

Foreword

The arrest of General Augusto Pinochet by the London Metropolitan Police on 16 October 1998 was a wake-up call to tyrants everywhere. The two subsequent rulings by the British House of Lords rejecting his claim of immunity forged legal history.

This book traces the Pinochet case from the Spanish criminal proceedings and the general's arrest through his appeals to the British courts to the March 2000 decision by British Home Secretary Jack Straw to release Pinochet on the ground that he was unfit to stand trial.

In assembling these materials, we have combined the publicly-available British judicial decisions with background materials and translations of the Spanish decisions to give the reader an appreciation both of the larger political and factual context as well as the legal arguments advanced by all sides in the case. As the "Pinochet precedent" is picked up and used by other victims, these materials may help litigators structure their own efforts.

Part I begins with commentaries which provide an overview of the case and its place in the development of international criminal law. Sir Nigel Rodley, the United Nations Special Rapporteur on Torture, describes the Pinochet litigation as a "milestone in the evolution of international law." Reed Brody, who directed Human Rights Watch's intervention in the House of Lords, gives a history of the case in England and insights into the intervenors' litigation strategy. Professor Richard Wilson, who assisted the Spanish lawyers in developing the underlying prosecution, describes how the case there took shape and led to Pinochet's arrest. Michael Ratner, who has litigated many of the major civil cases in the United States against international human rights violators, examines the legal reasoning of the Law Lords in their final decision.

The heart of the book, however, is Part II, the documents and materials, organized chronologically. These include a copy of the original one-page handwritten provisional arrest warrant signed by an English stipendiary magistrate at his home, the second provisional warrant, and letters by Pinochet's lawyers objecting to the warrants. The Spanish extradition request (over 50 pages) is excerpted. Five British judicial decisions are presented: the High Court ruling in favor of Pinochet's immunity, the first decision of the House of Lords upholding Spain's appeal against the High Court decision (*Pinochet I*), the lead opinion of the extraordinary decision of the House of Lords to vacate its ruling

on the ground of links between one of the sitting judges and a party to the case (*Pinochet II*), the final and complex ruling of the House of Lords upholding Spain's appeal but limiting the charges on which Pinochet could be extradited (*Pinochet III*) and the decision of the High Court ordering the Home Secretary to release Pinochet's medical records to the states seeking his extradition. We also present extracts from the legal submissions of the parties to the House of Lords in *Pinochet I*, as well as excerpts of the oral presentations in *Pinochet III* (there having been no transcript of the proceedings in *Pinochet I*). The two decisions of Spain's *Audiencia Nacional* upholding the criminal proceedings against General Pinochet have been translated and presented in English for the first time.

In excerpting the submissions of the parties, we have focused on the contentions relating to international law, which are of more general and transcendent interest, and have omitted lengthy discussions of British statutory interpretation and factual questions such as when Pinochet became head of state. Similarly, the excerpts of the oral presentations are intended to give only a glimpse into the contentions of the parties on the issue of immunity. Documents of historical interest produced for the House of Lords include a letter from the U.K. Foreign and Commonwealth Office on the question of the recognition of Augusto Pinochet as head of state and a statement by a former Chilean Ambassador explaining Pinochet's legal situation in Chile.

Part II also includes the two quasi-judicial decisions by the British Home Secretary to authorize the extradition proceedings following *Pinochet I* and *Pinochet III* as well as Human Rights Watch's representations to the Home Secretary. It also contains the decision of Stipendiary Magistrate Ronald Bartle committing General Pinochet to await the final decision of the Secretary of State. Finally, we include documents relating to Home Secretary Jack Straw's decision to release General Pinochet on health grounds: the letters between the Home Secretary and Pinochet's lawyers establishing the ground rules for the medical examinations, the Secretary's statement that he was "minded to" release Pinochet, Judge Garzón's reply to Straw, the decision of the High Court ordering the release of Pinochet's medical records, the leaked records themselves, the comments of Spain's doctors on the records, and Straw's final announcement of Pinochet's release.

Part III provides excerpts of the key statutes and treaties referred to throughout the book and a chronology of events in Chile and in the legal proceedings in Spain and the United Kingdom.

Participating in this historic litigation was a privilege. The quality of the advocacy made it more so. Clive Nicholls and Clare Montgomery for Pinochet, Alun Jones and Christopher Greenwood for the Crown Prosecution Service representing the Spanish authorities, *amicus* David Lloyd-Jones, Ian Brownlie and the late Peter Duffy for Amnesty International, and Lawrence Collins for the Republic of Chile presented their Lordships with sterling performances.

The proceedings in England, of course, were just an aspect of the prosecution in Spain against General Pinochet and the other leaders of the military juntas in

Chile and Argentina. That case is the result of many years work by Chilean and Argentine human rights monitors as well as Spanish lawyers and judges. The fact that this case could be sustained, 25 years after the horrible events to which it relates, is a tribute to the activists and families who kept the historical memory alive. People like Sola Sierra, president of the Chilean Association of Relatives of the Detained-Disappeared who lent her presence to the proceedings in the House of Lords and who died shortly after the Lords' final decision. After the Lords' historic first decision, she said, "It's a triumph for the disappeared. When they announced the verdict, all I could see were the faces of the disappeared. It was amazing, people were talking all around me, and all I could see were those faces."

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Two of the Spanish documents, as well as useful information for the chronology were taken from the *Derechos* home page <<http://www.derechos.org/nizkor/chile/juicio/>> which has maintained a file of the legal steps in the Spanish case.

Finally, this book is dedicated to General Pinochet's victims. It is a disappointment to them that Pinochet will not face trial in Spain. The fact, however, that he was arrested, that four states sought his extradition, that the House of Lords twice rejected his claim of immunity, that his crimes were spelled out before the extradition magistrate, and that he returns to a Chile where his impunity is in question and his stature is substantially diminished already represents a measure of justice for them.

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