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LETTER DATED 21 DECEMBER 1978 FROM THE PERMANENT REPRESENTATIVE OF CHILE TO THE UNITED NATIONS ADDRESSED TO THE PRESIDENT OF THE SECURITY COUNCIL

1. On instructions from my Government, I have the honour to address myself to you in connexion with a note dated 15 December 1978 from the Permanent Representative of Argentina addressed to you (S/12970). The purpose of that note was to draw to the attention of the Security Council what it describes as "the tense situation existing between the Argentine Republic and the Republic of Chile".
2. Although this tension exists, my Government considers that the form in which it is presented in the aforementioned note and the accusations formulated therein constitute an incomplete and distorted version of the truth. The purpose of this letter is to fill out the statement of the facts and to rectify the most obvious errors contained in that note.
3. The Argentine Government states that the aforementioned tense situation "has been brought about by the failure of the Chilean Government to respond in an appropriate manner to the numerous efforts by the Argentine Government to resolve through negotiations the dispute concerning the definitive delimitation of the jurisdiction of each country in the southern part of the American continent". It adds that "this attitude towards negotiations has coincided with a series of unilateral measures and acts by the Chilean Government which have also contributed to the present state of affairs".
4. These statements must not be left unanswered.
5. The Argentine note fails to mention the two basic facts which have given rise to the present situation:
 - (A) Argentina's disregard of the arbitral award delivered by Her Britannic Majesty's Government on 18 April 1977 regarding the Beagle Channel Controversy, and
 - (B) The territorial claims advanced by Argentina which are manifestly contrary to the Boundary Treaty between Chile and Argentina of 23 July 1881.
6. I will refer to both matters separately.

A. BEAGLE CONTROVERSY AND AWARD:

The old question known as the "Beagle Channel controversy" was for 78-32337

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several decades the subject of prolonged discussions between the two Governments until, in 1971, the arbitration of Her Britannic Majesty's Government was set in motion in accordance with the General Treaty of Arbitration of 28 May 1902. All that was confirmed in an Agreement of Arbitration ("Compromiso") of 22 July 1971, which bears the signatures of representatives of the Arbitrator and the Plenipotentiaries of Chile and Argentina. In accordance with that Treaty and the "Compromiso", an exemplary process of arbitration took place between 1971 and 1977 in which both parties put before the Court of Arbitration all the factual and legal background material which they deemed necessary.

7. The Court of Arbitration was composed of the following five eminent jurists, members of the International Court: Sir Gerald Fitzmaurice (United Kingdom), Mr. Hardy C. Dillard (United States of America), Mr. André Gros (France), Mr. Sture Petren (Sweden), Mr. Charles D. Onyeama (Nigeria). After a detailed study of all the historical, geographical, diplomatic and legal facts of the case, the Court unanimously decided that Picton, Nueva and Lennox Islands belonged to the Republic of Chile. At the same time, the Court drew on a chart a line indicating the "boundary between the territorial and maritime jurisdictions of the Republics of Argentina and Chile" in the area under arbitration.

8. The decision of the Court of Arbitration was communicated to the Government of Her Britannic Majesty which, pursuant to the instruments providing for the arbitration, ratified the Court's decision on 18 April 1977 and declared that it constituted the judgement in accordance with those instruments, and the two parties were notified of the judgement.

9. That judgement has unquestionably settled once and for all the old Beagle controversy, since, in accordance with the international instruments providing for the arbitration, it is "not subject to appeal" and is "legally binding on both parties". Furthermore, according to article 13 of the aforementioned 1902 General Treaty of Arbitration, compliance with the judgement "was left to the honour of the nations signatory to this Pact".

10. Chile complied fully with the Award and duly informed the Tribunal that it had done so. The Argentine Government, for its part, took the unusual decision, on its own and before itself alone, of declaring it "irremediably null and void".

11. Argentina thus sought to evade an international judgement. The Court of Arbitration itself has stated that this unilateral Argentine action lacks any validity. The Arbitrator, for his part, has declared that the Award delivered is of a "definitive and binding" character.

12. It is obvious, therefore, that it is not the Government of Chile that should be held responsible for the tension existing in the area, since all it has done is to conform to the Award of Her Britannic Majesty.

That responsibility falls entirely upon the Argentine Government, which has not complied with the Award it had solemnly committed itself to respect, has reverted to claims which the Arbitrator rejected in his judgement and has committed numerous violations of the air, sea and land territory which, according to the treaties in force and to the judgement in question, belong to the Republic of Chile.

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B. TERRITORIAL CLAIMS MADE BY ARGENTINA IN CONTRAVENTION OF THE TREATY OF 1881

13. The 1881 Treaty assigned to Chile "all the islands south of Beagle Channel down to Cape Horn" (art. III). In addition to Picton, Nueva and Lennox Islands, which the arbitral award recognized as belonging to Chile, there are other Chilean islands situated south of the Beagle Channel. The Government of Argentina is now claiming sovereignty over some of these islands.

These claims are entirely unjustified. As has been stated, all the islands south of the Beagle Channel down to Cape Horn are Chilean by virtue of the above-mentioned treaty.

14. Moreover, Picton, Nueva and Lennox Islands, recognized as belonging to Chile in the award, and those other islands situated farther south have always been and are under the uninterrupted and effective sovereignty of the Republic of Chile.

15. The situation in the area south of Tierra del Fuego may be summarized as follows:

Chile is abiding by the treaties in force, is complying with the award delivered by Her Britannic Majesty and is limiting itself to safeguarding its rights.

The Argentine Republic is attempting to alter the treaties in question, is disregarding a judgement which it solemnly undertook to respect and is trying to change the status of territories which have long been under the peaceful and effective sovereignty of Chile.

16. Desiring to avoid sterile polemics, the Government of Chile will not address itself to the other points raised in the Argentine note. It should, however, be observed that the efforts made to resolve the difficulties which have been created by the attitude of Argentina have been undertaken at the initiative of Chile or, at the very least, have had its full participation.

17. There is another aspect of the situation which is not mentioned in the Argentine note. I refer to the constant willingness of the Government of Chile to submit the aforementioned difficulties to judicial settlement. Since 10 January 1978, confronted with the failure of direct negotiations, the Government of Chile has repeatedly invited the Government of the Argentine Republic to join with it in having recourse to the International Court of Justice, the principal judicial organ of the United Nations, so that this high Tribunal might resolve the difficulties. The General Treaty of 1972 on the Judicial Settlement of Disputes between Argentina and Chile stipulates that both parties have an obligation to make use of this means of peaceful settlement.

All these invitations have so far met with no response.

18. In the light of the foregoing it is sufficiently clear that it is not the Government of Chile which is responsible for the tension in the southern part of the continent, nor is it that Government which has sought to evade international justice.

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19. Neither has my Government created a military threat which has obstructed the bilateral negotiations conducted with a view to solving the dispute. On the contrary, the existing threat would seem to be aimed at obliging Chile to yield to unacceptable territorial claims.

20. My Government is convinced that the present situation should be resolved through the implementation of the provisions of the treaties in force and the rules of international law.

21. Further evidence to corroborate the firm willingness of the Government of Chile to find a solution to the dispute by peaceful means is the invitation it issued to the Argentine Government, by a note dated 2 November 1978, to have recourse to mediation by a friendly country, designated by mutual agreement, with the express reservation by Chile that recourse could be had to judicial settlement if mediation also failed to produce results.

The Argentine Government welcomed that proposal and the Ministers for Foreign Affairs of the two countries reached agreement on 12 December 1978 to request the Holy See to assume the role of mediator. At the same time, they agreed on the basic terms of the mediation.

Unfortunately, despite these substantial points of agreement, it was not possible, owing to subsequent demands by Argentina, to make formal arrangements for mediation at that time.

22. The Government of Chile informs the international community that, by a note of 20 December 1978, it has invited the Argentine Government to pursue efforts with a view to the acceptance by the Holy See of the mission of mediator, so that it can assist the parties in their search for a just solution of the dispute within the framework already agreed upon.

23. Finally, the Government of Chile declares that the principles of peace and security proclaimed in the Charter of the United Nations would be seriously undermined if it were accepted that a Member State could be threatened solely for having obtained a favourable arbitral judgement, for refusing to accede to the demand to change a boundary treaty, for safeguarding its territorial sovereignty or for maintaining that, failing direct agreement, the dispute should be referred to the International Court of Justice in accordance with a Treaty binding on both parties.

24. I should be grateful if this communication could be circulated as an official document of the Security Council.

25. I wish to inform you that my Government has today submitted information on this matter to the Chairman of the Council of the Organization of American States.

(Signed) Sergio DIEZ
Ambassador
Permanent Representative

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Annex I

NOTE DATED 20 DECEMBER 1978 FROM THE MINISTER FOR FOREIGN AFFAIRS OF CHILE ADDRESSED TO THE MINISTER FOR FOREIGN AFFAIRS OF ARGENTINA

Sir,

Christmas, which is of such deep spiritual significance to the whole world, intensifies the desire of the peoples of Chile and Argentina to live in peace, brotherhood and hope, free from danger and tensions, in their common Christian spirit. Both peoples aspire only to devote their energy to the greatness of their respective nations in a climate of tranquillity and solidarity.

These feelings, which are shared by all Chileans, prompted my Government, with a view to seeking a solution to the current dispute concerning the south, to renew in a note of 2 November 1978 the invitation extended to your Government to have recourse, by mutual agreement, to the International Court of Justice, in accordance with the 1972 General Treaty on the Judicial Settlement of Disputes. In the same note my Government invited the Argentine Republic to request mediation by a friendly Government chosen by mutual agreement. Your Government chose the proposed course of mediation.

At the meetings we held in Buenos Aires on 12 December 1978, basic progress was made: it was agreed that the Holy See should be requested to accept the role of mediator, and that the mediation would be conducted within the framework of the Act of Puerto Montt.

Despite these substantive points and agreements, the mediation was not formally arranged on that occasion.

The climate of tension prevailing between our two countries, with the risks which it entails for both, imposes upon us the inescapable duty to persevere in our joint efforts to re-establish the fraternal coexistence which characterizes our relations.

Consequently, the Government of Chile, prompted by these considerations, invites your Government to express once more to the Holy See our full confidence in it as a mediator and to request it to accept that task.

The Government of Chile also proposed to you that, as an expression of that confidence, each Government should provide the Holy See with all the background material relating to the case so that it may help us to seek a just solution to the dispute within the framework for mediation upon which agreement has already been reached.

Accept, Sir, the assurances of my highest consideration.

(Signed) Hernan CUBILLOS CALLATO
Minister for Foreign Affairs

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Annex II

NOTED DATED 21 DECEMBER 1978 FROM THE MINISTER FOR
FOREIGN AFFAIRS OF ARGENTINA TO THE MINISTER FOR
FOREIGN AFFAIRS OF CHILE

Sir,

I have received your note of yesterday's date in which, invoking the significance of the forthcoming Feast of Christmas, you speak of the desire of the Chilean and Argentine peoples to live in peace, brotherhood and hope.

I fully concur in these sentiments, firmly convinced - as I have always been - of the common aspiration of Argentines and Chileans to prosper in harmony and brotherhood.

However, it is not easy to understand how the wishes and aspirations expressed in your note can be reconciled with the proposals put forward in that same communication. These do not change in any way the situation in which we found ourselves on 12 December of this year, which caused the breaking off of our conversations.

From the correspondence exchanged between our Governments beginning on 2 November it appears that the framework within which it had been agreed that this phase of the negotiations should be conducted required that the scope and modalities of the assistance of a friendly Government must first be determined.

The attitude now taken by Chile, expressed in the note which has been received, continues to depart from that agreement and thus makes it impossible to specify the aspects which I have just mentioned and which for Argentina are basic conditions. Without those conditions the agreed procedure would not be conducive to applying the definitive formula, which, while safeguarding peace and the essential rights of our peoples, would at the same time provide a just and equitable solution to the dispute between us.

The Argentine Government has repeatedly demonstrated that its conduct is in accordance with its firm desire to find a solution such as that which I have just described. It has therefore consistently refrained from carrying out in the area in dispute any actions or measures which would be prejudicial to the effort to settle the dispute. Unfortunately, this has not been the attitude of Chile, which, from the beginning and despite the repeated invitations extended by my country, has engaged in conduct which has altered the de facto situation in the area in dispute and laid down norms manifestly contrary to law on the basis of which it intends to put forward claims to insular and space which is under Argentine sovereignty.

Despite this situation, the Argentine Government, demonstrating its firm willingness to negotiate, continued the search for agreements which would be reasonable and would be in accordance with the interests of both countries.

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As you will recall, the Argentine Government, after seeing the persistent efforts to reach agreement which it had made in the course of arduous negotiations in the Second Committee frustrated, sought to settle the controversy bilaterally - with the aid of a friendly Government - for it was aware of the urgent and imperative need to secure for the peoples of Argentina and Chile a just and lasting solution.

It was in that spirit that my Government, responding to the proposal for a meeting of Ministers for Foreign Affairs, decided to invite you to come to Buenos Aires. In the ensuing interview, Argentina proposed that the assistance of the Holy See should be sought. That initiative, which was accepted by you, implicitly signified our country's full and continuing confidence in and respect for the Holy Father.

Precisely for this reason, my Government likewise tried to define the scope and modalities of the process of mediation so as to ensure that His Holiness would not be confronted with a persistent disagreement between the parties. Chile's intransigence and inflexibility again prevented those efforts from producing any positive results.

My Government regrets the hoped for response was not forthcoming.

Your note, showing that the Chilean Government persists in the attitude which it has taken, does not offer any possibility of finding appropriate formulas which will guarantee the success of the negotiating process.

Accept, Sir, the assurances of my highest consideration.

(Signature)