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REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

Letter dated 14 November 1989 from the Chargé d'affaires a.i. of  
the Permanent Mission of Chile to the United Nations addressed  
to the Secretary-General

I have the honour to transmit to you the attached letter dated 14 November 1989 containing the reply of the Government of Chile to the statements made by the Minister for Foreign Affairs of the Federal Republic of Germany concerning the Sociedad Benefactora y Educacional Dignidad.

I should be grateful if you would have this letter and its annex distributed as an official document of the General Assembly under agenda item 12.

(Signed) Sergio COVARRUBIAS SANHUEZA  
Ambassador  
Deputy Permanent Representative

ANNEX

Letter dated 14 November 1989 addressed to the Secretary-General  
by the Permanent Representative of Chile to the United Nations  
replying to the statements made by the Minister for Foreign  
Affairs of the Federal Republic of Germany

With reference to document A/44/680 of 26 October 1989 by which the Permanent Representative of the Federal Republic of Germany requested distribution of a letter dated 22 September 1989 from the Minister for Foreign Affairs of that country addressed to the Chairman of the Commission on Human Rights concerning the situation at Colonia Dignidad, the Permanent Mission of Chile considers it absolutely essential to provide some clarifications and to categorically reject false and arbitrary allegations which are at variance with the facts and with the basic principles of international law.

Background information on the origins of the "Colonia Dignidad" case

The Sociedad Benefactora y Educacional Dignidad acquired legal status in Chile in 1961. It is currently made up of German and Chilean citizens.

On 5 March 1968, the Senate of the Republic of Chile requested the Chamber of Deputies to appoint a special commission to investigate the activities of the Sociedad Benefactora y Educacional Dignidad. The conclusions of the special commission were adopted on 27 November 1968 by the Chamber of Deputies, which found that "the Sociedad Benefactora y Educacional Dignidad has fulfilled and continues to fulfil the purposes for which it was established" adding that "according to the facts, circumstances and information investigated and taken into account, there are no grounds for revoking its legal status".

In 1984 and 1985, the Baar and Packmor couples left Colonia Dignidad and settled in the Federal Republic of Germany. Once in Germany, they reported the existence of alleged crimes within Colonia Dignidad, based on which criminal proceedings were brought in Bonn against Paul Schaefer, one of the founders and leaders of Colonia Dignidad. However, these allegations were not brought to the attention of the Chilean authorities or law courts at the proper time.

Action by the Government of the Federal Republic of Germany

On 8 December 1987, the Minister for Foreign Affairs of the Federal Republic of Germany, Mr. Hans Dietrich Genscher, informed the Minister for Foreign Affairs of Chile that he was concerned about the situation of German citizens living at Colonia Dignidad, in the light of information that had been in the possession of the Embassy of the Federal Republic of Germany in Chile since 1985.

On 14 December 1987, the Ministry of Foreign Affairs of Chile replied to the Ministry of Foreign Affairs of the Federal Republic of Germany that Chile was fully prepared to co-operate with the German authorities and would guide them as to the steps and procedures that must be taken.

In later communications and contacts, the Ministry of Foreign Affairs of Chile informed the Government of the Federal Republic of Germany that substantiated complaints of situations for which valid proceedings were in effect were needed in order for a judicial investigation to be launched.

Action by the law courts

The Government of the Federal Republic of Germany, after handing over successive files of documents and correcting repeated errors, forwarded to the Chilean courts on 19 October 1988, through the Foreign Ministry, the dossier that it had put together.

The Chillán Court of Appeals studied the dossier and rejected it on the grounds that it was "not only vague but also inexact and refers to events that occurred long ago", and was therefore an insufficient basis on which to launch a judicial investigation.

In the mean time, in a letter sent to Foreign Minister Genscher in March 1988, the Chilean Ministry of Foreign Affairs had emphasized to the Government of the Federal Republic of Germany, the need for the German citizens concerned or the German Government to act as plaintiffs in criminal proceedings either themselves or through representatives, by filing a criminal complaint in accordance with Chilean criminal law.

In view of the fact that neither the German Government nor the eventual plaintiffs brought criminal proceedings, on 4 January 1989 the Chilean Minister for Foreign Affairs, in a written communication delivered personally to the President of the Supreme Court, requested the appointment of an investigating judge under article 560 (1) of the Judicial Code. The decision to invoke this provision, which was adopted with the firm intent of co-operating in the administration of justice, was without precedent this century. Its application was thus wholly exceptional.

It should be noted that the text of the article in question states that the court shall, as an exceptional measure, order the appointment of an investigating judge "for the investigation of acts or offences which may affect the international relations of the Republic".

On 12 January, in response to the Foreign Minister's request, the Supreme Court appointed an investigating judge with wide powers to investigate the "organization and activities of Colonia Dignidad". By a decision of 8 September 1989, after a detailed examination of the report of the investigating judge, Mr. Hernán Robert Arias, the Supreme Court approved the report and ordered proceedings Nos. 43,899 and 43,900, calling for investigations into alleged offences committed at Colonia Dignidad (unlawful exercise of the medical profession and fraud), to be referred to the Criminal Court of the city of Parral. These proceedings are currently at the preliminary stage and are being conducted in accordance with the Chilean laws in force.

Excessive German reaction

The response of the German Minister for Foreign Affairs to this decision of the Supreme Court was a highly unjustified and intemperate statement, made on 9 September, in which he accused the Chilean Government of obstructing investigation of the case and questioned the independence of the judiciary.

That same day, the Chilean Ministry of Foreign Affairs publicly rejected the German statement calling in question the decision of the Supreme Court, which had acted in accordance with its constitutional powers in deciding to bring to an end the investigation by the judge whom it has appointed to inquire into the situation at Colonia Dignidad.

In like manner, the Chilean Government today rejects similar allegations made in the letter which Mr. Genscher sent to the Chairman of the Commission on Human Rights.

Conclusions

The following conclusions can be drawn from this account of events to date:

1. Legal and political investigations into Colonia Dignidad are nothing new, since there have been complaints about it and investigations into it since 1966, none of which have corroborated the allegations made.
2. The Ministry of Foreign Affairs of Chile has shown every willingness to co-operate, while respecting fully the independence and powers of the judiciary, in the investigation of the unlawful acts with which Colonia Dignidad is charged. To that end, it was the present Chilean Minister for Foreign Affairs who personally, and on an exceptional basis, requested the Supreme Court to appoint an investigating judge to conduct an investigation, and it was the Ministry of Foreign Affairs which made available to the courts the dossier forwarded to it by the Government of the Federal Republic of Germany. It therefore cannot be claimed, as document A/44/680 alleges, that the Chilean authorities have remained inactive in this matter.
3. The case of Colonia Dignidad is not closed, since the Supreme Court itself referred to the Parral Criminal Court the proceedings calling for the investigations into the alleged offences of unlawful exercise of the medical profession and fraud.
4. The Chilean Government, and therefore the Ministry of Foreign Affairs, does not have the power to pass judgement on judicial decisions, but it cannot allow a foreign Government, openly interfering in Chile's internal affairs, to make assumptions and to call into question the highest court of the land. It should be noted that the defence of German interests in this case, and the presentation of arguments of fact and of law, were carried out by that country's own lawyers. The success or failure of the German complaints cannot therefore be attributed to the Government of Chile, nor can the plaintiffs claim to have been deceived and allege that the Chilean authorities have an interest in obstructing investigation of unlawful acts, and that they are covering up the happenings at Colonia Dignidad and

protecting the persons responsible, especially in view of the fact that the persons now making these charges in Germany did not take similar action with the Chilean authorities while they were in Chile, which they could and should have done in accordance with Chilean law.

Furthermore, mention should be made of certain inconsistencies in the action taken by the German authorities, in that while they have shown great interest in the investigation of acts which they regard as fully proven, they have never requested the extradition of any person currently on Chilean territory.

Also, more than a month has passed (2 October 1989) since the Chilean Ministry of Foreign Affairs sent a letter rogatory to the Embassy of the Federal Republic of Germany because the documents it had forwarded were not in the form required by Chilean law if they were to be processed by the courts, and this despite the fact that the German authorities were perfectly aware of the necessary formalities in such cases, since other letters rogatory relating to Colonia Dignidad had already been sent previously. The errors pointed out have yet to be rectified.

The Government of Chile declares once again its entire readiness to co-operate with the German authorities in all matters within its competence, subject to respect for the principle of separation of State powers and judicial decisions.

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