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STAFF NOTES:

Latin American Trends

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Chile: What Kind Of Trials For The Leftist Hierarchy?

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High-ranking officials of the Allende regime and other prominent leftist prisoners of the military government were not among the eighty or so leftist militants recently tried before military courts. The government continues to prepare its case against the Dawson Island detainees, however, and eventually intends to bring most, if not all, of them to trial. Judicial proceedings against some of the leftist luminaries could begin within the month, but trails for the bulk of the most notable prisoners are likely to be delayed until the regime decides which type of court will have jurisdiction.

Most of the Dawson prisoners were incarcerated on the morning of the military takeover. They will, therefore, be charged with offenses allegedly committed prior to the coup and the junta's declarations of states of siege and internal war. These offenses fall into two main categories: those normally tried in civil courts, such as misuse of public funds, and those which, even under normal circumstances, would come under the jurisdiction of military courts.

Violations of the arms control law and subversion of the armed forces--charges likely to be leveled against a number of the Dawson prisoners--are among the offenses normally tried in military courts. Here the jurisdictional question involves the type of military court that will handle the cases. Normally they would be tried in military tribunals under peacetime provisions of the military justice code that provide for appeal to the (civil) Supreme Court. Under the states of siege and war, however, wartime provisions of the code come into effect. The peacetime military tribunals give way to wartime military courts martial and the only right of appeal is to higher military authority.

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Decree Law 13 of September 17, 1973 construes Article 73 of the Code of Military Justice to hold that cases under military jurisdiction initiated after the declaration of a state of siege are the province of the wartime courts martial. This appears to mean that at least some of the Dawson prisoners can be tried by the wartime courts martial even though their offenses allegedly were committed prior to the coup.

A major contention of a memorandum presented to the government by a group of moderate Chilean lawyers last January was that legal norms hold that the date the offense is committed rather than the date of the initiation of judicial proceedings against the defendant is the operative factor in determining jurisdictional issues. The majority of Chilean lawyers do not appear to regard the matter as particularly significant, however, and seem to have allowed political considerations to color their legal views. The Supreme Court has declared itself incompetent to review the rulings of the wartime courts martial, but it has not directly addressed the jurisdictional issue.

The government still appears to be having trouble deciding how to proceed against its most prominent prisoners. Difficulties [redacted] are being encountered in breaking down certain activities into separate civil and military-related offenses--e.g., misuse of public funds to procure arms illegally. The government apparently intends to let civil courts handle purely civil offenses--committed before or since the coup--but this is not certain.

The government probably will continue to move deliberately while key jurisdictional issues are sorted out. The nature and extent of the procedural safeguards to be made available to the defendants before and at

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trial may also be in question. The government undoubtedly will take international public opinion into account in planning for the trials but this is unlikely to be an overriding consideration. The junta will not easily be swayed by arguments that the juridical measures it considers necessary and proper under what it sees as a continuing emergency situation do not measure up to internationally accepted standards. [REDACTED]

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