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Fundación Centro de Derecho de Conservación · Conservation Law Center of Chile
newsletter@centroderechoconservacion.org · www.centroderechoconservacion.org
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COMMEMORATIVE SERIES · 10 YEARS OF LAW N° 20.930 · BULLETIN 1 OF 5

A Brief Legislative History of the Conservation Right

From the initial motion for a "charge on property" to the Senate's final wording of an affirmative right that consists in the "faculty to conserve ecosystem assets"

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As Law N° 20.930 reaches its tenth anniversary, this bulletin reviews how the legal definition of the conservation right[1] was formed and transformed throughout its legislative process in the National Congress (Bulletin No. 5823-07). This review is important because it allows a full understanding of the legal nature and the broad possibilities of application of the Chilean institution, and of its differences with the model of the United States of America (*conservation easements*), the model that inspired the initial parliamentary motion. Among other things, this matters because the Chilean institution makes it possible to implement both the Ecosystem Approach of the Convention on Biological Diversity and the Natural Capital Methodologies of the Natural Capital Protocol, thus facilitating the emergence of the new economy of natural capital or ecosystem assets.

The definition underwent a radical change: the right went from being conceived as a *limitation to the right of ownership or a charge* (Chamber of Deputies, 2008–2012) to being defined as a *faculty to conserve* the environmental patrimony of a property or certain attributes or functions thereof (Senate, 2014–2016).

This change, introduced through the 'indications' (draft change proposals) prepared by the **Conservation Law Center (Fundación Centro de Derecho de Conservación)**, is the one adopted by the **law finally enacted** in its Article 2. The four versions of the text of Article 2 are compared below, with detailed references to the Historia de la Ley [Legislative History of the Law] published by the Library of the National Congress.

[1] Translation Note: A 'real right' or 'ius in re' in the civil law systems —also commonly referred to as a 'right in rem'— is a direct right in property that can be enforced against all third parties (erga omnes), and which broadly —but not exactly— corresponds to the notion of 'property interests' of common law systems. The Chilean 'derecho real de conservación' is referred to here as the 'conservation right'. The original notion 'patrimonio ambiental' could be translated either as 'environmental heritage' or as 'environmental patrimony'; the latter has been chosen because it preserves the original etymology of the words and is more adequate to the private law context. Legal texts are quoted in the original Spanish, followed by their translation in brackets.

Four legislative stages - four definitions at a glance

Stage	Definition (art. 2, first paragraph) and qualification of the attributes or functions as immovable property (art. 3)
(1) Parliamentary motion *Chamber of Deputies · April 17, 2008*	"The conservation right consists of a **limitation to the right of ownership** over a property, which is voluntarily established to contribute to conserving the environment, for the benefit of the community as a whole, whose exercise and protection are specially granted to a specific legal entity as titleholder, and by which **certain charges are imposed** on the encumbered real estate."
(2) Bill approved by the Chamber *Official Letter No. 10321 · August 13, 2012*	"The conservation right is constituted voluntarily by the owner of a property over that same property, by which **one or more of the charges** indicated in Article 7 are established, for the benefit of the conservation of the environmental patrimony in accordance with applicable regulations, and whose exercise is specially granted to a specific legal entity."
(3) CDDC indications *Senate · June 9, 2014*	"The conservation right is that which **consists in the faculty to conserve the environmental patrimony of a property or of certain attributes or functions** of such environmental patrimony, and which is established voluntarily by the owner, for the benefit of a determined legal entity." Art. 3, text proposed by the CDDC: "For the purposes of this law, the **attributes or functions** of the environmental patrimony of the property **will be considered immovable property**."
(4) Law N° 20.930 *Official Gazette (Diario Oficial) · June 25, 2016*	"The conservation right is a real right that **consists in the faculty to conserve the environmental patrimony of a property or of certain attributes or functions** thereof. This right is constituted freely and voluntarily by the owner of the property for the benefit of a determined natural or legal person." Art. 3, third paragraph: "For the purposes of this law, the **attributes or functions** of the environmental patrimony of the property **will be considered immovable property**."

Stages (1) and (2) define the right by the charges borne by the right of ownership; stages (3) and (4) define it as a faculty to conserve and qualify its attributes or functions as immovable property.

1. Parliamentary Motion (Chamber of Deputies, April 17, 2008)

As documented in the official document of the National Congress, *Historia de la Ley N° 20.930* [Legislative History of Law N° 20.930], the motion was submitted on April 17, 2008 by Deputies Vallespín, Eluchans, Burgos, Lobos, Robles, Montes, Bauer, Sepúlveda and Tohá (Bulletin No. 5823-07). The motion indicated two sources of inspiration: (a) the legislation of the United States of America on 'conservation easements'; (b) the 2003 article by Professor Jaime Ubilla proposing the conservation right, published in issue No. 1 of that year of the Revista de Derecho Ambiental of the Universidad de Chile (the article that used for the first time the name 'derecho real de conservación' [conservation right], in order to differentiate it from 'servidumbres de conservación' [conservation easements]).[3] The Parliamentary Motion was prepared with the assistance of attorney Juan Carlos Cruz and the support of different foundations such as The Nature Conservancy, Así Conserva Chile, Fundación Tierra Austral and others. Its Article 2 provided as follows:[4]

[2]Biblioteca del Congreso Nacional de Chile, Historia de la Ley N° 20.930. Establece el derecho real de conservación medioambiental (2018), § 1.1, Moción Parlamentaria, p. 3. Available at www.bcn.cl/historiadelaley. Hereinafter "BCN, Historia de la Ley N° 20.930".

[3]As documented in BCN, Historia de la Ley N° 20.930, § 1.1, Moción Parlamentaria, p. 5, the motion adopts the definition of Chilean doctrine with call [6], which appears as note [7] in the list of notes (p. 17): "UBILLA FUENZALIDA Jaime: La Conservación Privada de la Biodiversidad y el Derecho Real de Conservación en Revista de Derecho Ambiental n° 1 2003 Facultad de Derecho Universidad de Chile p. 79". The same definition and the same citation are repeated in the First Report of the Natural Resources Commission of the Chamber of Deputies (§ 1.2, p. 19, and note [1], p. 56). The article is also cited in the study by Professor Daniel Peñailillo included in the Report of the Constitutional Commission of the Senate (§ 2.4, pp. 310–311, notes [27] and [29]).

[4]BCN, Historia de la Ley N° 20.930, § 1.1, Moción Parlamentaria, p. 8 (Article 2 of the Bill).

> **Artículo 2°. CONCEPTO Y REGULACIÓN APLICABLE.** El derecho real de conservación consiste en una limitación al dominio de un inmueble, que se constituye voluntariamente con la finalidad de contribuir a conservar el ambiente, en beneficio de la comunidad en su conjunto, cuyo ejercicio y protección quedan especialmente entregados a una persona jurídica determinada en calidad de titular, y en virtud de la cual se imponen ciertos gravámenes al bien raíz afectado.
>
> **[Article 2. CONCEPT AND APPLICABLE REGULATION.** The conservation right consists of a limitation to the right of ownership over a property, which is voluntarily established to contribute to conserving the environment, for the benefit of the community as a whole, whose exercise and protection are specially granted to a specific legal entity as titleholder, and by which certain charges are imposed on the encumbered real estate.]

The legal model in this definition was the North American ***conservation easement*: the right is defined from the charge or burden borne by the owner's right of ownership**, not from the faculty of the titleholder, and it refers supplementarily to the appurtenant easement (servidumbre predial) (arts. 826, 828, 829 and 830 of the Civil Code).

2. Bill Approved by the Chamber of Deputies (Official Letter No. 10321, August 13, 2012)

As documented in the *Historia de la Ley N° 20.930*, after its legislative work, the Chamber of Deputies sent the following text to the Senate at the end of the First Constitutional Procedure:[5]

> **Artículo 2°.- Definiciones.** El derecho real de conservación es el que se constituye de manera voluntaria por el propietario de un inmueble sobre el mismo, en virtud del cual se establece uno o más de los gravámenes señalados en el artículo 7°, en beneficio de la conservación del patrimonio ambiental de acuerdo a la normativa vigente, y cuyo ejercicio queda especialmente entregado a una persona jurídica determinada.
>
> Se denomina inmueble o bien raíz gravado aquel sobre el cual recae el derecho real de conservación; y titular, la persona jurídica diferente del dueño a la cual queda entregado el ejercicio del derecho.
>
> **[Article 2.- Definitions.** The conservation right is constituted voluntarily by the owner of a property over that same property, by which one or more of the charges indicated in Article 7 are established, for the benefit of the conservation of the environmental patrimony in accordance with applicable regulations, and whose exercise is specially granted to a specific legal entity.
>
> The encumbered immovable property or real estate is the one on which the conservation right is established; and the titleholder is the legal person other than the owner to whom the exercise of the right is granted.]

As in the Parliamentary Motion, the model is still that of the ***conservation easement*, that is, a charge on the right of ownership, oriented only to protected areas**. The right is defined by the *charges* borne by the property, the titleholder category is reserved to legal persons, and Article 3 limits it to immovable property "de propiedad privada" [privately owned]. For this reason, the Chamber of Deputies established a **maximum duration of forty years**: "El derecho real de conservación durará como mínimo quince años y como máximo cuarenta años" [The conservation right will last for a minimum of fifteen years and a maximum of forty years] (Article 8, No. 5).[6] This was because it was a mere charge that hindered the circulation of wealth.

[5] BCN, Historia de la Ley N° 20.930, § 1.10, Oficio de Cámara de Origen a Cámara Revisora [Official Letter from the Chamber of Origin to the Revising Chamber], Official Letter No. 10321, of August 13, 2012, p. 169.

[6] BCN, Historia de la Ley N° 20.930, § 1.10, Oficio de Cámara de Origen a Cámara Revisora, p. 171 (Article 8, No. 5, of the Bill approved by the Chamber of Deputies).

3. Indications of the Conservation Law Center (Senate, June 9, 2014)

Text drafted by Dr. Jaime Ubilla,[7] as Executive Director of the Conservation Law Center (Fundación Centro de Derecho de Conservación), and delivered to Senators Alfonso De Urresti and Antonio Horvath within the period for the submission of 'indications'.[8] As documented in the *Historia de la Ley N° 20.930*, both Senators presented that same text as indications to Article 2 (No. 1 and 7, De Urresti; No. 2, Horvath).[9] The proposal was discussed in the Constitutional Commission of the Senate, composed of Senators Araya, De Urresti, Harboe and Larraín, with an oral presentation by the Director of the Conservation Law Center.[10]

> **Artículo 2°.- Definiciones.** El derecho real de conservación es el que consiste en la facultad de conservar el patrimonio ambiental de un predio o de ciertos atributos o funciones de tal patrimonio ambiental, y que se constituye de manera voluntaria por el propietario, en beneficio de una persona jurídica determinada.
> […]
> Se denomina inmueble ya sea el predio o los atributos o funciones que derivan del mismo sobre los cuales recae el derecho real de conservación; y titular, la persona jurídica diferente del dueño a la cual queda entregada la titularidad y ejercicio del derecho.
>
> **[Article 2.- Definitions.** The conservation right is that which consists in the faculty to conserve the environmental patrimony of a property or of certain attributes or functions of such environmental patrimony, and which is established voluntarily by the owner, for the benefit of a determined legal entity.
> (…)
> The immovable property is either the property or the attributes or functions derived from it on which the conservation right is established; and the titleholder is the legal person other than the owner to whom the title and the exercise of the right are granted.]

Article 3 (Characteristics). The Constitutional Commission unanimously approved this last paragraph with the wording "Para los efectos de la presente ley, los atributos o funciones del patrimonio ambiental del predio se considerarán inmuebles" [For the purposes of this law, the attributes or functions of the environmental patrimony of the property will be considered immovable property], and moved it to Article 3 as its third paragraph, since it describes a characteristic of the right.[11] Indications No. 12 (De Urresti) and 13 (Horvath) also deleted the expression "de propiedad privada" [privately owned], allowing the right to be established also over state-owned (fiscal) properties.[12]

Duration. Indications No. 17 (De Urresti) and 18 (Horvath), also proposed by the Conservation Law Center, **eliminated the forty-year limit**: "El derecho real de conservación durará como mínimo 15 años.

[7] Dr. Ubilla's proposal was based on his doctoral research at the University of Edinburgh between 2011 and 2015, whose thesis contains the intellectual history and theoretical bases of the proposed definition, as an affirmative right (faculty to conserve) over new ecosystem assets. See Ubilla Fuenzalida, J. (2016). Reflexive law and reflexive property rights: tackling the regulatory trilemma of ecosystems conservation [Doctoral thesis, The University of Edinburgh]. Edinburgh Research Archive. http://hdl.handle.net/1842/22860. This proposal, in turn, is based on the theory of legal forms developed by Dr. Jaime Ubilla to present a new theory of reflexive law, published in Germany in the journal Soziale Systeme in 2024; see Bibliography.

[8] Ubilla Fuenzalida, J. (2014). Propuesta de Indicaciones al Proyecto de Ley del Derecho Real de Conservación [Proposal of Indications to the Conservation Right Bill]. Prepared for the Constitutional Commission of the Senate of the Republic of Chile (Senators Alfonso De Urresti and Antonio Horvath). Bulletin of the Conservation Law Center of Chile. https://bit.ly/30qu3dn. See also Ubilla Fuenzalida (2023), pp. 30–31.

[9] BCN, Historia de la Ley N° 20.930, § 2.3, Boletín de Indicaciones [Bulletin of Indications], of June 9, 2014, pp. 220–221 (indications No. 1, 2 and 7 to Article 2).

[10] BCN, Historia de la Ley N° 20.930, § 2.4, Informe de Comisión de Constitución [Report of the Constitutional Commission], pp. 240 and 270–271.

[11] BCN, Historia de la Ley N° 20.930, § 2.4, Informe de Comisión de Constitución, pp. 274–275.

[12] BCN, Historia de la Ley N° 20.930, § 2.3, Boletín de Indicaciones, p. 221 (indications No. 12 and 13), and § 2.4, Informe de Comisión de Constitución, p. 275.

Las partes podrán acordar una duración perpetua" [The conservation right will last at least 15 years. The parties may agree to a perpetual duration].[13] It is no longer a charge, but an affirmative right over new assets, which therefore **promotes the circulation of new wealth. This was stated before the Constitutional Commission**: the conservation right seeks "valorizar una nueva riqueza denominada capital natural, la cual, siguiendo el principio de circulación de la riqueza, puede generar nuevos mercados" [to value a new wealth called natural capital, which, following the principle of the circulation of wealth, can generate new markets]. The Commission approved these indications unanimously (Senators Araya, De Urresti, Espina, Harboe and Larraín).[14]

The change is one of substance: the right ceases to be a charge and becomes: (1) a **faculty to conserve**, an affirmative and autonomous real right; (2) with **its own object (the environmental patrimony and its attributes or functions, legally deemed immovable property)**.

4. Law N° 20.930 (enacted on June 10, 2016; Official Gazette, June 25, 2016)

As documented in the *Historia de la Ley N° 20.930*, the text enacted and published in the Official Gazette is the following:[15]

> **Artículo 2°.- Definiciones.** El derecho de conservación es un derecho real que consiste en la facultad de conservar el patrimonio ambiental de un predio o de ciertos atributos o funciones de éste. Este derecho se constituye en forma libre y voluntaria por el propietario del predio en beneficio de una persona natural o jurídica determinada.
>
> La facultad de conservar se ejercerá de conformidad a las normas establecidas en esta ley y en el contrato constitutivo.
>
> **Artículo 3°.- Características.** El derecho real de conservación es inmueble y distinto del dominio del bien raíz gravado.
>
> Es, además, transferible, transmisible, inembargable, indivisible e inseparable del inmueble o de la parte de él que se grava, y se puede constituir sobre cualquier bien inmueble. Es de duración indefinida, salvo que las partes acuerden lo contrario.
>
> **Para los efectos de la presente ley, los atributos o funciones del patrimonio ambiental del predio se considerarán inmuebles.**

> **[Article 2.- Definitions.** The conservation right is a real right that consists in the faculty to conserve the environmental patrimony of a property or of certain attributes or functions thereof. This right is constituted freely and voluntarily by the owner of the property for the benefit of a determined natural or legal person.
>
> The faculty to conserve shall be exercised in accordance with the rules established in this law and in the constitutive contract.
>
> **Article 3.- Characteristics.** The conservation right is immovable and distinct from the ownership of the encumbered real estate.
>
> It is, furthermore, transferable, transmissible, unattachable, indivisible and inseparable from the immovable property or the part of it that is encumbered, and it may be established over any immovable property. It is of indefinite duration, unless the parties agree otherwise.
>
> **For the purposes of this law, the attributes or functions of the environmental patrimony of the property will be considered immovable property.]**

The law adopts the text of the indications of the Conservation Law Center (faculty to conserve, environmental patrimony, attributes or functions as immovable property) and, following them,

[13] BCN, Historia de la Ley N° 20.930, § 2.3, Boletín de Indicaciones, p. 222 (indications No. 17 and 18 to Article 8, No. 5). See Ubilla Fuenzalida (2014) and Ubilla Fuenzalida (2023), p. 34.

[14] BCN, Historia de la Ley N° 20.930, § 2.4, Informe de Comisión de Constitución, pp. 290–291.

[15] BCN, Historia de la Ley N° 20.930, § 5.1, Ley N° 20.930, enacted on June 10, 2016 and published in the Official Gazette on June 25, 2016, p. 373.

extends the titleholder category to natural persons. The forty-year limit is eliminated: the right is "de duración indefinida, salvo que las partes acuerden lo contrario" [of indefinite duration, unless the parties agree otherwise] (art. 3, para. 2), and the contract need only indicate "la duración del derecho real de conservación, si la hubiere" [the duration of the conservation right, if any] (art. 7, No. 5).[16] It is not a charge, but an affirmative right over new assets, which promotes the circulation of new wealth.

Broad titleholder category. The Chamber's Bill reserved the title to the right to corporations and foundations with an environmental purpose, research centers and accredited universities. The law, by contrast, provides that "toda persona natural o jurídica, pública o privada, podrá ser titular del derecho real de conservación" [any natural or legal person, public or private, may be the titleholder of the conservation right] (art. 4).[17] This broad titleholder category, proposed by the Conservation Law Center before the Constitutional Commission of the Senate,[18] does not limit the right to environmental NGOs and makes it applicable to all types of conservation projects, not only to protected areas.

[16]BCN, Historia de la Ley N° 20.930, § 5.1, Ley N° 20.930, pp. 373 (art. 3) and 375 (art. 7, No. 5).

[17]BCN, Historia de la Ley N° 20.930, § 5.1, Ley N° 20.930, p. 374 (art. 4). For the text of the Chamber of Deputies, § 1.10, p. 169 (art. 4 of the Bill).

[18]Ubilla Fuenzalida, J. (2015). Propuesta de indicaciones al Proyecto de Ley del Derecho Real de Conservación. Argumentos en favor de establecer una titularidad amplia del derecho real de conservación [Proposal of indications to the Conservation Right Bill. Arguments in favor of establishing a broad titleholder category for the conservation right]. Submitted to the Constitutional Commission of the Senate of the Republic of Chile (Senators Alfonso De Urresti and Antonio Horvath). Bulletin of the Conservation Law Center of Chile. https://bit.ly/3wOU2ag. As documented in the Historia de la Ley N° 20.930, § 2.4, Informe de Comisión de Constitución, pp. 278–281.

Comparative table

Element	(1) Motion 2008	(2) Chamber 2012	(3) CDDC indications 2014–2015	(4) Law 20.930
Nature	Limitation to the right of ownership	Right that establishes charges	**Consists in the faculty to conserve**	**Consists in the faculty to conserve**
Object	The immovable property	The encumbered property	**The environmental patrimony of a property or certain attributes or functions of this patrimony**	**The environmental patrimony of a property or certain attributes or functions of this patrimony**
Attributes or functions as immovable property	No	No	**Yes: the attributes or functions of the environmental patrimony are immovable property**	**Yes: the attributes or functions of the environmental patrimony are immovable property (art. 3, para. 3)**
Constitution	Voluntary	Voluntary, by the owner	**Voluntary, by the owner of the property**	**Free and voluntary, by the owner of the property**
Beneficiary	The community as a whole	The conservation of the environmental patrimony	**Determined natural or legal person**[19]	**Determined natural or legal person**
Titleholders	Only certain legal persons	Environmental corporations and foundations, research centers and universities	**Broad titleholder category (2015 proposal)**	**Broad titleholder category: any natural or legal person, public or private**
Duration	Minimum 20 years; may be perpetual	Minimum 15, maximum 40 years	**No maximum limit; may be perpetual**	**No maximum limit: indefinite, unless otherwise agreed**
Eligible immovable property	Real estate	"Privately owned"	**Any immovable property**	**Any immovable property**
Scope	Protected areas	Protected areas	**All types of conservation projects**	**All types of conservation projects**
Model	*Conservation easement / easement*	*Conservation easement / charge*	**Autonomous real right (affirmative right)**	**Autonomous real right (affirmative right)**

In green and bold, the elements in which Law N° 20.930 (4) reproduces the indications of the Conservation Law Center (3).

In summary, the definition in force derives from the indications of the Conservation Law Center: the conservation right is an affirmative right, not a charge on the property. A detailed analysis of this evolution can be found in Ubilla Fuenzalida (2023).[20]

[19] Ubilla Fuenzalida (2015), cit. As documented in the Historia de la Ley N° 20.930, § 2.4, Informe de Comisión de Constitución, pp. 278–281, the proposal for a broad titleholder category was presented before the Commission, which approved the definition "en beneficio de una persona natural o jurídica determinada" [for the benefit of a determined natural or legal person] (p. 302).

[20] Ubilla Fuenzalida, J. (2023). The conservation right in light of the legislative history of Law N° 20.930. General explanation of the origin, definition, differentiating elements, and legal nature of this new property right. Revista de Derecho (Coquimbo), 30: e5232. https://doi.org/10.22199/issn.0718-9753-5232.

Conclusions:

1. **The name "conservation right" (derecho real de conservación).** The parliamentary initiative used the name "derecho real de conservación" for what, in its structure, was a conservation easement, inspired by the North American *conservation easement*.[21] The name "derecho real de conservación" was used for the first time in Dr. Jaime Ubilla's 2003 article, which coined the name and proposed an autonomous, affirmative real right, distinct from the easement; for this reason it did not use the term "servidumbre de conservación" [conservation easement].[22] The affirmative formulation of the right — the expressions "faculty to conserve" and "attributes or functions of the environmental patrimony"— was developed in detail later, in his doctoral research of 2011–2015, and reached the law through the indications of 2014 and 2015.

2. **The legal definition of Articles 2 and 3.** Consequently, the definition and the articles finally approved are those proposed by Dr. Jaime Ubilla in the Bulletins of the Conservation Law Center. The conservation right is ultimately characterized by two elements: the faculty to conserve and the ecosystem assets (the attributes or functions of the environmental patrimony, legally deemed immovable property). These two elements were established in the Senate; they were present neither in the initial Parliamentary Motion nor in the Bill approved by the Chamber of Deputies.[23]

3. **The articles of the Law.** The new definition entailed a structural change in the type of right and, therefore, the replacement of 100% of the articles approved by the Chamber of Deputies. Of its sixteen articles, none remained in its original wording from the Parliamentary Motion, except Article 1, which establishes Law N° 19.300 on the General Bases of the Environment (Environmental Framework Law) and the Civil Code as supplementary rules.[24]

[21] As documented in the Historia de la Ley N° 20.930, § 1.1, Moción Parlamentaria, p. 3, the grounds of the motion expressly refer to the North American "conservation easement o servidumbre de conservación" [conservation easement].

[22] Ubilla Fuenzalida, J. (2003). La conservación privada de la biodiversidad y el derecho real de conservación [Private biodiversity conservation and the conservation right]. Revista de Derecho Ambiental, (1), 72–95. https://bit.ly/3ttJsbl.

[23] Compare, in BCN, Historia de la Ley N° 20.930, the motion (§ 1.1, p. 8), the Bill approved by the Chamber of Deputies (§ 1.10, p. 169), the indications submitted in the Senate (§ 2.3, pp. 220–221) and the published law (§ 5.1, p. 373).

[24] Compare, in BCN, Historia de la Ley N° 20.930, the Bill approved by the Chamber of Deputies (§ 1.10, pp. 169–173) with the published law (§ 5.1, pp. 373–376).

Photographic record



May 2016. Approval of the law in the National Congress: Jaime Ubilla with Senators Antonio Horvath (Aysén) and Alfonso De Urresti (Los Ríos).



June 2016. Enactment of Law N° 20.930 with President Michelle Bachelet.

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