as to reject a United Nations resolution that much blander than the Rettig Report. The official line of the regime, accepted by the majority of its supporters, was that no violations of human rights had occurred. After the Rettig Report the truth could not be denied, even though many of the same supporters fell back on a new line of denial: OK, violations of human rights did occur but Contreras was to blame: there was no policy in this sense from either Pinochet or the Junta”. But, in the end, the truth won and also the truth about the Unidad Popular, of course, which I believe is pretty well established, although maybe not so deeply recognised.

I would dare to say, even though I admit it's speculation, that without the Rettig Commission Manuel Contreras would not have been in prison four years later: without the climate that it created it would have been much more difficult to put him on trial and make him comply with the sentence.

During the years of the Concertacion governments there have been three proactive moments of public politics as regards human rights: 1) The first two years of Patricio Aylwin's government, with the creation of the Commission for Truth and Reconciliation, the Law for Redress in 1992 and the letter of the President to the Supreme Court, exhorting them to consider that amnesty was not an obstacle to investigate cases, 2) The Round Table for Dialogue, created in 1999 on the initiative of Edmundo Perez Yoma, the then Minister of Defence, and 3) The last three months, which have concluded with the proposal of President Lagos, prepared not only on the initiative of the government but also by the whole of the political world, even though it was the government who received the different proposals and formulated the document "There is no Tomorrow without Yesterday".

In between these "proactive" moments, it is not as if there has been nothing going on: there has certainly been a lot of activity among the judges, the families and the human rights lawyers. Sometimes this has led to periods of relative stagnation but there has been no backing down as regards the ethical principles associated with the transition to democracy and the past crimes which we referred to before.

Because of this, from the international point of view, Chile is seen as an example of a country that has not given up or backed down, as Argentina has done with the so called "final point" and "under orders" laws passed by the Alfonsín government.

Now, having arrived at the truth about crimes that had previously been denied, having got this recognised by the country at large and favoured the idea of redress, what is there left to do? There remain the problems of a more precise truth as regards the people who disappeared and of a justice that, up to now, has proved to be inconclusive. Because of this President Lagos has brought together various suggestions and proposed measures that specify truth and justice.

Let me explain: we know that the people who disappeared were detained, killed without trial and buried secretly and that later on many of them were disinterred and their remains thrown into the sea or destroyed in some other way. But there are various points that are still pending. To begin with, find the remains, if it were possible or, at least, know what fate they really suffered and at the hands of whom. To obtain this information it is necessary to create incentives to make the handing over of information

easier but without violating the international laws that forbid crimes against humanity from being absolved.

What are the incentives proposed by the President to get to the truth? Firstly, they exclude anyone who has responsibility in what can be called crimes against humanity from any benefit at all. Secondly, those who already being accused or charged of other crimes but who have not committed crimes against humanity, and who collaborate in clarifying the truth will receive a reduction in their sentence which could be substantial, even including the commutation of a deprivation of liberty for a restrictive one. Thirdly, perpetrators of crimes about which nothing is known but who have also not committed any serious ones themselves —this could be a conscript who buried or disinterred a body or a soldier involved in a shooting who today is sixty five years of age living on his farm in the South, breeding sheep, and who doesn't dare to open his mouth for fear of spending a day or a year in prison— would receive a kind of “immunity” that is not the same as impunity. This means that in the absence of any proof, his declaration and everything that logically arises out of it will not be used against him in a trial.

Apart from that, if anyone has already been condemned and admits to other crimes in which he has participated, he could be eligible for a commutation of his sentence or other benefits etc. These benefits would only be applied for a limited time, from 6 months to a year.

In this way we are trying to get at more of the truth, without surrendering the obligations imposed by International Law, using incentives and applying criteria that have produced results elsewhere and that have been a practical demonstration of the theories of cost-benefit. Thus, a person who has never been discovered is going to say: “If my colleague on patrol declares the truth and I don't within a fixed time, I could get involved and not receive any of the benefits”. It is anticipated that we will move more openly towards the truth by using these measures.

The president has also proposed that we try and get a system of justice that will be at the service of a fairer order. In these times of restoring democracy, if we allow the complete absence of justice we would be designing the moral software, which I spoke about before, very badly. But also we are not talking about a kind of Old Testament justice. If you will allow me to continue with this religious metaphor, we are also lacking something of the spirit of the New Testament. That is to say that the worst crimes cannot remain unpunished. As some of you know, for a long time now I have maintained that this is not incompatible with clemency, above all because in many cases the persons involved not only were acting under

orders or unsurmountable fear —and that is not to say that taking orders from above constitutes an excuse— but also that there was a generalised climate of hate and political insanity, which doesn't in itself constitute an excuse but does invite us to have a certain degree of clemency as regards crimes that were relatively less serious.

The president has also said that he is willing to welcome a proposal which could pardon some Leftist militants who have spent 10 years in a high security prison (in very harsh conditions and on evidence that could be criticised legally) for crimes and offences committed after the return of democracy. In the same way he has declared himself willing to pardon those soldiers who, having spent a long time in prison, express regret and collaborate with the clarification of the truth.

Finally, and with this point I shall finish, the proposal of President Lagos looks towards the future and suggests three types of measures: 1) *Legal reforms*. For example, that military jurisdiction once and for all aligns itself with the more modern tendencies of the civilised states and is reserved for those offences that fall strictly under its control. Or also incorporate several international agreements on human rights among the other reforms and initiatives detailed in the proposal. 2) Push the idea of education in human rights. 3) Create an institution for the promotion of human rights which nevertheless has no precise form at present.

The proposals are forty —two in all and grouped together in the following categories: truth and justice, redress and looking to the future.

Approximately thirty of them require the approval of a law, which does not mean that we need thirty different laws but that they can be grouped together in three or four⁵. As you know, the proposal has received quite a lot of support in the world of politics and a rejection, both respected and understandable, from the families of the victims, to which we can refer, perhaps, in the dialogue that follows.

The idea of the President is to advance rapidly because if we lose the initial impulse, the initiatives could fall by the wayside. Thus it is necessary that the proposal be presented as a legislative proposal as quickly as possible.

This last comment finishes my general presentation. Many thanks.

⁵ On October 23rd 2003 the President sent the following official communications to the Chamber of Deputies:

(a) No. 46-350, with a bill that proposes the elimination of certain textual annotations.

(b) No. 14-350 with a bill that establishes incentives for the handing over of information regarding crimes associated with detainees who have disappeared and politicians who have been executed.

(c) No. 15-350, with a bill that Law 19,123, the Law of Redress, and establishes other benefits in favour of the persons indicated.

Conversations with the audience

—*The following sentence appears in the agreement endorsed by the Round Table for Dialogue and I should like you to comment on it a little: “Nevertheless there are other events regarding which there can be no other legitimate attitude but rejection and condemnation, as well as a firm decision that they will never be repeated. We refer to the serious violations of human rights which agents of State organisations carried out during the Military Government and also the political violence committed by opponents of the Military regime”. This was signed by representatives of the Armed Forces. Could you expand a little on the significance of this and how it’s progressed?*

—This was the most discussed sentence in that famous final session of the Table for Dialogue where we stayed up until three o’clock in the morning: I don’t know if it will be famous but for us it certainly was —or memorable, in any case.

Because the text that we began to discuss was slightly weak as far as admission was concerned and it was the wording of this paragraph that had to be weighed and measured until three in the morning. Several people thought that by saying “agents of the State” it would shift the responsibility to the institution. But I definitely believe that this was a step that opened the way to others, and the successive admissions of responsibility that have happened after that on the part of the military have been clearer and more categorical.

What this sentence means as to its reference of political violence deserves a special explanation. It has to do with the qualification of political assassinations or other crimes by individuals, that is opponents, guerrillas or terrorists whichever is the case. Are we dealing with violations of human rights in these cases or just what could be called crimes? The Rettig Report took this on board and came up with the following : violations of human rights are committed fundamentally but not exclusively by states, which are the signatories of respective international agreements. This does not mean that a life cannot be violated by a guerrilla or another individual, although technically we are talking about different things.

Let me be more precise: a legal possession like a life can be violated by a man who kills his neighbour or could be violated in an internal armed struggle, for example by a guerrilla on behalf of the insurgents or a soldier on behalf of the government, who kills innocent civilians or captured fighters. In peacetime it could be violated by an agent of the state who kills a citizen. In all these cases, the life is affected in the same manner: in the

colloquial sense it is appropriate for the mother of the victim to say that the human rights of her son have been violated. It would be pedantic and insensitive to say; “Look, madam, actually not: the truth is that technically it’s not like that...”.

Nevertheless it is certain that when we talk about violations to human rights we generally mean that international obligations which are imposed on states to guarantee human rights have been violated. Because human rights are guaranteed by national and international legislation, given that the state, as a signatory to the agreements, has made a commitment before the international community. Taking all this into account, guerrillas are obliged to act according to international law, to rules that are called “Humanitarian Rights (which are the rules governing war and other armed conflicts) and these have the same moral standing as the rules regarding human rights: both government fighters and insurgents are under an obligation to obey them. He who kills a policeman on duty at an embassy without any risk to himself and he who kills a dissident are equally to be condemned.

Now, by saying that both types of crimes are equally to be condemned is not the same as saying that the number of victims is comparable. We are not talking about a body count here. On the other hand, in practice, it is even more serious if the crime is committed by the state, according to one of Hobbes’ principles which says that he who commits a crime in the hope of not being discovered is less to blame than someone who commits it with the confidence that his position of power gives him impunity. Why? Because in this case the shepherd becomes the wolf and that is a bigger nightmare. That a wolf attacks a flock or that there is a black sheep is another story. But if the shepherd, the state which is supposed to protect human rights, utilises its power to trample them underfoot, we are definitely in a bad way. It is because of this that international public opinion is mobilised more intensely when dealing with crimes committed by the state. Because if a delinquent or a terrorist commits crimes, the state and society can count on the police, justice, public opinion and the press to confront the events. But if the state employs all its powers to violate human rights, international solidarity is more necessary than ever.

In this sense if someone says, “Look, they didn’t violate your son’s human rights but they violated his humanitarian ones “, academic pedantry and insensitivity would have no limits. So, in a non-academic sense, not technical but colloquial (and this is the way the Rettig Commission reasoned) it could be said that the human rights of those who were victims of the opponents of the military regime were also violated. Even though technically speaking it is not the case, there is a transgression of universal values of

equal standing. Some have political power and others want to get political power through war and in the political fights to maintain themselves in power or to get to power, crimes are committed. He who kills a policeman guarding an embassy in cold blood and he who kills a dissident are equally to blame.

Now, by saying that both times of crimes are equally to be condemned is not the same as saying that the number of victims is comparable. We are not talking about a body count here. On the other hand, in practice it is more serious if the crime is committed by the state, because of one of Hobbes' principles which says that he who commits a crime hoping that it won't be discovered is less to blame than he who commits it with the confidence that his position of power will give him impunity. Why? Because in this case the shepherd has become the wolf and this is our greatest nightmare. That a wolf attacks a flock or that there is a black sheep around is another story. But if the shepherd, the state that is supposed to protect human rights, utilises its power to trample on these same rights, we are definitely in a bad way. And it is because of this that public opinion is mobilised more intensely when we are talking about crimes committed by the state. Because if a delinquent or a terrorist commits crimes, the state and society can count on the police, justice, public opinion and the press to confront the events. But if the state employs all its powers to violate human rights, international solidarity becomes more necessary than ever.

Therefore the category of the crimes is the same but the practical gravity for the stability of the nation is undoubtedly greater when we are dealing with violations committed by the state.

This is the conceptual background to the text of the agreement endorsed by the Table for Dialogue, which brings together references to the crimes committed by both sides in the same clause.

—I have great respect and admiration for the work that you have done on this subject but I have several critical commentaries about what you have been talking about and they are the following. You said that the Rettig Commission has been the most successful of all the Truth Commissions. The first question I have is that if it was so successful, why was the Round table for Dialogue so necessary? The Round Table dealt with themes that weren't in the Rettig Commission, like torture, for example. So it seems that the Round Table for Dialogue was born out of the defects of the Rettig Commission and I should like to hear your observations on this point. The second point is the following: it seems to me that if those accused of human rights violations number around 300 persons, you said 250, it is possible to imagine that the judicial system, with its logic and its

mechanisms to advance gradually in these matters, could be used to put them on trial and it wouldn't be necessary to have these commissions, especially if the number of people involved is so small. And the third point refers to an omission, to the fact that you said nothing in your talk about the case of Pinochet. It seems to me that the change in the military and in the judicial proceedings is explained by the fall of a piece that was immune and fundamental to the system: I am referring to General Pinochet who was arraigned for trial in London because of defects in the Chilean justice system and the defects of the Truth Commission that existed in Chile. Once General Pinochet had fallen, it broke the crown, the cusp of the mountain of immunity, and in judicial logic, there was no other possibility but to resort to the state of law.

—The three themes are certainly very pertinent and we can hold distinct points of view about all of them. A Truth Commission is naturally not only a component but, as in many countries like our own, the corner stone of a policy to confront the past. The Commission is concerned with clarifying the truth about crimes that have been denied, with an historical narrative both coherent and rigorous, at least on the factual side, and not an historical interpretation. Apart from revealing the truth, it is necessary, as we have said, to have an acknowledgement, measures for redress, justice etc. That is to say, the Commission is only an element, albeit an important one, in the arsenal or menu of measures.

I can confirm that the Rettig Report was successful.

But in the first place I would be interested to disagree a little with the comment that the Rettig Commission did not concern itself with torture. The Commission concerned itself with torture in lengthy chapters. What it did not do was to try and catalogue by name all the torture victims, a task that was furthermore impossible. I am going to give some data. As a reasonable estimate, there were between 150,000 and 200,000 people who were deprived of liberty during the 17 years of military rule, be it for 24 hours or for months, weeks or years. In the middle of 1974, General Benavides recognised 47,000 cases of detention. The proposal behind this official acknowledgement was to point out that many people had been freed and that there were only several thousands still detained.

The more serious estimates of the period raised the number to double, if we take into account those who had been detained for a day or a few days in military areas or police stations, without official evidence. Adding on the detentions of the remaining years of the military government, which raided whole populations a lot of times and detained a large number of men, we arrive at the estimated figure that I gave out a moment ago. Out of

this figure, whatever may be the percentage of people tortured or badly treated —torture being defined as an aggravated form of cruel, inhuman and degrading treatment— we are talking in all probability of dozens of thousands of persons.

Apart from the victims of specific crimes, there are always, in every time and place, many others who consider themselves to be victims and in more than one sense they may be. For example, if we take into account all those who declare or have declared themselves to be victims of the Holocaust, we can see that many of them escaped from Europe before the Nazi extermination policies were massively applied. In a sense they are survivors, since if they had not fled, they would have run the risk of being exterminated but they are not survivors if we understand the word to mean someone who, having been in concentration camps, managed to save his or her own life.

Something similar happens with torture. Many of those who passed through a period of prolonged pressure, living under constant fear, can genuinely feel that they suffered torture, although “technically” or legally speaking this is not the case.

In addition there are those who want to appear as victims so as not to remain outside a certain status of legitimacy. All of this is being well studied and is happening at every time and in every place. We can think of the fact that if, after the war, all those who presented themselves as members of the Resistance in France had actually resisted, maybe history would have been different. With this point I mean that if we open an unrestricted process to register every victim of torture or maltreatment by name, it would not be unthinkable that we would have, say, 200,000 registered. For a commission qualified to say with all due conscience that you were tortured and you no, it would be a nightmare. It has never been done anywhere in the world and it can't be.

What we can do is to take notice of the phenomenon, as President Lagos' proposal has, compensate the political prisoners (which also takes in those who have been tortured, although via their status as ex prisoners) and, if there are persons who have been tortured and suffered identifiable physical consequences of torture, with a certain degree of disability which occurs in minute percentage of the cases, these too must be compensated in a special way.

In fact, the Round table for Dialogue did not refer to torture per se but finished off the admission made by Chilean society in the face of the truth that the Rettig Commission had revealed, by involving the military world in it. That would be my comment as regards your first point.

Why not let justice itself act? Obviously we have to let justice act, but it's a problem of speed, time and also of prudence and the ethical sense of clemency.

People are dying. General Gordon has died and so has Sola Sierra.⁶ None of us are getting any younger. Nature follows its course and he who is 70 today will be 80 in 10 years time, if he goes on living. The speed of justice and the speed of our natural life cycle could pull in opposite directions and we are going to find much of the truth buried with those who are going to die. This is the first thing. Secondly, although the justice system has made great advances and is continuing to advance, there are certain blind areas that it cannot break into. Because as you would have seen, in various very good documentaries that have been made and in press articles, there are in existence certain groups or fraternities of intelligence personnel, who even in the 90's were committing crimes and were tied to networks of protection overseas and who, in all probability, have made a pact of mutual support and secrecy. These closed circles are not easy to break into. To create incentives to which allow us to break into them without betraying the principle of justice with respect to the worst crimes seems to me to be a prudent approach. Obviously this is a somewhat controversial position, but it's the meaning that we want given to the President's proposal regarding this point.

I am now going to give a personal opinion about the Pinochet case. I have no doubt at all of his major role in the repression. It seems highly improbable that General Pinochet would not have ordered the main repressive actions or at least, given the general lines of communication, not agreed to them or known about them. To say the contrary is an attempt to save his honour but insults his intelligence and his position as the head man: it would mean that he was simply a puppet.

Now the fact that I am convinced of this, like public opinion throughout the world and a good part of public opinion in Chile —not everyone, obviously— does not constitute legal proof. As far as penal justice is concerned, Pinochet must be presumed to be innocent while his guilt cannot be proved through the due processes of the law. This allows me to point out a frequent contradiction in our public debate. When we talk of those who “disappeared”, some people reply that legally it has not been proved where

⁶ General Humberto Gordon died in June 2000, of a heart attack, at the age of 70. He was head of the CNI between July 1980 and October 1986, the month in which he was named Lieutenant General of the Army and became part of the Military Junta of the Government until November 1988. For various periods, Sola Sierra presided over the Group of Families of Detainees who disappeared in Chile. He died in 1999 as a result of a respiratory problem.

they are or what happened to them, but common sense tells us that they're dead. When dealing with Pinochet the same people also say that legally Pinochet is innocent.

Legally Pinochet is innocent but common sense tells us that those who "disappeared" are dead !. Do you see the contradiction? They use the "truth of common sense" to say that it's absurd to go on investigating the cases of those who disappeared as there is no legal certainty as regards their fate, but they also use "legal truth" and not common sense to say that Pinochet is innocent.

As you have said, Pinochet was the crown or the cusp of a repressive system. If only those responsible, from Contreras downwards, had been summoned to appear in court and Pinochet had died peacefully in bed, without having to respond to anybody, without having said a word of commiseration or answered any questions before a judge, it would have left a very bad lesson for the future of Chile.

Let us remember that when he was on the point of leaving his position as Commander in Chief, in January 1998, lawsuits and charges had already been brought against him, in part because the countdown towards his losing military power had begun since he had to leave his post in March that year. People tend to forget this. There were a dozen charges accumulated against him at the moment he was detained in London: after his detention these rose to more than 200. What I want to say is that what happened to Pinochet with regards to Chilean justice probably would have happened anyway but more slowly and maybe to a lesser degree. It would not have had the same international effect, that's for sure, but already at the beginning of 1998 a certain dynamic had been set in motion to make sure that he answered legally for the acts he had committed in Chile.

I should also like to say that I believe that the rule of law that was applied in the case of Pinochet is a good rule, because legal rules and regulations should be both impartial and universal . If someone asks me, without divulging any names, whether or not I'm in favour of the interpretation of international law that if someone is moderately affected from a mental point of view they cannot receive a fair trial and therefore their trial should be discontinued, I would reply that, yes, I would be in favour of that.

But if, afterwards, when they reveal the identity of the person to me I say "Ah, so it wasn't Mandela or Havel as I thought but Pinochet, so please let me change my mind", that's not right. Universal law is blind: it can be applied to Mother Teresa and to Mussolini. In this sense, this interpretation of a fair trial is correct.

I also don't dispute the conclusions of the doctors. I don't believe that four British doctors and six Chilean ones conspired together, risking their reputation and their careers, to say that Pinochet had "moderate senile dementia" when he didn't, understanding that he doesn't suffer from delusions but that the technical definition of this illness means that he is not capable of managing his day to day affairs alone, from the mental point of view. I.e. that he is handicapped, to a certain extent: that is the technical definition.

Now what is happening is that the Chilean courts decided to apply this progressive interpretation of law deliberately to Pinochet's case. It might appear to be ironic, but ironic or not, it's a progressive step. We do not need to be over suspicious to come to the conclusion that they passed judgement this way because they understood that it gave them the possibility of appearing legally progressive while at the same time solving what appeared to them to be a tremendous judicial and political problem. One can also assume that the government breathed a sigh of relief that the courts encountered this solution.

But what are the effects of this on the collective memory and for the future? What is happening is that the idea that Pinochet never answered for his crimes no longer stands up. It seems relatively immaterial to me, as far as reconstructing democracy is concerned or as an ethical lesson for the future, if a senile person ends up behind bars or not, wearing a striped suit with a number on his chest. What matters is that the wheels of justice turned, even though they turned with the irony, nuances and motivations that we've just spoken about.

—There is a perception that the violations of human rights were not just isolated events, unconnected between themselves, but that they were part of a policy and that this policy had a theoretical foundation in which civilians were involved. That is to say you can make a subtle distinction between those who carried it out and those who really formulated the policy. Regarding the investigation which has been done and the need to know the truth, what information is there about those people who formulated the policy with the somewhat technical objectives of "national security"?

—This theme has been very well documented by Gonzalo Vial in the Rettig Report. Obviously we all discussed it but he laid the basis for it.

What happened—and you can disagree with other aspects of Gonzalo Vial's historical vision but be entirely in agreement with this—is that in Chile and other South American countries there was a spiral of polarisation which was characterised, on the ethical plain, by a dehumanisation of

the opponent. One of the characteristics of this dehumanisation, which went to extremes, was that it made it possible for any neighbour's son to transform himself into a monster. An Amnesty International documentary on Greece, entitled "The Neighbour's Son", showed that under the Colonels' regime in that country torture was applied, as the title suggests, by people who were just like the son of one's neighbour.

How do you get to such an extreme? Firstly, each side perceived the other to be a major threat. Secondly you are dealing with an opponent who is not human: he's sub human or demonic. The expression "humanoid" that Admiral Merino used to refer to the Leftists is a reflection of this attitude. On the other hand the expression "rights of the people" reflects something similar. When the MIR talks about "rights of the people" and not "human rights" it means those who lie outside their definition of "the people" have no rights. Here they are applying the old categories of religious exclusion but with an ideological tint: pagans, infidels, gentiles or whatever.

Thirdly, anyone who participates in the clandestine task of fighting against the great threat posed by subhuman adversaries, sees himself as a double hero: by confronting a danger and by assuming the stain on his reputation and conscience, "so as the rest of the country can sleep in peace". (This is a justification, incidentally, that was given to us by various witnesses, ex - members of the military or the secret police who came along to talk with us during the period of the Rettig Commission).

Other factors that contribute to the formation of a torturer or criminal are peer group pressure, within a disciplined and secret structure, and a kind of initiation rite, such as staining one's hands with blood. Nobody in the group can be exempt from firing a bullet, applying an electrical current or burying someone secretly.

If we apply all these elements, the perception of a serious threat —with some basis in reality but exaggerated or exacerbated— the dehumanisation of the adversary, the ideas of heroism or nobility plus peer pressure and initiation rite, anyone, unfortunately and with few exceptions, could be changed into a monster. We only have to look at the war we have to see that any neighbour's son can be changed into someone who ends up killing children and old people. Under certain conditions the beast emerges in all of us, as in others the angel flourishes.

Right, having said that, the situation of extreme political polarisation was leading predominately, on both sides, to strategies of revolutionary insurgency and counter-insurgency. We are talking about a new style insurgency here which appeared, in different forms, after World War II (firstly with Mao in China, then in Algeria during the anti-colonial war, later on in

Vietnam, under General Giap and afterwards in Latin America with the revolutionary theory of guerrilla warfare advocated by Che Guevara). What these insurgent models all had in common was that they understood the armed struggle to be part of a political strategy in which the line of division between the civil and the military was blurred, as well as the lines between the battlefield and the political scenario and those between the weapon and the ideological pamphlet.

As a response to this type of insurgency, the theory of counter-insurgency appeared, its mirror image, which doesn't mean that it's all clean and above board. Counter insurgency, from Algeria onwards, passing through Brazil and the school in Panama, emerged with the deliberate perception that insurgents do not recognise limits. So counter insurgents do not recognise limits either. "It's the only way of fighting them" they say.

According to Gonzalo Vial, this was the perception that was dominant in the DINA, which was already functioning in October 1973. (Because although the official decree of the creation of the DINA is dated June 1974, General Contreras has recognised that there was a preparatory DINA commission already operating in 1973 and we know that the persons in charge of the future DINA were in the helicopter of the so called "Caravan of Death"⁷ in October 1973. Up to what point General Stark knew about what they were doing and why he wasn't capable of exerting his authority over them and ended up by accepting the crimes that were committed, we still don't know exactly. It's a very complicated business and we haven't managed to unravel it completely. But there certainly was a DINA operation at that time and this marks a great difference between September 11th and post September 11th).

The 11th of September and the days and weeks that followed are about the taking of total power, of a kind of vengeful frenzy that included a number of landowners who felt aggrieved by agrarian reform and who now got their own back by denouncing peasants. But there was no centralised carrying out of crimes. There were cities like Talca which were relatively calm and in the North also hardly anything moved. So the DINA group says (and the analogy between DINA and the SS is not an arbitrary one): We have to stamp on the army's mind the idea that this war has not finished and there is a latent enemy around who is also beyond redemption. The idea of "beyond redemption" is one of the most anti-Christian concepts it is possi-

⁷ Name which was given afterwards to the military retinue, under the command of General Sergio Arellano Stark, that toured various cities in October 1973. As a result of their visit, dozens of detainees were summarily executed. Many of the bodies of those executed were never handed over to their families. The official version of these events talks about prisoners shot while attempting to escape.

ble to imagine: it supposes that there is no remedy for a person and that if we don't kill him, he will come back and punish us. Many of those who were set free in 1976—and who weren't eliminated—came back in 1979. Thus the period when Mena led the CNI (from 1978 to 1980), which had been a relatively quiet one, ended abruptly with the return of guerrillas who had been pardoned and with the first assassinations of military personnel. Therefore the hard line members of the military regime said "See? I told you so...", and a little later the attitude and policies of the CNI hardened once again.

This idea of "beyond redemption", of someone or something that is extremely dangerous, is defined according to the political party the person belongs to (the MIR, the Socialist and Communist Parties being considered the most dangerous) and their level of leadership or militancy. Among those elements that also weighed against the person was their level of education and their youth. Those who were classified as the most dangerous were eliminated. This plan had been already conceived from when Contreras was in charge of the DINA.

I actually believe that Contreras was Pinochet's Mephistopheles. The Faustian pact they made was the following: Pinochet joined the coup plotters 2 days before, that is a known fact. (They say that politicians have an unpredictable past: although Pinochet has written that everything was planned well in advance, it actually was not like that). Those who planned the coup were the Navy and the Airforce, we know this. So at the moment of the coup and afterwards, Pinochet appears as *primus entre pares* because there is an order of precedent in Chilean military tradition: Army, Navy, Air Force, Police. But for his colleagues, even though they didn't say so, Pinochet was not the "general" of the 11th of September, not the victorious leader of the coup, and he knew it. General Pinochet needed another war in which he could be the true leader. Contreras enters on the scene and presents him with another war, this time against a latent enemy. This was the Faustian pact. Contreras had all the power of political repression delegated to himself and became the person who dominated the repression, answering only to Pinochet himself. The latter acquired the leadership of the government and all this happened after October 1973.

Gradually the DINA imposed itself on the SIFA (the Intelligence Service of the Air Force) which was hard line as well, though not as much as the DINA. Later the Navy, to a large extent, retired from carrying out repressive actions. The Air Force changed all its strategy from the moment when General Leigh left the Junta in July 1978 and never carried out any more serious crimes for which it could be charged. Those who could be

accused of much from now on were the Police and the Army, the DINA and the CNI.

Pinochet would have liked to pass a decree guaranteeing a second penal amnesty in the dying moments of military rule. Before leaving power, the government approved the so called economic amnesty bill, via a law sponsored by the Minister Rosende that prevented the Chamber of Deputies from overturning the privatisation processes and other economic measures adopted in the past. But there was no second penal amnesty bill, because neither General Matthei nor Admiral Merino (i.e. neither the Air Force nor the Navy) had much to be accused of during the last years of the government and they didn't want it to appear that they needed an amnesty as this would have appeared as a gesture of self incrimination.

To answer your question, the doctrine of counter insurgency was assimilated in Chile most effectively. It's a doctrine for which they probably received foreign training or were inspired by ideas from foreign authors. It's a doctrine which arises, as we've said before, in response to another theory, that of total insurgency, but it cannot be extenuated or accepted because of that. In Brazil there were quite a lot of theorists on national security and there was a great deal of interchange with our country. If there were also civilian advisors, I don't know them and we have no details as to who they were. In any case, Contreras really had the picture very clear as far as exterminating the enemy was concerned and he always believed that this was the way to proceed.

—*Good evening. In President Lagos' proposal, what are the requirements that the victims of torture or political prisoners have to comply with so as to be accredited and obtain this somewhat austere and symbolic compensation that the government is talking about? If the Ethics Commission contemplated in the project calculates the numbers of victims as 100,000 people, based on data from CODEPU or archives from the Vicariate of Solidarity, do you have some estimated figure as regards to how many more it might rise to? Does this compensation imply that the victims have to forget about the possibility of bringing civil suits?*

—Look, in the first place I don't have hard data, but I was in the Committee for Peace from the beginning and I know, more or less, the history of how this information evolved. There are only estimates regarding this problem. I have heard from several people the figure of 400, 000 tortured, which would be double the maximum figure for all those who were imprisoned. I don't know how many people were tortured.

I was imprisoned and I knew many people who had been tortured, but they didn't torture me and I know a lot of others who weren't tortured. I

don't know how many people have been tortured but I estimate there to be tens of thousands, if we consider political prisoners held for a day or more, i.e. if we include those persons detained for a short period of time.

Compensation for this category of prisoners should be the object of more detailed discussions by an ethics commission which is going to be proposed by the government and which is going to be made up, like the Rettig Commission, of people from a wide spectrum of citizens. The idea is that the set compensation will not apply to someone who has suffered permanent consequences: there has to be sufficient compensation for that, obviously. If someone has suffered a partial disability, for example, there has to be adequate compensation.

What I have mentioned previously is that it is almost impossible to determine if someone who does not have the physical evidence was tortured or not, and in this case they have opted to include these persons within the compensation that all political prisoners will receive.

Why did the president use the words "austere compensation"? It's not for me to interpret his words, but if we're talking about 150,000 people being detained, and paying 1UF per person per day, to put a figure on it, it may sound "austere" but in terms of cost it's not a small amount. Obviously we have to incur all the costs deemed necessary, making every effort nationally, but also with a sense of what is possible and what isn't. The country has spent more or less \$500,000,000 US dollars up to now in paying out compensation. Out of this figure, approximately 66% has gone in compensation to people who were dismissed from their positions by the military regime and maybe the criteria used here has been, in practical terms, very flexible. I don't want to say that it's been flexible for everyone, but there are 87,000 of these cases and the figure could reach to more than 100,000. We have tended to give the benefit of the doubt to the petitioners. From now on, if the new people that are being considered are incorporated into the system as well as the new levels of compensation that are being talked about, we will incur an additional expenditure of approximately \$180,000,000 US dollars. So the President might have used the word "austere" to say to tell people not to expect large sums of money. I don't want to put an interpretation on it, but in the case of those people who have been tortured and have suffered consequences as a result, there is no doubt that there has to be appropriate compensation..

Now the 1992 Law of Redress established that to apply for compensation does not mean that one has to renounce the possibility of bringing a civil action and in fact civil actions have been brought by various people. How is the new law going to come out? I couldn't say.

We didn't manage to discuss the texts of projected laws in the commission that advised the President. The previous law (the 1992 Law of Redress) states that the fact of receiving compensation does not imply that a person must relinquish their right to bring a civil action for damages and additional injuries, even though the Supreme Court has tended to apply the principle of a 4 year lapse regarding the extra-contractual responsibility of the state. In theory we can discuss if this is acceptable or not or if international regulations as regards responsibility for serious crimes can be extended to the imprescriptible rights of civil action as well.

—*Why is the process of investigating violations of human rights, which began in Chile in 1990, so successful compared with the processes in other countries? In comparison with Argentina, for example, which takes one step forward and then one back, and in comparison with Brazil as well as Uruguay where apparently crimes were committed that were as serious as those committed here but where afterwards nothing happened?*

—Fine, naturally the fact that we are conscious of how much we have advanced must not blind us —and I'm saying this, not you— to the fact that there is still part of the glass that isn't full. But when I say that it's successful, I mean on the comparative side and in terms of time. In Mexico they have recently been revising the case of the massacre of the Plaza de Tlatelolco, which happened 35 years ago. And in Panama a report has just come out about the crimes committed by Torrijos, who was considered a national hero and which were never mentioned for 30 years. So there are these, without counting France or Japan, which have always had a policy of denial, or without considering the crimes of the USSR and many other cases.

The most important thing is to go on advancing and, from the comparative point of view, the advances made in Chile in the space of 13 years have been pretty substantial. We have also had periods of stagnation and the political class has generally had a reactive attitude. With the exception of the government of Aylwin, which was proactive in this matter, and the initiative of the ex Minister Perez Yoma in creating the Table for Dialogue in 1999, during Eduardo Frei Ruiz-Tagle's government, there has generally been a reactive attitude and the proposal itself is also reactive, born as it is out of other anxieties. I should like to imagine that this happened in the way it happened because our political world, our political class, with all its virtues which are applauded, comparatively speaking, in many parts of the world, still moves within the great ethical and normative frameworks that have come to us from the contributions of liberalism, socialism, social justice and public liberties (obviously the ones that are not out of date or fallen into disuse but on the contrary, those that have been reinvigorated.).

But in the last 30 or 40 years, as regards human rights, citizen participation etc, several very important additions have emerged which mark an almost new chapter in ethical boundaries. Nevertheless, for a political world forged in the old school, these new ideas tend to be perceived as problems that one has to deal with, and are not regarded as forming a natural part of their doctrinal mark of reference, if you understand me.

When problems of human rights arise, the first reaction of the political world is “What are we going to do with this problem? We’ll deal with it and get it off the agenda for a while”. But afterwards it appears again, and it appears again because there are basic things that have not been resolved. Nevertheless many in the political class do not understand why the problem reappears. This attitude of our politicians has been very obstinate in this respect. I believe that very few people actually understand the roots of the problem. I think that President Aylwin was one, although I must say that each time there are more and more politicians who are beginning to understand. I also think that in the military world General Cheyre understands pretty well. And I should like to believe that the people of UDI are also beginning to understand; although there might be a mixture of motivations in their case, we can’t discard the fact (that would be offensive) that there are among them persons who have a genuine adhesion to moral principles.

Why did this process come about in Chile? I don’t know. Maybe because we learned a little from the experiences of Argentina and Uruguay. Argentina believed that it could go much further because of the illusion, that as the Armed Forces had been defeated, there would be no major obstacles. But they had been defeated in the Malvinas, not on the mainland of Argentina. In Argentina they kept their monopoly of weapons. It’s similar to what happened in Greece after their politico-military defeat in Cyprus, 7 years before: the fiasco at the hands of the Turks in 1974 provoked the collapse of the Greek colonels’ regime, even though the military retained their monopoly of weapons in Greece.

If the legitimacy of an army rests on its sense of mission and self esteem, there is nothing that can demoralise it more than a defeat. So, faced with this situation of failure, military governments collapse and the new civil government begins to believe that it has *carte blanche* to do everything, as if it had won a war. Nevertheless this happens only for a time, because after the Armed Forces begin to recover a sense of cohesion, they offer resistance. Thus Alfonsín, in all good faith, repealed the Amnesty Law that the military had passed before they left power. Fine, the Amnesty Law was spurious and was therefore annulled. But afterwards, theoretically, there were thousands of soldiers in Argentina who could be punished and

with the passing of time, they ended up by closing ranks because they all felt that they were in the same boat.

I am not saying that Argentina should have passed an Impunity Law, but I am saying that there were no incentives for anyone to speak up: this wasn't considered because people thought that Argentina could go to the full limits of its justice system. So the men in uniform began to spread resistance, to place bombs, anonymously (even though everybody knew where they came from), and finished by shutting themselves up in their regiments, in an act of rebellion. Alfonsín called on the people and the people responded with a huge demonstration. The military did not give in, however, the time passed, the clock ticked on and they stayed shut up in their barracks. And it was Alfonsín who ended up by giving in, by signing laws about "the end of the matter" and being "under orders". It was a backward step, with the addition that, in a democratic Government's own handwriting, a measure was taken that was morally reproachable. From then on Argentina has had its ups and downs.

Uruguay opted for the opposite way by doing practically nothing after the transition to democracy, which later led to a national collection of signatures in order to comply with the constitutional requirements for calling a plebiscite to repeal the Impunity Law. The proponents lost the plebiscite and the country continued to be obstructed by these problems which have begun to come to the surface again, even more strongly, provoking several government measures to confront the legacy of a dictatorial past.

In Chile, President Aylwin observed these experiences and opted for a middle way, proposing a policy of truth and justice, as far as possible, and he has been criticised for the latter statement. But he did not mean by this a kind of watered down justice: he meant justice where it was possible, where it was going to be possible. I interpret it that way anyway. Aylwin decided to undertake a political course of action that could be sustained and it has been sustained. It's true that it has stopped at times during the 13 years of Concertación (Reconciliation) governments but it has always got going again. There has also been no backing down or retrograde steps and that is important.

The Rettig Commission opened up vistas because it's report really shook a lot of the country. I remember that Gonzalo Vial told me that a very respectable friend of his told him "Right, so finally, how many dead are there?". "Look, more than three thousand". "More than three thousand! I thought that there were about 800". And we're talking about a well-informed person here. The revelation of the Rettig Report was a shock for many people, including those who were not blind to what had been going on.

Thus, the negation or the veil of secrecy has been drawing back and one thing has led to another. I don't want to speculate too much but I feel this gradualism has probably something to do with our national character.

Now I repeat, we should not rest on our laurels. But when foreign journalists come here (lately for the 30th anniversary of the coup, they descended all over Chile, as many of you know, and as human rights lawyers, we are on the short list of those they want to interview), sometimes they come very well informed but other times they bring with them a general impression and ask "Why hasn't there been any justice?" . And when we reply "One moment: read the statistics", many of them are surprised.

—I should like to ask a question and get some clarification. In the helicopter of the so-called "Caravan of Death", in which there travelled the persons in charge of the DINA, Pinochet was missing, that much was clear. Why am I saying this? Because systematic repression did not start at the end of October but in the days immediately following the 11th of September. The fact is that the Caravan Death did not begin in the north but in the south. Today judges are proving that in several cases, like in Valdivia, there were people who were submitted to the same process. I have to say that I am one of the people who are supporting the hunger strike that is being carried out in Compañía Street with Bulnes Avenue. I am the son of a politician who was executed. Nevertheless I've come here because I'm interested to meet, at first hand, one of the people who contributed to the drawing up of President Lagos' proposal. We are people who are absolutely open to talk about things as we believe that this is a theme for society as a whole and not a particular one. But in fact it has hurt us a lot that at the moment when the conditions were created for the judges and the courts to investigate and advance along the only path in which they could effectively advance, i.e. the diligent investigation of the judges, at this precise moment there appear a series of laws that imply, either directly or indirectly, impunity for certain persons and acts. The argument that certain people are dying, even though that might be the case, seems to me a lightweight one. I feel that it opens a window for the impunity of people such as Krasnoff—or maybe I'm anticipating things because his trial hasn't finished—and with respect to those people where there is definite proof of their participation in numerous crimes. This could effectively strengthen the position of persons who have committed crimes and not open the door to justice. There are already those who are refusing to declare things until the law is passed. This is our feeling. Where is the limit, we ask ourselves? How is the government going to control this? So I should like to ask you, and it's a question that has to do with emotion as well as the rationale behind the

proposal, how do you feel that this theme has developed on the one hand and, on the other, whether or not you feel that it's going to be like a badly healed wound in the future?

—Good, it's a very pertinent question and I should like to congratulate you on the way it was framed: obviously we are very well disposed to dialogue and to receiving criticisms and talking about them.

In the first place, with respect to the fact that Pinochet had anything to do with the Caravan of Death, I have absolutely no doubts about it. I had to follow the same itinerary three weeks later, for the Peace Committee, setting up or trying to set up provincial committees, without knowing that there had been a Caravan of Death that had passed through there before. To begin with, when I arrived at, La Serena, Bishop Fresno, who was the bishop at the time and later on a Cardinal, told me “Terrible things have happened here”, and bishops or priests or lawyers told you what happened, city by city. I found the same thing further north. At that moment, of course, I didn't have the complete picture: that came later.

But, evidently, nothing pointed at Pinochet: everything pointed to Contreras, his man of confidence, as planning it. What role did General Arellano play? I don't know exactly. There is no doubt that he played a deceitful one, but more than that I don't know.

What you say is true about the caravan beginning in the south during the first days of October. What I meant to say is that in the first period, at the beginning of October, in the south, without smoothing over what happened there, it wasn't the policy, like it was in the north, to send the rest of the Army a message, accompanied by many deaths, that from now on there was a special force above them, even though this force didn't have the same military rank.

What I meant to say is that in the first period, there was obviously massive repression and a lot of deaths, vengeance and crimes. I did not mean to say that they weren't massive but that they weren't centralised. Everything began to be centralised under the DINA. The observations you have made are correct.

Secondly, if at some moment I gave the impression that I was delivering a weak argument I'm sorry, but I don't feel that my argument that persons are dying is a lightweight one. I believe that it points to a reality: there are secrets that die with those who guard them. It's also not the only argument that says that it's better to offer incentives. Obviously you can disagree with them, but time has validated other measures which were also considered to be controversial. Let me remind you that when they formed the Table for Dialogue many people said that it would mark the prelude to

the end of the chapter. Jaime Castillo, Pamela Pereira, Hector Salazar, Roberto Garretón and myself were not disposed to sanction any end of chapter or anything. But all the placards in the demonstrations against said “No to closing the chapter: No to impunity and the Table for Dialogue”. Today all those people who were so much opposed to it recognise that *after* the Table for Dialogue —although not necessarily *because* of it— there was much more justice than before and that their predictions about things coming to an end and impunity were not fulfilled.

What do I mean by this? That apprehensions are very legitimate and the proposal of President Lagos is a discourse, not a law, and in law you have to be careful that none of those things you fear will come to pass, happen. But for example, what you said about Miguel Krassnof Martchenko, to give him his full name: I have no doubt that he belonged to the top echelons of the DINA and formed part of systematic and massive attack, with full knowledge of what was going on, against the civil population. I also think he probably planned it. These people are expressly omitted by the President from the category of those who can receive incentives. He is talking about those who, not having committed serious crimes but committed others, cannot get impunity but a reduction in penalties if they declare the truth. There is a third group who have also not committed crimes of such magnitude and which nobody knows about, but who could be given immunity by saying that their declarations will not be used against them. If we don't do this they continue to be anonymous because nobody knows them, do you follow me? We are trying to give incentives to these people so that they talk, like the conscript who appeared in the *Mercurio* the other day saying that he was a personal witness to the burying of the people from La Moneda.

The two organisations which exist in our region for defending human rights, the International Court and the Inter-American Commission for Human Rights, have said that it is the duty of states to guarantee human rights: they have to guarantee them and not only respect them (in the sense of not violating them directly). To guarantee consists in preventing violations, up to where possible, and if they are committed, consists in investigating the acts, sanctioning those who are found guilty and making sure that they or their families receive compensation. These organisations define impunity as the absence of all these elements together. But they do not say, and neither does international law, that every violation of human rights - censorship, for example is a violation of human rights, the arbitrary privation of liberty even for a day, is a violation of human rights —is imprescriptible for all time. This is a mistake. What international law establishes is that war

crimes and crimes against humanity are imprescriptible and not subject to amnesty. But if every crime or offence were imprescriptible and not subject to amnesty there wouldn't exist the institution of prescription and amnesty. What cannot happen is that these other crimes that are not covered in such monstrous categories as war crimes or crimes against humanity, are swept under the table and that amnesty or prescription become a pretext for hiding them. If you give a measure of reduction to a jail sentence or clemency it has to be done looking towards constructing the truth and a more solid future, not as a way to disguising impunity and concealing things.

To distinguish these three categories of situations (who have committed crimes against humanity, who have committed other crimes and have been accused or blamed for them, and those who have committed crimes that nobody knows about up to now) the President is working to adjust to international law. It seems to me to be prudent that he does this. For example, if a person, a conscript who forms part of a firing squad, is being judged thirty years later and begins to tell where the bodies are buried and expresses remorse and says that he was acting under unbearable fear "because I believed that if I didn't obey, my commander would kill me", he could receive more merciful treatment. The same treaty that established the International War Crimes Tribunal says that enforced obedience is no excuse unless one fears, justifiably, that one will suffer the same fate or worse. You can ask no one to sacrifice their own life. If I put a pistol to someone's head and say "You're either part of the firing squad or part of those about to be shot", this person has to be excused. If somebody is in this situation and we insist, to the very end, in the slogan "No to impunity", which is in principle a noble one, we can fall into a purely righteous attitude, more than a just one, and moreover set back the process of reconstructing democracy.

Every society lives with a certain degree of common criminality. If we intend to wipe out criminality completely, we can end up with a country like Big Brother or a kind of Singapore, where nobody wants to live. This doesn't mean that we find crime all right, but that common criminality does not effect the life of the system itself. It mobilises its defences, its immune system: the police, the system of justice, laws, public opinion etc.

But when co-existence breaks down and unleashes a civil war or imposes a dictatorship, criminality is no longer a "normal" element, like the pathogenic germs we're all afraid of, that don't affect our life but mobilise our immune system: it becomes the result of the death and the rupture of co-existence. Later on, once the crisis is overcome, the task is not to keep common crime in check but to reconstruct the democracy that has been destroyed, and in whose destruction so many political crimes were commit-

ted. For this last task, justice has to play a role, but not an exclusive one. Truth also plays an important part as does the idea of admission and the measures for redress and there is a need for a degree of pardon, in the sense that it is legitimate and not spurious.

There can be disagreement over the precise measures proposed by President Lagos, but I should like to tell you that the advisers to the President, who included experts in human rights such as Alvaro Varela, Elizabeth Lira or Maria Luisa Sepulveda, were conscious of this. There can be differences about the real efficiency of such and such a measure and a need to demand accuracy so that something illegal doesn't slip through the system. What I am asking you is that please do not doubt the fact that we are working in good faith. We can make mistakes but the good faith is there.

—There are approximately 60 women who have disappeared and some of them were pregnant when they were detained. So you know anything about this? Are there any records of children born in prison like in Argentina?

No, in Chile this information is pretty scarce. In Argentina it was a systematic policy, and curiously enough, paradoxical and grotesque though it seems, it was a kind of humanist viciousness. Now, putting the crime that they were committing into context, this "humanism" transformed itself into a monstrosity. The Argentine military said "These extremists are irredeemable but what blame has the child about to be born got? So let's kill the father and the mother but wait until the child is born because we're not animals and we don't kill innocent creatures. And we'll leave it with a family where it can be brought up like it should be brought up." So put in this way, it was a twisted gesture of mercy that became a monstrosity. This was a systematic policy in Argentina until the point it included 160 children, if I remember the figures correctly. All this has been investigated over there and a lot of the children have been identified, which has caused immeasurable family dramas, because many of them lived in families that loved them very much and they didn't want to leave them. It's terrible.

In Chile, although this phenomenon wasn't undertaken systematically, there could be cases, but we don't have the evidence of how many children, if any, were born in detention, or what happened.

—You talked about the Amnesty Law and I should like to ask how many received amnesty "on the other side" as it were, if I can use those words, and if you could make some sort of general categorisation about who these persons were, and whether they'd been tortured or held in prison a long time.

—What happened was the following: up until the Amnesty Law of 1978 more or less 3% of the people who were deprived of their liberty had been subjected to this process. The others remained in detention without charges, only because of the powers that the government had assumed by declaring a state of siege. They were neither tried nor convicted and so they received no amnesty whatsoever. The method of detention was changed for many of those people to one of expulsion from the country or exile. Others who were detained, including members of the armed forces who were not in favour of the coup and who had been convicted, after grossly unjust trials—and many of them subjected to extensive torture as for example in the case of members of the Airforce— had their convictions changed for banishment.

So, if we look at things from the point of view of the military government, the remodelling of the country did not begin in March 1990, but in September 1973. For the historical vision of the military government the period of restructuring began with the military coup. One of the problems we have, as Chileans, to finalise a process of reconciliation (and we have made major strides here) is that different political sectors have unbalanced historical versions about what it means to recover democracy or re-found a political system. Let's see if we come to an agreement, little by little, over these differences: maybe it's not possible.

However, returning to the military regime's vision on the significance of the coup and its government, you can see that, in their judgement, political repression was partly their way of administering justice and partly their way of consolidating power. If we change the political banner it is not too different from what Castro did after deposing Bautista, kill a few, imprison some and exile others.

In Chile there were three thousand fatalities, dozens of thousands of exiles and still many thousands more detained. This was the sense of justice the military regime had with respect to the Left, do you follow me? During the CNI's period, from 1980 onwards, so as to distance themselves from the DINA, they changed the techniques and used the apparatus of military justice a lot, and the Public Prosecutor, Torres, became part of the system of repression. Before they managed things differently.

So, how many people were set free in 1978? Having made all these previous reservations, probably some four or five thousand people were set free, because the year before 6,500 people had been deprived of their liberty. But the great majority of those released were expelled abroad, which is another form of sanction.

Now, we are not dealing here with a kind of “comparison”: to see how much you are paying and how much I paid. But in the light of what I’ve just finished saying, the argument, which is sometimes lightly given, that pardon only operates from the one side, does not have much going for it. Also the reprieve, conceded by President Aylwin later on, benefited persons who had spent 8 or 9 years in prison and who had been tried by military courts on supposed acts committed in the 80’s. Some of them might have committed some bloody acts and others no, I don’t know: but all had been submitted to grossly unjust trials and suffered torture. So the measure of clemency in the form of a reprieve is justified, because moreover, including in international standards, it is considered that a punishment served under pre-determined conditions of hardship is equivalent to one double or three times as long in other conditions.

So the “other side” argument doesn’t function as an argument. On “this side”, to call it that, on the side of the military, there have been some 40 people convicted. There are also more than two hundred in different procedural situations in legal cases regarding those who disappeared. These people, or those who directed them, take the following implicit position. “Look, there’s an Amnesty Law here and this country must technically obey the law: now, that there are hundreds of people who have disappeared and whose families know nothing about them, bad luck !. They lose by default as there’s an Amnesty Law”. It is completely unsustainable from the moral point of view. But it’s the argument that’s implicit.

Let us suppose that these “Marxist masses” had won and the three thousand dead had been on “the other side”, from the opposition to the government of Salvador Allende, and they didn’t give the bodies back or they didn’t say what had happened 15 or 20 years later, what would be the reaction of those people affected and of their respective political sectors? It’s a question of putting yourself for a little in the place of the other.

The perpetrators want the best of both worlds: that the amnesty is applied and that nothing is said and no vengeance passed. In South Africa at least they said “Look, gentlemen, whoever confesses their crime we’ll give amnesty to”. It was the reason why they chose Mandela, because, with all his magnanimity, he said that it was necessary to construct a united future.

Seven thousand people registered to confess because they believed in an implicit threat: that if they did not confess they might be liable to be tried in the future. The problem is that those who decided to run the risk of not confessing have still not been tried, so the precedent set by South Africa

is a little lame. But seven thousand did register because they said “Between the shame or being behind bars, I prefer the shame”.

In Chile they are not disposed to confess their shame, even a little bit, or to serve their sentences. This resists any kind of analysis. While insisting on the barbarity of supposing that in a nation one can kill and bury thousands of people secretly, without taking into account their families, without anyone of those who know what happened opening their mouth and that things shouldn't go further because “there are laws” (which they themselves dictated), while they insist on being intractable, the complaints will continue and the problem won't be solved. Nevertheless these arguments rarely see the light of day in public debate.

So, I would say, in synthesis, that if we look at the “avenging” and repressive justice of the military government, the number of those who were subjected to it is enormous.

—*In this political restructuring process, what importance do you attribute to the reconstruction of a historical consensus with respect to the political processes that happened throughout the whole period, that is to say both before and after the 11th of September 1973? You explained very well how the initial denial about the events that happened became modified: how people began to know about them, recognise them and accept the consequences. In a way this has not happened with the rest of the historical process. And I recall how difficult it was, in the Table for Dialogue, to write about what really happened and to be able to agree on the wording. In your judgement, how can this process be established within the remodelling framework that you referred to?*

Well, in the first place, if we go back to the past, analysing the reciprocal wrongs that were committed and the social tensions, some as causes or explanations of others, we can go back to the time of the Conquest. Which does not mean that there is no historical dynamic in which some events influence others and that there is not a certain accumulation of social hatred.

Where do we make the break, where do we draw the dividing line for the historical analysis necessary in a process of political reconstruction? We discuss this as well in the Truth Commission and we concluded, obviously, that there has been social injustice throughout the whole of Chilean history, which has generated movements, actions, counter arguments, radicalism etc. But really this lends itself to a long reaching historical interpretation, which wasn't part of our brief. It was up to us to examine the recent historical phase of profound political polarisation, which was a process of such extremes of ideology that fundamental rights were denied

by one side to the other. This has to do directly with human rights, which was our mission to analyse.

So, let's begin by examining the period of the 60's, of a radical and reciprocal disqualification and denial of rights to others, of an ideological dehumanisation of one side and the other, because this is relevant for the creation of a climate that ends up by justifying political violence and the violation of human rights. That historical reality is being recognised. It seems to me to be important for there to be a solemn declaration from Congress, i.e. that in the seat of democracy, the civilians elected by popular vote make a historical acknowledgement like the military are beginning to do. It is not enough for Senator Viera-Gallo or Minister Bitar to write their memoirs and recognise these events and these political responsibilities. It is important and it's part of what I was saying about oral history, about events being related by historians, dramatists, poets etc. But there has to be something more solemn, some ritual. The Chilean Left is accustomed to say "We have faced the facts". It's true that if I count up all the friends who have faced the facts and moreover acknowledged that they have changed their position regarding democracy and values, it would be legion. But is this chiselled into the historical memory of the country, in the annals of the nation? The same is happening with admissions from the Right. But it would be good if this admission arose from a declaration of Congress, because no party is going to do it alone. It seems to me that it would be a good measure, and, hopefully, a fruitful one. If not now, then in two years more, because things reach a point of maturity.

But I do believe that an agreement is in the pipeline with regard to not playing with democracy as though it were an unbreakable toy. As Arturo Fontaine said very well in his introduction, there really was, at a particular moment, a sector, not all the Right but a sector of it, that had never reconciled itself to the idea of democracy and that suddenly came out with the theory that universal elections are of no use. I remember this theory of the Right, but I also remember that part of the Left used to say that democracy was a facade. And I have no doubt that in some Latin American countries that was the case, and that there were grave deficiencies in Chile, but I am also in no doubt that there was the basis in our system for debate, progress, and improvement. Nevertheless they thought that this democratic facade had to be discarded in favour of a chimera, there can be no doubt about that. And how many or how few of us on the Left were involved in that chimera.

So on both sides this contempt for democracy was incubating. Although I think that at a certain initial moment it was greater, numerically

speaking, in the Unidad Popular than in the other side, which does not justify what happened later, nor a single one of the violations against human rights that were committed.

This contempt for democracy, which also had deep roots in the Right, and which openly flowered after the coup, should bring us to an admission of the different types of responsibilities involved and with this I should like to conclude because I've taken up a lot of your time. There are legal responsibilities, and these can be penal, civil, constitutional and administrative. Theoretically, various legal responsibilities can arise from the same act. And different responsibilities can fall upon every person, on legal persons or only on public functionaries. There are also extra legal responsibilities: historical, moral or political. The conscience of international public opinion has assigned these responsibilities, generally to institutions or groups rather than to individuals. Of course to individuals as well. It has been said for example that Chamberlain had the historic responsibility for not stopping Hitler at the cost of 200,000 lives as he had to be defeated later on at the cost of 50,000,000. But generally we talk about historical or political or moral responsibilities of groups or bodies, such as "the German people" or "the Armed Forces of such and such a country" or "the political class of such and such a side" or "the Church".

There is a very interesting book written by Eleazar Barkan, *called The Guilt of Nations*, which brings together ten case studies which have been recognised and accepted as long term historical responsibilities during the last few years: for the oppression inflicted during centuries on the indigenous populations of New Zealand, Australia and Canada. for the prostitution forced on Korean women in the service of Japanese troops during the Second World War, for the Jewish current account holders whose were accounts frozen in Switzerland, for the slave labour used in German factories and others.

Responsibilities from fifty years ago and centuries back are historical responsibilities and not criminal ones. What do they give place to? To three things; firstly to the imperative of rectifying institutional doctrine. For example, to believe in theory of cosmology different to the one held to be official dogma cannot be considered a heresy subject to punishment as it was for Galileo. However much we believe in our dogmas, we cannot punish others for not subscribing to them. But we can rectify or clarify military doctrine to confirm that is not acceptable, under any concept whatsoever, not even under the pretext of saving the country, to commit violations of human rights or war crimes. Secondly, an admission the re-vindicates the memory of the victims. Thirdly, a social and moral disposition to esta-

blish redress (which can be translated into some legal measure). Firstly we must get a moral consensus regarding historical responsibilities and this opens the way for a law. This happened in Germany where they debated the theme of guilt (let's remember that there were four types of guilt according to Jaspers: the criminal, the ethical, the political and the metaphysical). This sense of admission from the whole of the German *polity* led to the people of the country being willing face up to and to contribute to the taxes raised to pay compensation. But first there has to arise a conscience of historical institutional or collective responsibility. □