

SANTIAGO—From the moment last September when the United States asked Chile's Supreme Court to extradite the three Chilean military intelligence officers accused of having conspired to kill Orlando Letelier and Ronni Moffitt, it implicitly accepted the authority and independence of this country's courts to decide the matter once and for all.

Now that the President of the Supreme Court, Israel Borquez, has rendered his opinion that the evidence submitted by the Justice Department was insufficient to order extradition, the Carter administration is threatening diplomatic and possibly economic reprisals against the government of Chile because its judicial branch did not decide as the United States wanted it to.

It is certainly possible to argue, as the State Department did last Tuesday when it announced that Ambassador George W. Landau was being recalled

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to Washington for consultations, that there was sufficient evidence—under U.S. procedure, anyway—to either order extradition to the United States or at least a civilian trial in Chile.

But even if there was sufficient evidence, that alone cannot negate—and should not obfuscate—the fact that the administration has placed itself in a completely illogical and untenable position. If it recalls Landau permanently or takes other retaliatory steps, it will be saying in effect that, having agreed to play the game by the legal rules and having lost, it is going to smash the game rather than accept defeat.

Had the administration thought that Chile's Supreme Court would not—or could not—decide the extradition case independently and fairly, it should never have put the matter before the court in the first place.

Instead, it should have gone directly to Gen. Augusto Pinochet, Chile's military ruler, and demanded from him the extradition of the three soldiers: Gen. Juan Manuel Contreras Sepulveda, the former head of the infamous DINA, Col. Pedro Espinoza and Capt. Armando Fernandez Larios, all accused by Michael Townley, Letelier's admitted assassin, of having ordered or aided the conspiracy.

The administration could have argued that the U.S.-Chile extradition treaty of 1902 contemplated a democratic government in Chile in which the court system was truly indepen-

dent of the executive branch of government. It could also have been argued that since the coup of 1973, there has been ample evidence that the civilian courts have consistently upheld various provisions of the military regime's national security law that fly directly in the face of the Chilean constitution.

The administration could also have argued that Pinochet expelled Townley without waiting for the Chilean courts to order his expulsion or waiting for Townley's appeal to them, a precedent that might have been cited in going directly to Pinochet—and going around the 1920 treaty—to obtain the three DINA officers wanted for trial in the United States.

But once the United States decided to go the legal route, it accepted the competence of the Supreme Court here to examine the evidence, which consisted primarily of Townley's testimony, and render a fair and impartial decision based on Chilean law and procedure—not on American law and procedure.

There is a difference between the two that is little understood in the United States, and it is rather important. In Chile, as in France, a judge does not order a trial unless he is virtually certain that a defendant is guilty. The evidence must be overwhelming.

Furthermore, plea bargaining (a practice that even has its critics in the United States) is unknown here, which is why Borquez discounted Townley's testimony, which came after a deal with U.S. prosecutors for a reduced sentence in return for his cooperation in providing evidence.

Borquez did recommend a military investigation of the evidence against Contreras, Espinoza and Fernandez Larios because the judge decided that, even though there wasn't enough proof for him to extradite the three or order a trial here, there were enough discrepancies for a further probe into their involvement in the Letelier affair.

While a military investigation is unlikely to result in a resolution of the case satisfactory to the United States, economic or diplomatic retaliation cannot be justified either unless the administration has evidence that Borquez was unduly influenced—or ordered—by Pinochet to reach the decision he did.

So far, there has not been even a hint that the United States has such evidence. It appears that the administration bungled the extradition request from the beginning. But if fairness and logic come into this situation at all, they now appear to be on Chile's side and the United States has little choice but to live with its mistake.

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The Letelier Case:
An American Bungle

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