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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Letter dated 6 September 1988 from the Chargé d'affaires a.i.
of the Permanent Mission of Chile to the United Nations
addressed to the Secretary-General

On behalf of the Government of Chile, I should like to make a formal report to you regarding serious and repeated irregularities with respect to my country on the part of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, a subsidiary organ of the Commission on Human Rights.

The Sub-Commission functions within the framework of two procedures, one embodied in Economic and Social Council resolution 1503 (XLVIII), the other laid down in resolution 8 (XXIII) of the Commission on Human Rights.

The first procedure has never been fully applied to Chile, despite its persistent appeals. With regard to the second, the modus operandi is laid down in document E/CN.4/Sub.2/1988/1/Add.1, dated 5 July 1988. Paragraphs 59 and 60 of that document are reproduced in extenso for ease of reference:

"59. By resolution 8 (XXIII) of 16 March 1967, the Commission on Human Rights decided to give annual consideration to the item entitled 'Question of violations of human rights and fundamental freedoms, including policies of racial discrimination and segregation and of apartheid in all countries, with particular reference to colonial and other dependent countries and territories'. In paragraph 2 of the resolution, the Commission requested the Sub-Commission to prepare a report containing information on violations of human rights and fundamental freedoms from all available sources for the use

* A/43/150.

of the Commission. The Secretary-General was requested, in paragraph 3, to provide assistance and facilities to the Sub-Commission in accomplishing its task. In paragraph 6, the Commission invited the Sub-Commission to bring to the attention of the Commission any situation which it had reasonable cause to believe revealed a consistent pattern of violations of human rights and fundamental freedoms, in any country, including policies of racial discrimination, segregation and apartheid, with particular reference to colonial and other dependent territories.

"60. The Economic and Social Council, in resolution 1235 (XLII) of 6 June 1967, welcomed the decision of the Commission to give annual consideration to the item and concurred with the requests for assistance addressed to the Sub-Commission and to the Secretary-General in Commission resolution 8 (XXIII). The Council authorized the Commission and the Sub-Commission to examine information relevant to gross violations of human rights and fundamental freedoms, contained in the communications listed by the Secretary-General pursuant to Economic and Social Council resolution 728 F (XXVIII) of 30 July 1959 and further authorized the Commission to make a thorough study of situations which revealed a consistent pattern of violations of human rights."

It is clear from the above paragraphs that the role of the Sub-Commission is to report to the Commission on Human Rights, so that the latter might adopt the relevant resolution on the basis of the respective report.

Nowhere is it stated that the Sub-Commission may adopt resolutions regarding the cases considered by it. That would be illogical, for it is normal and obvious that when one organ submits reports so that another might adopt resolutions, the former cannot adopt resolutions on its own.

In practice, however, the Sub-Commission on Prevention of Discrimination and Protection of Minorities has arrogated to itself the authority to adopt resolutions with regard to Chile and other countries, thus exceeding its powers and creating procedural confusion. At the very least, that leads to overlapping jurisdictions and clearly unjust situations that affect precisely those countries which have an outstanding record of unlimited co-operation with the United Nations system in the area of human rights.

That irregularity has not escaped the attention of the Special Rapporteur on the situation of human rights in Chile. Indeed, in his most recent report to the General Assembly, the Special Rapporteur referred in the following terms to the resolution adopted by the Sub-Commission during its 1987 session (A/42/556 and Corr.1, para. 72):

"Finally, on 4 September 1987 the Special Rapporteur wrote to the Secretary-General informing him of the adoption by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, at its thirty-ninth session, of resolution 1987/60 on the 'Question of Human Rights in Chile'. The Special Rapporteur expressed to the Secretary-General his 'surprise and dismay' at what might be 'a new and third forum for discussing my reports,

something which would not only unnecessarily increase my responsibilities ... but also add ... a disturbing element to the relations between the Commission on Human Rights and its Special Rapporteur, on the one hand, and the Government (of Chile) on the other'."

At its fortieth session, on 1 September 1988, the Sub-Commission adopted another resolution on the situation of human rights in Chile (E/CN.4/Sub.2/1988/L.44). The Permanent Mission of Chile in Geneva categorically rejected that resolution in a note dated 29 August 1988, for the reasons stated below:

"Document L.44, which contains a draft resolution on the situation of human rights in Chile sponsored by Mr. Sobarzo (Mexico), was circulated today. On express instructions from the Government of Chile, the Permanent Mission of Chile would like to express its total and categorical rejection of the terms of the draft resolution. The fact is that this proposal ignores the true Chilean situation and contains substantive inaccuracies which cannot escape the attention of any objective observer of the situation of human rights in Chile.

"In this connection, anyone can see that there are fundamental discrepancies between the draft resolution and the reports submitted by Mr. Fernando Volio Jiménez, whom the Commission on Human Rights and the General Assembly appointed as Special Rapporteur on the situation of human rights in Chile.

"The Permanent Mission of Chile has no desire to describe how each point in draft resolution L.44 is at odds with the aforementioned reports of the Special Rapporteur. Suffice it to say that in the fifth paragraph of his latest report to the Commission on Human Rights (E/CN.4/1988/80, dated 7 March 1988), Professor Fernando Volio pointed out that 'Between February 1985 and December 1987 there was a significant improvement in [the situation of human rights in Chile]'. He went on to state:

'As regards progress towards the desired goal, I note, without prejudice to possible omissions and what is stated in my sixth report, the drastic decline in cases of administrative banishment. Exile has practically ceased to exist. There is a political liberalization enabling political parties to register, be legitimized as such and participate in the 1988 plebiscite as well as in subsequent activities forming part of the return to a system of representative democracy.'

"The draft resolution submitted by Mr. Sobarzo (Mexico) is particularly inaccurate and tendentious when it purports to describe the forthcoming electoral process in Chile (third preambular paragraph of document L.44). In his report to the General Assembly at its forty-second session, the Special Rapporteur on the situation of human rights in Chile stated that 'taking into account the transitional system which is being instituted in Chile with a view to investigating complaints relating to the 1988 plebiscite ... so far as the Special Rapporteur can judge, reasonably guarantee a proper electoral system' (A/42/556 (16 September 1987), para. 86). Subsequently, in his aforementioned

report to the Commission on Human Rights at its most recent session, the Special Rapporteur added: 'As I see it, the plebiscite could be a genuine step forward towards a representative democracy ...' (E/CN.4/1988/80 (7 March 1988), p. 3).

"As the Secretariat knows, the Government of Chile, continuing its policy of unlimited co-operation with the Special Rapporteur, has consented to a visit by Mr. Fernando Volio Jiménez to Chile during the plebiscite, in fulfilment of his mandate.

"These facts demonstrate the good faith of the Government of Chile and its confidence in the openness and integrity of the forthcoming electoral process."

An additional point to be made is that it is incongruous to ask the Secretary-General to request the Special Rapporteur on Chile to report to the Sub-Commission on the results of his investigations. In the first place, the Special Rapporteur has a mandate from the Commission on Human Rights, not from the Sub-Commission. The request is therefore inadmissible. Secondly, it is impossible for the Sub-Commission to reach such categorical conclusions regarding the situation in Chile if it has not yet seen the report which it requested and which it lacks the competence to receive.

The fact that a consultative, technical organ so blatantly exceeds its powers in no way promotes the cause of human rights. It is bound to irritate the Governments concerned, as they note that their co-operation is not duly acknowledged. It creates confusion as one organ of the United Nations system assumes the functions of the organs designated by that very system. Lastly, it opens the door to politicization of the human rights item.

In the light of the foregoing, the Government of Chile, in bringing these flagrant irregularities to the attention of the Secretary-General, requests him to work out such measures within his competence as he may deem appropriate with a view to redressing the aforementioned situation, and protests in the strongest terms at the objectionable conduct of the Sub-Commission.

I should be grateful if you would have this letter circulated as an official document of the General Assembly under item 12 of the provisional agenda.

(Signed) Sergio COVARRUBIAS SANHUEZA
Ambassador
Deputy Permanent Representative
Chargé d'affaires a.i.
