As right wing steps up their defence

Retreat by prosecution in Pinochet extradition case

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The Chilean military dictatorship of General Augusto Pinochet was responsible for torturing its opponents with flamethrowers, crushing their bones and using dogs to rape women, lawyers acting on behalf of the Spanish government told the Law Lords on Monday.

Alun Jones, lawyer for the Crown Prosecution Service representing Spain's extradition warrant against Pinochet, was the first to appear at the hearing that is expected to last one week. "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such offences can the provisions of international law be enforced," Jones said. The Spanish government's position was straightforward: "Torture is not part of the function of a head of state". Spain's proceedings were motivated by the fact that more than 50 Spaniards were the victims of torture, disappearance and murder during Pinochet's regime. Chilean security forces attempted to murder people in several foreign countries, he went on.

Jones listed "the most hideous imaginable methods" that had been utilised by the junta against its opponents. These included rape and sodomy, with family members forced to watch or take part. Victims were often beaten to the point of death and then revived by hooded doctors, for further torture. The chief torturer reported directly to Pinochet, Jones charged.

In a significant shift, however, Jones went on to argue that Pinochet could not claim immunity for these crimes because he ordered some before he became head of state. Whatever the intention, this argument concedes ground to the argument of Pinochet's lawyers that he enjoyed sovereign immunity as a head of state regarding his subsequent actions.

The first Law Lords hearing last year ruled that, as a former head of state, Pinochet was immune from prosecution for torture and kidnapping, and admitted that British law would have allowed Hitler to go free. This ruling was only narrowly overturned on appeal by a 3-2 verdict, which found that Pinochet had only partial immunity from prosecution. This subsequent ruling was also set aside after allegations of possible bias against Lord Hoffmann, one of the presiding judges, for his links with the human rights organisation Amnesty International.

In the original hearings, Jones had argued that no head of state involved in torture, kidnapping and murder could claim immunity from prosecution as these were crimes against humanity. This time the legal defence concentrated on Pinochet's exact constitutional status in September 1973.

Head of the military junta and head of state were not synonymous, Jones argued. "The immunity only arises from the moment he became head of state." Many of the tortures and murders were carried out in the time between the coup in September 1973, when Pinochet became head of the military junta, and December 1974, when he made himself President of the Republic. Jones argued that the Chilean government's written submission to the court effectively admitted that Pinochet did not formally become head of state until nine months after the coup and that "they were only asserting immunity in respect of acts taken as head of state".

Pinochet and his conspirators had agreed prior to their coup against President Salvador Allende in September 1973 that they would eliminate their opponents once they were in power, Jones continued. They had identified football stadiums, ships and other facilities as places where their victims could be held once the coup was carried through. In the months before, Pinochet had ordered the torture of 70 Chilean naval officers sympathetic to Allende's reformist government. When the coup was mounted on September 11, more than 20 people were seized, tortured and most likely killed before Pinochet was declared head of the new junta after night fell. "Immunity applies from the moment of the taking up of his post. He is not immune from acts before," concluded Jones.

In response, Clive Nicholls QC, representing the general, argued that Pinochet had been accepted as head of state by

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the British government. The Chilean ambassador had presented his credentials, signed by the former dictator, to the Court of St. James in October 1973, and the Queen had accepted them, he said.

This has still proved embarrassing for the government. Lord Browne-Wilkinson, chairman of the new panel of seven law lords, criticised Foreign Secretary Robin Cook after he heard that the Foreign Office had so far declined to help with the precise date that Britain had recognised the military dictatorship. Browne-Wilkinson said that he was "astonished" that the Foreign Office had not made matters clear upon request.

In general, however, Jones's argument for Pinochet's personal liability, as opposed to actions taken while head of state, and other points he made met with a frosty reception from the seven Law Lords. They said they were "baffled" by some of the legal arguments being advanced. Browne-Wilkinson warned Jones that the panel was not concerned with policy matters and that he was sustaining "heavy gunfire" and should "regroup" before continuing. When Jones opposed Baroness Thatcher's argument that General Pinochet should be allowed to return home because he helped save British lives in the Falklands/Malvinas war, Brown-Wilkinson warned him to "try to keep this stuff out".

Immediately prior to the trial, further evidence of high-level government attempts to protect Pinochet was revealed. Aides of the general said that the Foreign Office had plotted with the former dictator to ensure his escape from Britain prior to his arrest in October. Brigadier Oskar Izurrieta, military attaché at the Chilean embassy in London, said he was warned by his Madrid counterpart on October 14 that arrest was likely. Having undergone back surgery five days previously in a London clinic, doctors warned that the general would not be able to travel for a further five days. The next day Madrid told Izurrieta that Pinochet's arrest was imminent. The Foreign Office stepped in to help, putting him in touch with the office of Sir Colin Marshall, head of British Airways, and tickets for the general and his wife were organised for the following Tuesday.

Accusing Britain of "an extraordinary ... betrayal", Izurrieta revealed that the Chilean ambassador, Mario Artaza, had been assured by the Foreign Office on Friday, October 16 that nothing would happen to the general before his flight. But 12 hours later Pinochet was arrested in his hospital room. The former Conservative party chancellor Lord Lamont also accused the Blair government of "treachery" for allowing Pinochet to be arrested.

Also at the weekend Amnesty International pointed out that whilst Lord Hoffmann's links with the organisation had been used to overturn the previous ruling against Pinochet, the general's defence had not queried Lord Bingham's support for the human rights organisation. Bingham had ruled in Pinochet's favour in the High Court. The Lord Chancellor, Lord Irvine, was another Amnesty supporter and had known of Hoffmann's connection, the group raised. Given that Hoffmann's connections were known to his fellow judges, why had he been selected to participate in the Pinochet appeal, they asked. Though this avenue was not explored by Amnesty International, Lord Irvine is Prime Minister Blair's mentor, Blair having taken his articles as a barrister under Irvine. Under these circumstances a legitimate question is raised as to whether Hoffmann's failure to declare his affiliations can simply be attributed to a personal error of judgement.

What is incontrovertible is that substantial sections of the British establishment are open defenders of Pinochet. The general's most vociferous supporters have stepped up their public campaign to ensure his freedom. Pinochet was sympathetically photographed and interviewed by two leading British newspapers at the weekend, as part of a publicity drive to portray the general in a more favourable light. He told the newspapers that he was "answerable to only two people--God and the Chileans", and that he was ready to die in Britain, as a "sacrifice for the Fatherland".

On Tuesday, the office of former Tory prime minister, Baroness Margaret Thatcher, released the pamphlet *The Real General Pinochet*, which is to be sent to 5,000 "opinion formers". It is written by Robin Harris, Thatcher's assistant, and financed by, among others, Taki Theodoracopulos, the gossip columnist; Patti Palmer-Tomkinson, a close friend of the Prince of Wales; and Robin Birley, stepson of the late Sir James Goldsmith, leader of the now defunct anti-European Referendum Party. The pamphlet's author describes Pinochet as a "political prisoner" who has been "kidnapped", and says that his coup saved thousands of lives by averting a long and bloody civil war.

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