

By mail and bearer

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President of the Commission on Ethics
of the IOC
28, avenue de l'Elisée
1006 Lausanne

Geneva, September 11th 2003

Reference: Complaint against the presence of Mr. Henry Kissinger as an honorable member of the International Olympic Committee.

Mr. President of the Commission on Ethics of the IOC,

In this letter our association would like to express its protest before your Commission for the presence of the above mentioned Mr. Henry Kissinger as an honorable member of the IOC.

Our complaint states the following:

- A. Formal and material acceptance of complaint, p. 1
- B. The facts alleged against Henry Kissinger and their legal qualification, p. 2
- C. Incompatibility with the Chart and Code of Ethics of the IOC, p. 12
- D. The appropriate punishment, p. 14

A. Formal and material acceptance of the complaint

The rule 25 of the Olympic Chart creates the Commission on Ethics of the IOC, which is in charge of investigating the complaints lodged in relation with the repudiation of the values and principles defended in the Olympic Chart.

The above mentioned Henry Kissinger is an honorable member of the IOC since 2000.

Rule 25 of the Olympic Chart establishes that the sanctions may be declared against the honorable members of the IOC who, because of their behavior, constitute a criminal attempt against the interests of the IOC (Rule 25, Ch. 2.1.1).

The sanctions adopted **against the honorable members** of the IOC are:

- a) the blame, pronounced by the Executive Commission,

- b) the suspension, for an indefinite period of time, pronounced by the Executive Commission,
- c) the exclusion, established by the rules 20.3.7 and 20.3.8 of the Olympic Chart.

It is also necessary to state that, according to the Code of Ethics of the IOC, *“the safeguard of the dignity of the human person is a fundamental demand of the Olympic movement”* (A, Ch. 1).

Hence it follows that an honorable member of the IOC that repudiates the values and principles defended in the Olympic Chart or one whose behavior might mean a criminal attempt on the interests of the IOC, or repudiates the dignity of the human person, shall be subject to sanctions that may go as far as his exclusion.

It will be hereinafter demonstrated that the above mentioned Henry Kissinger, an honorable member of the IOC, has blatantly and repeatedly repudiated the values and principles defended in the Olympic Chart, and has seriously repudiated the dignity of the human person. His conduct means a clear repudiation of the interests of the IOC.

Our association has the legitimate right to lodge a complaint before the Commission on Ethics of the IOC, which is the competent instance. The present complaint is, on the other hand, acceptable in its form.

The sanction requested hereinafter (**see chapter D**) is the exclusion, the only one applicable given the gravity of the facts (**see chapter B**).

B. The facts with which Henry Kissinger has been charged and their legal qualification

Our association will try to prove (**Rules of the Commission on Ethics of the IOC, letter B Ch. 6**) the facts hereunder by means of the evidence indicated between parenthesis. They are first of all summarized and then developed.

These facts particularly affect three countries or regions: Chile, East Timor and Indochina (Laos, Cambodia and Vietnam).

1. The facts in relation with Chile

Henry A. Kissinger has been accused of having participated in the coup d'Etat that overthrew the government of the democratically elected president of Chile Salvador Allende and of having taken part in the deliberate destabilization of that government, specifically in the assassination of General René Schneider in 1970 perpetrated by people supported by the CIA, and which finally led to the 1973 coup d'Etat against Allende's government (**witnessed evidence, NGO's reports and unclassified national files**).

The facts with which Henry Kissinger has been charged in relation with Chile have already been the subject of several legal actions. In fact, General Schneider's family lodged a complaint against Henry A. Kissinger before a civil instance, in Washington D.C in September 2001, for the assassination of the already mentioned general. Likewise, in November 2002, a second complaint was lodged in Washington by eleven victims against Henry A. Kissinger, charging him with deliberately providing material assistance to the Chilean dictatorship and with having encouraged the repressive Chilean regime before, during and after the coup d'Etat in complete repudiation of the victims and the members of their families.

In addition, on the 28th anniversary of the Chilean coup d'Etat on September 11th 2001, a coalition of victims and human rights organizations lodged a complaint before a criminal instance in Santiago of Chile against Henry A. Kissinger for his implication in the Plan Condor, an intergovernmental network whose aim was the assassination of political opponents to right-wing governments in Latin America. This network, created and conducted by Pinochet's secret police head officer, was based on the coordination of all secret services of the South Cone countries in the 1970's and 1980's, that is to say, at a time when most South American states were under military regimes. With the Plan Condor, governmental agents were authorized to arrest foreign people and send them back to governmental agents of their countries of origin where, quite often, they were tortured, assassinated or disappeared. Besides, Henry Kissinger's implication in the Plan Condor has led judges in France, in Spain and Argentina to try to question him on this matter. Moreover, the Chilean judge Juan Guzman, of the Court of Appeal of Santiago of Chile, and who is currently investigating the assassination of the American journalist Horman by Pinochet's regime, threatened with launching an International Warrant of Arrest against Henry A. Kissinger for obstruction to justice. Nevertheless, he has always refused to respond on the acknowledgement and implication of the State Department in Horman's assassination.

The aim of the present complaint is that of underlining Henry A. Kissinger's role in the events that took place in Chile and demonstrate that his actions were constitutive of crimes as stated in international criminal law. The first legal qualification of such actions is the violation of the classified principle of non-interference with the internal affairs of a state, the second being the complicity in the commission of international crimes of which we will mainly mention those of assassination and torture.

a) The violation of the principle of non-interference with the internal affairs of another state

Henry A. Kissinger has said:

"I don't see why we need to stand by and watch a country go communist due to the irresponsibility of its people. The issues are much too important for the Chilean voters to be left to decide for themselves".

This allegation, in complete contradiction with the principle of non-interference with the internal affairs of a state, reflects perfectly well the position of the United States of America toward the political situation in Chile and clearly sums up the historical facts

attributable to the United States today. Inasmuch as Henry A. Kissinger, central character of the American policy, has been able to express himself in those terms and inasmuch as he occupied a high governmental position, the first fact he has been charged with is precisely that interference with the political affairs of another state.

The principle of non-interference is legally explicit in the Charter of the United Nations, Charter of which the United States is one of the signatories and which had been adopted long before the execution of the facts mentioned herein. In fact, section 4, article 2 of the above mentioned Charter establishes clearly, among others, the principle according to which the United Nations and its Members must act:

The Members of the Organization shall refrain in their international relations from the use of threat or force, whether against the territorial integrity or the political independence of a State (...)

The explicit prohibition to intervene by force in the political independence of another State, which is one of the founding and fundamental principles of the UN Charter, has been really derided by the American foreign policy, put into practice at that time by the CIA, whose operations were being overseen by Henry A. Kissinger as president of the "Committee of the 40". By firstly having organized an assassination and afterward backed up a coup d'Etat, the CIA illegally interfered in the internal affairs of Chile in complete repudiation of its political independence¹. Under these circumstances; Henry A. Kissinger is directly responsible of having organized the overthrowing of a foreign government, which had been previously elected in a democratic way by the Chilean people. Such interference in the political life of Chile stands clearly against the essential principles of the United Nations and, in doing so; Henry A. Kissinger has clearly violated the Charter of the United Nations.

b) The complicity in the commission of international crimes

By supporting General Pinochet's coup d'Etat against the democratically elected government of President Salvador Allende, the CIA, under the supervision of the "Committee of the 40" chaired by Henry A. Kissinger, participated in the execution of one of the most repressive military regimes of the twentieth century. Inasmuch as Henry A. Kissinger is allegedly involved in the Plan Condor, whose aim was the elimination of political opponents by means of their assassination, torture or disappearance, it becomes clear enough that he may not have ignored General Pinochet's criminal and dictatorial policy deriving from the coup d'Etat.

In other words, Henry A. Kissinger should have foreseen the disastrous consequences that such a military dictatorship was going to bring about at human rights level. Besides, according to the facts that make it evident the CIA's and, consequently, Kissinger's support to Pinochet's regime, Henry A. Kissinger knew those consequences quite well. But, his engagement in fighting communism in Latin America – as proved by the Plan Condor – appeared to him a nobler cause than the protection of human rights.

¹ See especially the Church (1975) and Hinchey (2000) reports of the American Congress.

Until now, the policy of torture carried out by Pinochet's regime has been judicially acknowledged² and is a proven and settled fact. Thus, by having participated directly in the execution of such a crime and being in complete knowledge of his murderous ideology, Henry A. Kissinger indirectly participated in the crimes committed by this regime and is guilty of complicity in the violation of human rights in Chile. Henry A. Kissinger may not have ignored the consequences that the military seizure of power would bring about on the Chilean population in terms of violations of their fundamental rights. It is precisely in this aspect that he is guilty of complicity in the commission of these acts. He conducted and encouraged them through the policy he executed when he was in charge of supervising the work of the CIA.

Certainly, at the time the facts involving Henry A. Kissinger took place, torture – which afterward was acknowledged against General Pinochet – had not been the subject of any specific codification, since the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment was not adopted until December 10th, 1984. Consequently, Henry A. Kissinger can, in no way, be considered as responsible of having violated the provisions contained in the named Convention. Notwithstanding, the notion of '*crimes against humanity*' had already been defined in international law, specifically in the London Charter having Statute of the Nuremberg Tribunal³, and covering the crime of torture under the heading '*other inhuman acts committed against the civil population*', as well as under the crime of '*persecutions*,' particularly because of political reasons.

It is necessary to acknowledge that, in Nuremberg, crimes against humanity had been just defined in relation with the other crimes upon which the Tribunal had jurisdiction, that is to say war crimes and crimes against peace. In other words, at the time they appear in international law, crimes against humanity did not have their own legal autonomy.

Nevertheless, from the end of the Nuremberg trial, such incoherence has not remained without any kind of reaction and the ensuing case law, as well as the international instruments that have been adopted, show that the link between crimes against humanity and other crimes is not needed anymore in order to acknowledge their commission⁴. Thus, while Henry A. Kissinger may not be considered as responsible of complicity in the crimes committed during Pinochet's regime in relation with the 1984 Convention against Torture, he can be so considered through the application of article 6 (c) of the London Charter that defines the crimes against humanity as a rule of customary law.

Moreover, it is self-evident that torture was at that time a forbidden fact not only in international customary law, but also in both American and Chilean internal law.

² See *Regina v. Bartle and the Commissioner of Police for the metropolis and Others Ex Parte Pinochet – Regina v. Evans and Another and the Commissioner of Police and Others Ex Parte Pinochet*, Judgment of November 25th 1998, (1998) 37 ILM 1302; *ibid.*, Judgment of March 24th 1999, (1999) 38 ILM 581.

³ Article 6 (c)

⁴ See specifically the works of the Commission on International Law, which is a true laboratory in that field, that from 1945 had discarded the need for a link between the crimes against humanity and the other crimes in its Code of Crimes. See U.N. Doc. A/1316.

Just as mentioned above, it is clear that this legal qualification applies perfectly well to the incriminating facts, namely those inhuman acts committed against the civil population as well as the policy of persecution carried out against political opponents.

2. The facts in relation with East Timor

The documents recently made public have confirmed that, in December 1975, when Henry A. Kissinger and President Gerald Ford visited General Suharto in Jakarta, the United States had given green light to the invasion of East Timor by Indonesia. In spite of the fact that the American administration knew that the American military equipment was going to be used in this action, Henry A. Kissinger and President Ford insisted on the fact that the invasion should not start until they had returned to the United States⁵. In reality, this invasion – that turned into the 25-year occupation of East Timor – began the day after. During the following years, the United States continued providing military assistance to the Indonesian army, allowing in this way the massacre of almost one third of the population.

Particularly well informed of the invasion plans of East Timor and of the fact that the invasion would be extremely troublesome from a legal point of view, especially since the Indonesian army would be using American weapons whose exportation had not been authorized by the American Congress for purposes other than the merely defensive ones, Henry A. Kissinger informed dictator Suharto about these problems. He always told him that it would be impossible to “make other people believe that the invasion was an act of legitimate defense”. According to the documents of the American files, after six months of occupation of East Timor by the Indonesian army, Henry A. Kissinger acknowledged before high officials of the Department of State that the American military material had been used in an illegal way. The files show that Henry A. Kissinger knew quite well that the invasion of East Timor was carried out with the illicit use of American military equipment, which had obviously been used for purposes other than the purely defensive ones authorized by the law.

Right after the invasion and at a time when the Indonesian Army's number of victims kept always increasing, American weapons continued to be supplied⁶. (**Witnessed evidence, reports of NGO's and unclassified national files**).

By allowing the Indonesian regime first to invade and then occupy East Timor in an authoritarian way, the American government, whose Secretary of State was then Henry A. Kissinger, indirectly orchestrated the ensuing genocide that took place under the Indonesian occupation. It is necessary to remember here that Henry A. Kissinger along with President Ford gave their consent to the invasion of East Timor by the Indonesian Army during a meeting held with General Suharto in December 1975, in Jakarta⁷.

⁵ “Ford and Kissinger Gave Green Light to Indonesia's Invasion of East Timor, 1975: New Documents Detail Conversations with Suharto”: www.icaonline.org/kissingerwatch/invasion_of_east_timor.pdf

⁶ “East Timor Revisited: Kissinger, and the Indonesian Invasion, 1975-76”, National Security Archive: <http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB62/>.

⁷ *Ibid.*

By giving such a green light, Henry A. Kissinger did nothing but allowing the occupation of East Timor. It is necessary to keep in mind that, during this meeting in December 1975, General Suharto had a gloomy reputation, that of a dictator who had already assassinated 800,000 political opponents after the coup d'Etat in Indonesia in 1965. Hence the fact that Henry A. Kissinger may not have ignored it. By permitting the Indonesian Army's invasion, he was at the same time organizing the installation of a military regime in East Timor.

Inasmuch as the invasion of East Timor has marked the beginning of an occupation by the Indonesian Army clearly recognized as a genocidal occupation⁸, Henry A. Kissinger has then participated in the commission of this genocide and is, therefore, guilty of the crime of complicity in genocide. In fact, in the title of article III d) of the Convention for the Prevention and Repression of the Crime of Genocide of 1948, the complicity in genocide constitute a punishable act in the sense of the Convention. Having the above mentioned Convention come into force on January 12th 1951; it becomes evident that its provisions were applicable at the time of the facts imputed to Henry A. Kissinger.

Undoubtedly, in spite of the fact that it had signed this convention on December 11th 1948 and that it had at the same time to act in good faith in relation to this signature, the United States did not ratify it until November 25th 1988, but that does not mean that the rules contained in the cited convention were applicable to it. In fact, it has been widely recognized in doctrine appeared after World War II that the prohibition of genocide is an imperative rule of international law (*jus cogens*), that is to say a rule that cannot be repealed. In fact, it is good to remember that even before the adoption of the 1948 Convention, the General Assembly of the United Nations had adopted resolution 96 (I)⁹ by unanimous decision and without debate. Inasmuch as it is widely recognized that the way in which the States vote in the General Assembly is a demonstration of the practice of the States as well as their understanding of the existing law, it seems clear that the *opinio juris* of the States reflects the fact that genocide is a forbidden crime in international law.

In other words, it was necessary to wait for the adoption of a convention to see that genocide is considered a crime, not only because its criminality had already been established by the *opinio juris* of the States, but also and particularly since its prohibition is an imperative rule of international law which nobody can repeal, whatever the circumstances, and since this absolute prohibition had been widely recognized at the time of the facts imputed herein to Henry A. Kissinger¹⁰.

In a practical way, that means that despite the fact that the United States was not a party in the Convention on Genocide at the time of the facts, it was not less committed to respect the prohibition of genocide, since it constitutes a rule of *jus cogens*. Thus, by allowing the invasion of East Timor by the Indonesian Army, Henry A. Kissinger has really permitted the genocidal invasion of that country and has then

⁸ See particularly Antonio Barbedo de Magallanes, *East Timor, Indonesian Occupation and Genocide*, President's Office, Oporto University, 1992.

⁹ General Assembly, Resolution 96 (I), U.N. Doc. A/231, December 11th, 1946.

¹⁰ see Egon Schwelb, 'Some Aspects of International Jus Cogens as Formulated by the International Law Commission, (1967) 61 AJIL 955; Lauri Hannikainen, *Peremptory Norms (Jus Cogens) in International Law – Historical Development, Criteria, Present Status*, Helsinki: Lakimiesliiton Kustannus, Finnish Lawyers' Publishing Company, 1988.

become guilty of complicity in the genocide. Certainly, at first sight this has to do with a rather vague legal element in the sense that the Convention on Genocide of 1948 itself does not define it, but instead, in the light of the decisions of International Criminal Tribunals – whose respective statutes retake the provisions of the Convention on Genocide – it becomes evident that the facts herein imputed to Henry A. Kissinger do correspond to this legal qualification. Thus the Tribunal for Rwanda has expressed itself in the following terms on the *Akayesu* affair:

“(...) the Court considers that, in order for a point of genocide complicity accusation to be accepted, it must first have been established, beyond all reasonable doubt, that a crime of genocide has been effectively committed.”¹¹

Thus, by specifying that the crime of complicity only became evident once the crime of genocide itself had been committed, the Tribunal for Rwanda has hereby established the bases for the definition of the crime of complicity of genocide. In other words, if it is proved that genocide has been perpetrated, those who participated in its commission will be responsible of complicity of genocide by transferring the criminality of the act of genocide itself. Without having the particular intention specific to genocide itself, the moral or intentional element of the complicity supposes the accomplice's awareness, at the moment he acts, of his participation in the commission of the main offence. That is to say, the agent should have acted in full knowledge of the facts, without necessarily wanting the genocide.

Thus:

“In dealing with the crime of genocide, the accomplice's own intention is then either help or assist one or several other people, in full knowledge of facts, to commit a crime of genocide. The Chamber considers that the accomplice in the genocide has not forcefully been himself animated to commit genocide, which requires the specific intention of destroying totally or partially a national, ethnic, racial or religious group as such”.¹²

As far as East Timor is more particularly concerned, there is no doubt about the genocidal policy practiced by Indonesia.

Since then, the people who have participated in this genocide, particularly by supporting the Indonesian regime as Henry A. Kissinger did, become guilty of complicity of genocide. Considering his position as a Secretary of State and the decisions made in order to support actively the illegal delivery of weapons when it was clear that the Indonesian troops were committing genocide, the invasion of East Timor can be considered as an element of complicity of genocide.

3. The facts in relation with Indochina (Laos, Cambodia and Vietnam)

Among the most serious crimes imputed to Henry A. Kissinger are the bombardments of Laos and Cambodia in 1969 that meant the death and massive

¹¹ *Akayesu*, N°. ICTR-96-4-T, Judgment, Chamber I, 2 September 1998, para. 530.

¹² *Ibid.*, para. 540.

displacement of over a million civilians¹³. In both cases, the bombardments were the cause of thousands of dead and injured people and Henry A. Kissinger is also accused of having first participated in their planning and then of having followed their development. The Vietnam case is equally interesting here, in the sense that the United States conducted the Vietnam War and Henry A. Kissinger played an essential role in the expansion, intensification and extension of the war (1969-1975), the most known of his actions being the “Christmas bombardment” (**evidence provided by witnesses, NGO’s reports and unclassified national files**).

a) The violations of the international humanitarian right

The Indochina case, that is to say the actions carried out by the United States in Laos, Cambodia and Vietnam, present a perfect example of violations of the principles of international humanitarian law.

The first principle of international law that has been violated is the principle of distinction defined as:

“the cornerstone upon which the whole humanitarian law rests (...); this principle prohibits all attack against civilians and holds that at all times, the parties in conflict must make the distinction between civilians and combatants, only these latter can be the object of attacks. In dealing with the means of fighting, the same principle forbids the indiscriminate use of weapons”¹⁴.

In fact, according to the First Additional Protocol to the Geneva Conventions, the general rule is that the parties in conflict must at all times make the distinction between the civil population and the fighting forces, as well as between the goods of a civil nature and the military objectives. Hence, at the end of article 48 of the same Protocol, the parties in conflict must carry out their operations exclusively against military objectives.

The international humanitarian law so defines both the goods and people that are protected during armed conflicts, whether national or international. Thus, the attacks against the civil population, as such, are forbidden and article 52-6 of the First Protocol clearly states that retaliation attacks against civilians are forbidden.

Likewise, article 52 forbids the attacks against goods of civil nature. The international humanitarian law forbids indiscriminate attacks, that is to say those attacks that affect indistinctively military as well as civilians or goods of a civil nature. Article 51 of the First protocol defines such attacks with precision and forbids them. Among the listed forbidden attacks are:

- The attacks that are not directed against a specific military objective¹⁵.

¹³ Nicole Barrett, “Holding Individual Leaders Responsible for Violations of Customary International Law: The U.S. Bombardment of Cambodia and Laos”, Columbia Human Rights Law Review 2001, pp. 429ss.

¹⁴ M. Angelo Gnaedinger, General Director of the ICRC, Declaration before the Security Council of the United Nations, New York, December 2002.

¹⁵ Article 51 par. 4-a.

- The bombardment attacks, whatever the methods or means used, which treat a certain number of military objectives as such when they are neatly spaced and differently located in a town, a village or any other zone containing a similar concentration of civilians or goods of a civil nature¹⁶.
- The attacks that are expected to cause incidental damage or loss of human lives among the civilians, injuries, damage to goods of civil nature or a combination of these losses and damages, which will be excessive in relation with the concrete and direct military advantage expected¹⁷.

In the cases that retain our attention, the number of civilians killed or injured because of the bombardments necessarily implies that these attacks were effectively indiscriminate and, consequently, forbidden in the light of international humanitarian law.

Another major principle of international humanitarian law, which derives from the principle of distinction between civilians and combatants, is the principle of proportionality between the attack and the threat, or between the attack and the response or retaliations. So, in the matters herein covered and given the reach of the bombardments, it seems clear enough that the demand of proportionality has not been accomplished. In fact, it must be kept in mind that more bombs fell on Laos alone than on Germany and Japan together during World War II. International humanitarian law is very clear on this matter, since the afore mentioned article 51-5 b) of the First Additional Protocol to the Geneva Conventions expressly forbids those attacks that might cause damage judged “*excessive in relation with the concrete and direct military advance expected*”. In other words, this means that if the principle of proportionality is not respected, the attack will be considered indiscriminate and therefore forbidden. Moreover, we may equally refer to article 57 of the same protocol that, in defining the precautions the parties in a conflict must take in the event of an attack, expressly states that “*military operations should always be conducted safeguarding the integrity of civilians, considered both as a group and as individuals, and the goods of a civil nature*”¹⁸.

Legally, the bombardments over Laos, Cambodia and Vietnam can be easily qualified as indiscriminate attacks, whose extension and damage in terms of human lives are the most overwhelming evidence.

It is, nevertheless, true that the facts herein imputed to Henry A. Kissinger were committed before the adoption of the Additional Protocols to the Geneva Conventions, which date back to 1977. Yet, the study of the provisions related to this matter is not irrelevant, since those provisions are nothing but the offshoot of article 3, common to the Geneva Conventions which, dating back to 1949, may very well be applied to the facts herein considered. It is necessary to underline at this point that the United States had ratified the Geneva Conventions on August 2nd 1955 and so it was bound by those provisions at the time of the facts herein considered. In fact, common article 3 forbids explicitly “*the acts or threats of violence whose main*

¹⁶ Article 51 par. 5-a.

¹⁷ Article 51 par. 5-b.

¹⁸ Article 57 par. 1.

objective is that of spreading terror among the civil population". What do bombardments really do if not spreading terror among the civil population? In fact, the Additional Protocols of 1977 came to reinforce the prohibition of indiscriminate attacks and the need for proportionality, but it is fair enough to say that this prohibition and principle had already been mentioned in the terms of article 3 common to the Geneva Conventions of 1949. Therefore, from a legal point of view, the repeated American bombardments against civil targets, decided upon and orchestrated by Henry A. Kissinger, violated the existing international humanitarian law.

Besides, it is convenient to remember here that, in 1969, the General Assembly of the United Nations had adopted unanimously the Resolution 2444 related to the necessary distinction between combatants and non-combatants and that, in 1970, it had reiterated this demand in a second resolution. Thus, just as we had previously underlined, in spite of the fact that they have no normative value, nor do they have any compulsory force; the General Assembly resolutions are not irrelevant as indicators of the existing perception of the law by the international community of States, especially when adopted unanimously.

In this case, they constitute evidence of the *opinio juris* of the States on the legal matter which is the subject of the resolution. Thus, by having adopted Resolution 2444 unanimously, the international community of the States expressed itself clearly and unequivocally in favor of the respect for the distinction between combatants and non-combatants, and all this before the commission of the facts herein imputed to Henry A. Kissinger.

b) The specific case of Cambodia

The vast majority of the experts in the Cambodian case agree to affirm that there is a link between the devastation suffered by Cambodia – caused by the secret bombardments orchestrated directly by Henry A. Kissinger – and the seizure of political power by the Khmer Rouges.

In fact, the American bombardments really pushed many civilians to join the Khmer Rouges, especially by means of destroying the whole social and economic fabric that had been since then a guarantee of Cambodia's balance. In this sense, the bombardments undeniably served as good propaganda for the Khmer Rouges.

By favoring the expansion of the Khmer Rouges, the illegal bombardments decided upon by Henry A. Kissinger created the historical conditions that made possible for the former to seize power and start their genocidal policy.

B. Incompatibility with the Chart and Code of Ethics of the IOC

The third fundamental principle of the IOC states that:

"The Olympic aim is that of spreading sport everywhere and putting it to the service of man's harmonious development in order to encourage the establishment of a peaceful society, which is able to preserve human dignity. To this purpose, the

Olympic Movement shall develop actions in favor of peace, whether alone or in cooperation with other organizations and within the limits of the means at its disposal”.

The sixth fundamental principle is, in itself, the expression of the high moral standards promoted by the Olympic Movement and its engagement in favor of peace and human dignity:

“The Olympic Movement has the aim of contributing to the building of a peaceful and better world by educating youth by means of the sport practiced without discrimination of any kind and within the Olympic spirit which demands mutual understanding and a spirit of friendship, solidarity and fair play”.

These noble values are retaken in the Code of Ethics of the IOC, which reminds us that:

“The safeguard of the human person’s dignity is a fundamental requirement of the Olympic Movement” (A, ch. 1).

On the other hand, Rule 25 of the Olympic Charter states that sanctions may be pronounced against members of honor of the IOC that, because of their conduct, have repudiated the interests of the IOC (**Rule 25, ch. 2.1.1**).

As indicated at the beginning of this complaint, the title of member of honor of the IOC cannot be conferred to anyone who has repudiated the dignity of the human person. Such a member would be a threat to the interests of the IOC and would disregard the values and principles defended in the Olympic Charter.

It is necessary to indicate that the acts imputed to the member of honor Henry A. Kissinger are eminently contrary to the dignity of the human person and, therefore, disregard the values and principles defended in the Olympic Charter: violation of the principle of non-interference with the internal affairs of another State, complicity in the commission of the international crime of torture and violation of the international humanitarian law.

Henry A. Kissinger’s responsibility for the facts imputed to him rests upon the principle of responsibility of a higher official in the line of authority.

This doctrine, which appeared by the end of World War II, particularly during the Nuremberg and Tokyo processes, is based upon the idea that the higher official in the line of authority who gives an order will be considered legally bound, if he knows and approves of the illegal actions that will forcefully occur and voluntarily participates in this act of negligence. Since then, case law regarding this situation has not experienced any change and the different jurisdictions that have dealt with this matter have not ceased to see it this way and to reiterate the principle of responsibility.

In the case of Henry A. Kissinger, there is no doubt about his hierarchical position: Secretary of State of the United States from 1973 to 1977, always occupying the

position of councilor in the Council for the National Security between 1969 and 1975. He also presided the "Committee of the 40", which monitored the CIA's activities.

In the Chilean case, it is now a historical certainty that both the over-throw of Allende's government and the installation of Pinochet's regime had been orchestrated by the CIA, just like the Plan Condor.

Thus, at the time these facts happened, it was Henry A. Kissinger himself who, by his position of councilor of the National Security Council, overviewed the CIA's guiding committee. So, it was himself personally who ordered the CIA to act and who was directly and personally linked to the origin of the CIA's actions aiming at overthrowing Allende's government, particularly by means of assassinations. Moreover, it is quite unlikely to argue that Henry A. Kissinger, a great strategist and a specialist in international relations, may have ignored that the actions he ordered to be executed were illegal. He must not have ignored that the actions he was ordering the CIA to execute and their consequences were crimes in the sense of international law. From a legal point of view, it is then clear that, at the time of the facts herein considered, Henry A. Kissinger was directly responsible for the CIA's actions. In other words, Henry A. Kissinger has direct responsibility for the criminal actions herein considered, since the CIA orchestrated the coup d'Etat in Chile, specifically General Schneider's assassination, and afterward supported General Pinochet who overthrew the government in place and assassinated Salvador Allende.

Apart from the Chilean case (1969-1973 and the following years) through which the hierarchical commandment chain goes easily up to Henry A. Kissinger, his criminal responsibility according to the doctrine of the higher official's responsibility can also be applied to the other elements being the subject of this complaint. In fact, whether it is the case of East Timor (1975) or that of Indochina (1969-1975), Henry A. Kissinger was still exerting the functions of extremely high importance within the American administration (Secretary of State for the National Security, CIA) and as such he had at his disposal a considerable decisional power. Henry A. Kissinger, in crucial positions, participated in political meetings where the facts imputed to him originated. By way of the decisional power he had, which he exerted illegally on making decisions without any considerations of international law standards, Henry A. Kissinger must necessarily be regarded as responsible of actions and violent acts committed as a result of the orders he gave.

Given the essentially strategic positions he occupied, it becomes evident that Henry A. Kissinger knew, or should have known, that his orders were illegal and that their consequences, being real disasters for the civil population, were not less illegal either.

C. The appropriate sanction

As indicated above, the sanctions taken in relation with the members of honor of the IOC are as follows:

- the blame, pronounced by the Executive Committee,

- the suspension for a definite period of time, pronounced by the Executive Commission,
- the exclusion, stated in rules 20.3.7 and 20.3.8 of the Olympic Chart.

In this case, the facts imputed to Henry A. Kissinger are of the most serious kind: violation of the principle of non-interference in the internal affairs of another State, complicity in the commission of the international crime of torture, complicity of genocide and violation of the international humanitarian law.

Nothing can be more contrary to the human dignity and a graver attempt against the IOC's interests than these acts. Therefore, the only appropriate sanction is the exclusion.

As it was just indicated at the beginning of this complaint, a person cannot be a member of honor of the IOC who has repudiated the values and principles defended in the Olympic Chart, who, by his conduct, becomes an attempt against the interests of the IOC or against the dignity of the human person.

The exclusion is established in rules 20.3.7 and 20.3.8 of the Olympic Chart.

These provisions give competence to the IOC's Session to decide on the exclusion of a member of honor who, by his conduct, would have dishonored the IOC. For this to happen it is necessary to have a two-third majority of the present members of the Session.

Once its research was concluded, TRIAL requests the Commission on Ethics to receive, in its next working session, a petition of exclusion of Henry A. Kissinger from his position as a member of honor.

We, of course, stay at your entire disposition concerning any additional information you might need and remain sincerely yours.

Fernando Ruiz
Member of the Committee

Philip Grant
Chairman