

Pinochet's counsel argues that British law would protect Hitler

Appeal to House of Lords concludes

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After six days, the appeal to the House of Lords against the High Court ruling upholding former Chilean dictator General Augusto Pinochet's claim to "sovereign immunity" closed yesterday. Prosecutors argued that his crimes against humanity "unequivocally" violated international law. This took precedence over Britain's 1978 State Immunity Act. The Law Lords did not indicate when a ruling could be expected.

During the appeal, lawyers acting for Pinochet advanced a series of extraordinary arguments. The State Immunity Act has its origins in feudal law, when the monarch was the personal embodiment of state power. It decrees that a head of state is not subject to civil or criminal process and cannot be sued or prosecuted for criminal acts committed while "acting in his public capacity."

Drawing attention to the scale of the crimes for which Pinochet faces prosecution, Lord Slynn, chief of the panel of five Law Lords hearing the appeal, asked whether torture was such a "public act". Pinochet's lawyer, Clive Nicholls QC, replied in the affirmative, if the torture was carried out "in the name of the government."

At one point the Law Lords asked whether the Holocaust was an official act for which Adolf Hitler could have claimed immunity. Nicholls said yes, "Hitler would have been protected" under British law.

He then played what Pinochet believes is his trump card, warning of the consequences his prosecution could have for other heads of state. "There is no distinction to be made between the state, the sovereign or the current head of state.... If he was, as head of state, in fear of future reprisals should he go abroad, he

would be hindered in the proper exercise of his sovereign authority," Nicholls argued.

If this principle of immunity were discarded, former American President Ronald Reagan could be arrested abroad for his administration's support for the Contra rebels in Nicaragua. Former British Prime Minister Margaret Thatcher would have been prevented from properly leading Britain during the Falklands war because of the prospect of extradition to Argentina, and "so would any other head of state," Nicholls went on. If South Africa's last president under apartheid, F.W. de Klerk, came to Britain and was arrested "because of some misguided warrant," this would be "horrific," said Nicholls.

Clare Montgomery QC expanded on this political aspect of Pinochet's defence. Pinochet's argument for immunity was strengthened, she said, by Britain's co-operation with his government after the 1973 military coup. The British government had not only dealt with Pinochet's regime but had in effect endorsed the restoration of civilian rule in 1990, including provisions for an amnesty for Pinochet.

After making a general claim regarding Pinochet's innocence, Montgomery specifically argued against his having committed "crimes against humanity". Firstly, because such crimes only occurred in times of war and secondly, because the alleged murders in Chile were said to be politically, and not racially, motivated. She also argued that Pinochet had not been charged with any crime that could be prosecuted under international law. He could not be tried for torture here, as Britain had only adopted the United Nations Convention on Torture in 1988. This date was after all but one of the acts of torture of which Pinochet is accused had

occurred—the electrocution of a teenage girl in 1989. Any prosecution of Pinochet would be “a breach of international law and could permit a suit by Chile.”

The issues raised by Pinochet’s defence counsel are ones the British government and its counterparts internationally had fondly hoped would never be subject to such a public examination. What do they amount to?

* The assertion that governments of any description, and by definition those who head them, can commit crimes of terrible magnitude, against their own citizens and those of other countries, without fear of reprisal.

* If this principle is denied, the leaders of the imperialist powers might themselves have to account for their crimes.

* There is a long record of British support for Pinochet’s regime, which will inevitable feature in any prosecution.

* Mass murder conducted for political reasons rather than for racial motives is not genocide.

Pinochet’s arrest has proved to be a major political embarrassment for the Blair government. Even if the Law Lords agree to him being granted immunity, this will provide no respite. An appeal by relatives of his regime’s victims to Home Secretary Jack Straw would inevitably follow. This would make Straw directly responsible for Pinochet’s fate.

On Wednesday, the Home Office received the formal request for Pinochet’s extradition from the Spanish Government, while a letter was delivered to Blair by Sola Sierra Henriquez, president of the Association of the Families of the Arrested & Disappeared in Chile, calling on him to support their fight for justice. Lawyers for victims of the Pinochet regime are also threatening to seek a judicial review of the conduct of the attorney general, John Morris, if he refuses them leave to bring a private prosecution against Pinochet.



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