Second: That the elements of evidence in the case under consideration confirm the following facts:

A. With regard to the death of Charles Edmund Horman Lazar.

1.- That on September 17, 1973 at approximately 5:30 p.m., U.S. citizen Charles Edmund Horman Lazar, journalist and filmmaker, was detained by military personnel in Santiago at the same time that a military patrol raided his private home at Avenida Vicuña Mackenna No. 4126 in Santiago, and also removed numerous pieces of documentation from inside the home.

2.- On that same day, September 17, at about 10:00 p.m., soldiers returned to the aforementioned home and removed books and additional documentation from inside.

3.- That, additionally, also on September 17, between approximately 6:00 and 7:00 p.m., intelligence officials working for the Departamento II del Estado Mayor de la Defensa Nacional [2nd Department of the National Defense High Command], interrogated the detainee, Charles Edmund Horman Lazar, in the office of the Director de Inteligencia [Director of National Intelligence] Augusto Lutz Urzúa, located on the upper floors of the Ministerio de Defensa Nacional [Ministry of National Defense] building, because military authorities were interested in information that Horman might have regarding the investigation of the “Viaux-Schneider” case (page 1,297), and because they had classified him as “subversive” for his work as a scriptwriter for Chilean state company “Chile Films” with regard to the films they produced, in accordance with background information provided about him by U.S. agents operating in Chile.

4.- That the following day, September 18, 1973 at around 1:35 p.m., military officials took the remains of an unidentified male to the Servicio Médico Legal [Medical Legal Department], and this

individual was later fingerprinted and identified as Charles Edmund Horman Lazar, in accordance with Protocol No. 2663/73; the Medical Legal Department concluded that his death had occurred on September 18 at approximately 9:45 a.m. The corresponding death certificate was issued on October 4, 1973 by Doctor Ezequiel Jiménez Ferry of the aforementioned Department.

Also the Medical Legal Service informed the 2da. Fiscalía Militar [2nd Military Fiscal Authority] on November 9, 1973 that on September 25 of that same year, an autopsy was carried out on an unidentified body measuring approximately 172 centimeters in height, weighing 70 kilos, and concluded that the true cause of death was multiple gunshot wounds.

5.- Additionally, the documentation and facts establish that on September 18, 1973, at approximately 8:00 a.m., Isabella Restrello, a friend of Charles Horman and his wife Joyce Horman, received a phone call at her home from an individual who identified himself as a member of the staff of the Servicio de Inteligencia Militar [Military Intelligence Service] (SIM), and this individual demanded information about a bearded U.S. man who was detained and said to be an extremist.

6.- That on the same day, a second phone call similar to the one described above, was received at the home of Warnick Armstrong, a friend of the Hormans, from an alleged member of the staff of the Military Intelligence Service indicating that Armstrong must report to a police station in order to answer questions regarding a friend who was a filmmaker.

7.- That Joyce Horman, wife of the then missing Charles Horman, began the search for her husband at the U.S. Consulate and U.S. Embassy, as well as at the International Red Cross and other

agencies; a search which started on September 20 and lasted until October 5, 1973 without results. Meanwhile, on October 3, Charles Horman's father arrived in Chile and after several meetings with the U.S. ambassador in Chile, Nathaniel Davis, and the U.S. Consul Frederikc [*sic*] Purdy, obtained permission to enter the National Stadium, the place where his son was allegedly detained and held, and he entered that location with the U.S. Consul and Vice Consul Dale Shaffer. In that location—which had been converted into a prison camp by the military—Charles Horman's name was called out over the loudspeakers without response, obviously, because by that date Charles Horman was already deceased. After that, both Joyce and Edmund Horman returned to New York on October 20, 1973 without having obtained information about Charles Horman's ultimate fate.

8.- That—the foregoing notwithstanding—the legal proceedings establish that, at least by October 19, 1973, the Ministerio del Interior [Ministry of the Interior] and therefore, the Chilean government as well, were fully aware of the circumstances that led to Charles Horman's death.

9.- That, four months after the facts described here, approximately during the first half of March 1974, the then Minister of Defense—in response to a request by the Chair of the U.S. Senate Committee on Defense—ordered the same Chilean intelligence official who had participated in Charles Horman's interrogation in the office of General Augusto Lutz Urzúa, to hand over Horman's remains to U.S. diplomatic authorities. The intelligence official complied with this order on the morning of March 21, 1973, and, after preparing the body, initiated transfer to the United States on March 25, utilizing the services of San Pancracio Funeral Home in Santiago.

10.- That, prior to the facts stated here, that is, on September 15, 1973 at approximately 3:00 p.m., the victim Charles Edmund Horman Lazar and his U.S. citizen companion Terry Simon, departed Viña del Mar for Santiago transported by Ray Davis, Chief Official Commander of the U.S. Naval Group in Chile; a trip that occurred once the U.S. official became aware that Horman and Simon were staying at Hotel Miramar in Viña del Mar, a fact that is documented in the consular document declassified by the U.S. Department of State which states: “Art Creter –ISND– Both were registered guests at the Hotel Miramar, Room 315, at 11:00 p.m. on Sept. 10, gave the address Paul Harris 425, stated “writer.” Departed Sept. 15.”

11.- That, without a doubt, Charles Edmund Horman Lazar and Terry Simon were transported from the city of Viña del Mar to Santiago by Ray Davis, U.S. Naval Captain with a “safe conduct" from Raúl Monsalve Poblete, Intelligence Official of the 2nd Department of the National Defense High Command, who served as a liaison official with U.S. military officials in compliance with his tasks as Chief of Intelligence Division A–2, of the National Defense High Command, a position he had held since December 15, 1972;

12.- That prior to Charles Edmund Horman Lazar’s death, on September 17, 1973, the U.S. Embassy had informed the U.S. State Department about Horman’s disappearance—according to declassified document 045652528Z—when the victim was still alive, detained and undergoing interrogation in the upper floors of the Ministry of National Defense in Santiago.

13.- That similarly, the Chilean intelligence official and Navy Captain Raúl Monsalve Poblete knew—through the chief operative of counterintelligence of the National Defense High Command—about the activities being carried out by Charles Edmund Horman Lazar in Chile, and thought that they were

dealing with a foreign “subversive,” which authorized his immediate detention, according to the instructions received from Vice Admiral Patricio Carvajal Prado, Chief of the National Defense High Command and Minister of National Defense, who carried out the orders of General Augusto Pinochet Ugarte.

14.- That, as a consequence, the action taken against the life of Charles Edmund Horman Lazar occurred as a result of the secret U.S. investigation of U.S. citizens affected by data collection activities about their political activities in the U.S. and in Chile; activities which were characterized as “subversive” by State agents in and outside of the U.S. In the case of Charles Horman, without a doubt, he was considered and labeled a “subversive” because of his work for the Chilean state company “Chile Films,” regarding sensitive film material, part of which corresponds to film footage taken out of Chile and produced outside of the country following the victim’s death. There is evidence that the work he carried out for “Chile Films” resulted in an intelligence investigation of the National Defense High Command prior to, during, and following Horman’s death, as registered in the official military documentation. In fact, the film referred to in a document declassified by the U.S. State Department has been added to the investigation: declassified document BB 263 (manuscript), Memorandum dated April 12, 1974, which indicates, according to the hypothesis of the U.S. official who signs it, that the production of that film could have caused Horman’s death and, furthermore, a copy of the reserved legal document from the Chief of the National Defense High Command dated September 24, 1973 has been added. Background information from the document declassified by the U.S. Department of State, Declassified document COUNT I Do-44 dated May 8, 1973. “The MHCHAOS Program.” MORI DocID: 1451843, pages 00591, 00592, and 00593 from the CIA Archive “Family Jewels” which refers to the surveillance, telephone wiretaps, monitoring and espionage to

which U.S. journalists were subjected at that time, one of the operational areas of interest being: "…Santiago."

15.- That, because this case concerns a foreign national detained in Chile, the decision to kill Charles Edmund Horman Lazar was the direct responsibility of the 2nd Department of the National Defense High Command, under the command of Army General Augusto Lutz Urzúa, and was carried out by the Batallón de Inteligencia Militar [Military Intelligence Battalion] or the Cuartel de Inteligencia del Ejército [Army Intelligence Headquarters] under the command of an official of that unit in charge of supervising detainee executions.

A. With regard to the death of Frank Randall Teruggi Bombatch:

1.- That Frank Randall Teruggi Bombatch, born in the United States, entered Chile on January 9, 1972 and registered as a U.S. citizen residing in Chile at the U.S. Consulate, listing his address in Santiago as the apartment of fellow U.S. citizen Mishy Lesser, who he knew through a reference from another U.S. citizen, Shepard Bliss.

Later, along with David Hathaway, also a U.S. citizen, he moved to another residence on Hernán Cortés Street No. 2575 in the neighborhood of Ñuñoa, Santiago.

At the same time, Frank Randall Teruggi Bombatch, using his student visa, enrolled at the Centro de Estudios Económicos y Sociales [Center for Economic and Social Studies] at the University of Chile's Department of Economics; and also took classes at the Instituto Chileno Francés de Cultura [Chilean-French Cultural Institute] in Santiago.

Likewise, Frank Randall Teruggi Bombatch joined other U.S. citizens who published a newsletter: “Fuente de Información Norteamericana” (FIN) [North American Information Source] and published documents in opposition to U.S. policy toward the Chilean government.

2.- That prior to this, according to documents declassified by the U.S. Department of State, Frank Randall Teruggi Bombatch was the subject of a secret investigation carried out by U.S. agents during July, 1972 as follows:

A U.S. government agency conducting security related investigations alerted the FBI that they were in contact with an informant who provided the following address: Frank Teruggi, Hernán Cortés 2575, Santiago, Chile.

The agency indicates that according to information received by sources, Teruggi is an American living in Chile who has close ties to the Chicago Area Group for the Liberation of the Americas;

Furthermore, with regard to Teruggi: According to a memorandum dated November 28, 1972 to the Executive Director of the FBI, from the U.S. legal attaché in Bonn, Germany, Teruggi was classified as a “subversive,” and further indicates the information regarding Teruggi was provided by the 66th Military Intelligence Group (66th MIGp), and was classified confidential and marked (with the note) “Warning: Sensitive Methods and Sources involved.” It originally came from Heidelberg, Germany. The nature of this source must be protected.

The above-mentioned Military Intelligence Group indicates that Teruggi was involved in activities designed to support enlisted service members who left their posts without the permission of their units, and in support of promoting desertion among enlisted personnel, with regard to both supporting and disrupting dissident

activities and efforts among U.S. Army personnel in Germany. It also attests that he has many contacts in Germany and in the U.S.

The source further states that on November 28, 1972, Teruggi had stated that he was not interested in the distribution of newspapers, but he was interested in helping coordinate by writing and editing articles for newspapers.

Then, the Military Intelligence Group, according to a document declassified by the U.S. Department of State, claims that in July 1972, a member of the group in London, England through information that had previously been provided by Bonn, indicated that Teruggi's address in Chile was: Calle Hernán Cortés 2575, Santiago, Chile.

The report indicates that Teruggi is described as an American living in Chile, who is engaged in editing a newsletter called "FIN" which publishes information about Chile for the left in the U.S. It stated this group was closely tied to the Chicago Area Group for the Liberation of the Americas (CGLA) [*sic*].

The document declassified by the U.S government, Memorandum dated December 14, 1972 from the U.S. Department of Justice, Federal Bureau of Investigation, indicates that a source that has provided reliable information in the past indicated between September 1 and 3, 1971, that the Committee of Returning Volunteers (CRV) held their national conference in Allenspark, Colorado August 27–30, 1971. The conference was described as "Conference on Anti-Imperialist Strategy and Action" with approximately 200 attendees, the majority of whom represented different leftist groups from all over North America.

It indicates that Frank Teruggi's name appears on a list showing that he had participated in this conference as a delegate.

The document states that the CRV is a national group made up primarily of returned Peace Corps Volunteers, which is maintained with support from Cuba and all Third World revolutionaries and who oppose U.S. foreign “imperialism and oppression.”

An August 1971 newsletter published by the Chicago Area Group for Latin America (CAGLA) [*sic*], 800 West Belden, Chicago, Illinois stated that Frank Teruggi, a member of CAGLA, would be traveling to Santiago, Chile in October 1971.

It concluded that on December 7, 1972, the staff person in charge of Special Affairs, Gertrude Pach, investigated the archives from the Chicago, Illinois Police Department and found no records on Frank Teruggi;

Additionally, the U.S. Department of State indicates that according to a document declassified by the U.S. government, with a memorandum dated December 14, 1972, addressed to the FBI’s Director of Operations, from SAC, Chicago, (100 – 53422) (C); SUBJECT: FRANK TERUGGI SM – SUBVERSIVE, indicating that:

“(Re) Background Check Form from FBI Chicago, dated November 13, 1972, and – Letter from Legal Attaché Bonn to the FBI dated October 25, 1972.”

“Attached for the FBI are five copies (5) of an LHM related to the above-mentioned subject.”

The source for the LHM is stated and it further indicates “currently no contact with the informant.”

It also recounts who made contact as follows: "… contacted on December 5, 1972 by SA LELAND G. RICHIE; … contacted on December 7, 1972 by SA PAUL L. TIMMERBERG; … contacted on December 5, 1972 by SA LELAND G. RICHIE; … contacted on December 4, 1972 by SA JOHN P. O'BRIEN;"

3.- That as with Charles Edmund Horman Lazar, the action taken against Frank Randall Teruggi Bombatch falls within the secret investigations conducted against U.S. citizens as a result of a clandestine effort to collect data about the political activities they were engaged in; investigations carried out by agents of the U.S. Military Intelligence Group for America in Chile, with regard to political extremism both inside and outside of the U.S.

In this particular case, they were interested in the production of leftist journalistic material by Frank Teruggi Bombatch in the newsletter called FIN (North American Information Source) distributed in the U.S., which was sensitive material as it was considered to be "subversive" by U.S. government agents.

4.- That this background information about Frank Randall Teruggi Bombatch was shared with the Intelligence Service of the National Defense High Command, under the command of General Augusto Lutz Urzúa, an official of the Army High Command. As a result, on September 20, 1973, that military authority gave the order to Carabiniers officials from the Escuela de Sub oficiales de Carbineros [Carabinier's School for Non-Commissioned Officers], to detain the victim, Frank Teruggi, and his compatriot David Hathaway at their home on Calle Hernán Cortés No. 2575 in the Ñuñoa neighborhood of Santiago at around 8:15 a.m., that had been obtained by U.S. intelligence, and delivered the intelligence of the Chilean Military-; said detention order for Teruggi by the higher official of Chilean Intelligence was carried out around 8:15 a.m., in the presence of David Hathaway's future wife, the young Olga Irene Muñoz

Gómez, who was also detained; an operation in which the captors also seized "*suspicious literature*" and personal photographs.

After Frank Randall Teruggi Bombatch and David Hathaway were removed from the residence, they were transferred to the Carabinier's School for Non-Comissioned Officers in the Ñuñoa neighborhood, where they were interrogated, and then taken to the nearby National Stadium detention camp.

Both young U.S. men, deprived of their freedom, had in their possession their respective U.S. passports; however, the passport belonging to the victim Frank Randall Teruggi Bombatch was made to disappear after his arrest.

5.- That Frank Randall Teruggi Bombatch and David Hathaway were both deprived of their freedom at the National Stadium, and in the early morning hours of Friday, September 21, were interrogated by an official of the Chilean Army in front of the locker room where foreign nationals were being held; later, around mid-day, both were returned to the locker room in the National Stadium, the one where an indefinite number of foreign nationals were being held. On that same day, the 21st, at around 6:00 p.m. an Army official called a group of detainees, including Teruggi, who was then taken out of the locker room, and his compatriot Hathaway never saw him again; nevertheless Hathaway realized that every day after Friday, September 21, military officials *asked about and pretended to be looking for the victim Charles Edmund Horman Lazar*, without ever mentioning Teruggi's name, both of whom were already dead and had been made to disappear.

6.- That, in effect, between the night of the September 21 and dawn of September 22, 1973, Frank Randall Teruggi Bombatch was killed outside the parameters of any legal proceeding by agents of the State, who had ordered his detention in the National

Stadium, and those same agents abandoned his body in the streets of Santiago; Teruggi was killed by multiple gunshot wounds while he was detained by agents of the State. The death certificate from the Registro Civil e Identificación [Chilean Civil Registry and Identification Service] issued on October 10, 1973 indicates that Frank Randall Teruggi Bombatch died on September 22, 1973 at 9:10 p.m. and the cause of death was thoracic-abdominal bullet wounds. That information corresponds to the entry of the victim's body in the morgue, since his cadaver had been abandoned in an undetermined location on a public street by the captors in order to hide the circumstances that resulted in his death.

The treatment suffered by the victim Frank Randall Teruggi Bombatch constituted standard practice conducted by military officials carrying out orders in the National Stadium prison camp: summary executions of numerous prisoners under the so-called "martial law," or executions under the so-called "ley de fuga" ["escape law"] (using the pretense of an escape attempt to justify shooting the prisoner), later abandoning the lifeless bodies in the streets of Santiago, a practice designed to instill fear in a large part of the country's population.

II.- With respect to the crimes:

Third: First, that the facts outlined here, consistent with the analysis of the evidence, constitute the crime of homicidio calificado [felony murder] as defined by Article 391, No. 1, first instance, of the Código de Procedimiento Penal [Code of Penal Process, hereinafter "Penal Code"], which is felony murder with malice aforethought against the person of Charles Edmund Horman Lazar. In other words, the aggressors, having incapacitated the victim so that he was unable to defend himself, killed him under those circumstances.

Second, that the facts outlined here, consistent with the analysis of the evidence, constitute the crime of felony murder as outlined in Article 391, No. 1, first instance, of the Penal Code, which is felony murder with malice aforethought against the person of Frank Randall Teruggi Bombatch, and, just as in the above-mentioned case, the aggressors, having incapacitated the victim so that he was unable to defend himself, killed him under those circumstances.

Fourth: That, in effect, the crime of homicide is conduct that consists of voluntarily killing another person; that is, it is an attack on the physical integrity of the victim for such end; also, if the conduct of the active agent consists of adding to the homicide specific and determined particularities, expressly described by the Penal Code, in order to increase the agent's responsibility, this constitutes in itself a determined act that constitutes a distinct type, characterized by the legal description of those specific and determined particularities.

The foregoing constitutes the provisions of the Penal Code to penalize the offense of felony murder, characterized by causing the death of a person involving some of the aggravating circumstances of criminal responsibility, provided in Numbers 1, 2, 3, 4 or 5 of Article 12 of the Penal Code, elements or factors described by the law that, in essence, change from aggravating circumstances to elements that constitute the crime, contained in the nature of the crime, as expressly indicated in Article 63 of the Penal Code.

As a result, in classification of homicides, the malice aforethought with which it is perpetrated is the element that qualifies them, given that, the malicious acts of the agents lead them to cause certain death, without allowing the victims to attempt any defense against the attack, enabling the acts of the perpetrators to become advantageous and certain; thus, No. 1 of Article 12 of the

Penal Code defines malice aforethought as acting with treachery or virtual certainty, that is, one or the other, but not necessarily both together.

Also, the facts asserted in the **Second** finding of this ruling are confirmed, that these cases present the extreme applicability of the qualification of malice aforethought for these homicides, therefore, such facts support the evidence that the victims' state of defenselessness was the critical motive for the fatal attack; if the condition of defenselessness did not exist, the crimes could not have been committed.

As a result, the applicability of malice aforethought, as a qualifying circumstance for homicide as established in Article 391 No. 1 of the Penal Code, is required, whereas, in the first place, the victims' situation of defenselessness is established and, in second place, the intent of the agents to take advantage of the victims' condition of defenselessness.

Fifth: That, in these cases, and in accordance with the established facts, as shown in the **Second** finding of this judgment, the agents acted with certainty and without risk, since it was after both victims were deprived of their freedom that the attacks were carried out against them; also, they were transferred to places in which the offenders could act with complete discretion and freedom.

Also, there is an absolute disproportion between the power of the agents and the helplessness of the victims in the facts of this case: young men who found themselves in a situation of complete and utter helplessness, which made a defensive reaction on their part impossible, much less defensive actions by third parties on their behalf, given that, despite the fact that they were foreigners and their country's authorities were aware of their detention and

should have protected them, they failed to do so in a timely manner.

This aspect constitutes the critical motive employed by the agents to commit the crimes.

In effect, this lack of danger for the agents of the State in the criminal activity, makes the acting with certainty result in the killing of the victims, outside of all legal processes, despite the duty of care that the agents had once the youths were deprived of their liberty.

Sixth: That the established crimes—which under Municipal Law are the felony murders of Charles Edmund Horman Lazar and Frank Randall Teruggi Bombatch—not only violated the victims' right to life, given that it constituted the extrajudicial execution of the victims with the purpose of and in the context of conduct with a medium or instrument carried out within a widespread and general policy of depriving a large number of civilians of their lives and liberty, civilians who, on and following September 11, 1973, were accused of ideologically belonging to the deposed Chilean political regime, but also these crimes constitute, in the International Human Rights Law, as crimes against humanity, since this law categorizes said crimes as cruel, atrocious crimes, and serious violations of human rights; and given these elements, in this case they cannot go unpunished. Therefore, in this case, the court must closely analyze the components that comprise the crimes, when referring to the criminal responsibility or judicial consequences to the perpetrators who commission this type of crime, since the facts constitute a violation of several principles and regulations of the International Human Rights Law, designed to protect human rights (General Assembly of the United Nations. General distribution January 29, 2013. Human Rights Council. 22nd session. Item 3 on the agenda. Promotion and protection of all human, civil, political, economic, social, and cultural rights,

including the right to development. Report of the Working Group on Enforced or Involuntary Disappearances. Addendum: Mission to Chile).

Seventh: That, in effect, said reasoning derives from the assertion that Municipal Law and International Human Rights Law are one and the same, being laws that encompass Rights in their entirety, with International Human Rights Law being recognized by Municipal Law, both as an International Principle of Human Rights, and by international treaties ratified by Chile and currently in force.

In this way our judicial system does not exclude the procedure of incorporating the General Principles of International Human Rights Law or *jus cogens*, which as such become part of Municipal Law, whereas the Principles of International Law prevail over Municipal Law as the category of General International Rights norms, in accordance with the acquis of law and conventional universal acquis, and with the acceptance in the judicial practice of national tribunals that are part of United Nations, in addition to that of international tribunals with jurisdiction over crimes against humanity.

Eighth: That also, the above-mentioned international principles, covenants, agreements, and treaties that recognize human rights and the guarantees at the national tribunal level, have constitutional precedence. As a result, in accordance with a progressive and conclusive interpretation of the Constitution, they take precedence over national law, given that it is understood that they favor, complement and further define said legislation. Therefore, given that the norms are irrevocable by all individuals, the State’s moral and judicial commitment to the international

community to respect, promote, and guarantee said norms is heeded.

Ninth: That, Article 5 of the Political Constitution of the Republic establishes limitations to sovereignty, stating that “the exercise of sovereignty recognizes as a limitation the respect for the essential rights originating in human nature.”

Also, the constitutional reform in 1989 added the second section of Article 5, the last sentence expressly adds to Law the mandate which states: “It is the duty of State agencies to respect and promote the rights guaranteed by this Constitution and by international treaties ratified by Chile and in force.”

Tenth: That said special normative constitutional provision is in accordance with universal jurisdiction on this matter, and the Geneva Conventions of 1949 are also found in the International Human Rights Law, stating that all States Party have the jurisdiction to try serious violations of its norms;

Eleventh: That, also, the transfer from category of war to the structure of crimes against humanity, has a normative precedent in the Hague Conventions of 1899, which attempted to put into effect various regulations that limit or prohibit certain combat media and methods, under the premise of irrevocable rights of each combatant. The conceptual and judicial manager was legal expert Fyodor Fyodorovich Martens, author of *Peace and War* [*sic*] and the clause that was named after him, the “Martens Clause.” In accordance with which, it is indicated that while they have come to a complete regulation code regarding war hostilities, the contracting parties consider that combatants and populations remain under the shelter and protection of the Principles of International Law, as they result from the established uses between civilized nations, from the laws of humanity, and from the injunctions of public consciousness. (Caron, D. *War and*

International Adjudication: Reflections on the 1899 Peace Conference, 94 *American Journal of International Law* (2000), 4–30; Adrich G.H. *The Laws of War on Land*, 94 *Am. J. Int'l L.* (2000), 43–60; Meron, T. *The Martens Clause, Principles of Humanity, and Dictates of Public Conscience*, 94 *Am. J. Int'l L.* (2000), 78–89; cited in *La Génesis de la Noción de Crimen de Lesa Humanidad* [The Origins of the Notion of Crimes Against Humanity], Víctor Guerrero Apráez, *Revista de Derecho Penal Contemporáneo* [Journal of Contemporary Criminal Law] No. 6, Jan-Mar 2004, pg. 21).

Tenth: Let it serve as a reference to consider any interpretation of our positive domestic penal law, the application of the previously mentioned Geneva Conventions of 1949, which were ratified by Chile in 1951, and constitute a Law of the Republic.

Article 3 of the Geneva Conventions states: "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed 'hors de combat' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; b) taking of hostages;

c) outrages upon personal dignity, in particular humiliating and degrading treatment;

d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2) The wounded and sick shall be collected and cared for."

Later on, Article 49 of the Conventions states:

Article 49. "The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article."

"Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prima facie case."

"Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article."

"In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following,

of the Geneva Convention relative to the Treatment of Prisoners of War of 12 August 1949";

Later on, Article 50 of the Conventions states:

"Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly."

Finally, Article 51 states: "No High Contracting Party shall be allowed to absolve itself or any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article."

Thirteenth: That said norms comprise the *jus cogens* or General Principles of International Law if we consider that, at the time, the constituent power incorporated as a treaty the Vienna Convention on the Law of Treaties, ratified by Chile on April 9, 1981, enacted by Supreme Decree No. 381 of 1981, with Chile recognizing the primacy of international law over Municipal Law, being unable to invoke any legitimate reasons to violate the good faith performance of contracted obligations, (Article 26 of the Convention), thus supporting the provisions of Article 27, which state that a State Party may not invoke the provisions of its Municipal Law as justification for its failure to perform a treaty.

In addition, the *jus cogens* is integrated into the very regulations of the treaties because the incorporation of said Vienna Convention on the Law of Treaties clarified observance by domestic Chilean legal decision on the principle of *jus cogens*,

however, Article 53 of the Convention defines it with absolute clarity as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

In other words, via the Vienna Convention on the Law of Treaties the general value of the *jus cogens* principle is expressly recognized, and is understood, therefore, as norm of general international law which must be respected with the same conviction as a treaty ratified by Chile, not only for the specific way in which it can be modified, but also, as previously mentioned, because its entity is such that Article 53 of the Convention states that: a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law.

Fourteenth: That if the previous arguments were not sufficient, the primacy of the general principles of international law has been recognized since the dawn of the Republic of Chile.

To such end, the “Lei [*sic*] de Garantías Individuales” [Law of Individual Guarantees], of September 25, 1884, First Title, “De Las Restricciones a La Libertad Individual en Jeneral [*sic*]” [On Restrictions to Individual Liberty in General], states in Article 5: “The provisions contained in the three previous articles do not apply:

“2nd. To those enacted in accordance with treaties made with foreign nations, or to the general principles of international law such as, for example, in the case of extradition of criminals and apprehension of deserting marines.” (Penal Code of the Republic of Chile, Explained and Annotated by Pedro Javier Fernández, Second Edition, Santiago de Chile; Printed, Lithographed, and Bound in Barcelona, [on] Moneda [Street] between Estado and San Antonio. 1899, page 426).

That the doctrine also cites jurisprudence of the Chilean courts of law, to support that Chile has recognized the primacy of Customary International Law over Chilean Internal Law in the case of conflict, citing, among others, the decision by the Honorable Supreme Court published in the *Revista de Derecho y Jurisprudencia* [Journal of Law and Jurisprudence]. Volume LVI, 2nd part, section 4a, page 66, indicating that: “In 1959, the Supreme Court in a case of active extradition considered: ‘That therefore, and in accordance with the cited Article 673 of the Penal Code, it is obligatory to consult the principles of Municipal Law to obtain a pronouncement regarding the extradition, a principle which, on the other hand, shall always prevail over the precepts of the State’s Municipal Law” (cited by Humberto Nogueira Alcalá, *Las Constituciones Latinoamericanas* [Latin American Constitutions]*, Anuario de Derecho Constitucional Latinoamericano*, [Latin American Yearbook of Constitutional Law], (2000) Edited by Honrad [*sic*] Adenauer Stiftung, A.C., CIEDLA [Centro Interdisciplinario de Estudios sobre el Desarrollo Latinoamericano, Interdisciplinary Center for Latin American Development]. Page 204).

Fifteenth: That, therefore, there is a prevalence of international norms of general international law that determines that, in crimes against humanity, the current norms have been constitutionally accepted by means of international treaty, and have been binding prior to that as a General Principle of International Human Rights Law, which are obligatory as analyzed before.

Sixteenth: That, as a result, it can be asserted that the present case is an instance of crimes against humanity; in effect, the direct actions of State agents who—acting against U.S. citizens Charles Horman and Frank Teruggi, who were already detained by state officials—are under the obligation to guarantee the

detainees' security, nevertheless cause their deaths via a cruel execution lacking humanity, outside of any civilized procedure, in order to terrify a large part of the civilian population to which the young people belonged at that time.

Seventeenth: That, in this way, these crimes appear to have been committed via the active participation of the State agents, with constitutive elements that constitute a crime against humanity.

Immediately, it also appears that the crimes were carried out within the context of a plan or policy or the execution of such a plan or policy, in accordance with a planned course of action.

The latter is a second element that allows these events to be qualified as crimes against humanity, that is, "part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."

Eighteenth: That these contexts constitute key elements in considering any of the crimes to be against humanity, that is:

a) attack by State agents; and

b) that said attack be against any civilian population, with the term "civilian population" being used and normatively transferred from the International Criminal Law, via Allied Control Council Law No. 10, section c of Article 6 of the Nuremberg Statute.

That this second element provides more than one difficulty in interpreting, as this is what is said of the victim or "the condition capable of being attributed to the victim (op. cit. pg. 248), whose elucidation or interpretation must be in accordance with the purpose of extending to the maximum "any class of individual subjects," by which, even in the case of just one person, it must

be understood that this also encompasses forming part of “any civilian population.”

II.- With respect to concurrence in crimes:

Regarding Rafael Agustín González Berdugo.

Nineteenth: That the defendant, Rafael Agustín González Berdugo, in his depositions on pages 1,860 to 1,865 of this case, page 2,323, and pages 2,258 to 2,262, respectively, states that in 1974 he was a civilian staff member for the Air Force, with the rank of Colonel; that he worked for the 2nd Department of the National Defense High Command as an Operating Manager; he also states that his connection with the armed forces began in January 1953. He was contacted by an official who invited him to work at the Dirección de Informaciones del Estado Mayor [Directorate of Intelligence of the High Command], after one year during which they apparently did a background check, therefore he began in 1954, and stayed until April 14, 1974 without interruption, working in this division.

He states that he carried out covert operations during this entire time, infiltrating regimes in other countries, in intelligence and counterintelligence work, serving his country.

He also indicates that between 1965 and 1974 he was at the CORFO (Corporación de Fomento de la Producción de Chile) [Chilean Production Development Corporation], carrying out other work parallel to his intelligence work. [On April 4, 1974] he was fired for not complying with General Palacios’s order to kill journalist Carlos Jorquera who was inside the La Moneda Palace, on September 11, 1973.

That in 1969, the government at the time, under instructions from President Eduardo Frei Montalva, sent him to the U.S.,

specifically to New York. In January 1971, they were requesting that he return to Santiago from the U.S., where he was to carry out tasks typical of his position, with his wife in his charge, even when he was traveling constantly between the two countries, staying most of the time in Chile.

That in November 1972 he had cut off contact with the Unidad Popular [Popular Unity Party], after having had problems with Minister Vuscovic, since the minister had “stopped” his salary from CORFO in June of 1972; that to sort out the situation, González Berdugo was accompanied personally by his then superior, Lieutenant Ariosto Lapostol, Chief of Intelligence of the high Command, with the issue only being resolved in April 1973.

That later, he began to work in matters distinctly pertaining to intelligence, under Mr. Aquiles González: they gave him catalogs in German and English to decide and choose the electronic equipment that they should buy.

That between September 10, 1973 and April 1974, his superior was Admiral [*sic*: Vice Admiral] Carvajal, and he used the “badges” of Walter Díaz, Roberto García Valenzuela, Ivo Ramírez Perchevisc.

To such effect, on September 10, 1973, Vice Admiral Patricio Carvajal asked the most senior agent to work with him, so González Berdugo became his direct subordinate.

That the National Defense High Command was located on the 5th floor; that in 1962 and later, in 1969, he was offered work by the CIA.

That on September 11, General Lutz, who had been his superior in the second half of 1970, called him.

That Vice Admiral Carvajal gave him instructions on September 11, informing him that General Palacios had arrived and was heading to La Moneda Palace to remove documents and that eight soldiers in combat gear would be accompanying him and they had been instructed only to respond if they were fired upon.

That González Berdugo entered La Moneda Palace and saw President Allende in a chair with a tapestry behind him, slumped to his right side, very pale, with a tweed jacket, and noticed that part of his head and scalp had splattered onto the tapestry; that Lira, the photographer for the newspaper *El Mercurio,* arrived; that Lira made a written report for Vice Admiral Carvajal, in intelligence; that he obtained documents from desks and other parts of the office that was saved from the shelling; that he took an AKA machine gun and a soviet bazooka as evidence.

He adds that all the information that he was able to obtain he reported to Vice Admiral Carvajal who was Chief of the National Defense High Command.

That regarding the Horman case, González Berdugo was unsure whether it was three or four days after the coup, he only remembers that it was not a Saturday or a Sunday and he remembers being busy. General Lutz calls him internally to go up to meet him on the 9th floor. It must have been around 5:30 p.m. or 6:00 p.m., upon arriving at Lutz's office, in the waiting room, he saw some people he did not recognize, identifies himself, and asks for General Lutz and asks who General Lutz is with at the moment, and the people reply that he is with a gringo [American] and he thinks that the man is a CIA agent. That he entered and saw a short Army Colonel and another tall official, who he was unable to identify, but the short man could be Colonel Barría, but he could not confirm it; he saw a thin civilian, about 1.79 meters tall, white, with jacket and pants of different colors, no tie, he was

not handcuffed or mistreated, had stubble, was calm and looked like a gringo; General Lutz said something to him like: what was he doing here in Chile or what was he doing in Chile; he does not remember well, but the gringo told him that he was making a film in Chile Films about the Chilean situation, all of this in Spanish. Then General Lutz told him that he was investigating the CIA's involvement in the death of Schneider and that the head of that unit was Coco Paredes. Later General Lutz told him that that was it, ordering him to take the person out; when "this guy" was leaving, two officials entered and General Lutz said aloud " this is the American, Horman," pointing to the gringo.

González Berdugo adds that later he heard rumors in the hallway from military officials in the Ministry, that a gringo had been taken to be interrogated at a regiment, had jumped out of the vehicle, and had been killed, this must have been about a month after the events described above.

He asserts that Horman was never at the National Stadium since he looked over the full lists, and Horman was never recorded.

He adds that when Horman's parents left Chile in October, they were convinced that Horman was already dead.

González Berdugo indicates that in the first half of March 1974, he received instructions from Vice Admiral Carvajal to report to SENDET (Servicio Nacional de Detenidos) [National Department of Detainees] in order to collect the information necessary about where Horman might be detained; knowing that Horman had never been detained in any of the detention facilities of the time, nor in the National Stadium, he returned with this information to the Ministry of Defense, called once again by Vice Admiral Carvajal to his office at 11:00 a.m. Vice Admiral Carvajal informed him that U.S. Senator Jacob Javitz [*sic*: Javits] had spoken with him and told him that as Chair of the U.S. Senate Committee on

Defense he wanted Horman's remains to be repatriated to the U.S. within 90 days, or he would oppose arms sales to Chile. Pursuant to the above, Vice Admiral Carvajal ordered González Berdugo to go meet Vice Consul James Anderson, who was waiting for him at the U.S. Consulate. That along with the Vice Consul, they went to gather information about Charles Horman at the University of Chile hospital, then to a small office of the Servicio de Registro Civil [Civil Registry Department], without success; he told the Vice Consul that they should go to the morgue, there they asked about an American, providing his description, and an employee told them that yes, a man by that description had been there for a long time, and had been sent to the Cementerio General [General Cemetery] about three or four months prior; that they went to the General Cemetery, spoke with the administrator who immediately showed them where the remains were, and along with the Vice Consul, they confirmed that the remains were in a niche; the exhumation took place immediately, confirming that it was indeed Horman. González Berdugo adds that all of this information was able to be obtained by virtue of the credentials that he could show at that time, which is why he was given that task.

He states that they had no problems locating Horman's body since it was very easy with the information given to them by the Medical Legal Department, and if it seems strange that he was unable to be located earlier, it is due to a cover-up; due to not knowing which person or people could have been responsible for Mr. Horman's death.

He indicates that he reported these facts to Vice Admiral Carvajal over the phone; then he went to the Civil Registry with Vice Consul Anderson to obtain the appropriate documentation to proceed with the transfer of Mr. Horman to the U.S.

Finally, he states that by October 1, the CIA and the U.S. Embassy had to have known that Horman was already dead.

Related to the statement on page 2,232, the defendant González Berdugo states that in the office he gestured to General Lutz to indicate that he would call the 2nd Department of the National Defense High Command to obtain background information on Charles Horman; that an official answered, and he asked the official to check the files to see if there was record of anyone with the last name of Horman, and the official reported that there was not. He stated that he had not heard the name Charles Horman.

The defendant states that, regarding the name Joyce Horman, he received a paper with her name on it when she worked in a department of the CORFO, which he sent to the Director of Investigation, Mr. Paredes, for her to be investigated to find out if she was a CIA agent and shortly thereafter, Mr. Paredes told him not to worry, because she was a trusted person; González Berdugo adds that he later associated this name with Charles Horman.

He also states that his wife, María Eugenia Arrieta Larraín, in 1969, was subjected to hypnosis and later taken out of the country by the CIA with her destination currently still unknown; that the entire time he was with her he never realized what she was, that she was spying on him to report back to the CIA about his activities in order to figure out his activities and collusions in this country.

He states that the only thing that he has done through his activities is break down the network of CIA agents who operated in Chile, so this is why the Americans hate him.

Based on his analysis, González Berdugo is convinced that they killed Horman in Chile, that it was not the CIA directly, but that

they knew about it; later they gave him a fool's errand to go look for Horman at the morgue, given that the respective authorities, both the Chilean (Army, Investigations, and Ministry of Defense) and the local American authorities, knew what had happened to Horman.

Finally, he states that Vice Admiral Carvajal, who gave him the task of accompanying Vice Consul Anderson to locate and deliver the body of U.S. citizen Charles Horman, had no idea what had happened to Horman.

Twentieth: That in order to determine the participation of the defendant Rafael González Berdugo in the felony murder of Charles Edmund Horman Lazar, we must consider elements arising from his own deposition, therefore, even if the defendant has not acknowledged direct involvement in the crime, which is what is implied, directly, by an implicit negation of having had prior and concurring knowledge of the crime's commission; nevertheless, from his statements several pieces of evidence to the contrary arise, namely, that:

a) On the date of the crime, the defendant was working in intelligence for the National Defense High Command, specifically, he worked in the 2nd Department of the National Defense High Command as Operating Manager; the defendant states that he carried out his tasks at the Directorate of Intelligence of the High Command, where he began in 1954 and stayed until April 14, 1974 without interruption, working in this division;

b) That, as the defendant states, he carried out covert operations during this entire time, infiltrating regimes in other countries, in intelligence and counterintelligence work;

c) That, as the defendant also states, from September 10, 1973 to April 1974 his superior was Vice Admiral Carvajal, that is, the

Chief of the General High Command of the Armed Forces and Minister of National Defense for the Military Junta of the Government installed after the coup on September 11, 1973; and he acknowledges, where relevant, that all of the information that he was able to collect, he reported to Vice Admiral Carvajal.

d) That, on the date of the crime he knew the victim Charles Horman and his wife, since he acknowledges that he met them far before Charles Horman was deprived of his liberty and killed, that is, at the beginning in 1971 or 1972, when the Hormans arrived in Chile, when, as he states, she began working at a branch of CORFO; remembering that he spoke with “Coco Paredes,” chief of Police Investigations of the time, to tell Paredes that he had an American worker named Joyce Horman working there, and that she had to be checked out, since she might be a CIA spy, and told him that people were in a network that was operating inside CORFO; that Paredes told him not to worry since the woman’s husband, Charles Horman, worked with him at Chile Films;

e) That, regarding the victim Charles Horman’s activities in Chile, who the defendant González Berdugo claims to have known since 1971 or 1972, González Berdugo could not be indifferent toward him, due to his work in intelligence that he carried out from the General High Command of the Chilean Armed Forces, even more so if we consider that the defendant acknowledges that in 1969 he was offered work with the CIA;

f) That he took part in the intelligence activities that were conducted starting on September 11, 1973, directed by the General High Command of the Armed Forces, since he assisted Army General Lutz, Head of the Military Intelligence Service of the Chilean Army, given that the defendant states that on September

11, General Lutz (who had been González Berdugo's superior in the second half of 1970) called him;

g) That participation can be reliably attributed to the defendant, Rafael González Berdugo, as per his previous deposition, as in it he acknowledges that, regarding "the Horman case" "he was unsure whether it was three or four days after the coup, he only remembers that it was not a Saturday or a Sunday and he remembers being busy. General Lutz called him from within the office to go up to meet him on the 9th floor. It must have been around 5:30 p.m. or 6:00 p.m. Upon arriving at Lutz's office, in the waiting room, he saw some people he did not recognize, identifies himself and asks for General Lutz and asks who General Lutz is with at the moment, and they reply that he is with some gringo and he thinks that the man is a CIA agent." That he entered and saw a short Army Colonel and another tall official, who he was unable to identify, but the short man could be Colonel Barría, but he could not confirm it; he saw a thin civilian, about 1.79 meters tall, white, with jacket and pants of different colors, no tie, he was not handcuffed or mistreated, had stubble, was calm and looked like a gringo; General Lutz said something to him like: what was he doing here in Chile or what was he doing in Chile; he does not remember well but the gringo told him that he was making a film in Chile Films about the Chilean situation, all of this in Spanish. Then General Lutz told him that he was investigating the CIA's involvement in the death of Schneider and that the head of that unit was Coco Paredes. Later General Lutz told him that he was done, ordering him to take the person out; when "this guy" was leaving, two officials entered and General Lutz said aloud "this is the American, Horman," pointing to the gringo.

Therefore, from the previous statement by the defendant Rafael González Berdugo appears to be convincingly established in the cause, at least, his participation prior to and concurrent with the death of the victim Charles Edmund Horman Lazar, who was

deprived of liberty by the military organization of which González Berdugo, by receiving orders, was a part; that is, the Army Military Intelligence Service, under the command of the Chief of the National Defense High Command, as the defendant expressly states.

That, in effect, the defendant Rafael González Berdugo was part of the commanding organization, and said Military Intelligence Service was destined to strengthen the military regime installed on September 11, 1973, namely, in this case, he carried out part of the actions aimed at capturing and causing the death of Charles Edmund Horman Lazar, a foreign national considered by the armed organization as a subversive, activist, or extremist, whose political activity was deemed dangerous;

h) That the defendant Rafael González Berdugo, in his deposition, indicates that in the first half of March 1974, he received instructions from Vice Admiral Carvajal to report to SENDET (National Department of Detainees) in order to collect the information necessary about where Horman might be detained; knowing that Horman had never been detained in any of the detention facilities of the time, nor in the National Stadium, he returned with this information to the Ministry of Defense.

However, this information is blatantly discovered to have been used to hide the actions taken by Vice Admiral Carvajal himself and the Military Intelligence Service of the National Defense High Command, and the defendant Rafael González Berdugo, against the life of Charles Horman; since this statement contradicts with what the defendant himself acknowledges regarding what he knew prior to Horman being deprived of his liberty, which he learned about in the office of General Augusto Lutz Urzúa, learning about the office's plans for the victim, plans in which the defendant himself consequently participated.

i) That also in his statement, the defendant Rafael González Berdugo asserts that Vice Admiral Carvajal informed him that—as the defendant acknowledges, the superior officer under whose direct command he fell on September 10, 1973, by the Vice Admiral's express decision—at 11 a.m. on September 11, 1973, he ordered González Berdugo to his office and told him that U.S. Senator Jacob Javitz [*sic*: Javits] had spoken with him and told him that as Chair of the U.S. Senate Committee on Defense he wanted Horman's remains to be repatriated to the U.S. within 90 days, or he would oppose arms sales to Chile. That pursuant to the above, Vice Admiral Carvajal ordered him to go meet Vice Consul James Anderson, who was waiting for him at the U.S. Consulate. That along with the Vice Consul, they went to gather information about Charles Horman at the University of Chile hospital, then to a small office of the Civil Registry Department, without success; that he told the Vice Consul that they should go to the morgue, there they asked about an American, providing his description, and an employee told them yes, a man by that description had been there for a long time, and had been sent to the General Cemetery about three or four months prior; that they went to the General Cemetery, spoke with the administrator who immediately showed them where the remains were, and along with the Vice Consul, they confirmed that the remains were in a niche; the exhumation took place immediately, confirming that it was indeed Horman. He adds that all of this information was able to be obtained by virtue of the credentials that he could show at that time, which is why he was given that task. He states that they had no problems locating Horman's body since it was very easy with the information given to them by the Medical Legal Department, and if it seems strange that he was unable to be located earlier, it is due to a cover-up; due to not knowing which person or people could have been responsible for Mr. Horman's death. He indicates that he reported these facts to Vice Admiral Carvajal over the phone; then he went to the Civil Registry with

Vice Consul Anderson to obtain the appropriate documentation to proceed with the posthumous transfer of Mr. Horman to the U.S.

That, without a doubt, the defendant Rafael González Berdugo cannot be believed when he asserts that his involvement in finding the body of the victim Charles Horman and being successful in that regard, consisted solely of going to the morgue with U.S. Vice Consul Anderson and asking about an American, providing his description, and that an employee told them that yes, a man by that description had been there for a long time, and had been sent to the General Cemetery about three or four months prior; and that later they went to the General Cemetery, spoke with the administrator who immediately showed them where the remains were, and along with the Vice Consul, they confirmed that the remains were in a niche; resulting in confirmation that it was indeed the body of the victim, Charles Horman.

Of course, the version provided regarding the fortunate, easy, quick search, the finding and identification of the victim's body by the defendant Rafael González Berdugo turns out to be untrue; therefore, from his deposition it can be easily concluded that González Berdugo, as part of the military command organization, the leadership of the National Defense High Command, specifically, the intelligence department within this organization, and in his role as Operating Manager of intelligence—although he may not acknowledge it—carried out his superior's order and agreed to participate by planning the mission that he was assigned, that is, to go to the Medical Legal Department and the General Cemetery of Santiago, in order to facilitate the prompt exhumation and transfer of the victim's remains to the U.S., for political reasons; without a doubt, the mission that he was tasked with carrying out was given to him in his capacity as an agent of the military organization that previously caused the death of the

victim, knowing where the body was located from the moment it was buried.

As a result, from the previously analyzed sections of defendant Rafael González Berdugo's deposition, we can deduce unequivocally that González Berdugo contributed to planning the action and accepted the missions assigned to him by the intelligence organization of which he was a part, from monitoring the victim Charles Edmund Horman Lazar in his political journalistic activities in Chile while he was alive, until the moment his body was delivered for transfer to the U.S.

Twenty-first: That, to determine the participation corresponding to Rafael Agustín González Berdugo in the felony murder of Charles Edmund Horman Lazar, in addition to the background provided in the ruling on this crime and the reasoning in the previous finding, it is necessary to analyze the following items of evidence to the same end:

a) The statements by the plaintiff and wife of the late Charles Horman, Mrs. Joyce Horman, née Hamren, pages 502 and 2,482 of this case, where she claims that the defendant Rafael Agustín González Berdugo, on the only occasion that she met him, never told her that he knew of her beforehand or that he had ever seen her, and the two spoke very little on that occasion.

The foregoing reveals a presumption against the defendant Rafael Agustín González Berdugo, in that the defendant, despite appearing as a witness before a court in the U.S. to testify about the events surrounding the death of Charles Horman, at this time said nothing about the wife of the deceased, Joyce Horman, née Hamren, about what he knew of her, specifically, when he states in his deposition that he met Charles Horman at the beginning in 1971 or 1972, when Horman arrived in Chile with his wife, who began working at a branch of CORFO; that he remembers that he

spoke with “Coco Paredes,” chief of Police Investigations of the time, to tell Paredes that he had an American worker named Joyce Horman working there, and that she had to be checked out, since she might be a CIA spy, and told him that people—specifically Muñoz—were in a network that was operating inside CORFO; that Paredes told him not to worry since the woman’s husband, Charles Horman, worked with him at Chile Films; and hearing nothing more about them.

It is evident that it was natural for the defendant González Berdugo, upon personally meeting Joyce Horman, née Hamren, to have—upon meeting her in the U.S.—told her the information about herself and Charles Horman that he had possessed since 1971 and 1972 (as he later told the court in his testimony), far prior to the death of Charles Horman; from this relevant fact that the defendant González Berdugo hid this information from Joyce Horman, née Hamren and the parents of the victim, who invited him into their home in the U.S., it may be deduced that the defendant voluntarily did so in order to prevent this information from revealing the plan to monitor Charles Horman and his wife in Chile, of which he was not unaware, thereby implicating himself in the crime.

Of course, in this respect it is necessary to reject the defendant González Berdugo’s recantation in his later deposition, on page 2,232, stating that he had never heard the name Charles Horman, since it is not unambiguously proven that the assertions in his first statement about having met Charles Horman in 1971 or 1972 were due to an error, coercion, or to not being in full possession of his faculties during the judicial proceeding.

b) The statement by Frederick Dunbar Purdy, U.S. Consul in Santiago in September 1973, on pages 684-686, 976-978, and 980, in which he indicates that with respect to the delay in delivering Charles Horman’s body, Jim Anderson, who was then

the Vice Consul and was in charge of the Charles Horman case, was in contact with the then director of the Medical Legal Institute [*sic*] in Santiago and was not satisfied with the information that was provided to him. He adds that Anderson, in any case, thought that it was not the director of the Medical Legal Institute who slowed down the release of information, but rather officers of the Army. It must also be taken into account that, even if at the beginning the U.S. government was pleased with the coup of 1973, little by little this enthusiasm waned as the number of deaths caused by the coup became apparent. The U.S. government, dissatisfied with the situation, then decreased all types of cooperation and this, possibly, led the military to also decrease their collaboration in issues related to U.S. interests, one being the hand-off of U.S. citizen Charles Horman.

Purdy adds that, as far as he knows, there was no involvement in Chile by representatives of the U.S. above his level. That the Ambassador did not have good contacts in the government and the person in charge of this matter was Purdy, as U.S. Consul; that on his part, he contacted the Consular Department of the Ministerio de Relaciones Exteriores [Ministry of Foreign Relations] and the information they provided him was that they had contacted the Medical Legal Department, but since [Purdy] had already done that on his own, they could not give him any additional information.

That, in this manner, Consul Purdy's statement allows for the inference that the defendant González Berdugo had previous knowledge of the plan directed by the National Defense High Command that culminated with the perpetration of the murder of Charles Horman, since, by the Consul's report of what he was told by Vice Consul Anderson (who accompanied the defendant González Berdugo to the Medical Legal Department and the General Cemetery) regarding the unjustified, several-month delay

in delivering Horman's body to U.S. authorities, it is demonstrated that this had been previously agreed upon by Chilean state officers, and, as a result, the defendant is not telling the truth when he describes the supposed fortunate and easy search, discovery, and identification of the remains of the victim Charles Edmund Horman Lazar, but in fact his actions were part of the plan to hide the crime from the intelligence organization operating at the time, a plan crafted by the National Defense High Command military organization, in which the defendant González Berdugo was, as he acknowledges, Operating Manager of Intelligence.

c) Therefore, the defendant Rafael González Berdugo's involvement in the murder of Charles Horman can be peremptorily affirmed, after considering the police order on page 3,844, containing the statement by Intelligence Officer Raúl Monsalve Poblete in which he states that he retired at the rank of Capitán de Navío de la Armada [Navy Captain of the Fleet] and that on September 11, 1973, he occupied the premises on the seventh floor of the Ministry of Defense; that he was the liaison officer to the "Jefe del Grupo Militar de Asistencia Mutua de los Estados Unidos en Chile" [Head of the United States Mutual Assistance Military Group in Chile], Navy Captain Ray E. Davis; that he remembers that on September 11, 1973, Davis was in Valparaíso and in the days following, Davis asked him over the phone to arrange for a "safe conduct" to travel to Santiago over land, that he made the proper arrangements, and Davis arrived in Santiago on September 17, 1973, around 3:00 p.m.; days later, Davis told him that he had brought the U.S. journalist Charles Horman with him and had left Horman at Hotel Carrera, before going to his offices at the Embassy which was located across the street from Hotel Carrera.

Raúl Monsalve Poblete states that, at the beginning of October, Secretary of Defense Vice Admiral Patricio Carvajal Prado

ordered the creation of the Central de Contrainteligencia de las Fuerzas Armadas (Cecifa) [Armed Forces Counterintelligence Department], that would directly report to him and would be made up of members of the armed forces, carabiniers, and investigations, requesting from the Navy an officer to head it, and Poblete was designated the head of this organization; he remembers that Rafael Agustín González arrived from the Defense High Command, who was directly under the head of the Department of Intelligence of the National Defense High Command, Navy Captain Ariel González Cornejo.

That he recalls that, in early October 1973, Vice Admiral Carvajal told him that the Military Government was being pressured by the U.S. due to the disappearance of journalist Charles Horman, in light of the situation, he reported that Captain Ray E. Davis had told him that Davis had brought Horman in his vehicle from Valparaíso; that Vice Admiral Carvajal ordered him to use all possible means to locate Horman, and he also told the Vice Admiral that intelligence officer Rafael Agustín González Berdugo—who lived in the La Florida neighborhood and worked as an undercover agent—handled political history regarding the existence of Charles Horman; he added that, since González Berdugo was the one handling information on this issue, he was tasked with locating Horman; that at this stage in the collection of information, González Berdugo told him that Horman had been detained by a military patrol and had probably been taken to the National Stadium. Poblete maintains that González Berdugo later told him that Horman was dead; that upon asking González Berdugo for information regarding Horman, Poblete adds that González Berdugo told him that: “He was executed by the soldiers and that he was in a mass grave at the General Cemetery, he also told Poblete that Horman had been detained on September 17th and was taken to the National Stadium; González Berdugo added that he was already in contact with the U.S. Consulate, [to request that] Vice Consul James Anderson

accompany him to identify the body at the cemetery. Poblete states that on various occasions he spoke with Ray E. Davis regarding the Horman case, telling Davis that Horman worked for the Ford foundation, also asking him if he knew where Horman was, with Davis answering that he did not know; that Rafael González Berdugo had always had ties to the U.S. Embassy and these ties were basically established through his Consulate, "...where Rafael had strong ties"; he adds that at the end of 1973, the Cecifa was terminated and the officials returned to their previous institutions, with González Berdugo being transferred to the Air Force, with Poblete later finding out, in 1976, that González Berdugo had been given asylum at the Embassy of Italy; Poblete states that he did not know where González Berdugo had received the information that Horman had been executed by the soldiers.

Poblete emphasizes that Rafael Agustín González Berdugo told him that he had information on Charles Horman before September 11, 1973, due to his "counterintelligence" activities for the National Defense High Command.

As a result, the evidence that arises from the statements of intelligence agent Raúl Monsalve Poblete is that he corroborates the other data pondered in this ruling, specifying that the defendant, Rafael González Berdugo, formed part of the intelligence organization directed by the National Defense General Staff, and handled political evidence regarding the victim, Charles Horman; and, finally, that the defendant knew of, and therefore, monitored Charles Horman's activity since before September 11, 1973, due to his "counterintelligence" activities for the National Defense General Staff.

Twenty-second: That, as a result, the participation of Rafael Agustín González Berdugo, is that of an accomplice to felony

murder, since the possibility of causing the death of the victim in the serious projected circumstances has been described and confirmed, and González Berdugo cooperated with prior and simultaneous actions, with the malice demanded by the crime.

The Situation of Pedro Octavio Espinoza Bravo.

Twenty-third: That the defendant Pedro Octavio Espinoza Bravo, in his statement on pages 5,437 and following, asserts that, he had no information at that time regarding the situation that affected U.S. citizens Charles Horman and Frank Teruggi; that he later found out about the events through press reports; that Colonel Brantes was working at the time in Intelligence and was the contact for General Augusto Lutz Urzúa with the U.S. citizens.

He states, in particular, that he never went to the National Stadium nor to the Estadio Chile [Chile Stadium], and the person in charge of the detention centers was General Francisco Herrera Latoja; that he was never involved, much less had any possibility of deciding the fate of the detainees, Chilean or foreign; that he never participated in these activities.

Regarding where he was conducting activities for the military coup, on September 11, 1973, he states that he was in Santiago on secondment for the National Defense High Command in order to investigate the death of Naval Aide Mr. Arturo Araya Peters; his superior at that time was General Nicanor Díaz Estrada, and they legally reported to the Auditor of the Fleet, Admiral Aldo Montagna Barghetto. That General Díaz Estrada conveyed the progress of the investigation to the President of the Republic, Salvador Allende, at La Moneda Palace.

That the High Command operated in the Ministry of National Defense building, currently the Armed Forces building, and that he was there physically.

That regarding the progress of the investigation, he also reported directly to Commander in Chief of the Army, General Carlos Prats, which he did since August 1973, when General Prats retired, but since he still belonged to the Dirección de Inteligencia del Ejército [Army Intelligence Directorate] (DINE), he also reported to his superior, General Augusto Lutz Urzúa. That General Augusto Lutz Urzúa was the Director of Army Intelligence, his office was on the 9th floor of the Army Intelligence Directorate.

That the Dirección de Logística del Ejército [Directorate of Army Logistics] operated on the 8th floor, that, until approximately 1965, was located in the south wing of the U.S. Military Mission office, which was no longer in operation by September 11, 1973.

That on September 12, 1973, through General Díaz, he was ordered to report to the Comandancia de Guarnición [Garrison Command] to retrieve an envelope for the Commander of the Tacna Regiment, Vice Admiral Carvajal, who he contacted, he expressly told him to tell the Regiment Commander to free the Investigations personnel who had been detained at La Moneda Palace.

That General Herman Brady's assistant gave Espinoza Bravo a sealed envelope to take to the Tacna Regiment, where he was received by Deputy Commander Julio Hernández Atienza, since Commander Joaquín Ramírez Pineda was not present, he did not know what was in the envelope, but it was likely regarding a resolution.

That on September 13, 1973, Vice Admiral Patricio Carvajal Prado ordered Espinoza Bravo to transfer to Peldehue to be present and verify the execution by firing squad of people who had been tried and sentenced by a War Council; upon arriving in

Colina around 5:00 p.m., Espinoza Bravo observed a military truck from which a group of civilians exited, about 15 people, who were struck down by a rifle squad in the sector next to the NASA Space Center, training grounds of the Tacna Regiment; he was unaware of the identities of the people and the charges made against them that the War Council decided; only later did he find out that they were people who had been detained inside La Moneda Palace; in any case, the identities must have been known by those who carried out the trial and ordered the deaths by firing squad.

On September 15, 1973, Espinoza Bravo received an order from General Nicanor Díaz Estrada to transfer Ms. Moy de José Tohá from the Embassy of Mexico to the house of Tomás Moro, where she went to find some medications to give to Hortensia Bussi, who was also protected at the Mexican embassy.

That his hierarchical superior was Vice Admiral Carvajal, who was in charge of COFA (Centro de Operaciones de las Fuerzas Armadas [Armed Forces Operations Center]), an entity that began operation on September 11, 1973, coordinating the operative units of the Armed Forces.

That he was later on secondment to the Military Junta, from December 1973 to May 21, 1974, under the Secretary General of the government, Pedro Ewing, carrying out security tasks for the movements of Military Junta members throughout Chile, in the advance party.

That in the hall of the Armed Forces building, where the Ministry of Defense was then operating, Espinoza Bravo witnessed a large number of detainees, among whom he noticed the presence of Mr. Alfredo Joignant, Director of Police Investigations, with whom he had had the opportunity to meet in work meetings during the investigation of Naval Aide Araya Peters, and he did not know the

destination of these people; he knows that Joignant left the country.

Espinoza Bravo states that on September 30, 1973, he received the order from General Augusto Lutz Urzúa to accompany General Sergio Arellano Stark, who would be traveling in helicopter toward the South and then the North of the country, where he would be conducting information-gathering activities regarding the current civilian situation in each one of the military garrisons; also going on this mission were Lieutenant Colonel Carlos López (only to the South), Colonel Sergio Arredondo González (only to the North) and a military group from the Comando de Tropa [Troop Command]; he adds that he never participated in the activities that this contingent carried out, he only concerned himself with obtaining information in order to make the mentioned report; in both commissions he wore civilian clothing, did not carry a firearm, and had no staff under his command.

That he never went to the National Stadium nor to the Chile Stadium, and the person in charge of the detention centers was General Francisco Herrera Latoja; that he was never involved, much less had any possibility of deciding the fate of the detainees, Chilean or foreign; that he never participated in these activities.

That after September 11, 1973, he thinks it was September 13 or 14, General of Aviation, Francisco Herrera Latoja and Colonel Enrique Montero Marx arrived on the 6th floor, along with a Catholic chaplain, and these men took charge of the prisoner detention centers and used the office of General Nicanor Díaz Estrada.

Twenty-fourth: That since the defendant Pedro Octavio Espinoza Bravo has not acknowledged participation in the deaths of Charles Horman and Frank Teruggi, indicating that he had no information at that time about the facts, we must take into consideration, as evidence of his involvement in the crimes, the evidence stemming from his deposition on pages 5,437, in particular for the aspects indicated and the items of evidence analyzed below:

a) The defendant Pedro Octavio Espinoza Bravo acknowledges that, on the date of the crimes investigated in this proceedings, he worked for the National Defense High Command, specifically, he worked at the 2nd Department of the National Defense High Command, and states that one of his superiors at that time was General Nicanor Díaz Estrada.

Therefore, it must be observed that General of Aviation, Nicanor Díaz Estrada—direct superior of the defendant Pedro Octavio Espinoza Bravo, as acknowledged by the defendant, in accordance with the official document on page 2,070, in a true copy of the original—worked as Chief of the National Defense High Command, and is the official who, on September 24, 1973, gave the order contained in the cited document—that is, during the same days that Charles Horman and Frank Teruggi were detained, interrogated, and killed—to detain the foreign staff that worked at Chile Films, an order given to the Dirección General de Investigaciones [Directorate General of Investigations], the Ministry of Foreign Relations, the Military Intelligence Service, the Servicio de Inteligencia Naval [Naval Intelligence Service], and the Servicio de Inteligencia de la Fuerza Aérea [Air Force Intelligence Service].

Therefore, said order by the superior of defendant Pedro Octavio Espinoza Bravo must be related to the fact that the victim Charles Edmund Horman Lazar, as stated by his wife Joyce Horman, on

page 508, among other work, worked with his wife producing cartoon films written by the producer of Chile Films, Pablo de la Barra, the same Chile Films where, according to the order given by the superior of defendant Espinoza Bravo, General Nicanor Díaz Estrada, all foreign staff were to be detained. Also, the actions of the second victim, U.S. citizen Frank Randall Teruggi Bombatch, just like [those of] Charles Horman, were related to Chile Films, since he worked with young U.S. citizens in issues related to the distribution of news information, essentially U.S. news information called North American Information Source, (FIN), as stated by witnesses David Hathaway on page 376, and Steven Saúl Volk Segal, on page 822; the objectives of the FIN publication were to provide critical non-governmental information about the political role of the U.S. in Chile, a fact corroborated by the declassified U.S. government documents on pages 4,226 and 4,228, that refer to Teruggi as a subversive, according to U.S. intelligence agencies; and Teruggi is described as an American in Chile at that time editing a newsletter called “FIN” with Chilean information for U.S. leftists.

As a result, the action against the victims Horman and Teruggi was being managed from the highest director of intelligence, who was the Chief of the National Defense High Command, General Nicanor Díaz Estrada, direct superior of the defendant Pedro Octavio Espinoza Bravo, since the order came from General Díaz to detain the foreigners that worked at Chile Films, where Horman worked with his wife, and Charles Horman was also working with Frank Teruggi on editing the FIN newsletter. Therefore, from the beginning, said activities of the victims could not be considered irrelevant to the information-gathering tasks that the defendant Pedro Octavio Espinoza Bravo carried out in the National Defense High Command, under the orders of General Nicanor Díaz Estrada.

b) The defendant Pedro Octavio Espinoza Bravo acknowledges that he reported his intelligence-gathering activities to General Augusto Lutz Urzúa and that General Lutz was the Director of Army Intelligence, and that his office was on the 9th floor of the Army Intelligence Directorate.

Therefore, it is established in these proceedings that General Augusto Lutz Urzúa, Director of Army Intelligence, was also, as was General Nicanor Díaz Estrada, a superior of the defendant Pedro Octavio Espinoza Bravo, and the order from General Díaz, Chief of the National Defense High Command—contained in the official document on page 2,070 of this judgment in a true copy of the original, from September 24, 1973—to detain foreign staff that worked in Chile Films, this last institution, as it has been noted, related directly to the victims Horman and Teruggi, was directed to said General of Army Intelligence;

For this purpose we must also consider that it is General Augusto Lutz Urzúa, Chief of Army Intelligence, who calls the other defendant in this judgment, Rafael Agustín González Berdugo, in accordance with González Berdugo's statements, on pages 1,860 to 1,865 and 2,232, to go up to meet him on the 9th floor where General Lutz was, and where González Berdugo (as he has unwaveringly asserted) finds, both alive and detained, the late Charles Edmund Horman Lazar; González Berdugo stating, to such end, that it must have been around 5:30 p.m. or 6:00 p.m., upon arriving at Lutz's office, in the waiting room, he saw some people he did not recognize; that he identifies himself and asks for General Lutz and asks who General Lutz is with at the moment, and the people reply that he is with some gringo; that he entered and saw a short Army Colonel and another tall official, who he was unable to identify, but the short man could be Colonel Barría; that he saw a thin civilian, about 1.79 meters tall, white, with jacket and pants of different colors, no tie, he was not handcuffed or mistreated, had stubble, was calm and looked like

a gringo; that General Lutz said something to him like: what was he doing here in Chile or what was he doing in Chile; he doesn't remember well but the gringo told him that he was making a film in Chile Films about the Chilean situation, all of this in Spanish. Then General Lutz told him that he was investigating the CIA's involvement in the death of Schneider and that the head of that unit was Coco Paredes. Later General Lutz told him that he was done, ordering him to take the person out; when "this guy" was leaving, two officials entered and General Lutz said aloud "this is the American, Horman," pointing to the gringo.

C) Also, the defendant Pedro Octavio Espinoza Bravo acknowledges that one of the superior officers who gave him orders was Vice Admiral Patricio Carvajal Prado, specifically stating in writing that his hierarchical superior was Vice Admiral Carvajal, who was in charge of COFA, the Armed Forces Operations Center, the entity that began on September 11, 1973, coordinating the operative units of the Armed Forces, and that this official, on September 13, 1973, ordered Espinoza Bravo to transfer to Peldehue to be present and verify the execution by firing squad of people who had been tried and sentenced by a War Council; that upon arriving in Colina, states the defendant Espinoza Bravo, around 5:00 p.m. he observed a military truck from which a group of civilians exited, about 15 people, who were executed by firing squad in the sector next to the NASA Space Center, training grounds of the Tacna Regiment; he was unaware of the identities of the people and the charges made against them that the War Council decided; only later did he find out that they were people who had been detained inside La Moneda Palace; in any case, he adds that the identities must have been known by those who carried out the trial and ordered the deaths by firing squad.

As a result, based on the foregoing, the direct relationship of the defendant Pedro Octavio Espinoza Bravo with Vice Admiral Patricio Carvajal Prado arises in these proceedings. Carvajal Prado was the highest level superior who worked in the National Defense High Command, from where he coordinated, after September 11, 1973, the arrests and deaths of people who were against the military regime that was recently installed in the country, as stated in the statement by the defendant Espinoza Bravo, regarding the death of about 15 people in places around the Colina neighborhood of Santiago; and—as confirmed by the evidence analyzed in this ruling regarding the crimes—the defendant's task, in the National Defense High Command, as a result of his job, of verifying what happened to Charles Edmund Horman Lazar following September 17, 1973, after Horman was detained by military personnel and interrogated in the upper floors of the National Ministry of Defense, with respect to his political activities in Chile, qualified as "subversive" by the State agents.

Also, due to his intelligence work, the defendant Pedro Octavio Espinoza Bravo was involved with the victim Frank Randall Teruggi Bombatch, since the Intelligence Service of the National Defense High Command, where he worked, gave the order to the Carabiniers to detain Teruggi and his compatriot David Hathaway, precisely at the home address that the Intelligence Service had, of the house on Hernán Cortés No. 2575, Ñuñoa, to later send them to the National Stadium detention center, and later, between the night of September 21, 1973 and the morning of September 22 to kill Teruggi, abandoning his body on the streets of Santiago.

d) That the defendant Pedro Octavio Espinoza Bravo denies in his deposition having gone to the National Stadium and Chile Stadium detention centers and having decided where to send the Chileans or foreigners who were detained there; nevertheless, these proceedings establish the position and activities that Espinoza Bravo occupied and performed, as well as the higher

command of Generals Díaz Estrada, Lutz Urzúa, and Vice Admiral Carvajal Prado in the Army Intelligence Directorate of the National Defense High Command, which is an indication, contrary to the defendant's assertions, that arises from the statements of U.S. Consul at the time, Frederic Dunbar Purdy, exposed in the confrontation hearing with witness Steven Saul Volk, from page 1,366 of this case, the transcript of which was added to page 1,422; in effect, regarding this, U.S. Consul Frederic Dunbar Purdy indicates to the court that when he entered the National Stadium: "...there he was given access to the lists"—referring to the names and citizenships of detainees—and adds that: "in the first five or six days the lists were very primitive...they were on paper...all handwritten...written by the soldiers who were leaders of the squads...that brought some prisoners...after five or six days...they began to use the computer...of the Catholic University...it was much easier...because I asked for it...it was formatted...and everything, had the nationalities on the back and Brazilians, Bulgarians could go...and see if not a U.S. citizen..."(sic). Later, when Consul Purdy was interrogated by the Court about whether he could provide information about the name of the Chilean official with whom he and the U.S. military attaché had spoken, Consul Purdy responded: "I don't remember...the name of the man that time...the first time that I went there...he was the man who is now imprisoned and was at the Colina prison...what is his name." The Court states: Bravo, Espinoza Bravo. To which Consul Purdy says: "Yes..." Then the Court continues, "...Espinoza Bravo...the first one you spoke with..." Consul Purdy confirms: "Yes...Espinoza Bravo...him...he was in charge of all of the lists...at the time and I...but I didn't see...him more than one or two times."

Accordingly, Consul Purdy asserts that when he went to the National Stadium, the detention center to which—according to the established facts of the crime—the victim Frank Teruggi was unequivocally transferred with his friend, U.S. citizen David

Hathaway, one of the chiefs of the military group that directed activities at this camp was the defendant himself, Pedro Octavio Espinoza Bravo, who is also referred to many times in this case—also according to the evidence analyzed obtained in the course of the crimes—indicate that both Teruggi and Hathaway, being detained, were interrogated by an armed forces officer in front of a locker room occupied by foreigners; and finally, that an officer also called Teruggi from among a group of foreign detainees, and that he was taken from the locker room without his companion Hathaway, and Hathaway never saw him again.

Also, it is apparent from the statement by Consul Frederic Dunbar Purdy, that the defendant Pedro Octavio Espinoza Bravo was identified by the Consul as a direct participant in the action directed by the military against the victim Frank Teruggi, if it is considered to be accurate that Teruggi was killed after being taken into military custody, and held in the National Stadium;

e) It also concerns the defendant Pedro Octavio Espinoza Bravo and relates directly to that which is reasoned in the previous letter c), the allegation that stems from the statement on page 3,294, of Héctor Manuel Rozas Montecino, whose states in his deposition, after stating that he is a former Carabiniers official, that on September 11, 1973 he was ordered by the Prefecture of North Santiago, to work a 12-hour shift at the National Stadium, with other people added from different units from the same Prefecture, in order to keep “the exterior perimeter” of the area guarded at all times; specifying that from the National Stadium he only remembers one Army Commander named Espinoza who was in charge of “internal service”; he seemed to recognize this commander on TV when the DINA (Dirección de Inteligencia Nacional [National Intelligence Directorate]) was being investigated, specifically when the commander appeared standing

at attention before being imprisoned at Punta Peuco Prison, which corroborates the statements by U.S. Consul Purdy.

Therefore, in light of the related information, the defendant Pedro Octavio Espinoza Bravo did carry out tasks at the detainee camp in the National Stadium, in the so-called “internal enclosure,” that is, directly in contact with the people detained in that camp.

f) Also, directly related to the foregoing, and concerning the defendant Pedro Octavio Espinoza Bravo, the presumption that stems from the statement by Oscar Elías Muñoz Gallardo, former Army Major, who confirms that at the time of the military coup on September 11, 1973, he was on secondment taking the second course of Aspirantes de Ayudantías Generales [Candidates for General Assistants] at the School of Telecommunications; that on September 14 of the same year the [members of the] first and second course for Candidates for General Assistants, by order of the Army High Command, were sent to the National Stadium to organize the administrative and executive aspects of the prisoner camp, staying there until December 1, 1973, returning to their usual tasks, to continue with the second period of the indicated course.

That, former official Oscar Elías Muñoz Gallardo continues, in the National Stadium he was in charge of “detainee reception,” which consisted of receiving the detainees and the documentation submitted by the various patrols; that they personally signed the receipt and delivered the lists to the secretaries, to later, and as locker room capacity permitted, go about distributing the detainees in the northern sector of the Stadium. That each locker room had capacity for approximately one hundred people, but held up to three hundred; that it was his responsibility to guard only locker rooms with male, Chilean detainees; there was a special area for foreign detainees, therefore, the patrols that transferred foreign detainees already knew that they had to

deliver the detainees to Colonel Pedro Octavio Espinoza Bravo, who had full control of the Stadium, currently imprisoned in the Cordillera Prison, in an outbuilding located outside to the West of the Stadium, but very close to the locker rooms where he was located.

That he wishes to clarify, in response to the Court's question, that effectively in the National Stadium there was another official with the last name of Espinoza, but he thought he was lower ranking than Pedro Octavio Espinoza Bravo, and his work was more administrative than command-related.

Also, he continues in this respect, contiguous to this office for receiving foreign detainees, was an area used exclusively for interrogations, of which Colonel Pedro Octavio Espinoza Bravo was in charge, where legal consultations were carried out for the interrogations by intelligence specialists of the various branches of the Armed Forces and Carabiniers.

As a result, this evidence, in conjunction with the previously analyzed evidence, verifies the fact that the U.S. Consul spoke about the detainees in the National Stadium with the defendant Pedro Octavio Espinoza Bravo, who, in order to carry out the intelligence activities in this location that were assigned to him by commanders of the National Defense High Command, secretly carried out the orders of said superior officers of the National Defense High Command, that is, he supervised the interrogations and verified the executions of the victims by firing squad.

In effect, in accordance with the statements by former Army official, Oscar Elías Muñoz Gallardo, a concordant and precise statement regarding the rest of the analyzed evidence, in order to carry out said functions the defendant Pedro Octavio Espinoza Bravo was located in the outbuilding to the West of the National

Stadium, in an area exclusively for receiving foreign detainees who were deprived of their freedom.

e) Finally, in addition to the rest of the analyzed information, there is the presumption against defendant Pedro Octavio Espinoza Bravo that arises from the document on page 5,438 and following: a document declassified by the U.S. Department of State, NH 140, from April 20, 1987, addressed to the "Political Adviser to the Chief of the Mission" from David Dreher, which is consistent with with the other analyzed evidence and refers to internal reports designed to shed light on the assassination of Charles Horman, from the U.S. Embassy in Santiago, from 1987; a document in which, to this effect, indicates that:

"According to (name redacted) Horman was detained by intelligence units resulting from information provided by Salas, chief of the CNI (Centro Nacional de Informaciones [National Information Center]) at the time. He was taken to the Escuela Militar [Military School] and interrogated. From there he was transferred to the National Stadium for additional interrogation. The documents seized at his residence indicated that Horman was an "extremist." For this reason, he was considered a foreigner/extremist and his execution was ordered. (Name redacted) said that Horman spoke little Spanish and the troops that detained him were not aware that he was American, but thought that he was Brazilian, Italian, etc. The file showed that he was an American who arrived at the Stadium, later executed. They forced him to change clothes and then immediately fired upon him three times. The body was thrown into the street so it would appear he was killed in a fight. The news of his death was lost due to the confusion of those days and later it was covered up when it was discovered that he was an American; (name redacted) said that the person who made the decision that he should die was Pedro Espinoza, who was later notorious for

belonging to the DINA. He estimated that hundreds of people died in the Stadium..."

In this regard, in accordance with the document dated March 17, 2011, from the U.S. Consul General in Santiago, Mr. William W. Whitaker, attached in page 5,274, regarding the investigation of the crimes of homicide against U.S. citizens Charles Horman and Frank Teruggi and, particularly, the documents, mentioned in letter rogatory number 3,236, dated May 19, 2009 from the Chilean Supreme Court, the previous legal instrument [*sic*], "fall precisely into the category of documents indicated in sub-paragraphs (5) and (10) described below as 'true or authentic in and of themselves.'"

Consequently, regarding the participation of defendant Pedro Octavio Espinoza Bravo in the crimes against the victims Charles Edmund Horman Lazar and Frank Randall Teruggi Bombatch, the cited document from U.S. authorities, as it mentions Espinoza Bravo, is another piece of evidence corroborating the rest of the previously analyzed evidence in these proceedings, regarding the crimes and being sufficiently consistent with other evidence analyzed in the finding of this ruling, to conclude that these proceedings fully prove the participation of the defendant Pedro Octavio Espinoza Bravo, as a perpetrator of the crimes of felony murder of the named victims.

Twenty-fifth: That, as a result, with the merit of the analyzed evidence, which constitutes multiple, precise, serious, and concordant presumptions, it is fully proven that the defendant Pedro Octavio Espinoza Bravo was involved as a perpetrator, under the terms of Article 15 No. 1, of the Penal Code, in the constitutive elements of the crimes of felony murder, provided in Article 391 No. 1, first circumstance of the Penal Code, against the persons Charles Edmund Horman Lazar and Frank Randall

Teruggi Bombatch, executing the orders received directly from his superior officers at the Intelligence Directorate of the National Defense High Command; first, immediately detaining the victims due to their being foreigners who carried out activities considered “subversive” or “extremist” and, therefore, treating the victims as subjects considered dangerous by the military authority that assumed the government of Chile on September 11, 1973; and second, summarily executing them, abandoning their bodies in undetermined public locations in order to hide the circumstances that resulted in their deaths.

IV. With respect to the defenses.

Twenty-sixth: That the defense of the defendant Rafael Agustín González Berdugo, on pages 6,166 and following, responds to the charge and to the specific statement made by the plaintiff Joyce Horman, née Hamren, respectively:

In the first place, the defense requests that an acquittal be issued for the defendant Rafael Agustín González Berdugo, as the facts investigated in these proceedings are covered by the amnesty [law] and the statute of limitations of the criminal proceedings, and to this effect, the arguments on his behalf are repeated, exhibited to oppose the previously mentioned motion and special ruling filed due to said causes.

Upon opposing this motion, the defense for defendant González Berdugo sustained that, in order for a crime to exist, the law must describe and sanction the criminal offense as such, which does not occur in this case, since the facts investigated are covered by Decree Law 2,191 of 1978, legislation which is currently in force. The defense shows that Article 1 of this Decree Law grants amnesty to all persons who participated—as perpetrators, accomplices, or accessories after the fact—in crimes during the period between September 11, 1973 and March 10, 1978, as long

as they were not prosecuted or sentenced on the date that said Decree Law was published. That is, the defense adds, the legislator, through a legal norm, has allowed the persons directly or indirectly involved in cases of this nature to go unpunished by disassociating them from sentencing.

The defense holds that the doctrine and jurisprudence understands that once an amnesty law has been passed, the criminal character of an event must be considered null and all penal consequences for the perpetrators deriving therefrom must be considered eliminated, therefore the case must be dismissed since the prosecution lacks legal basis for investigation.

Also, the defense adds, the amnesty is legally expressed as cause for termination of criminal liability in Article 93, Number 3, of the Penal Code, indicating that due to amnesty the sentencing and its effects are completely terminated, with the procedures established in Article 408, Number 5 of the Penal Code.

The defense states that it has been claimed that Decree Law No. 2,191 of 1978, shall not be in effect; that it shall not apply when said Decree Law violates rights guaranteed by international treaties, signed and ratified by Chile, currently in force, especially the Geneva Conventions, of August 12, 1949; however, the defense states, the Geneva Conventions approved by the National Congress, enacted by Decree Number 75, on April 17, 18, 19, and 20, of 1951, cannot be applied to the situation in Chile between 1973 and 1974, since the ordinary requirement to apply Common Article 3 to the four Conventions, is that there be an armed conflict not of international character, and that it arise in the territory of one of the high contracting parties, which supposes the existence of conflicting sides and hostilities of military character; that is, the defense adds, they apply when there is an armed conflict of international character, or an armed conflict not of international character in which there is a war situation; they

indicate that this is clarified in Additional Protocol of the Hague, number 2 [*sic*: Additional Protocol II to the Geneva Conventions], of 1977, which clarifies that humanitarian protection shall extend to conflicts taking place inside the territory of a High Contracting Party between its armed forces and armed dissident forces or organized armed groups that, under the direction of a leader, exercise control over a part of said territory to the extent that they can carry out sustained, concerted military actions and apply this protocol to armed conflicts.

The defense indicates that some people erroneously refer to Decree Law Number 5, of September 5, 1973 which states that: “I declare a state of internal war in Chile,” which, the defense states, does not apply, because it was passed in order to allow the suppression of certain crimes by Military Tribunals, solely to express that the state or time of war is only for the purposes of applying punishment during that time; also, the defense adds, the validity of Decree Law Number 5 was time-limited, until September 1974 as indicated in the text: “Let it be declared, interpreting Article 418 of the Código de Justicia Militar [Code of Military Justice], that the state of siege decreed due to internal unrest, in the circumstances in which the country finds itself, should be understood as a state or time of war for the sole purpose of the punishment during that time established by the Code of Military Justice and other criminal laws and, in general, for all other purposes of said legislation.”

The defense states that Decree Law Number 640, of 1974, also does not contain a declaration of war for the purposes of applying the Geneva Conventions.

That none of the Geneva Conventions prohibit states from promulgating amnesty laws relative to crimes committed during conflict, on the contrary, the defense states, Article 6 Number 5 of

Protocol II of the Geneva Conventions states that “At the end of hostilities, the authorities in power shall endeavour to grant the broadest possible amnesty to persons who have participated in the armed conflict, or those deprived of their liberty for reasons related to the armed conflict, whether they are interned or detained.”

The defense asserts that the legislative power at the time, in promulgating Decree Law 2,191, did so in legitimate exercise of an existing constitutional power, that is, Article 44, Number 13 of the Political Constitution of the Republic, of 1925, that states as a matter of law the granting of amnesty, a power not derogated by International treaties ratified, promulgated, and published in Chile when the Constitution of 1925 was in force.

The defense states that it must also be considered that Article 5, Section 2 of the Political Constitution of the Republic, of 1980, recently modified on August 17, 1989, is not retroactively applicable.

The defense states that another argument is that both the Constitutions of 1980 and 1925 did not address the possibility of being modified by an international treaty, adding that international treaties that have entered into force after Decree Law 2,191, on Amnesty, may not derogate it, since it would be in opposition to the principles of non-retroactivity of criminal law, and of not applying the unfavorable criminal law after the fact to the defendant, as enshrined in the Political Constitution of the Republic. The defense affirms that for these reasons, international agreements or treaties they will cite do not impede or prohibit enforcement of Decree Law 2,191.

The defense states that the Convention on the Prevention and Punishment of the Crime of Genocide, published in the Diario Oficial [Official Gazette] on December 11, 1953, is not applicable,

since the crimes characterized as crimes against humanity, genocide, and crimes and acts of war, were established by Law 20,357, published on June 26, 2006.

They maintain the inapplicability of the UN International Covenant on Civil and Political Rights, published in the Official Gazette on June 15, 1992, whose proclaiming decree contains the following declaration: “The Government of Chile recognizes jurisdiction of the Human Rights Commission, which is understood to provide for actions that take place after the entry into force of the optional protocol for this state, or at any rate, for actions carried out after March 11, 1990.”

The defense shows that in the Pact of San José, Costa Rica, or the American Convention on Human Rights of the member states of the OAS, published in the Official Gazette on August 23, 1991, has an identical declaration: that said Pact provides for jurisdiction over actions carried out after March 11, 1990.

That the Código de Derecho Internacional Privado [Code of Private International Law] (published in the Official Gazette on April 25, 1934, was signed with the following reservation: “that the precepts of current and future Chilean law take precedence over said code.”

As a result, the defense argues, with Decree Law 2,191 on amnesty being in effect, and the events having taken place on September 18, 1973, the defense requests an opposing motion.

Regarding the statute of limitations of the act, the defense for defendant Rafael Agustín González Berdugo affirms that, the statute of limitations operates with the mere passing of time, in order to achieve social peace and provide legal security. This institution, the defense adds, is contained in Article 94 of the Penal Code, which indicates that criminal prosecution has a 15-

year statute of limitations for crimes to which the law imposes a life sentence, a period that begins from the day on which the crime was allegedly committed, a period which, in the case of this investigation, would begin on September 18, 1973, the date on which the crime was also completed.

The defense states that this period is suspended ever since the proceedings were directed against the possible perpetrator. Since it is understood that the period is counted from the beginning of the indictment, or from processing, the fact is that the period corresponding to the statute limitations for criminal offenses has more than expired, given that if the events took place on September 18, 1973, the statute of limitations for the criminal offense expired on September 18, 1988, and the complaint was filed on December 7, 2000. As a result, the defense indicates, 26 years have passed without interruption from the commission of the crime, on September 18, 1973, to the year in which this investigation began, on August 7, 2000, with the filing on the complaint.

The defense adds that it attaches a ruling by the Supreme Court dated May 3, 2008 “Episodio José Alfonso Constanzo Vera” [“José Alfonso Constanzo Vera Incident”] docket 3,872-2007, published in the Gaceta Jurídica [Judicial Gazette] Number 335, May 2008, Santiago, page 171, which accepts the statute of limitations for the criminal offense.

Therefore, the defense for defendant Rafael Agustín González Berdugo, in response to the charge and statement thereto, requests that the court issue an acquittal of the defendant due to the fact that the charge does not permit the court to procure conviction beyond a reasonable doubt that their client was a participant in and was punishable by law in the offense of felony murder against the person of the victim Charles Horman, in

accordance with the provisions of Article 456 bis of the Penal Code.

The defense states that there are no facts in this investigation that allow for legal presumptions to be made to convict the defendant González Berdugo, since there is no evidence that supports his participation in the felony murder of Charles Horman, as a perpetrator, accomplice, or encubridor [accessory after the fact].

Thus, the defense adds, regarding the participation of the defendant, the only part in which this refers to him states:

"4th: that from the evidence analyzed and the statements by Rafael Agustín González Berdugo on pages 1,860 to 1,865, the charges appear sufficient to claim that he participated in the offense of felony murder, defined in Article 391, number 1, first circumstance of the Penal Code, against the person of Charles Edmund Horman Lazar, in the capacity of accomplice, as defined by Article 16 of the Penal Code."

The defense states that, neither in the deposition on pages 1,860 and following, nor in any evidence in these proceedings can it be deduced, supposed, or concluded that their client Rafael Agustín González Berdugo, has taken part, directly or indirectly, in the felony murder of Charles Horman.

The defense adds that, regarding the presumed activity of monitoring and investigation that their client supposedly conducted on the victim Charles Horman in the months leading up to his death, it must be kept in mind that it is not true nor could have it occurred, since Rafael Agustín González Berdugo was out of the country from September 5, 1971 until June 18, 1973, when he arrived in Chile from New York, from the CORFO acquisitions

office in New York, to prepare for a new trip to Liverpool, England, during which he would be accompanied by his family to take a two-year Police Intelligence course in Scotland Yard, a course which would begin on September 15, 1973, and was suspended due to the military coup.

Also, adds the defense, their client, until July 1969, was a Foreign Operating Manager (*sic*) in bordering countries, a position that he left when he was sent to New York in 1969, as another agent of the 2nd Department of the National Defense High Command, until his retirement.

The defense indicates that, as per the evidence in the investigation, Charles Horman arrived in Chile in July 1972, when their client was completing his duties in New York, in the CORFO acquisitions office.

Also, the defense adds, the description of the facts that form the basis of the charge and that do not refer to their client or the actions he carried out, are sufficient to prove his innocence, or lack of participation in the events being investigated.

Notwithstanding that his statement is not, by any means, incriminating, there is no other evidence linking him positively and seriously with the investigation, existing in this respect the prohibition in Article 481 number 4 of the Penal Code, against convicting with the sole confession of the defendant, or even on the merit of his sole statement.

The defense states that there is no witness who says that their client participated in any way in the felony murder of Charles Horman. The witnesses that make statements in this investigation, Colonel Ariosto Lapostol and Ariel González Cornejo, as superiors of the defendant, indicated that on no occasion did they instruct him to carry out any monitoring

activities on Charles Horman, since Horman was of no interest to the National Defense High Command. Therefore, regarding the presumptions, there is no history, evidence, or proof that allows criminal liability to be attributed to their client.

The defense holds that with respect to the limits of proof of presumption, the defense attaches a copy of the replacement judgment issued by the Honorable Second Supreme Court, Penal Chamber, a unanimous judgment by the justices, a commutation dated April 6, 2010 “against Gonzalo Arias and others,” Docket 5231-2008.

In conclusion, the defense indicates that their client, Rafael Agustín González Berdugo, did not participate in the offense of felony murder of which he is accused, and there is no evidence for, according to the provisions of Article 456 bis of the Penal Code, the Court to have decided beyond a reasonable doubt to accuse him, much less to convict him, since it is not sufficient to presume his participation, if said participation is not categorically proven, which, to their judgment, has not occurred in these proceedings, and therefore he must be acquitted.

Alternately, the defense requests, in the event that the Court deems the defendant a participant and punishable by law, that he be convicted as an individual who was an accessory after the fact to the crime of felony murder as defined by Article 17, number 1 of the Penal Code, that is, “hiding or damaging the body, the effects, or the instruments of the violent crime or less grave felony to prevent them from being found.”

Also as an alternative, the defense requests, if it is decided that the defendant was a participant in the events and is punishable by law, that the following mitigating circumstances be considered in his favor:

1.- Partial statute of limitations [“media prescripción” in Chile]: Article 103 of the Penal Code states that if the accused voluntarily presents himself or is located before expiration of the criminal statute of limitation, but after more than half the statute of limitations has transpired, the court must regard the fact as invested with two or more very mitigating circumstances and no aggravating element, and must apply the pertinent norms in sentencing, including reducing the sentence already imposed, if the case has already been decided. In this case, the calculations must be done to determine what the statute of limitations is for this crime. According to the provisions of Article 94 of the Penal Code, the statute of limitations is 15 years, and from the date that the events took place on September 18, 1973 to the date that the complaint that led to this investigation was filed, on August 7, 2000, 26 years have elapsed, uninterrupted.

That, as a result, adds the defense, the period of 7 years and 6 months of the partial statute of limitations in this case has been met three times over, from the commission of the crime to the beginning of the investigation.

Thee defense adds that this very mitigating circumstance is independent and different from the situation of the statute of limitations itself. They are different institutions with different characteristics and purposes. One is a mitigating circumstance of criminal liability and the other is grounds for termination of criminal liability. One carries a minor penalty, the other prohibits penalty for the event. The partial statute of limitations is based on the senselessness of a high sentence for events that took place a long time ago but which should be punished.

To this end, the defense cites the jurisprudence of the Courts.

The defense adds that, at the same time, the circumstance of applying this very mitigating circumstance is based on

humanitarian norms and specifically on the application of the humanitarian principle of Criminal Law (Article 5 of the American Convention on Human Rights) that justifies the reduction of the sentence. In effect, the defense adds, if the only purpose of the punishment is the resocialization of the person, there is no sense in imposing, 41 years later, a sentence of the scope and character of that which may be imposed in the future definitive ruling that will be issued.

2.- Prior irreproachable conduct; the defense states that since this case includes character evidence, and the defendant does not have a criminal record, it is therefore appropriate to apply the mitigating circumstance of Article 11 number 6 of the Penal Code.

3.- Substantial collaboration in clarifying the facts.

The defense states that a simple reading of their client's statements, both his testimony and depositions, shows that his intent has always been to provide the information that he possessed in order to collaborate in clarifying the facts, even shortly after the events took place. This even resulted in his political exile in an office of the Italian Chancellor, located at Calle Triana 843, Providencia, from September 1975 to May 1978.

4.- Application of Article 68 bis of the Penal Code.

If it is deemed that only one mitigating circumstance applies in favor of my client, may it be considered very extenuating and be awarded according to the provisions of Article 68 bis of the Penal Code, reducing the sentence by one degree from that which is applied for the crime of felony murder.

Twenty-seventh: That the defense of defendant Pedro Octavio Espinoza Bravo, on page 6,191 of this case, requests the acquittal of Espinoza Bravo, by answering the charges herein and

the statements of the specific plaintiffs formulated against Espinoza Bravo as the perpetrator of the crimes of felony murder, provided for and sanctioned in Article 391 No. 1 of the Penal Code, committed against the persons of Charles Edmund Horman Lazar and Frank Randall Teruggi Bombatch.

The defense states that according to the charges, the victims had been detained on September 17 and September 20, 1973, indicating also that one of the victims had been supposedly taken by intelligence officials to the office of the Director of Intelligence, and that later, the bodies had been taken to the Medical Legal Service, their identities and deaths having been confirmed; and that with respect to the other victim, that he had been detained and taken to the National Stadium for interrogation, and later his body had been abandoned in Santiago, his identity and demise having been confirmed. Nevertheless, the defense states, it must also be noted that the defendant, Pedro Octavio Espinoza Bravo, in those dates, did not participate in these events and had no relation with the events, deaths, and tortures supposedly conducted at that place, and therefore it is unjust to charge him with any liability, whether direct or indirect. This is because the defendant, during the time of the events investigated in this case, worked on secondment at the National Defense High Command, under the command of General Nicanor Díaz Estrada. There, the defense's client had nothing to do with specific activities of the National Defense General Headquarters. That, later on, between August 1, 1973 and July 31, 1974, the defendant worked at the Directorate of the Escuela Nacional de Inteligencia [National Intelligence School], doing administrative intelligence work, not operations, of which other people were in charge, according to the official documents in his service record and his military service history.

The defense also states that as far as is known, Horman and Teruggi, both U.S. citizens, were detained in the National

Stadium, where the defendant never went, never visited, nor had any relationship with the activities of the military occupation of the stadium, which was under the command of an Army Colonel named Espinoza Ulloa, who was not the superior of the defendant nor had any relationship with the defendant. This last issue is important, claims the defense, because Colonel Jorge Espinoza Ulloa was the person in charge of the National Stadium and the defendant, at that time, Pedro Octavio Espinoza Bravo was a major not a colonel.

Also, states the defense, it must be noted that the simple fact of having been sent by the government to the National Intelligence School, does not mean that he had a direct relationship with the supposed crimes being investigated and described in this case; moreover, the defense adds, the Armada had contact with the U.S. citizens through the Chief of the 2nd Department, Ariel González and Raúl Monsálvez, both from the National Defense High Command.

Therefore, claims the defense, to determine responsibility for the facts indicated in the charge, the events must be linked to the people in charge of the operations for detaining victims during those dates. And in this case the defendant Pedro Octavio Espinoza Bravo was not in charge of said responsibilities.

The foregoing analysis indicates that, since the defendant was not at the place where the events took place, the theoretical participation—as the perpetrator—which is attributed to him, is inadmissible, since it has not been shown that he participated in any capacity in the crimes described in the previously mentioned charge.

From the foregoing, states the defense, it is deduced that in this case there is no evidence whatsoever supporting the presumption that their client, Pedro Octavio Espinoza Bravo, participated in the

events described in the mentioned charge, given that he did not carry out any of the previously described actions nor did he give any order to carry out the events described in the charge. In fact, he never ordered or gave instructions whatsoever regarding the detention of the people mentioned in this charge.

Consequently, the defense states, the extensive foregoing analysis indicates that, since the defendant was not at the place where the events took place, the theoretical participation—as the co-perpetrator—which is attributed to him, is inadmissible, since it has been shown that he did not participate in any capacity in the crimes described in the previously mentioned charge, and therefore he should be acquitted for lack of participation in the events under investigation.

According to the defense, there is not sufficient evidence to accuse their client, Pedro Octavio Espinoza Bravo, and therefore they request that he be definitively acquitted due to lack of participation in the events.

That, as an alternative to the above, the defense states that a penalty of no more than 5 years of prison or confinement should be applied, to grant him the very mitigating circumstance of Article 103 of the Penal Code, that is, partial statute of limitations or graduated statute of limitations, due to the fact that more than half of the statute of limitations had elapsed, and to also grant him the mitigating circumstances of Numbers 6 and 9 of Article 11 of the Penal Code, that is, his irreproachable conduct prior to the events and the substantial collaboration that their client has always provided in clarifying the facts, since it is appropriate to concede him an alternative means of serving his sentence, as established by Law No. 18,216.

The defense also invokes the mitigating circumstances of criminal liability addressed by numbers 6 and 9 of Article 11 of the Penal

Code, to apply a sentence reduced by 2 or 3 degrees and offer some alternative means of serving the sentence, established by Law 18,216.

Regarding the defense's petition for acquittal of the defendants Rafael Agustín González Berdugo and Pedro Octavio Espinoza Bravo.

Twenty-eighth: That, firstly, regarding the allegations and approaches of the defenses for defendants Rafael Agustín González Berdugo and Pedro Octavio Espinoza Bravo, upon answering the charges and statements, stating the Court's duty to issue an acquittal in the defendants' favor due to the lack of evidence proving the first defendant's participation in the offense of felony murder of Charles Edmund Horman Lazar, and the second defendant's participation in the same offense and in the felony murder of Frank Randall Teruggi Bombatch, in order to avoid repetitions, the information analyzed and concluded in this ruling, in findings twenty-one and twenty-two, regarding the participation of defendant González Berdugo in the offense of felony murder of Charles Horman; and in findings twenty-four and twenty-five, regarding the participation of defendant Espinoza Bravo, in the crimes of felony murder of Charles Horman and Frank Teruggi, respectively must be considered.

Also, in accordance with that which was reasoned and concluded in findings twenty-one and twenty-two of this ruling regarding the participation of defendant Rafael Agustín González Berdugo, as an accomplice in the crime of felony murder of Charles Horman, the Court hereby denies the defense's request, submitted as an alternative to the request for acquittal, that their client be sentenced as an accessory after the fact, in the manner stated in Article 17, number 2 of the Penal Code, that is, hiding or damaging the body, the effects, or the instruments of the violent crime or less grave felony to prevent them from being found.

Twenty-ninth: That, therefore, claims the defense of defendant Rafael Agustín González Berdugo, the criminal offense of the crime established herein is already prescribed and, furthermore, that their client's conduct is covered by the Amnesty Law, contained in Decree Law No. 2,191 of April 18, 1978, which is currently in effect, as Article 1 of this law states: "Let amnesty be granted to all persons who participated as perpetrators, accomplices, or accessories after the fact in crimes during the comprehensive period between September 11, 1973 and March 10, 1978, as long as they are not currently being prosecuted or sentenced," it must be taken into consideration that State agents acted in the crimes investigated herein, agents whose conduct was motivated by reasons of political persecution against a particular group of people belonging to the civilian population.

Thirtieth: That the Court, regarding the application of the aforementioned Amnesty Law and the statute of limitations for criminal offenses claimed by the defense of defendant Rafael Agustín González Berdugo, it must be considered that the felony murder of the victim Charles Horman, established herein, formed part of a generalized and systematic attack against the civilian population, of which the victim was a part, with the majority of that population belonging to a group of sympathizers and political militants of the government that was deposed on September 11, 1973.

Therefore, the evidence that has been analyzed in this ruling regarding the felony murder of Charles Horman, establishes that the unlawful conduct was carried out in a context which allows it to be labeled a crime against humanity. This also applies to the felony murder of the victim Frank Randall Teruggi Bombatch.

In fact, the criminalization of this class of crime is part of the universal judicial conscience, after being faced with the need to

punish the atrocious acts carried out as part of the project and execution of the plan to exterminate the Jewish population.

For this reason, at the end of World War II, the allied forces invoked the international criminal legal instrument that, as a historical-cultural construct of humanity, allows for the accounting of these occurrences in terms of justice.

Thus, the compulsory nature of International Human Rights Law in Chile that was created since that time, with all the consequences thereof, is provided in Article 5 of the Political Constitution of the Republic, with the establishment of the institutional foundations, expressly incorporating as a principle or fundamental value that “the exercise of sovereignty recognizes as a limitation the respect for the essential rights originating from human nature” (Article 5, section 2); and this inspiration of modern constitutionalism guarantees this second section as well, stipulating that: “It is the duty of State agencies to respect and promote the rights guaranteed by this Constitution and by international treaties ratified by Chile and in force.”

That from the foregoing it can be unequivocally deduced that the national Courts can prosecute individual liability derived from crimes against peace, which consist of sparking armed conflicts in violation of international treaties (the Charter of the United Nations), crimes of war, violating the norms of the Four Geneva Conventions of 1949 or their Additional Protocols (I and II respectively) on international and non-international conflicts; and crimes against humanity, such as genocide, enforced disappearance of persons, terrorism, torture, and widespread and systematic violations of human rights.

It must be kept in mind that, regarding the foregoing, establishment of criminal punishments for crimes against

humanity take place in section c) of Article 6 of the Charter of the International Military Tribunal of Nüremberg, which defines as crimes against humanity:

“namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.”

Subsequently, the obligation to apply and interpret criminal laws within this framework arises also from the same international treaties, among them, Common Article 1 to the four Geneva Conventions of 1949, which states that the High Contracting Parties undertake to respect and to ensure respect for this Convention, a norm which sends us directly to the General Principles of International Human Rights Law.

That, along the same lines, the Chilean Supreme Court has recognized that our Criminal Law is influenced by the mentioned Principles of International Law, specifically, regarding the nature of crimes against humanity.

In effect, in “Extradition of Guillermo Vilca” the Chilean Supreme Court ruled that, in the absence of a treaty and in compliance with the Principles of International Law, it is appropriate to request that Peru extradite a defendant charged with homicide, “a grave crime against humanity which compromises social order and peace.” A similar point of view is sustained in “Extradition of Manuel Jesús Huerta,” in which it was ruled appropriate to request the extradition from Argentina of a Chilean citizen convicted of rape, “because it is a crime against the order of families and public morality that all people have an interest in punishing.” Both cases are from 1929. Previously the Chilean Supreme Court had ruled

in “Extradition of José Colombi and Others” that it was not appropriate to request the extradition from Cuba of two criminal defendants for the crimes of fraud and forgery, since, according to the Principles of International Law, in the absence of a treaty, it is only relevant to request the extradition of defendants who have been found guilty of crimes against humanity and crimes that threaten social peace, and in “Extradition of Pantaleón Gómez and Others,” that it is inappropriate to request the extradition from the Republic of Argentina, of a defendant prosecuted for fraud, since, according to the Principles of International Law, extradition is warranted “for crimes against humanity or crimes that threaten social peace,” of which fraud is not a part (also, they add, it would refer to a less grave felony, not one punishable by corporal punishment). The two cases date back to 1928.” [*sic*] (Alfredo Etcheberry. *El Derecho Penal En la Jurisprudencia* [Criminal Law in Jurisprudence]. Volume I, general section, Editorial Jurídica de Chile [Legal Editorial of Chile], second edition reprinted in 2002, pages 38-39).

Thirty-first: That regarding the compulsory nature of the norms with respect to the inapplicability of the statute of limitations and inapplicability of amnesty laws as a General Principle of International Human Rights Law, recognized by the Constitution as indicated in the previous findings, it thereby appears to have a tangible basis for UN Member States as per the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, adopted and opened for signature, ratification, and statement by the General Assembly in resolution 2391 (XXIII) of November 26, 1968, the preamble of which states that the Member States Party to the Convention, recalling UN General Assembly resolutions 3 (I) of February 13, 1946 and 170 (II) of October 31, 1947, regarding the extradition and conviction of war criminals, resolution 95 (I) of December 11, 1946, confirming the Principles of International Law recognized by the Charter of the International Military Tribunal of Nüremberg and by

ruling of said Tribunal, resolutions 2184 (XXI) of December 112 [*sic*], 1966, and 2202 (XXI) of December 16, 1966, which expressly condemned as crimes against humanity the violation of the economic and political rights of the native population, on one hand, and the policy of apartheid, on the other; observing that in none of the solemn declarations, instruments, or conventions on the prosecution and punishment of war crimes and crimes against humanity have statutes of limitations been provided for; and noting that the application to war crimes and crimes against humanity of norms of municipal law regarding the statute of limitations of ordinary crimes raises serious concern in the world's public opinion since it impedes the prosecution and punishment of the individuals liable for these crimes; agree to the following:

Article I

The following crimes are not subject to any statute of limitations, regardless of the date on which they were committed:

b) Crimes against humanity committed both in times of war and times of peace, according to the definition given in the Charter of the International Military Tribunal of Nüremberg, of August 8, 1945, confirmed by United Nations Assembly General resolutions 3 (I) of February 13, 1946 and 95 (I) and December 11, 1946, as well as expulsion by armed attack or occupation and inhumane acts due to the policy of apartheid and the crime of genocide defined in the Convention on the Prevention and Punishment of the Crime of Genocide, even if these acts do not constitute a violation of the municipal law of the country in which they were committed.

Thirty-second: That, the previous instrument was not ratified by Chile, however, the inapplicability of the statute of limitations of the crimes against humanity, in whose context this case is found,

stems from the legal interpretation that necessarily must be employed in interpreting this matter, which the interpreter of the Law must consider, as our Supreme Court has always indicated, that in the case of “crimes against humanity”, the “Principles of International Law” shall apply, as a category of the norms of General International Law (*jus cogens*), and in accordance with acquis of law and universal conventions and the acceptance in practice of national courts and tribunals in United Nations Member States, in addition to international courts and tribunals with jurisdiction over crimes against humanity.

In effect, in accordance with these aspects, (acquis of law, universal convention, acceptance in the practice of national courts of the Member States of the United Nations, and international courts and tribunals with jurisdiction over crimes against humanity) the inapplicability of the statute of limitations of these crimes must be recognized currently, not only as an International Principle, but as a customary norm of Public International Law; a norm from which, in accordance with Article 53 of the Vienna Convention on the Law of Treaties, ratified by Chile on April 9, 1981, published in the Official Gazette on June 22, 1981, no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.

Thirty-third: That the foregoing leads to the conclusion that, therefore, there is a primacy of international norms of General International Law, which determines that amnesty laws and laws of statute of limitations invoked with respect to the criminal offenses described in this case are incompatible with the above-mentioned norms.

Thirty-fourth: That, also, the Inter-American Court of Human Rights has recognized the incompatibility of amnesty laws with

the American Convention on Human Rights, in a judgment from March 14, 2001, as follows:

“41. This Court considers that all amnesty provisions, provisions on prescription [statute of limitations] and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.
(…).

43. The Court deems it necessary to emphasize that, in light of the general obligations established in Articles 1(1) and 2 of the American Convention, the States Parties are obliged to take all measures to ensure that no one is deprived of judicial protection and the exercise of the right to a simple and effective recourse, in the terms of Articles 8 and 25 of the Convention. Consequently, States Parties to the Convention which adopt laws that have the opposite effect, such as self-amnesty laws, violate Articles 8 and 25, in relation to Articles 1(1) and 2 of the Convention. Self-amnesty laws lead to the defenselessness of victims and perpetuate impunity; therefore, they are manifestly incompatible with the aims and spirit of the Convention. This type of law precludes the identification of the individuals who are responsible for human rights violations, because it obstructs the investigation and access to justice and prevents the victims and their next of kin from knowing the truth and receiving the corresponding reparation.

44. Owing to the manifest incompatibility of self-amnesty laws and the American Convention on Human Rights, said laws lack legal effect and may not continue to obstruct the investigation of the

grounds on which this case is based or the identification and punishment of those responsible, nor can they have the same or a similar impact with regard to other cases that have occurred in Peru, where the rights established in the American Convention have been violated."
(…).

"48. Despite this, in the circumstances of the instant case, the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the events that violated human rights and the corresponding responsibilities from the competent organs of the State, through the investigation and prosecution that are established in Articles 8 and 25 of the Convention." (*Novedades Jurisprudence* [Jurisprudence News]. *Derecho Penal Contemporáneo Revista Internacional* [International Journal of Contemporary Criminal Law] No. 2, January – March, 2003, Bogotá, Colombia, Editorial Legis, 2003).

Thirty-fifth: That, therefore, there is a primacy of international norms of General International Law that determines that, in crimes against humanity, the statute of limitations for criminal offenses is invalid and these crimes cannot be amnestied in accordance with municipal law because the inapplicability of the statute of limitations of crimes against humanity is a peremptory norm of International Law, currently constitutionally accepted in Chile by means of an international treaty, and have been binding prior to that as a General Principle of International Human Rights Law, as previously analyzed.

Thirty-sixth That, in accordance with the foregoing findings, it can be asserted that, in the case of these murders, as expressly stated by the Court with regard to the crimes, they are considered crimes against humanity and, therefore, are crimes that cannot be amnestied and are not subject to any statute of limitations, which

prevents an acquittal from being issued in this section in favor of the defendant Rafael Agustín González Berdugo as requested by the defense in answering the charges herein and the statements of the plaintiffs.

V.- Regarding the defenses and modifying circumstances to criminal liability.

Thirty-seventh: That the mitigating circumstance of criminal liability of Article 11 No. 9 of the Penal Code, claimed by the defense of defendant Rafael Agustín González Berdugo, of having collaborated substantially in clarifying the events, is hereby rejected, due to lack of factual basis, if it is considered that the defendant has only accepted, in short, that: first, three or four days after the coup, General Augusto Lutz Urzúa calls him to go up to meet him on the 9th floor of the National Defense High Command building, and in the General's office he saw a civilian, who looked like a gringo, that was being interrogated by said General; later General Lutz orders him to take the civilian out of his office, saying aloud "this is the American, Horman," pointing to the gringo; and second, that in the first half of March 1974, he received instructions from Vice Admiral Carvajal to report to SENDET (National Department of Detainees) in order to collect the information necessary about where Horman might be detained; knowing that Horman had never been detained in any of the detention facilities of the time, and later Vice Admiral Carvajal ordered him to go meet Vice Consul James Anderson, who was waiting for him at the U.S. consulate, with whom he located Horman's body, following the information given to them at the Medical Legal Department and the General Cemetery, later proceeding to process the transfer of Horman's body to the U.S.

Consequently, defendant Rafael Agustín González Berdugo does not benefit in these proceedings from the mitigating circumstance of having substantially collaborated in clarifying the facts, that is,

that which his testimony clarifies in these proceedings regarding the crime for which he is being judged, so even if he expresses the above-mentioned facts in these proceedings, the truth is, based on those facts, the existence of the crime being investigated and his participation therein have not been able to be deduced.

Thirty-eighth: That the mitigating circumstance of criminal liability of Article 11, No. 9 of the Penal Code, claimed by the defense of defendant Pedro Octavio Espinoza Bravo, of having collaborated substantially in clarifying the events, is hereby rejected, due to lack of factual basis, if it is considered that the defendant has said in his deposition that he has no knowledge of the criminal offenses investigated in these proceedings.

Thirty-ninth: That, the mitigating circumstance of criminal liability of the prior irreproachable conduct of the defendants Rafael Agustín González Berdugo and Pedro Octavio Espinoza Bravo, provided in Article 11 No. 6 of the Penal Code, established herein with the evidence on pages 2,480 and 5,514 and following, respectively, that confirm that there are no prior convictions against either defendant for any crimes prior to those with which they are charged in these proceedings is hereby accepted.

Fortieth: That, also in favor of the defendants, Article 103 of the Penal Code must be considered, for the purpose of reducing the sentence, keeping in mind the principle of humanity in relation to criminal justice, given the time which has passed since the commission of the crimes, as long as this provision does not assume lack of criminal capacity but rather a very mitigating circumstance, that is, a consideration that the event has two or three mitigating circumstances and no aggravating circumstances.

Forty-first: That when these crimes were committed, these crimes were punished, in Article 391, No. 1 of the Penal Code, with a term of imprisonment lesser than that which is currently in force; therefore, in accordance with Article 18 of the Penal Code, which orders that no crime shall be punished with a penalty other than that indicated in a law promulgated prior to the crime's perpetration, the defendants' offenses shall be punished in accordance with the older law, which is in their favor.

Forty-second: That, therefore, defendant Rafael Agustín González Berdugo is hereby convicted as an accomplice to the crime of felony murder of Charles Edmund Horman Lazar, and, as a result, he shall receive a sentence one degree lesser than the sentence indicated by law for this crime; then, in conformity with Article 68 of the Penal Code, having assessed the type and amount of mitigating circumstances that apply to him, he shall receive a sentence two degrees lesser than the minimum sentence indicated by law.

Forty-third: That, for the defendant Pedro Octavio Espinoza Bravo, for the commission with a prior conviction of the crimes of felony murder of Charles Edmund Horman Lazar and Frank Randall Teruggi Bombatch, of which he is the perpetrator, application of the precepts of Article 509, first section of the Penal Code is more favorable for him, that is, to impose the term of imprisonment corresponding to the various infractions, deemed a single crime, increasing it by one degree; and, having also in his favor the rule reducing the sentence, from Article 103 of the Penal Code, pursuant to Article 68 section 3 of the same Code, we arrive at the minimum degree of long-term imprisonment.

A.- Criminal sentencing:

a) **Rafael Agustín González Berdugo** is hereby sentenced to **two years** of medium-degree short-term imprisonment, and additionally to the suspension of public position or office for the duration of the sentence and to the payment of legal fees for this case, as accomplice in the crime of felony murder of Charles Edmund Horman Lazar, perpetrated on September 18, 1973, in the city of Santiago.

The defendant **Rafael Agustín González Berdugo** is granted the alternative benefit of conditional suspension of the imposed custodial sentence, being subject to two years of supervision by the Gendarmería [Gendarmerie] of Chile.

If the granted benefit were to be revoked from the defendant **Rafael Agustín González Berdugo**, the imposed custodial sentence would be counted from when he presents himself to serve it or be acknowledged, with credit for the days he was detained in preventive detention, that is, on May 27, 2003, according to police records on page 1,842 and the certificate on page 1,866, and from December 10, 2003 to February 6, 2004, as shown by the police records on page 2,227 and the certificate on page 2,528, respectively.

b) **Pedro Octavio Espinoza Bravo** is hereby sentenced to **seven years of minimum-degree long-term imprisonment**, and additionally to a lifetime ban on holding public position or office, and political rights, and full disqualification from holding leadership positions for the duration of the sentence, and the payment of court costs, as perpetrator of the crimes of felony murder of Charles Edmund Horman Lazar and Frank Randall Teruggi Bombatch, committed, respectively, on September 18,

1973 and between the night of September 21 and the morning of September 22, 1973, both in the city of Santiago.

Addressing the sum of the imposed custodial sentence, defendant **Pedro Octavio Espinoza Bravo** is not granted any of the alternative measures established by Law No. 18,216, and the sentence shall be served immediately following the sentences already imposed and that he is currently serving at the Centro de Cumplimiento Penitenciario de “Punta Peuco” [Punta Peuco Penitentiary Center], the most recent of which being Order for Imprisonment No. 4,139 dated January 11, 2011, Case docket No. 2182 – 1988, Episodio Villa Grimaldi – Silva Camus y otros [Villa Grimaldi Incident – Silva Camus and others], without any credit for time served to be considered.

B. Civil sentencing.

That the first additional prayer for relief of the civil complaint on pages 5,917 and 5,986 of this case are hereby sustained, with court costs, only as far as:

a) The civil respondents Fisco de Chile [State Treasury of Chile],—represented herein by the Consejo de Defensa del Estado [State Council of Defense]—Pedro Octavio Espinoza Bravo, and Rafael Agustín González Berdugo, are hereby ordered jointly and severally, to pay damages for pain and suffering, in the sum of:

$ 200,000,000 (two hundred million Chilean pesos), to the civil plaintiff Joyce Horman, née Hamren.

b) The civil respondents State Treasury of Chile,—represented herein by the State Council of Defense—and Pedro Octavio Espinoza Bravo, are hereby ordered jointly and severally, to pay damages for pain and suffering, in the sum of:

$ 200,000,000 (two hundred million Chilean pesos), to the civil plaintiff Janis Teruggi Page.

c) The aforementioned sums in each case shall be paid to the civil plaintiffs, duly adjusted from the date in which this ruling is made final until the month prior to when the payment is made.

Be it hereby recorded and submitted to a higher court for summary review if there be no appeals.

Docket No. 2,182-98.- Episodio “Estadio Nacional” [National Stadium Incident].-

Issued by Mr. Jorge Zepeda Arancibia, Judge of Jurisdiction.