

BACKGROUND INFORMATION TO THE CASES OF THE AIR FORCE PRISONERS IN CHILE

ARRESTS:

Soon after the military coup of September 11th 1973, a large number of military officers (from the Army, Navy, Air Force and National Police) were detained in Chile. Even a few days before the coup, over 100 naval cadets were arrested in the naval bases of Valparaiso and Talcahuano (near Concepcion) for disobeying their superiors. It was generally believed that the reason for the arrest of the naval cadets was that they had refused to obey orders for the preparation of the military coup against the Allende government.

The imprisoned Air Force officers came from all ranks, and all sectors. They included two Generals (General ALBERTO BACHELET and General SERGIO POBLETE) who had retired from active service but had held distinguished positions in economic development institutes during the Allende government. They also included several Colonels, Captains, Group Commanders, Lieutenants and junior officers.

In April 1974 a report written in Santiago reached Amnesty International. Although we are not completely certain of the source of the report, the information contained in it tends to be corroborated by other sources, including the statements of defence lawyers themselves. It described the manner in which these Air Force officers had been arrested, and the manner in which they had been severely tortured during interrogation in September and October 1973. Most of the arrests took place within a week of the military coup, although arrests continued up to the end of 1973. Some of the officers were detained in their homes, others were ordered to present themselves at the Ministry of Defence and were then imprisoned. Colonel ROLANDO MIRANDA was reportedly dragged from his sick-bed by military officers (he was suffering from pneumonia), and taken to the Colina Air Base for interrogation. Captains CARLOS CARBACHO and JORGE SILVA were arrested while they were carrying out their military duties. Others were arrested in their barracks.

For several weeks after the arrests, the families of the detained officers were unable to establish contact with them. They were at first detained in the Colina Air Base in Santiago. On September 27th, many of the officers (including General BACHELET, Colonel GALAZ, Colonel MIRANDA and Captain VERGARA) were transferred by helicopter to the Air Force Academy of War. It is believed that most other officers were transferred there at about the same time. Until the end of October the officers were detained strictly incommunicado in the Air Force Academy. It was only after October 29th, by which time they had been transferred to the Academia Politecnica Aeronautica (Politechnical Academy of Aeronautics) that the prisoners were enabled to see their relatives for the first time. Until that time the only contact these officers had with the outside world was by a few brief and censored notes.

According to the Santiago report, many of the officers received inhuman treatment until the end of October. In the Colina base they received adequate treatment in adequate conditions. After transfer to the Air Force Academy, they were submitted to a series of tortures. They were hooded and handcuffed, deprived of food and drink, water and hygienic services. They were frequently kicked and beaten with rifle-butts. During interrogation, they were subjected to the following kinds of torture:- electric shocks; beatings; needles under the nails; cigarette burns over the body; sessions of psychological torture including hypnosis. Between the

sessions of interrogation, the officers were detained four to a room without being permitted to speak to one another. They were handcuffed while they slept, and their sleep was interrupted by bright lighting in the cells. During the interrogation sessions, the officers were allegedly forced to admit the charges that were made against them by their hooded interrogators. They were also forced to acknowledge the 'guilt' of persons other than themselves. At the end of the interrogation sessions, they were forced to sign a 'declaration' admitting their guilt.

From the Air Force Academy, the report continues, the officers were moved to the Academia Politecnica Aeronautica. In this place they were at first detained strictly incomunicado, while they recovered from torture sessions. They were forced to sleep on the floor, were prevented from speaking, and were given limited nutrition. Only in their last week there were they given access to newspapers etc., and permitted to speak to each other.

Since the beginning of November 1973, the majority of the detained officers have been held in the Public Prison of Santiago. Conditions have reputedly been far better there. Hygienic conditions are reputedly very poor, but the prisoners have had access to radio, newspapers, ventilation and other minimal comforts. They were able to receive weekly visits from relatives, to have extra food brought in, and to receive visits from their lawyers. Even after their transfer to the Public Prison, the officers were at times taken back to the Air Force Academy for further interrogation, and to make further declarations. The time, apparently, their treatment was much improved, and they were taken back to the Public Prison on the same day. One exception was that of Captain RAUL VERGARA (who has now been condemned to death). On December 5th 1973, after receiving visits in the Public Prison, he was again taken to the Air Force Academy. There he was hooded, stripped naked, and subjected to repeated torture including the application of electric shocks to the genitals and other sensitive organs. After this torture he was forced to sign a declaration in which he admitted his culpability as ringleader of a marxist group which had attempted to infiltrate the Armed Forces. VERGARA was taken to the Academia Politecnica on December 12th and back to the Public Prison on December 19th, 1973.

CHARGES AND TRIALS:

On February 9th 1974, the officers were taken from the public prison and ordered to appear - one by one - before the military prosecutor. The Air Force prosecutor, Colonel HORACIO OTAIZA, informed them of the charges of which they were accused, and of the sentences that had been demanded for them. The charges ranged from High Treason (sometimes involving the death penalty) to lesser military offences such as 'offences against the order and security of the Armed Forces'. The majority of the officers were charged under Articles 245, 272, 274 and 299 of the Code of Military Justice (see appendix for full texts). The sentences demanded ranged from the death penalty to lesser sentences of three and five years imprisonment. The death penalty was demanded for six of the accused: 30 years imprisonment for at least five: 25 years for at least two: 20 years imprisonment for at least four: ten or fifteen years imprisonment for five more. Lesser sentences of three and five years imprisonment were demanded for the majority, including the most prominent defendants, Generals BACHELET and POBLETE. In addition to the Air Force officers, 10 civilians were involved in the same indictments. They involved CARLOS LAZO (Vice President of the State Bank and member of the Socialist Party) for whom a sentence of life imprisonment was demanded - though he was later sentenced to death: ERIC SCHNAKE (Socialist ex-Senator for whom 30 years imprisonment was demanded):

and two television cameramen, for whom 10 years imprisonment was demanded. The civilians involved had been accused of directing the marxist infiltration of the Armed Forces. Even before the trial commenced in May 1974, two of the defendants had died, under mysterious circumstances. In mid-May it was officially reported that General BACHELET had died of a heart attack in the Public Prison. It is generally believed that his death was due to tortures previously received. Another defendant was said to have killed himself in prison.

When the trial commenced in May 1974, each of the 67 cases was conducted individually. As foreign observers and journalists have reported the trials, they were conducted in the following fashion. First, the military prosecutor would read out the case for the prosecution: the defence lawyer would respond briefly, by reading out a written defence pleading: the defence lawyer would then summon one or two witnesses of good conduct: the defendant himself never uttered a word in his defence, throughout the trial: the case was then adjourned, and the next defendant brought into the court room. The case for the military prosecution was presented in a long and detailed document. The prosecution alleged that a marxist group of Air Force officers had planned to 'subvert' other officers, and to create a parallel army whose goal was to destroy the regular army and form a 'popular army'. It was alleged that several officers had formed a marxist cell within the Air Force which was collaborating with the extreme left wing Movimiento de la Izquierda Revolucionaria MIR (Left Wing Revolutionary Movement), and planning pre-emptive coup within the Armed Forces. It was alleged that these officers had plotted to invade the El Bosque Air Base, and to assassinate a number of anti-Allende officers. It was alleged that the accused officers had several diverse functions within the marxist cell. That some were responsible for establishing contacts and recruiting more sympathisers: that others were responsible for stealing confidential maps and plans, and making them available to the MIR: that others were in charge of security: others were responsible for establishing contact with civilian politicians who were involved in the same plot: and others were responsible for planning the actual takeover of the El Bosque Air Base.

In order to justify the charges of High Treason, the prosecution argued that the Allende government had been illegal for several months before the date of the military coup: and that all leading politicians within the Allende government had been involved in seditious plots to instigate a civil war and assassinate leading members of the Chilean Armed Forces. The written text of the prosecution, alleging that some officers were guilty of Treason for collaboration with the enemy, gave the following explanation:-

"The juridical status of ENEMY which in this instance is held by the MIR, the Communist Party, Socialist Party and MAPU, and in general all the political parties and political movements that formed part of the so-called Popular Unity Government, is based on the provisions of Art. 419 inc. 2 of the Code of Military Justice".

Yet the text of Article 419 of the Military Code states that:-

"In this instance one understands by ENEMY not only the foreign enemy, but any kind of rebellious or seditious forces that are organised in a military fashion".

In other words the prosecution had claimed that all those political parties which formed the Constitutional and democratically elected government of President Allende were rebellious forces, organised in a military fashion, which were the ENEMY of the Chilean people even before the military coup.

The decision of the Military Prosecutor that the Allende government was de facto illegal made it completely impossible for defence lawyers to give an adequate defence to the prisoners. One of the defence lawyers was evicted from the court when he produced arguments in favour of the legality of the Allende government. The Military prosecutor later stated that "political arguments were forbidden". Moreover, defence lawyers were prevented from making statements that their clients had been tortured during interrogation. One lawyer who reported that five of his clients had been tortured was reprimanded before the court. The lawyer, Hector Basoalto was also given a public reprimand by the Chilean Colegio de Abogados (Bar Association) after arguing in favour of the legality of the Allende government and denouncing the torture of his client. In the light of such outrageous legal procedures, it is not surprising that the Air Force tribunal was bitterly condemned by all international legal experts who were permitted to observe the proceedings.

FOREIGN OBSERVERS:

Before the Air Force tribunal, all political trials since the military coup had been held in secret. In theory the Air Force trial was declared 'public'. In practice, it was extremely difficult to gain access. Foreign observers had to receive written permission from Air Force officials, and had to undergo a thorough body-check by heavily armed guards, before they could enter the court-room. Reportedly, the only Chileans permitted to attend the trials were pro-Junta journalists. No relatives of the defendants attended the trial proceedings. Many impartial foreign observers did attend at least part of the trials. They included:- Ramsey Clark (former US Attorney General): William Booth (Judge of the New York Criminal Court): Horst Woesner (Judge of the West German Federal Supreme Court), who observed the trials on behalf of Amnesty International: Professor Ole Esperson (Danish Member of Parliament): Mauricio Birgin, Professor of Law at the University of Buenos Aires: J.P. Morray (US lawyer): Ira Lowe (US lawyer): and many others. Every one of these lawyers had strong criticisms of the legislative base according to which the trials were conducted, and the actual Courtroom proceedings. It is worth quoting the summaries of some of these observers:-

"The five trials I witnessed conducted by the Air Force under the authority of the military government were lawless charades.....First, it is not possible to trace power from the Constitution to this court. Perhaps this is why posted outside the Courtroom which was formerly the chapel of a Catholic convent was a memo saying no attorney shall challenge the jurisdiction of the Court or the procedure it uses. A lawyer who dared to question whether his client had been tortured was banned from further practice there among other penalties. General Orlando Gutierrez, the Air Force prosecutor, presented his entire case by reading from the Dictamen, or indictment and witness statements, nearly all by defendants and their co-defendants. All were elicited under circumstances so inherently coercive, whatever the techniques used, as to make them questionable by any standard....."

(Ramsey Clark).

"Summing up I must emphasise that the trials were 'show trials' conducted in order to convince the outside world that the Chilean Junta is civilised in so far as it conducts some sort of trial. But the accused have no possibility of defending themselves in a decent way, and the most fundamental legal guarantees are disregarded..

(Professor Ole Esperson).

"....The verdict is based on the results of the investigation conducted by the police and prosecution before the trial. The simple acceptance of the information given by the police is highly objectionable from a legal point of view. The practice is

general at all Chilean trials, but its effect is most pronounced at military trials. The results of the investigations are kept secret, and the defence and the accused cannot influence them. Lies, misunderstandings, hearsay evidence, promises, threats and torture can falsify the results, without the court being aware of it. This increases the danger of unfair verdicts".

(Judge Jorst Woesner).

"...The retroactive application of penal law, the illegality of the present Tribunal, the violation of the right of legal defence, and the illegality and illegitimacy of the accusations against all the defendants, allow one to affirm that the sentences dictated by the Air Force Court Martial will be void, absolutely void..."

(Mauricio Birgin).

CONCLUSIONS:

Such are the statements of a few of the foreign observers. When the tribunal passed sentence at the end of July, no less than four death sentences were passed. Colonel ERNESTO GALAZ, Captain RAUL VERGARA, Sergeant BELARMINO CONSTANZO, and the civilian CARLOS LAZO, were all condemned to death on charges of High Treason. The sentences against all the remaining defendants are not yet known. Amnesty Secretary General Martin Ennals has appealed to General Pinochet, Chilean Head of State, for commutation of the death penalties. Because of the doubtful nature of the charges, and the clearly unsatisfactory conduct of the Court Martial, Amnesty International is adopting all the sentenced Air Force officers, and conducting a campaign for their release.

While making all these officers adoption cases, Amnesty International does not necessarily deny that there may have been a plot to infiltrate the Chilean Armed Forces. It was part of the policy of several left wing groups, particularly the MIR, to infiltrate the Armed Forces. Yet it appears likely, from information received through other sources, that the majority of the imprisoned Air Force officers had belonged to a non-violent organisation that supported the policies of the Allende government. This group was known as the 'Constitutionalists' and was implacably opposed to the idea of a military coup. It is widely known that some sector within the Armed Forces of Chile had been deliberating a military coup, since shortly after Allende was elected President in September 1970. Other sectors decided to collaborate with the Allende government, and formed a semi-official organisation which resolved to protect the interests of the Constitutional government. It is believed that there were about thirty members of this organisation. This group admits to having met with leading members of the Allende government, including Socialist Party leaders, in order to discuss the possibilities of a military coup. Yet it was clearly within the prerogative of military officers to submit information to the Constitutional government of the dangers of a military coup, and to discuss possible measures in the event of an attempted coup. It should be remembered that a rebel section of the Armed Forces had attacked the Moneda Palace in an attempted coup on June 29 1973, shortly before the successful coup of September 11th. After that date, there was increased factionalism within the Armed Forces of Chile. Yet the fact that the 57 Air Force officers were denied all adequate juridical guarantees during their trial by Court Martial gives full reason to doubt the validity of the charges against them.

6th. August, 1974

It was announced today in Santiago that Air Force General, José Berdichesky, the appeal judge dealing with the trial of the Air Force Officers, has decided to commute the death sentences on Colonel ERNESTO GALAZ, Captain RAÚL VERGARA, Sergeant BELARMINO CONSTANZO and the civilian CARLOS LAZO. They have now been sentenced to 30 years imprisonment. Other sentences remain unchanged.

