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SANTIAGO, 25 NOV. 1991


DE : JEFE DE GABINETE PRESIDENCIAL

AL : SR. MINISTRO DE JUSTICIA
D. FRANCISCO CUMPLIDO CERECEDA

Para su conocimiento adjunto a usted fotocopia de carta enviada a S.E. el Presidente de la República por el Presidente de "International League for Human Rights", señor Jerome J. Shestack, en la que hace llegar el informe "The Long Road to Justice: A Report on the Letelier - Moffitt Case" cuya traducción oficial al español encontrará incluida.

Agradeceré a usted se sirva sugerir respuesta del Presidente de la República.

Saluda atentamente a Ud.


CARLOS BASCUÑAN EDWARDS

Jefe de Gabinete Presidencial

CHC/esr

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September 13, 1991

Sr. Presidente Aylwin
Palacio de la Moneda
Santiago de Chile

Dear Sir:

I have the honor of presenting to you a report, "The Long Road to Justice: A Report on the Letelier-Moffitt Case," prepared by the International League for Human Rights. The report examines efforts over the past fifteen years to bring to justice those who are responsible for the 1976 assassination of Orlando Letelier and Ronni Karpen Moffitt.

As you know, in July 1991 two representatives of the League, Ambassador Harry G. Barnes, a member of the League's Board of Trustees, and R. Scott Greathead, visited Chile at the request of Michael Moffitt and Isabel Letelier, the widower and widow respectively of Ronni Karpen Moffitt and Orlando Letelier. The purpose of their visit was to inquire into the status of criminal proceedings against Gen. Manuel Contreras Sepulveda, Col. Pedro Espinoza Bravo, and others who may be responsible for the Letelier-Moffitt murders. The enclosed report sets forth the results of their inquiry.

The League believes that complete impunity for the serious human rights violations committed during the seventeen-year period of military government would violate Chile's obligations under international law. Prosecution of those who were responsible for ordering the assassination of Orlando Letelier would be an important step in discharging Chile's international obligation to punish atrocious human rights crimes.

As noted in the report, the League applauds your personal commitment to see that justice is done in the Letelier-Moffitt case, and welcomes the progress that has taken place in recent months. We believe that the case must continue to receive the strong support of your government to overcome the significant obstacles that lie ahead. With that commitment, we believe that none of the obstacles is insurmountable.

Respectfully,

Jerome J. Shestack
Chairman

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ARCHIVO

**THE LONG ROAD TO JUSTICE:
A REPORT ON THE LETELIER-MOFFITT CASE**

THE INTERNATIONAL LEAGUE FOR HUMAN RIGHTS

September 1991

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**THE LONG ROAD TO JUSTICE:
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PREFACE

In July 1991, Harry G. Barnes, Jr., a member of the Board of Trustees of the International League for Human Rights who served as U.S. Ambassador to Chile from November 1985 to November 1988, and R. Scott Greathead, a New York attorney and former First Assistant Attorney General for New York, visited Chile to inquire into the status of criminal proceedings in the case of the 1976 assassination of Orlando Letelier and Ronni Karpen Moffitt. The League's inquiry was undertaken on behalf of Michael Moffitt, widower of Ronni Karpen Moffitt and the sole survivor of the bomb that killed his wife and Ambassador Letelier, and Isabel Letelier, the widow of Orlando Letelier.

While in Chile the two met with various Chilean officials, including President Patricio Aylwin, Justice Minister Francisco Cumplido, Secretary General of the Presidency Edgardo Boeninger, Secretary General of Government Enrique Correa, Special Ambassador for Human Rights Affairs Roberto Garreton; members of the Chilean Congress, including Gabriel Valdez, President of the Senate, and Jose Antonio Viera-Gallo, President of the Chamber of Deputies; officials of the U.S. Embassy, including Ambassador Charles Gillespie; members of the Letelier family, including Isabel, Juan Pablo and Fabiola Letelier, the widow, son and sister, respectively, of Orlando Letelier; Jaime Castillo Velasco, counsel to Fabiola Letelier; experts on the Chilean legal system, including Dr. Manuel Guzman Vial and Dr. Ricardo Rivadeneira, President of the Chilean Bar Association; and leading members of Chile's human rights community, including Bishop Sergio Valech and Alejandro Gonzalez, Vicar and Legal Director, respectively, of the *Vicaria de la Solidaridad*, and Jose Zalaquett, who served as a member of the Commission on Truth and National Reconciliation. League representatives also met with various U.S. officials in Washington, including Assistant Secretary of State for Inter-American Affairs Bernard Aronson and Attorney General Richard Thornburgh.

This report was written by R. Scott Greathead, who was the principal author, and

Diane F. Orentlicher, General Counsel to the League. Substantial contributions were also made by Ambassador Harry G. Barnes, Jr., and Edwin Rekosh and George Rogers, both of whom are attorneys associated with the New York law firm of Coudert Brothers.

The League is grateful to the J. Roderick MacArthur Foundation for supporting its work on behalf of the Moffitt and Letelier families. The League is also grateful for invaluable assistance provided in this inquiry by several individuals and organizations, including Jaime Castillo Velasco, President of the League's Chile affiliate, the Chilean Commission on Human Rights, and a Vice President of the International League for Human Rights; Cynthia Brown and Jose Miguel Vivanco of Americas Watch; Nancy Soderberg; Samuel Buffone; Peter Kornbluh; Sergio Baeza; Martin Poblete; the Institute for Policy Studies; and the New York law firm of Coudert Brothers. Finally, we gratefully acknowledge the cooperation extended by Chile's Ambassador to Washington, D.C., Patricio Silva, and his staff in arranging meetings with government officials.

INTRODUCTION

It is rare for interests crucial to two nations to be bound up in the resolution of a single case. Yet the assassination of Orlando Letelier and Ronni Karpen Moffitt is such a case. For Chile, the case will be a benchmark of the civilian government's success in restoring the rule of law after one and a half decades of military rule. For the United States, the case is a litmus test of the nation's commitment to oppose international terrorism. Fifteen years after the crime, its resolution is the single most important issue in bilateral relations between the two nations.

Mr. Letelier, a prominent opponent of former Chilean President Augusto Pinochet, and Ms. Moffitt, a U.S. citizen who worked with Letelier in Washington, D.C., were killed by a bomb as they drove to work on September 21, 1976. General Juan Manuel Contreras Sepulveda, then director of Pinochet's first, and notorious, secret police force, DINA,¹ and Col. Pablo Espinoza Bravo, DINA's Director of Operations, were the authors of the crime, according to testimony obtained from other participants convicted in U.S. courts. Their extradition to the United States was sought by the U.S. government as long ago as 1978, and U.S. aid to Chile was suspended until significant progress had been achieved in the case.

Yet despite its importance, the Letelier-Moffitt case was, until July 1991, headed for oblivion. U.S. extradition efforts have been thwarted by Chile's Supreme Court. Military courts charged with investigating the crime shielded Contreras and Espinoza from justice for over a decade, and the Supreme Court has evinced scant interest in assuring an impartial investigation. Almost fifteen years since the crime occurred, neither Gen. Contreras nor Col. Espinoza has even been indicted. With Chile's statute of limitations for murder due to expire on September 21, 1991, their lasting impunity seemed all but assured.

¹DINA is the acronym for *Direccion de Inteligencia Nacional*, which officially operated from 1973 until August 1977. It was then replaced by the *Centro Nacional de Inteligencia* (CNI).

But a series of recent developments have, at last, opened the way for a serious investigation. In early July, Chile's Supreme Court rejected a military prosecutor's motion to bring a final close to the Letelier-Moffitt case. Two weeks later the Court, acting on a request of President Patricio Aylwin, designated one of its own members, Adolfo Banados, to investigate the Letelier-Moffitt case. On August 1, Justice Banados formally reopened the investigation in the case, and three weeks later issued an order barring Gen. Contreras and Col. Espinoza from leaving Chile. His efforts hold forth the promise that the authors of the Letelier-Moffitt murders may, at last, be brought to justice.

Re-establishing the Rule of Law in Chile

The importance of establishing accountability for such a brutal act of international terrorism speaks for itself. Beyond its immediate importance, progress in the criminal proceedings against Contreras and Espinoza will be a crucial test of Chile's success in reclaiming its democratic tradition after a prolonged period of military dictatorship. In particular, bringing these men to justice would be an important step in establishing accountability for the human rights crimes committed by the government of General Augusto Pinochet.

In February 1991, a Commission on Truth and National Reconciliation, appointed by President Patricio Aylwin to investigate human rights violations committed during the 17-year rule of Gen. Pinochet, produced a report concluding that over 2,000 people had been victims of forced disappearances or political killings in that period. Most of these crimes were carried out by agents of DINA in the early 1970s, when the most sweeping violence occurred. It was also then that Gen. Contreras headed DINA, and Lt. Col. Espinoza served as the agency's Chief of Operations. While an amnesty law enacted by the Pinochet government bars prosecution of most of DINA's crimes, the Letelier-Moffitt case is explicit-

ly exempted from the amnesty's effect.²

Chile's Obligations Under International Law

By bringing Contreras and Espinoza to justice, the Government of Chile would take an important step in discharging its obligations under international law. In recent years, international law governing states' responsibility to punish atrocious crimes has been significantly clarified. Recent decisions by international bodies that monitor human rights treaties that Chile has ratified, including the International Covenant on Civil and Political Rights³ and the American Convention on Human Rights,⁴ have made clear that States Parties' duty to ensure freedom from torture, illegal killings and disappearances is breached if a state fails to bring to justice persons who commit these crimes.⁵ Further, the *Revised Restatement (Third) of Foreign Relations Law of the United States*, adopted by the American

²The amnesty law, Decree Law 2,191, enacted in 1978, bars prosecution of most human rights crimes committed from September 11, 1973, the date of the coup that brought Gen. Pinochet to power, through March 10, 1978. The decree law specifically excepts those responsible for the assassination of Orlando Letelier.

³Dec. 16, 1966, G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, 999 U.N.T.S. 171. Chile ratified the Covenant on Feb. 10, 1972.

⁴Jan. 7, 1970, O.A.S. Official Records, OEA/ser.K/XVI/1.1, doc. 65 rev. 1, corr. 1 (1970), *reprinted in* 9 I.L.M. 673 (1970). Chile ratified the Convention in August 1990.

⁵For examples of cases interpreting the Covenant, see *Bleier v. Uruguay*, Comm. No. R.7/30, 37 U.N. GAOR Supp. (No. 40) Annex X, U.N. Doc. A/37/40 (1982) (disappearance); *Quinteros v. Uruguay*, Comm. No. 107/1981, 38 U.N. GAOR Supp. (No. 40) Annex XXII, U.N. Doc. A/38/40 (1983) (disappearance); *Dermit v. Uruguay*, Comm. No. 84/1981, 38 U.N. GAOR Supp. (No. 40) Annex IX, para. 11.a, U.N. Doc. A/38/40 (1983) (extra-legal execution); *Muteba v. Zaire*, Comm. No. 124/1982, 39 U.N. GAOR Supp. (No. 40) Annex XIII, U.N. Doc. A/39/40 (1984) (torture). For examples of cases interpreting the American Convention on Human Rights, see *Velasquez Rodriguez Case*, Inter-Am. Ct. H.R. (ser. C) No. 4, para. 174 (1988) (judgment) (disappearance); *Godinez Cruz Case*, Inter-Am. Ct. H.R. (ser. C) No. 5 (1989) (judgment) (disappearance).

Chile has also ratified the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Feb. 4, 1985, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *reprinted in* 23 I.L.M. 1027 (1984), *as modified*, 24 I.L.M. 535 (1984) (*entered into force* June 26, 1987), which explicitly requires States Parties to either extradite an alleged torturer or "submit the case to [their] competent authorities for the purpose of prosecution." *Id.*, art. 7. Chile ratified the Convention on Sept. 30, 1988.

Law Institute in 1987, recognizes that states' failure to punish repeated or notorious instances of torture, disappearances and extra-legal killings violates customary international law.

Prosecution of Contreras and Espinoza has special significance in light of Chile's international duties. The assassination of Orlando Letelier and Ronni Moffitt ranks among the most notorious crimes committed by DINA during a period of massive violations. And while prosecution of Contreras and Espinoza for the Letelier-Moffitt murders would not establish accountability for the other violations committed at DINA's command, it would prevent those who bore a large measure of responsibility for many of those violations from attaining lasting impunity.

The Costs of Impunity

While international law governing states' duty to prosecute atrocious crimes has been clarified in recent years, so, too, have the costs of impunity. In recent years, scores of countries have made a transition from dictatorship to democracy. Each has faced the dilemma now confronting Chilean society: how to balance the demands of justice against the continued threat of military force. In many countries -- including Chile -- security forces responsible for the worst abuses continue to exert substantial influence, and make clear that they will not abide a legal accounting for their past depredations. Fearing a challenge from the military, many of the fledgling democracies have conferred impunity. This has been true even when the new governments possessed the power to establish legal accountability without provoking a serious military threat.

With this development, the harmful effects of impunity for widespread violence of the recent past -- once a subject of speculation -- have become clear. In countries like the Philippines and Haiti, where military abuses generally have been subject to *de facto* impunity, and countries like Brazil, Guatemala and El Salvador, where *de jure* impunity has been conferred by amnesties, security and police forces continue to perpetrate grave human rights abuses -- torture and worse -- despite the transition to democratic government in those

countries. Further, the experiences of such countries as the Philippines, Haiti, Guatemala and El Salvador belie the claim that impunity for past abuses can assure military acceptance of civilian rule. In each of these countries the military has continued to assert autonomous power. Emboldened by impunity, rebellious military factions have repeatedly sought the civilian government's violent overthrow in the Philippines.

Obstacles to a Successful Prosecution

If the case for prosecution of Contreras and Espinoza is compelling -- and recent progress encouraging -- significant obstacles remain. General Pinochet, who retains considerable power as Commander-in-Chief of Chile's Army, may resist efforts to charge Contreras and Espinoza. In the past, he has vowed to oppose any effort by his successor to prosecute "his men" for human rights violations.

Justice Banados may thus face personal risks, and will look to the Aylwin government for the visible and uncompromising support he will need to pursue a vigorous investigation. In this, we have every reason for confidence. President Aylwin has evinced the strongest commitment to secure justice in the Letelier-Moffitt case. But the government, too, will face risks, underscored by Gen. Pinochet's demonstrated willingness to call out the troops when his own will is thwarted, as he did last December during a dispute with the civilian government.

Although Justice Banados has a strong reputation for independence, his decisions will be reviewed on appeal by the entire Supreme Court, which is dominated by conservative members who consistently refused to act on human rights cases presented to the Court during the Pinochet era. The Court's vote to designate an investigating judge was close; only 9 of 17 members approved the decision (Justice Banados was one of those who voted in opposition).

Further, according to the weight of Chilean legal opinion, Gen. Contreras and Col. Espinoza must be named as subjects of investigation before September 21, 1991 to assure

survival of criminal proceedings against them. While the recent filing of criminal complaints by relatives of Orlando Letelier appears to have met this requirement, the defendants may challenge the sufficiency of action taken before September 21, and any such challenge would be considered by the Supreme Court -- a troubling prospect in view its record in human rights cases.⁶

While serious, all of these challenges can be met. In our view, the sufficiency of available evidence against Gen. Contreras and Col. Espinoza presents no genuine obstacle to their prosecution. There is no dearth of evidence to support an indictment. Much has already been collected, and more is readily available if the will to find it exists.

The political challenges to successful prosecution also can be met. The League was told by government officials in Chile that it is unlikely that an indictment of Contreras would provoke a major military threat. President Aylwin assured us specifically that the government would continue to press for a thorough investigation to assure that justice is done.

Still, the risks should not be discounted. The United States must do its part to counter them by continuing to communicate unequivocally its own determination to see that justice is done in the Letelier-Moffitt case and to cooperate fully and promptly with any requests from the investigating judge. The U.S. should also be prepared to renew efforts to extradite Gen. Contreras and Col. Espinoza for trial here if a prosecution in Chile is blocked. Further, the U.S. should immediately suspend any plans for military assistance to Chile, authorized last December after a 14-year ban, if the military acts to obstruct the judicial process. Finally, the United States should continue to press for progress in the Letelier-Moffitt case in the context of current negotiations for a free-trade agreement with

⁶On September 11, a military prosecutor presented a challenge to Justice Banados, arguing *that the military court still has jurisdiction over the Letelier-Moffitt case.* Even if the Supreme Court, which will rule on this challenge, affirms its earlier decision to appoint Justice Banados, the delay could interfere with Justice Banados' efforts to assure that necessary legal action is taken before September 21 to assure that the time bar does not come into effect.

Chile.

For its part, the Aylwin government must continue to place the highest priority on securing justice in the Letelier-Moffitt case. On the basis of our inquiry, we are satisfied that none of the obstacles to justice examined in this report is insurmountable if the will exists to overcome them.

New York, New York
September 1991

I. THE CRIME

On the morning of September 21, 1976, a bomb exploded in the car of Orlando Letelier as he drove to his office with two colleagues, Michael and Ronni Karpen Moffitt. Letelier had offered to drive the Moffitts to work that day, since their own car had broken down. As Letelier's car rounded Sheridan Circle in the fashionable Embassy district of Washington, D.C., the bomb, detonated by remote control, ripped through the floorboards under the driver's seat, severing Letelier's legs from his body. Pieces of metal slashed Ronni Moffitt; one pierced her carotid artery. Ms. Moffitt drowned to death in her own blood.⁷ Her husband, sitting in the back seat, survived the explosion.

Letelier, who had served as Chile's Ambassador to Washington and as its Minister of Foreign Relations, Minister of Interior, and finally Minister of Defense under the government of Salvador Allende, was imprisoned at the time of the 1973 military coup that brought Gen. Augusto Pinochet to power. Letelier was released in early 1974, and was expelled from Chile. After a stay in Venezuela, he moved to Washington in January 1975, and became a prominent opponent of the military regime of Gen. Augusto Pinochet. At the time of his murder, Letelier, then 44 years old, was Director of the Transnational Institute of the Institute for Policy Studies (IPS).

Ronni Karpen Moffitt, 25 years old at the time of her death, was the development director of IPS. Michael Moffitt, then a Research Associate at the Institute, was collaborating with Letelier on a major study of the international economy. At the time of Ronni Moffitt's death, the two had been married for four months.

II. CRIMINAL PROCEEDINGS IN THE UNITED STATES

Until very recently, virtually all of the progress in bringing the assassins to justice has occurred through criminal proceedings in the United States. Although several defen-

⁷See Michael Moffitt, "A Trial for Manuel Contreras," *The Washington Post*, Apr. 30, 1991.

dants have been prosecuted in the U.S., the authors of the crime, Gen. Manuel Contreras Sepulveda and Col. Pedro Espinoza Bravo, have eluded punishment.

Initial Investigation

In light of Letelier's status as a former diplomat and his public opposition toward the Pinochet government, his assassination seemed likely the work of international terrorists. The Federal Bureau of Investigation (FBI) was brought into the investigation, and the U.S. Attorney's office in Washington assigned it a high priority.⁸

Early on, suspicions centered on Chile's notorious secret police agency, DINA. During each previous September since the coup that brought Gen. Pinochet to power, a prominent opponent of his regime had been the target of an assassination attempt by agents of DINA outside of Chile.⁹ One week after the Letelier-Moffitt assassination, an FBI agent assigned to the U.S. Embassy in Buenos Aires sent a top-secret report to Washington speculating that the assassination had been carried out as part of Operation Condor, a joint intelligence operation organized by DINA that included the intelligence services of Argentina, Bolivia, Paraguay and Uruguay.¹⁰

The Chilean government denied responsibility. A Foreign Ministry statement asserted: "What has happened can only harm the Chilean government, because it immediately becomes part of the propaganda campaign of the Soviet Union against us."¹¹

⁸A comprehensive account of the crime and investigation is set forth in Dinges and Landau, *ASSASSINATION ON EMBASSY ROW* (New York: 1980).

⁹The coup occurred on September 11, 1973. In September 1974, former Army Commander Gen. Carlos Prats and his wife were killed by a car bomb in Buenos Aires. In September 1975, Bernardo Leighton, a Christian Democratic politician, and his wife were the targets of a shooting attack in Rome.

¹⁰Dinges and Landau, *supra* note 8, at 238-39.

¹¹*Quoted in id.*, at 223. Despite the initial conclusions of the FBI, the Central Intelligence Agency (CIA) initially gave credence to Chile's denial. According to *The Washington Post*, George Bush, then Director of Central Intelligence, told then Secretary of State Henry Kissinger that CIA officials "believe that operatives of the present Chilean military junta did not take part in Letelier's killing."

Early suspicions of the Chile government's involvement were reinforced as the U.S. investigation progressed. In February 1978, following leads implicating Cuban exile militants known to have visited Chile, U.S. investigators narrowed their suspects to two DINA agents who were believed to have entered the United States in August 1976, and whose photographs appeared on fraudulent Paraguayan passports bearing the names Juan Williams Rose and Alejandro Romeral Jara. "Juan Williams Rose" turned out to be a U.S. citizen living in Chile named Michael Vernon Townley, and "Alejandro Romeral Jara" was, in fact, Capt. Armando Fernandez Larios. Both were agents of DINA.

In April 1978, responding to intense pressure from the U.S. government, Chile agreed to expel Townley, and turned him over to the custody of Justice Department officials who brought him back to the United States for questioning. A week after his arrival in the United States, Townley agreed to plead guilty to one count of conspiracy to murder a foreign official, and to cooperate in the investigation and prosecution of others involved in the crime. In return, Townley was promised a sentence of no more than ten years, opportunity for parole after three years and four months, and federal protection for himself and his family.

Townley's testimony provided a comprehensive account of the conspiracy to assassinate Orlando Letelier. Ultimately, it led to the indictment by U.S. courts of eight suspects.

Townley's Testimony

Townley testified that he was a DINA agent, recruited in 1974 by DINA's Director of Operations, Col. Pedro Espinoza Bravo, because of his electronics expertise and his anti-Allende activities prior to the 1973 coup. A substantial body of evidence corroborated Townley's claim to be a DINA agent. For example, Townley regularly used a car that was registered to a DINA front organization; he had been issued a safe-conduct pass for the purpose of "carrying out special service missions" that was signed by the head of DINA,

Gen. Manuel Contreras; and he had been permanently assigned three DINA employees to serve as his secretary, administrative assistant and driver.¹²

In July 1976, Townley testified, he and Capt. Fernandez travelled to Paraguay, where they obtained false Paraguayan passports in the names of Juan Williams and Alejandro Romeral. The trip was undertaken at the direction of Col. Espinoza, who instructed the two agents to obtain U.S. visas and then travel to the United States to assassinate Letelier. The mission was aborted after a telephone call to Fernandez from DINA officials in Chile, apparently because of questions raised by U.S. and Paraguayan officials concerning the purpose of the visas.¹³ Unknown to Townley, copies of the falsified passports were sent to the U.S. Department of State, where the passports' photographs were ultimately used to identify Townley and Fernandez.¹⁴

According to Townley's testimony, in August 1976, after his return to Chile, he was informed by Espinoza that the plan to murder Letelier was going forward.¹⁵ Espinoza directed Townley to travel to the United States, where he would meet Fernandez. Fernandez was to conduct surveillance on Letelier's home and workplace to determine his travel habits and modes of transportation. Townley was instructed to make contact with an anti-Castro exile group, the Cuban Nationalist Movement (CNM), to engage its help in carrying out the assassination.¹⁶

¹²See Submission of the United States Government to the Supreme Court of Chile in support of the extradition of Manuel Contreras et al., January 31, 1979, at 33 et seq. (English translation) [hereinafter "U.S. Submission"].

¹³See transcript of Townley's testimony on May 14, 1981 in U.S. v. Novo, at 1447-1463 [hereinafter "Transcript, U.S. v. Novo"].

¹⁴Dinges and Landau, *supra* note 8, at 195.

¹⁵Transcript, U.S. v. Novo, at 1466.

¹⁶Townley was instructed to make the killing appear accidental or a suicide if possible, but was authorized to use other means, including explosive devices. See *de Letelier v. Republic of Chile*, 502 F. Supp. 259, 602 (D.D.C. 1980).

On September 8, 1976. Townley left Chile for the United States, using an official Chilean passport issued in the name of Hans Petersen Silva and a U.S. visa issued at the request of the Chilean government. He travelled to Kennedy Airport in New York, where he met Fernandez, who had completed his part of the mission and provided Townley with a surveillance report on Letelier's daily movements. Fernandez was accompanied in the U.S. by a DINA agent, Luisa Monica Lagos, operating under the name "Liliana Walker" and posing as his wife. Fernandez and Lagos returned to Chile within hours of Townley's arrival.

Pursuant to Espinoza's orders, Townley contacted the CNM, several of whose members agreed to assist him in carrying out the assassination. Townley and CNM member Virgilio Paz Romero travelled together to Washington, where they conducted corroborative surveillance of Orlando Letelier. Townley constructed the bomb using parts he had brought from Chile and other components that he, Paz and Jose Dionisio Suarez y Esquivel, another CNM member, had purchased in the United States, and attached the bomb to Letelier's car. On the morning of September 21, the two CNM members followed Letelier's car as it headed to the IPS office, and detonated the explosive device by remote control.

In early 1978, Townley testified, three CNM members who had participated in the assassination -- Guillermo Novo, Virgilio Paz and Alvin Ross -- contacted Townley in Chile seeking assistance in relocating CNM members who, they believed, were under U.S. government scrutiny. Townley relayed this request to Gen. Contreras, who said that, since he was no longer director of DINA, he did not have access to funds. In another meeting, Townley and Contreras discussed covering up the trips of Townley and Fernandez to Paraguay to obtain false passports.

Prosecutions in U.S. Courts

On August 1, 1978, a federal grand jury indicted eight men for the murders of Orlando Letelier and Ronni Moffitt, including three DINA officials -- Gen. Manuel

Contreras Sepulveda, Col. Pedro Espinoza Bravo and Capt. Armando Fernandez Larios. Also indicted were the five Cuban exiles recruited by Townley to assist him in carrying out the assassination: Guillermo Novo Sampol, Alvin Ross Diaz, Ignacio Novo Sampol, Jose Dionisio Suarez y Esquivel and Virgilio Paz Romero. The FBI apprehended Guillermo Novo Sampol, Alvin Ross Diaz and Ignacio Novo Sampol, and brought them to trial in Washington, D.C. in early 1979. Guillermo Novo and Alvin Ross were convicted and sentenced to consecutive life terms for their roles in the deaths of Orlando Letelier and Ronni Moffitt, and Guillermo Novo was also convicted of perjury in connection with his testimony before a grand jury. Ignacio Novo was sentenced to two consecutive five-year terms for perjury and a three-year term for failing to report a felony. At the sentencing hearing, Judge Barrington Parker observed, "In the ten years I have served on the bench, I've never presided over a trial of murder as monstrous as this."

But in September 1980, all three convictions were overturned. The D.C. Court of Appeals reversed the convictions of Guillermo Novo and Alvin Ross because the trial court had erred in introducing testimony of government informants who were inmates in the same cellblocks as the accused while they awaited trial. In reversing their convictions, the appellate court noted that the evidence presented at trial "all support the conclusion" that the two were guilty. Ignacio Novo's conviction was reversed because the trial court erred in refusing to grant him a separate trial for his lesser charges. Guillermo Novo Sampol and Alvin Ross Diaz were retried; both were acquitted in May 1981.¹⁷

The two other indicted Cubans eluded arrest for over a decade. In April 1990, the FBI arrested Jose Dionisio Suarez y Esquivel in St. Petersburg, Florida, and charged him with first degree murder and conspiracy. Suarez pleaded guilty to the conspiracy charges, admitting that he had provided a blasting cap to Michael Townley. On November 15, 1990,

¹⁷On retrial, the two argued that Townley had assassinated Orlando Letelier and Ronni Karpen Moffitt on orders from the Chilean government, but had done so without the assistance of Cuban exiles, who were later used as "scapegoats."

Suarez was sentenced to twelve years' imprisonment.

The prime-time television program "America's Most Wanted" led to the arrest of Virgilio Paz Romero on April 23, 1991. Paz, still a fugitive from justice almost fifteen years after the crime, had been featured on a recent broadcast. A viewer who recognized Paz, then living in Miami, identified him to federal authorities.¹⁸ On July 30, Paz pleaded guilty to conspiracy to murder a foreign official,¹⁹ and was sentenced to twelve years' imprisonment on September 12. With his conviction, only two men included in the 1980 indictment have evaded prosecution -- Gen. Manuel Contreras and Col. Pedro Espinoza.

Extradition Efforts

Despite U.S. efforts to secure the extradition of Contreras and Espinoza, both remain in Chile, whose courts have long acted to shield the two from justice. Their extradition, along with that of Capt. Fernandez, was sought as long ago as September 1978. But the U.S. requests have been blocked by Chile's Supreme Court, which under Chilean law must approve extradition requests.

The U.S. Embassy retained a distinguished Chilean attorney, Alfredo Etcheberry, to assist it in presenting its case for extradition. In January 1979, Etcheberry presented the Supreme Court a 100-page submission in support of the U.S. extradition request. The submission exhaustively set forth evidence supporting the case against the three Chileans. This included, in addition to Townley's testimony, a significant body of documentary evidence corroborating Townley's statements that he was a DINA agent and that the murder of Letelier had been ordered by Contreras and Espinoza.

Neither Contreras nor Espinoza denied that Townley had worked for DINA. They in

¹⁸"Cuban Exile Is Arrested in Florida In 1976 Slaying of Chilean Envoy," *The New York Times*, April 24, 1991, at A1.

¹⁹"Cuban Exile Pleads Guilty in the 1976 Bomb Slaying of Chilean Ambassador," *The New York Times*, July 31, 1991, at A14. In exchange for Paz's plea, the U.S. Attorney agreed to drop other charges against Paz, to impose a sentence no longer than twelve years, and not to prosecute his wife for concealing him from arrest.

fact corroborated key aspects of Townley's testimony: both admitted that they had sent Townley to Paraguay with Fernandez, and had instructed the two to use false Paraguayan passports to travel to the United States. They denied, however, that Townley's trip was undertaken as part of a DINA mission to assassinate Letelier. Instead, Contreras and Espinoza insisted, Townley's September 8 trip to the United States was for a family vacation. The claim was patently implausible, and indeed the official Chilean passport Townley used (in the name of Hans Petersen Silva) was issued in the same numerical sequence as several official passports used by other DINA members -- including Contreras and Espinoza -- on foreign missions undertaken for the agency.²⁰

Fernandez also denied that the purpose of Townley's trip was to assassinate Letelier, but his account of Townley's trip differed from that of Contreras and Espinoza. Fernandez testified that Townley had traveled to Washington to meet with General Vernon Walters, then at the CIA, to obtain names of prominent Americans who could help Chile.²¹ (More than a decade later, Fernandez recanted this testimony, and pleaded guilty to charges of perjury.)

On May 14, 1979 Chile's Supreme Court -- which routinely rejected human rights claims brought during the 17-year dictatorship of Augusto Pinochet -- ruled that there was insufficient evidence to support extradition of Contreras, Espinoza and Fernandez. On October 2, 1979, the Court rejected the U.S. government's appeal. The Court's action turned on its refusal to consider Townley's testimony because it was presented pursuant to a plea bargain. Plea bargains are unknown to Chilean criminal procedure, and there is no authority that would permit a Chilean court to accept evidence obtained as a result of such

²⁰U.S. Submission at 40-42.

²¹*Id.* at 36.

an agreement.²²

Yet Dr. Etcheberry's submission on behalf of the United States laid out a considerable body of circumstantial evidence linking Contreras, Espinoza and Fernandez to the murders. The Supreme Court had to wilfully ignore this evidence to reach its conclusion.

The U.S. government responded forcefully to the denial of its extradition request. Senators Kennedy and Church called for the suspension of any remaining military or economic credits to Chile and for the withdrawal of non-essential diplomatic and military personnel "in the absence of a just conclusion" in the Letelier-Moffitt case. On November 30, 1979, the U.S. government announced a series of sanctions against the Chilean government, including: 1) suspending six million dollars in U.S. economic and military aid; 2) halting operations in Chile for the Export-Import Bank and the Overseas Private Investment Corporation; and 3) reducing the size of the U.S. mission in Santiago and halting "pipeline" military shipments to Chile. These measures supplemented an existing ban on arms sales to Chile pursuant to legislation enacted in 1976.

The dramatic defection of Capt. Armando Fernandez Larios in January 1987 produced important new evidence about the involvement of Contreras and Espinoza. No longer able to bear the weight of his guilt, Fernandez defected from Chile and placed himself in U.S. custody.²³

Fernandez, who agreed to make a full confession in exchange for protection as a witness, corroborated Townley's previous testimony that Gen. Contreras had ordered the assassination. Further, Fernandez provided new evidence that Gen. Pinochet had been personally involved a cover-up of the assassination. Fernandez pleaded guilty to being an

²²In this respect, Chile's procedure is consistent with that of many other Latin American countries, where the testimony of accomplices and co-conspirators is not admissible in evidence against co-defendants. As noted below, a bill now pending in Chile's Congress would allow courts to consider evidence obtained as a result of plea bargains in cases against persons charged with terrorist acts.

²³Fernandez had been in touch with U.S. authorities since 1983.

accessory after-the-fact in the murder of an internationally-protected person, and served seven months in prison.

Despite the new evidence provided by Fernandez's testimony, the U.S. government decided not to renew its extradition request for Gen. Contreras and Col. Espinoza. The evidence presented by Fernandez did, however, prompt Judge Barrington Parker of the D.C. district court to submit a series of questions to the Chilean Supreme Court. The questions sought information from seven former members of the Chilean government about their knowledge of the Letelier-Moffitt case. The response to these questions submitted by a retired Chilean diplomat, Jose Miguel Barros, asserted that in April 1978 Enrique Montero Marx, then Undersecretary of the Interior, had told Barros that Gen. Contreras had ordered the assassination of Orlando Letelier.

III. CRIMINAL PROCEEDINGS IN CHILE

Justice in the Letelier-Moffitt case will remain incomplete until Gen. Manuel Contreras and Col. Pedro Espinoza are brought to trial. Since the possibility of favorable action on a new extradition request is uncertain,²⁴ prosecutions in Chile may now offer the best prospect for bringing the two to justice.

Until quite recently, criminal proceedings in Chile made little discernible progress. Chile's military courts, which had jurisdiction over the Letelier-Moffitt proceedings for over a decade, acted to shield the perpetrators from justice. The nation's Supreme Court, which routinely refused to act on human rights cases during the Pinochet years, likewise declined to advance the Letelier-Moffitt case when key issues were presented to it for decision during that period.

²⁴Chilean lawyers believe that further extradition proceedings would be barred by a rule akin to the "double jeopardy" rule, which bars two prosecutions for the same crime in the United States. In view of Fernandez's testimony that the prior extradition proceedings were tainted by fraud, application of such a bar would appear to be unwarranted in this case. Despite the legal obstacles, the U.S. Justice Department has indicated its intention to pursue extradition if Contreras and Espinoza are not brought to justice in Chile.

The election of Patricio Aylwin opened the way for more vigorous efforts to bring the authors of the crime to justice, and recent months have seen substantial progress. But significant obstacles remain, and considerable effort must be taken to assure that Gen. Contreras and Col. Espinoza do not permanently elude justice.

The Passports Case

Criminal proceedings in Chile began with an investigation into the falsification of passports used by Michael Vernon Townley and Armando Fernandez Larios in their first attempt to secure entry into the United States.²⁵ The so-called "Passports Case" originated on March 7, 1978 with the Supreme Court's designation of an investigative judge, in response to a request from the U.S. Justice Department for information that would assist in identifying the individuals whose photographs appeared in the fraudulent passports.²⁶ Although the Passports Case thus initially focused on crimes relating to falsification of passports, the investigation ultimately encompassed related crimes, including murder.

On March 21, 1978, the case was transferred to the military court system, since the involvement of DINA officials was suspected.²⁷ There the case languished for more than eight years, with little investigative activity. On October 14, 1986, the case was ordered permanently closed.²⁸

On May 22, 1987, after Armando Fernandez Larios had confessed to U.S. authori-

²⁵The investigation was marred by irregularities, which have yet to be fully investigated. Guillermo Osorio, the Consular official who had approved the false passports, died in 1977. Although his death was officially attributed to a heart attack, witnesses say that they heard shots at the time of his death. Osorio reportedly had been troubled by the Letelier-Moffitt assassination and his role in facilitating it. Two other potential witnesses also met violent deaths during an internal Foreign Ministry investigation of the fraudulent passports. Americas Watch, HUMAN RIGHTS AND THE "POLITICS OF AGREEMENTS": CHILE DURING PRESIDENT AYLWIN'S FIRST YEAR at 61, n.94 (July 1991) [hereinafter AMERICAS WATCH REPORT].

²⁶See "Desarrollo Historico del 'Casa Pasaportes'," *El Mercurio*, July 17, 1991, at C8.

²⁷The case was referred to the *Segundo Juzgado Militar* (Second [district] Military Court).

²⁸The Supreme Court had earlier ordered the case temporarily closed.

ties, the *Corte Marcial* changed the status of the case from permanent to "temporary" closure (*sobreseimiento temporal*). A case in this status is no longer being actively investigated, but can be reopened to receive new evidence. But the nine-year failure of Chile's military court system to carry out any serious investigation left little basis to hope that anyone would be charged before the fifteenth anniversary of the crime -- September 21, 1991 -- after which further criminal proceedings would be barred by Chilean law.²⁹

Nor did it appear likely that the Supreme Court would intervene to direct that the case be re-opened.³⁰ Its refusal to extradite Contreras and Espinoza to the United States was just one example of a record of virtually complete indifference to human rights cases during the seventeen years in which Pinochet was in power. The Court has traditionally been a conservative body, historically insulated from the influence of elected officials by a complex appointment process by which the President can only fill vacancies from the ranks of appellate court judges. A 1987 report of the Association of the Bar of the City of New York and the International Bar Association concluded: "Although it lays claim to judicial independence and neutrality, the Supreme Court [of Chile] more typically has acted as a political ally of the military government."³¹ During the Pinochet era, the judiciary was the only branch of government that continued functioning without interruption, although its authority in cases involving political or national security crimes was transferred to military courts. Its institutional survival was no doubt ensured by the largely passive posture most civilian courts took toward human rights cases. Thus was particularly true of the Supreme Court, which from October 1973 through 1989 rejected over 8,900 habeas corpus petitions,

²⁹Article 94, *Codigo Penal*.

³⁰As noted *infra*, the Supreme Court did briefly reopen the case in April 1990. See note 38.

³¹HUMAN RIGHTS AND THE ADMINISTRATION OF JUSTICE IN CHILE: REPORT OF A DELEGATION OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK AND OF THE INTERNATIONAL BAR ASSOCIATION, 42 RECORD OF THE ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK 431 (May 1987).

accepting only 30.³²

Developments Under the Aylwin Government

The restoration of civilian government in March 1990 held forth the possibility that there might, for the first time since the murders of Orlando Letelier and Ronni Karpen Moffitt, be genuine progress in the criminal proceedings. As a presidential candidate, Patricio Aylwin had campaigned at the head of a multi-party coalition, the *Concertacion de Partidos por la Democracia*, which promised full restoration of and respect for human rights. The *Concertacion's* platform included a pledge to obtain justice in cases of human rights violations committed during the Pinochet era, and the repeal or nullification of an amnesty enacted in March 1978.³³

That President Aylwin is personally committed to obtaining justice in these cases is clear. Still, his administration has fallen short of its promises. To avert confrontations with the military, the Aylwin government has opted for a policy of disclosure of past crimes and national reconciliation based upon acknowledgement of the crimes and forgiveness, rather than pursuing legal accountability through criminal prosecution. Edgardo Boeninger, Secretary General of the Presidency, explained the rationale for this approach: "Look, we accepted a certain number of safety valves We are in a period of transition to democracy. Not everything is possible."³⁴

One of the chief products of this policy was a report by an eight-member National Commission on Truth and Reconciliation, headed by former Senator Raul Rettig, documenting political killings and disappearances committed during the period of military government. President Aylwin created the Commission in May 1990, with the mandate to investigate the

³²AMERICAS WATCH REPORT at 36, n.59.

³³*Concertacion de Partidos por la Democracia*, "Programa de Gobierno" at 3-4 (1989). As noted in the Introduction, the Letelier-Moffitt case was explicitly exempted from the amnesty's effect.

³⁴"Pinochet Assails Chilean Report," *The New York Times*, March 28, 1991, at 3.

most serious violations committed in that period. The Rettig Commission's 2,000-page report, publicly released by President Aylwin in March 1991, documented the cases of 2,115 persons who it concluded had been victims of political killings or disappearances, most at the hands of persons acting on behalf of the state. The vast majority of serious human rights abuses documented by the Commission occurred in the period before March 1978; all but one of the crimes committed before March 10, 1978 -- the Letelier-Moffitt case -- were covered by the amnesty and could not be prosecuted under its terms.

An early casualty of the "not everything is possible" policy was the Aylwin government's commitment to overturn Pinochet's amnesty law, which President Aylwin reportedly agreed to abide by when he assumed office.³⁵ With this retreat from the *Concertacion's* campaign promise, the Letelier-Moffitt murders became the only case from the period of the worst violations that stood any chance of prosecution.

Even so, for a time it appeared that the Passports Case would suffer the same fate as cases covered by the amnesty. Officially, the Aylwin government remained committed to obtaining justice in the Letelier-Moffitt case. On December 3, 1990, the Bush administration announced that the Aylwin government had agreed to enact legislation transferring the case from military to civilian courts and to seek the appointment of an investigating judge, a *Ministro en Visita*.³⁶ Still, months passed before either step was taken.

The first step -- transfer of the case to civilian courts -- was effectively accomplished by legislation enacted in February 1991, known as the "Cumplido laws" after Chile's Minister of Justice.³⁷ One provision modified the Code of Military Justice to transfer to

³⁵*Id.*

³⁶The announcement accompanied publication of Secretary of State James Baker's certification that Chile had met the requirements necessary to end sanctions imposed against Chile by the 1976 Kennedy-Harkin Amendment. See Justification for Certification under Section 726(b) of the International Security and Development Act of 1981.

³⁷Law No. 19,047, published in *Diario Oficial de la Republica de Chile*, Feb. 14, 1991.

civilian courts cases involving a member of the military using the passport of another military person. Another amended the *Codigo Organico de Tribunales* to give the Supreme Court jurisdiction of "crimes under the jurisdiction of the Chilean courts when they could affect the international relations of the Republic with another state." Although drafted in generic terms, the provisions were clearly aimed at transferring the Letelier-Moffitt case to civilian court jurisdiction. Acting on the new law's assignment of the case to Supreme Court jurisdiction, in March the Aylwin government requested the Supreme Court to appoint one of its own members as a *Ministro Instructor*, a special investigating judge.

At the time the Cumplido laws were enacted, an appeal of a military court's decision to close the Passports Case temporarily was pending before the *Corte Marcial*.³⁸ The appeal had been brought by the military prosecutor, whose decision to close the case permanently, rather than temporarily, had been modified by the military court. In March 1991, the Supreme Court ruled that, notwithstanding the Cumplido laws, it could not accept jurisdiction over the Passports Case until the *Corte Marcial* had issued a decision on the appeal. Many observers saw the Court's decision as an effort to delay the Letelier case, as the 15-year time ban was rapidly approaching. In the view of Americas Watch, the decision was "legally defensible, but not the Court's only option." Under the circumstances, it was "a gesture of disrespect to the government."³⁹

On April 8, 1991, the *Corte Marcial* finally issued its decision. Three members of the five-member court voted to uphold the lower court's decision. The mixed-court's two civilian members -- Judges Cerda and Guzman -- dissented, voting to reopen the *sumario*, or

³⁸In 1987, a prominent Chilean human rights lawyer, Jaime Castillo Velasco, acting on behalf of Orlando Letelier's sister, Fabiola Letelier, intervened in the case in an effort to reopen the investigation. In April 1990, acting on an appeal by Castillo, the Supreme Court ordered the case reopened to permit the examination of Luisa Monica Lagos, who, under the alias "Liliana Walker," had accompanied Fernandez when he met Townley in the United States shortly before the murders. After conducting a brief interrogation of Ms. Lagos, the military prosecutor (*fiscal militar*) once again permanently closed the case.

³⁹AMERICAS WATCH REPORT at 62-63.

investigative, stage of the proceedings. The dissenters' opinion listed 47 separate areas of inquiry which they believed should be pursued, ranging from an examination of the woman who accompanied Capt. Fernandez to the United States, to seeking the testimony of Michael Townley, Capt. Fernandez and other key witnesses in the U.S. criminal proceedings. The military prosecutor promptly appealed the decision to the Supreme Court, asking it to close the case permanently.

Preventing the Case from Expiring

This appeal, along with a request by the Aylwin government to appoint an investigating judge, was pending before the Supreme Court when the League delegation arrived in Santiago in the first week of July. Our principal concern was the forthcoming fifteenth anniversary of the crime, and the possibility that prosecution would be barred under Chilean law if not initiated before September 21. Our objectives were to meet with Chilean lawyers to learn what we could about the future prospects of the case, and to exhort government officials to do whatever was possible to expedite the proceedings.

All of the lawyers with whom we met agreed that Article 94 of the Penal Code imposed a fifteen-year period within which prosecution of the most serious crimes in the Passports Case, including murder, must commence.⁴⁰ Various provisions allowed, however, for suspension of the running of the period under specified circumstances. Of these, the most important to the Letelier-Moffitt case is Article 96, which provides that the limitation period "is suspended from the time that the proceedings are directed against [the delinquent]." Thus, if proceedings are directed against suspects before the 15-year period ends, criminal prosecutions may go forward. But Article 96 has an important qualification: "[I]f the prosecution is halted for three years, or ends without a conviction, the prescription continues as if it had not been interrupted."

Given the ambiguity of the language, it is not surprising that experts on Chilean law

⁴⁰Lesser crimes are subject to a ten-year time bar.

disagree on its meaning. There is considerable dispute, in particular, about whether it is necessary formally to charge specific defendants with a crime (*encargada reo*)⁴¹ to avoid the time bar. As elaborated more fully below, the weight of legal opinion in Chile is that the limitations period is tolled as soon as suspects are named; many believe that the filing of complaints by relatives of the victims -- which has already occurred -- is sufficient. There is also considerable disagreement over whether the limitation period was tolled (i.e., stopped running) during the earliest stage of the case, when Contreras and Espinoza were arguably subjects of the investigation. Some lawyers assert that any suspension of the limitation period was nullified because the prosecution was halted for at least a three-year period while the various appeals ran their course.

In light of the vagaries of the law, and the penchant of Chilean judges to resolve cases on hyper-technical grounds, we are concerned that anything less than formally naming subjects of investigation before September 21 could invite a later appeal by defendants, which could jeopardize hard-won progress in the case. But before the Court itself could take this action, two other critical steps had to be taken: First, the Supreme Court had to appoint an investigating judge -- a *Ministro Instructor*.⁴² Second, the Supreme Court or the *Ministro* would have to decide that the evidence was sufficient to reopen the *sumario*, or investigative, stage of the case.

Recent Progress

Prior to our meetings with officials of the Aylwin government, we were doubtful that

⁴¹This is often compared to indictment by a grand jury under U.S. criminal procedure.

⁴²A *Ministro Instructor* is a member of the Supreme Court appointed to investigate a case. In December 1990, when the Aylwin government made a commitment to the U.S. government to seek the appointment of an investigating judge, it was contemplated that a judge of the intermediate appellate court -- known as a *Ministro en Visita* -- would be appointed. The change in designation came about with the legislation giving the Supreme Court exclusive jurisdiction over the case. Some lawyers expressed concern that the change would harm the investigation's prospects by limiting the pool of potential investigating judges to members of the smaller and generally conservative Supreme Court, and by eliminating the safeguard of an appeal of the *Ministro's* decisions to the intermediate appellate court.

either the will or the means existed to accomplish these steps in the short time that remained before September 21. But our expectations were raised after our meetings with President Aylwin, Minister of Justice Francisco Cumplido, Secretary General of the Presidency Edgardo Boeninger, and Secretary General of Government Enrique Correa (who serves as the President's point person on the Letelier-Moffitt case). These officials expressed unreservedly the government's determination to do everything possible to re-open the case and to avoid the September 21 time bar. The President, in particular, impressed us with his knowledge of the case, his command of the details of its procedural status, and his personal commitment to see justice done.

Still, all of the officials with whom we spoke underscored the limits of the Executive branch's power to determine whether the case will be investigated and prosecuted. This will be up to the courts, which in Chile control virtually every aspect of the criminal process. The concept of a public prosecutor, such as a district attorney or an attorney general, is alien to Chile. In the Anglo-American system, a judge acts as an impartial arbiter of the law, the prosecutor is responsible for obtaining and presenting evidence of guilt, and a jury normally decides guilt or innocence. In Chile, all of these functions are performed by the judge, who investigates the crime, decides whether the evidence warrants a trial, and, if so, renders a verdict after trial.

The limitations of the Aylwin government's influence over the judicial process was brought home by the Supreme Court's delay in ruling on the government's request to appoint a *Ministro Instructor* in the Passports Case, and on the closeness of the vote when it finally came. Although the request was made on March 11, the Court's ruling was not handed down until July 15.

In an extremely close vote -- nine to seven, with one judge not voting -- the Court granted the government's request and designated its newest member, Adolfo Banados, to serve as a *Ministro Instructor*. Although some legal experts told us that the Court could

also have acted formally to re-open the investigation, it chose not to and deferred to Justice Banados a decision on the pending appeal by the military prosecutor to close the case permanently.

The closeness of the Supreme Court's vote, along with its refusal to act on its own to re-open the case, raises concern over future rulings the Court may render in the Letelier-Moffitt case. According to Chilean press accounts, the dissenters voted to reject the government's request on several grounds, including the impropriety of retroactively applying the Cumplido laws to transfer jurisdiction in the case to the Supreme Court, and the law's failure to designate a secondary appellate court, in addition to the Supreme Court, to hear appeals from decisions of the *Ministro Instructor*.⁴³

Government officials and human rights advocates were heartened, however, by the Court's designation of Justice Banados to oversee the case. In 1978, as a judge of the intermediate appellate court, Banados had been designated a *Ministro en Visita* to investigate the discovery of the bodies of several murder victims near the town of Lonquen. He won the respect of human rights advocates by conducting a vigorous investigation, which uncovered evidence linking the crimes to members of the *Carabineros*, the uniformed police force whose Commander-in-Chief was part of the military government, at which point he was required to relinquish jurisdiction to military courts.

Despite his reputation for vigor and independence in human rights cases, Justice Banados was among the seven members of the Court who voted to reject the government's request to appoint a *Ministro Instructor*, a fact that reinforced the concerns of many that the investigation would not be re-opened and that Contreras and Espinoza would not be cited as

⁴³"Supreme Remitio Proceso de Caso Letelier a Min. Banados," *El Mercurio*, July 17, 1991, at C1.

subjects of investigation in time to meet the September 21 deadline.⁴⁴ These concerns were not allayed by news reports quoting Justice Banados stating that a decision to re-open the investigation would require "an extraordinary circumstance, a finding that new facts exist

. . . ."⁴⁵

Among those most concerned that the case be reopened and defendants cited before September 21 are members of the Letelier family. Acting on those concerns, on July 21, attorney Jaime Castillo Velasco announced plans to submit a complaint (*querrela*), on behalf of Orlando Letelier's sister, Fabiola Letelier, accusing Gen. Contreras, Col. Espinoza and "other persons who may appear from the investigation as responsible" for the murders of Orlando Letelier and Ronni Moffitt and the falsification of passports. Dr. Castillo told reporters that the object of the action was to interrupt the running of the time-bar period and force Justice Banados to make a definite ruling on re-opening the case.⁴⁶ He stated however, that it was legally debatable whether the complaint naming Contreras and Espinoza would itself be sufficient to stop the prescription from running, or whether it would be necessary for Justice Banados formally to charge them with crimes.

Two recent developments raised hopes that Justice Banados will take action before the September 21 deadline that could eliminate any legal doubt that the case will survive the 15-year time bar. On August 1, Justice Banados formally re-opened the investigation in the Passports Case, ordering letters rogatory to obtain the testimony in the United States of Virgilio Paz Romero and Jose Dionisio Suarez, the two Cubans who were recently apprehended by U.S. authorities and who pleaded guilty to assisting Michael Townley in

⁴⁴Even an editorial in the conservative newspaper *El Mercurio* found it "curious" that Justice Banados had voted with the dissenters. "Ministro En Caso Letelier," *El Mercurio*, July 19, 1991.

⁴⁵"Ministro Banados y el Caso Letelier," *La Segunda*, July 23, 1991, at 26.

⁴⁶"Semana Decisiva en el Caso Letelier," *La Segunda*, July 22, 1991, at 18.

carrying out the murders.⁴⁷ On August 26, a few days after the complaint of Fabiola Letelier was filed, Justice Banados granted her request for an order barring Contreras, Espinoza and Luisa Monica Lagos ("Liliana Walker") from leaving the country.

While these developments are promising, a number of obstacles -- some legal, some political -- must still be overcome before Contreras and Espinoza can finally be brought to justice in Chile.

Remaining Obstacles

(i) The September 21 Deadline

The most immediate potential obstacle to obtaining justice in the Letelier-Moffitt case is the requirement that Contreras and Espinoza be named as subjects of the investigation before the fifteenth anniversary of the crime. In the view of most Chilean legal experts, the case will die if this has not been accomplished by September 21.

Developments since the Supreme Court designated Justice Banados in mid-July encourage us to be optimistic that the case can survive this threshold obstacle, if it has not already done so.⁴⁸ Although, as previously noted, there is some debate about what steps must be taken to prevent the case from expiring on September 21, the weight of legal opinion is that the statute of limitations is tolled as soon as individuals are named as the subject of the criminal investigation. We found this view persuasive; the plain language of Article 96 of Chile's Penal Code appears to support it.⁴⁹

A number of highly respected legal experts, as well as key officials of the Aylwin government, believe that the filing of *querellas* by relatives of the victims -- two have

⁴⁷"Ministro Instructor Reabrio Sumario en Caso Letelier," *El Mercurio*, Aug. 1, 1991, at A1.

⁴⁸Justice Banados is clearly proceeding with energy and expedition. He reportedly completed studying six of the seven large volumes of evidence in the case within two weeks of his appointment. "Caso Letelier: Avanza Estudio de Expediente," *El Mercurio*, July 27, 1991.

⁴⁹See page 23, *supra*. The statutory requirement seemingly should be satisfied once a suspect is named as a subject of the investigation.

already been filed⁵⁰ -- is sufficient to satisfy the requirement that individuals be named as subjects of investigation by September 21. Some lawyers believe, however, that Justice Banados himself must cite Contreras and Espinoza as subjects of the investigation before September 21, and a minority believe that the two must be formally indicted by that date. On the other extreme, some believe that Justice Banados's decision to reopen the case has already tolled the limitations period.

It is, of course, desirable that Justice Banados take the strongest action possible by September 21. If the investigation results in criminal charges, it is inevitable that the question whether the time-bar has run will be among the issues appealed by the defendants. The ultimate decision on this and other legal issues in the case will be made by the Supreme Court. Its record on human rights cases in general, and on the Passports Case in particular, is substantial cause for concern about rulings by the Court, as presently constituted, on any issue that may be presented to it for decision in connection with the Letelier-Moffitt case.⁵¹ Progress in this case has been delayed far too long, and the obstacles have been far too numerous, to take any unnecessary risks in jeopardizing further progress.

In what may be an effort to prevent Justice Banados himself from citing Contreras and Espinoza as subjects of an investigation by September 21, the military prosecutor recently submitted a challenge to Justice Banados's jurisdiction, claiming that the Letelier-Moffitt case should be transferred to military courts. Even if the Supreme Court affirms its earlier decision appointing Banados, the delay may derail progress at a critical time.

⁵⁰Both Fabiola Letelier, the sister of Orlando Letelier, and Isabel Letelier, the victim's widow, have recently filed *querellas*.

⁵¹The final outcome may turn on the success of the Aylwin government in its efforts to reform the judiciary. Proposals now under study by Minister Cumplido include expanding the Supreme Court from its current number of 17 to 24 members, and encouraging the retirement of some of its older Justices. This would permit President Aylwin to make new appointments to the Court of Justices who are more willing to uphold human rights.

(ii) Sufficiency of Evidence

In our view, the sufficiency of evidence against Gen. Contreras and Col. Espinoza for their roles in the Letelier-Moffitt murders presents no obstacle to their prosecution. This conclusion is based upon our examination of the evidence presented in U.S. criminal proceedings,⁵² and our understanding of the evidence that has been compiled in Chile in connection with the Passports Case.

Our view is shared by others knowledgeable about the case, including the Rettig Commission. Its report described the body of evidence in the Letelier-Moffitt case as "abundant." This included evidence developed in the Passports Case and information produced in the U.S. investigation, as well as a "variety of statements" pertinent to the case that the Commission obtained in its own investigation. The Commission's report states that, from its study of this information, it had "arrived at the conviction" that Orlando Letelier and Ronni Moffitt were "victims of a terrorist act committed by agents of the Chilean state, specifically DINA"

Our conclusion is buttressed by the evidence set forth by attorney Alfredo Etcheberry in his extensive submission to the Supreme Court on behalf of the United States government in the January 1979 proceedings to extradite Contreras, Espinoza and Fernandez. Particularly significant are the admissions of Contreras and Espinoza that they sent Townley and Fernandez to Paraguay with instructions to use the false Paraguayan passports they obtained there to enter the United States -- the first stage of the murder plan. These admissions, together with documentary evidence linking DINA, Contreras and Espinoza to the official Chilean passport that Townley ultimately used to enter the United States, are strong circumstantial evidence of the involvement of Contreras and Espinoza in the murders.

⁵²A wealth of documentary evidence was introduced against the defendants in both the civil and criminal proceedings in the United States. In addition to Townley's testimony, 160 exhibits were introduced in the civil tort action addressed in Section IV of this report; many of these exhibits had also been introduced in earlier criminal proceedings. See *de Letelier v. Republic of Chile*, 502 F. Supp. 259, 261 n.3 (D.D.C. 1980).

Nor is there any dearth of evidentiary leads that can be pursued by Justice Banados in the newly re-opened investigation, some of which could produce further corroboration of evidence implicating Contreras and Espinoza in the murders. These leads are extensively set forth in the opinion of Judges Cerda and Guzman dissenting from the April 9 decision of the *Corte Marcial* to close the Passports Case investigation temporarily.

We are heartened that Justice Banados, in his August 1 decision to re-open the investigation, has already begun to pursue at least some of these leads by seeking the testimony of the two Cubans who recently pleaded guilty in U.S. proceedings to charges of assisting in the murders. We are hopeful that this is only the beginning of a larger -- and long overdue -- inquiry into other available leads.

Finally, the Chilean legislature may soon enact a law that might allow the testimony of Townley and Fernandez, obtained pursuant to plea bargains in the United States, to be admitted as evidence in Chilean criminal proceedings. To combat urban terrorism, the Aylwin government has proposed a bill that would allow convicted terrorists to receive a reduced sentence if they cooperate with authorities in providing information that prevents further acts of terrorism or leads to the apprehension of other terrorists. Attorney Alfredo Etcheberry has expressed the view that, since the provision would effect only a procedural change in the law, it could be applied retroactively and could make plea-bargained evidence, including the Townley testimony earlier rejected by Chile's Supreme Court in the extradition proceedings, admissible.⁵³

While we do not believe that the Townley and Fernandez testimony will be essential to prosecute or convict Contreras and Espinoza, enactment of this provision would of course facilitate criminal proceedings in the Letelier-Moffitt case, while eliminating an antiquated element of Chilean criminal procedure that needlessly hampers effective law enforcement.

⁵³"Etcheberry Admitio Posible Aplicar Arrepentimiento Eficaz' en Caso Letelier," *El Mercurio*, July 27, 1991.

(iii) Political Will

Achieving justice in the Letelier-Moffitt case will require courage and determination, as much as diligence, on Justice Banados' part. Gen. Pinochet, who remains Commander-in-Chief of Chile's Army, has openly declared his opposition to human rights prosecutions of military personnel. At a press conference on October 13, 1989, he made his intentions clear: "No one is going to touch my people. The day they do the rule of law will come to an end."⁵⁴

As Commander-in-Chief of the Army, Gen. Pinochet retains the power to threaten the stability of the civilian government, and has in the past year demonstrated his readiness to do so. Last December, during a dispute with legislators over a corruption investigation involving his son, Pinochet ordered the Army into a state of alert. Although the troops returned to their barracks within twelve hours, Pinochet had served notice of his continuing readiness to challenge civilian authority.

Efforts to prosecute Contreras and Espinoza thus present challenges to the Aylwin government that cannot be readily discounted. With this in mind, we sought the views of Chilean officials and legislators about the feasibility of prosecuting Contreras and Espinoza.

None of the officials to whom we put this question -- all of whom responded in confidence -- expressed the view that an arrest order would not or could not be carried out. Most felt that, although elements of the military would oppose such a development, it would not provoke a serious threat to the civilian government.

Conclusion

None of the legal obstacles examined in this report is insurmountable if the will exists to overcome them. Much will depend upon the courage and vigor of Justice Banados, who must decide in the first instance whether sufficient evidence exists to charge, try and convict Contreras and Espinoza and any others whose complicity in the murders may emerge

⁵⁴Quoted in AMERICAS WATCH REPORT at 43.

during the investigation.

Justice Banados, in turn, will need the support of his colleagues on the Supreme Court, which will review his decisions. While the Court's record in human rights cases has been poor, the Letelier-Moffitt case holds forth an opportunity for the Court to regain the public trust it lost during the Pinochet era.

Finally, the judiciary will need the support of the Aylwin government. Although it cannot intercede in the judicial proceedings, the government must be prepared to respond forcefully to any threat to the rule of law or to the independence of the judiciary. We have every reason to be confident that President Aylwin is prepared to do this.

IV. COMPENSATION

As previously noted, international bodies that monitor compliance with comprehensive human rights treaties have, in recent years, consistently asserted that States Parties' duty to prevent grave violations of physical integrity entails an obligation to investigate alleged violations and seek to bring the wrongdoers to justice.⁵⁵ The same bodies have also repeatedly expressed the view that States Parties have a distinct obligation to afford civil remedies -- in particular, a right to compensation -- to victims of extra-legal killings, disappearances and torture.⁵⁶

Efforts by the survivors of Orlando Letelier and Ronni Moffitt to secure such remedies have, after protracted delays, seen significant progress in recent months.

Proceedings in U.S. Courts

The families of Orlando Letelier and Ronni Karpen Moffitt initially turned to U.S. Courts for civil remedies against those responsible for the victims' deaths and for Michael Moffitt's injuries. In August 1978, the families filed a civil tort suit in the United States

⁵⁵See note 5, *supra* (citing decisions interpreting the International Covenant on Civil and Political Rights and the American Convention on Human Rights).

⁵⁶See *id.*

District Court for the District of Columbia against the Republic of Chile, the CNI (DINA's successor), Michael Townley and the three DINA officials and five Cuban exiles named in the U.S. grand jury indictment. In March 1980, the D.C. District Court ruled that it had subject matter jurisdiction over the Chilean government, rejecting Chile's claim of sovereign immunity.⁵⁷ Default judgments were rendered against the individual defendants, with the exception of Virgilio Paz Romero and Jose Dionisio Suarez, who could not be served process because they were in hiding, and Ignacio Novo Suarez, who was dismissed from the suit because his alleged involvement took place after the murders had been accomplished.⁵⁸

On November 5, 1980, the D.C. District Court awarded judgment against the remaining defendants, including the Republic of Chile, totalling over \$5 million.⁵⁹ The decision was a landmark. For the first time, a U.S. court, applying a then recently-enacted law, held that a foreign government is not immune from lawsuits alleging responsibility for intentionally wrongful acts committed by the government in the United States. But a later ruling by the Second Circuit Court of Appeals, rendered on November 20, 1984, effectively precluded the families from collecting this judgment, finding that Chile's assets in the United

⁵⁷*Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.D.C. 1980). The Chilean government at first declined to acquiesce in the court's jurisdiction, and a default judgment was rendered against it on May 3, 1979. The Republic of Chile then submitted to the court a memorandum of law urging that the court lacked subject matter jurisdiction. The court rejected this claim, relying upon an exception to foreign states' general immunity under the Foreign Sovereign Immunities Act ("FSIA") that applies to cases in which "damages are sought against a foreign state for personal injury or death . . . occurring in the United States and caused by the tortious act or omission of [the] foreign state. . . ." 28 U.S.C. Section 1605(a)(5) (1976).

⁵⁸On September 20, 1978, a default judgment was rendered against Ignacio Novo upon his failure to answer the complaint, but the judgment was vacated on substantive grounds in November 1980. See *de Letelier v. Republic of Chile*, 502 F. Supp. 259, 266 n.4 (D.D.C. 1980).

⁵⁹Approximately \$2.9 million in compensatory damages was awarded against the Republic of Chile and the individual defendants. An additional \$2.1 million was awarded against the individual defendants for punitive damages, attorneys' fees and costs.

States are protected by the doctrine of sovereign immunity.⁶⁰

United States Espousal of the Families' Claim

The families' claim for civil compensation was subsequently taken up by the United States government. Relying upon long-established principles of international law, the U.S. government espoused the claims of the Letelier and Moffitt families.⁶¹ On April 18, 1988, the U.S. government sent the Chilean government a diplomatic note demanding \$12 million in compensation on behalf of the families.⁶² The Chilean government rejected this request, denying any responsibility for the murders.

In January 1989, the U.S. government invoked a 1914 Treaty for the Settlement of Disputes that May Occur Between the United States and Chile, known as the William Jennings Bryan Treaty,⁶³ to resolve its dispute with Chile over compensation. The treaty establishes a commission, known as a Bryan Commission, to resolve disputes that have resisted diplomatic resolution.

⁶⁰The plaintiffs had brought suit to execute the November 1980 judgment in their favor against Linea Aerea Nacional-Chile (LAN), Chile's national airline. In doing so, the families relied upon evidence that LAN had transported the explosives and detonation device used to kill Orlando Letelier and Ronni Moffitt, and had facilitated Michael Townley's travel between Chile and the United States. The presiding judge appointed Michael Moffitt as receiver of the Chilean government's property interests in LAN, but temporarily suspended his order to allow LAN to obtain a bond for the amount of the judgment in lieu of submitting to receivership. Considering an appeal from this decision, the Second Circuit ruled that the FSIA did not allow execution of the judgment against LAN, reasoning that LAN was a separate juridical entity from the Chilean government and that LAN's involvement in the assassination did not fall under the "commercial activities" exception of the FSIA. The court's ruling prompted congressional efforts, ultimately unsuccessful, to amend the FSIA to enable victims of terrorist attacks to collect damages.

⁶¹Under the procedure of espousal, the government literally espouses the claims of individuals who were wronged by injuries for which a foreign government is responsible under international law, seeking compensation on their behalf from the responsible government.

⁶²The \$12 million included both the amount of the outstanding District Court judgment against the Chilean government and costs incurred in connection with the U.S. government's investigation of the incident.

⁶³The treaty entered into force in January 1916.

The Bryan Commission

The election of Patricio Aylwin opened the way for a more forthcoming response by the Chilean government. On June 12, 1990, the Aylwin government and the U.S. government signed an agreement pursuant to which Chile agreed to make an *ex gratia* payment of compensation to the victims' families, without admitting its liability for the assassination. The agreement stipulated that "the amount of the *ex gratia* payment should be equal to that which would be due if liability would be established."

The amount of compensation is to be determined by a Bryan Commission, comprising members from five countries.⁶⁴ On July 3, 1991, Chile's Senate approved a bill to establish the Bryan Commission; the other chamber of Chile's Congress, the Chamber of Deputies, had previously ratified the June 1990 accord in January 1991. On July 9, representatives of the U.S. and Chilean governments met with the Secretary General of the Organization of American States to discuss arrangements permitting the commission to begin its work. Although the work of the commission lies ahead, the Senate action was a welcome breakthrough in the Chilean government's long-delayed efforts to provide a civil remedy for the assassination of Orlando Letelier and Ronni Moffitt.

At the same time, Chile's progress in providing civil remedies to the survivors of the 1976 bombing in no way diminishes its responsibility to assure that the authors of the crime are brought to justice through the criminal process. The Chilean and U.S. governments recognized this when they signed the June 1990 accord. Announcing their agreement, the governments stated: "While this agreement is designed to resolve one of the aspects of the existing dispute between the United States and Chile, that is just compensation for the

⁶⁴The United States government appointed two of the members. One, Sir John Freeland, is a retired British foreign service officer. The other is a retired federal appeals court judge from the D.C. Circuit. The Chilean government appointed Francisco Orrego Vicuna, a Chilean law professor, and Julio Maria Sanguinetti Ciorolo, a former President of Uruguay. The two nations jointly selected the Commission's President, Andres Aguilar Mawdsley, a Venezuelan human rights activist.

to signal its insistence that those responsible for the Letelier-Moffitt murders be brought to justice, either in Chile or in the United States.

In early July, after both chambers of the Chilean Congress voted to approve in principle the payment *ex gratia* of compensation to the Letelier and Moffitt families, U.S. representatives were quick to correct the impression on the part of many legislators that this would satisfy all of the U.S. government's concerns. U.S. Ambassador Charles Gillespie told reporters in Santiago that compensation was a "step" toward justice, but asserted that the United States was still "looking for . . . action by the Court" in the Passports Case.⁶⁵ A few days later, Assistant Secretary of State for Inter-American Affairs Bernard Aronson was quoted by two Chilean Senators as telling them that the vote on compensation was "a big step forward," but that "the United States would continue to exercise pressure to obtain the extradition" of Contreras and Espinoza.⁶⁶

This message was reiterated on July 16, after the Supreme Court's vote to designate Justice Banados as a *Ministro Instructor* in the Passports Case, by a State Department spokesman who told Chilean reporters: "We see that Chile is doing its part. We are doing ours by pursuing without rest everyone involved in the murder of Letelier and Ronni Moffitt."⁶⁷

These messages are influential in Chile, where improving bilateral relations and negotiating a free-trade agreement with the United States are policy goals shared by virtually the entire political spectrum. The State Department has not hesitated to press its concerns in the Letelier-Moffitt case in the context of those negotiations, and has reportedly told Chilean officials that a free-trade agreement is impossible as long as the Letelier-Moffitt case

⁶⁵"EE. UU. Espera Avances Judiciales en Caso Letelier," *El Mercurio*, July 6, 1991, at C2.

⁶⁶"Bernard Aronson Sigue Ejerciendo Presiones," *El Mercurio*, July 13, 1991.

⁶⁷"Satisfaccion en EE. UU. por Ministro Instructor," *El Mercurio*, July 17, 1991.

remains unresolved.⁶⁸

As noted earlier, the Aylwin government has done a great deal to assure prosecution. But in view of the obstacles that still must be overcome to obtain justice in the case, it is vital that the U.S. government continue to maintain its strong stance until this is accomplished. Specifically, the U.S. government should be prepared to renew efforts to extradite Contreras and Espinoza for trial here if the prosecution in Chile is blocked. Further, the U.S. should immediately suspend any plans for military assistance to Chile, authorized last December after a 14-year ban, if the military acts in any way to obstruct the judicial process.

⁶⁸"Cuban Exile Pleads Guilty in 1976 Bomb Slaying of Chilean Ambassador" *The New York Times*, July 31, 1991.