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One Country, Two Systems: The Inherent Conflict Between China's Communist Politics and Capitalist Securities Market

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ALUMNI RESEARCH GUIDES

THE CASE OF GENERAL AUGUSTO PINOCHET: A LEGAL RESEARCH GUIDE

*Kathleen M. Johnson**

I. INTRODUCTION

General Augusto Pinochet, dictator of Chile from 1973 to 1987, has repeatedly been accused of having committed innumerable atrocities against his political opponents during his time in office, both within Chile and abroad. As information about the internal workings of his police state was uncovered, certain key players in the international legal community paid close attention. When Pinochet was physically present in a country with which Spain had a formal extradition treaty, a Spanish magistrate sought his extradition to face charges in a Spanish court for the crimes he committed while in office. This Pathfinder provides a research framework for students, scholars and professors of law who are interested in the Pinochet case. This Pathfinder focuses on sources written in the English language.

Part II of this Pathfinder discusses the historical and procedural background of the Pinochet case. Part III identifies the key sources available to someone researching the Pinochet legal proceedings. Part IV describes useful finding tools.

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II. THE PINOCHET CASE

A. *Historical Background*

In September 1973, General Augusto Pinochet successfully led the Chilean military in a violent coup d'état of a democratically elected government.¹ He swiftly introduced the hallmarks of a police state to eliminate his political opposition. Most notably, he authorized the imprisonment, torture and execution of a large group of loosely defined "subversives."²

Pinochet brutally repressed thousands of left-wing sympathizers. His victims included citizens of Chile, Spain and the United Kingdom.³ Pinochet then exported his terrorism across international borders through Operation Condor, "a plan of mutual cooperation among intelligence agencies of different South American countries."⁴ In 1987, Pinochet agreed to relinquish his position as head of state so long as he was able to remain head of the armed forces until 1998, at which time he was made a senator for life.⁵

B. *Procedural Background*

In 1996, a team of Spanish lawyers and magistrates, known as the Progressive Association of Prosecutors ("Association"), launched efforts to hold accountable the Argentinean and Chilean military officers who were responsible for numerous deaths and disappearances in the 1970's.⁶ Discovering that Pinochet

1. See Amnesty International USA, *The Case of General Pinochet*, at http://www.amnestyusa.org/countries/chile/pinochet_case.html (last visited Mar. 20, 2002).

2. See MARGARITA LACABE, DERECHOS HUMAN RIGHTS, THE CRIMINAL PROCEDURES AGAINST CHILEAN AND ARGENTINEAN REPRESSORS IN SPAIN: A SHORT SUMMARY, at <http://www.derechos.net/marga/papers/spain.html> (last visited Mar. 20, 2002) [hereinafter DHR REPORT].

3. See Michael Byers, *The Law and Politics of the Pinochet Case*, 10 DUKE J. COMP. & INT'L L. 415, 417 (2000).

4. See DHR REPORT, *supra* note 2; Scott Armstrong & Saul Landau, *Pinochet: Is a Terrorist Hiding in Chile's Senate?*, at <http://www.derechos.org/nizkor/chile/doc/armstrong.html> (last visited Mar. 20, 2002).

5. See DHR REPORT, *supra* note 2; Armstrong & Landau, *supra* note 4.

6. See Mark Lakota, *The Truth About Pinochet: Chile's Legacy of Torture, Murder, International Terrorism and "the Disappeared,"* at <http://www.lakota.clara.net> (last visited Mar. 20, 2002).

was in London for medical reasons, the Association appealed to the British government to apprehend Pinochet for extradition. They invoked the European Convention on the Suppression of Terrorism,⁷ a mutually binding treaty obliging signatories to detain suspected international terrorists.

Pinochet was arrested in London on October 16, 1998.⁸ The arrest, however, was quickly ruled unlawful by the British Divisional Court on the grounds that, as a former head of state, Pinochet was immune from such prosecution in British courts.⁹ Despite this initial victory for Pinochet, the House of Lords ruled in later proceedings that Pinochet did not have immunity from prosecution.¹⁰ In October 1999, the Magistrates' Court ruled that Pinochet could be extradited to Spain to face charges.¹¹

Pinochet then underwent a series of medical evaluations to determine whether he was mentally capable of standing trial. The medical reports concluded that he was not fit to face the charges against him.¹² British Home Secretary Jack Straw endorsed the reports, and received backing from the High Court when his decision was challenged.¹³ Pinochet left Britain on March 2, 2000, aboard a Chilean Air Force aircraft.¹⁴

Pinochet did not escape all charges against him; many plaintiffs lodged lawsuits against him in Chile, accusing him of torture and murder during his time in office.¹⁵ After being placed

7. European Convention on the Suppression of Terrorism, Jan. 27, 1977, Europ. T.S. No. 90 [hereinafter Convention on Terrorism].

8. See DHR REPORT, *supra* note 2.

9. See *Regina v. Bartle & Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet*, 37 I.L.M. 1302 (1998), available at <http://www.derechos.net/doc/hl.html> (last visited Mar. 20, 2002).

10. See *Regina v. Bartle & Commissioner of Police for the Metropolis and Others, Ex Parte Pinochet Ugarte* (Amnesty International et al. intervening) (No. 3), 2 All E.R. 97 (H.L. 1999).

11. See *The Kingdom of Spain v. Augusto Pinochet Ugarte* (Magistrates' Court 1999), available at <http://www.open.gov.uk/lcd/magist/pinochet.htm> (last visited Mar. 20, 2002).

12. See Transnational Institute, *Operation Exit: The Political Decision, Full Text of Jack Straw's Decision* (Mar. 2, 2000), at <http://www.tni.org/pinochet/docs/straw3.htm>.

13. See *id.*

14. See Transnational Institute, *Pinochet Case Timeline*, at <http://www.tni.org/pinochet/docs/timeline.htm> (last visited Mar. 20, 2002).

15. See *id.*

under house arrest in January 2001, however, the Santiago Appeals Court reduced many of the charges. In July 2001, that same court decided to suspend the legal proceedings against Pinochet until further notice.

III. PINOCHET LEGAL RESOURCES

A. *Pinochet for Beginners*

For researchers not well-versed in Chilean political history, Pinochet's dictatorship, or the legal proceedings accusing the former dictator of crimes against humanity, visiting the following website is a necessary first step: <http://www.telegraph.co.uk>. Sponsored by *Electronic Telegraph*, a U.K. news channel, this site provides a thorough history of Chilean politics, and guides one through the key events leading up to Pinochet's 1998 arrest in London. It also offers a complete recapitulation of the legal proceedings since 1998, and is integral to an understanding of the Pinochet case. Prior to viewing most materials at this site, a researcher must complete a brief registration form.

B. *Print Resources*

1. International Treaties

To understand the international legal principles underlying the Pinochet case, one should review the relevant international treaties. The European Convention on the Suppression of Terrorism, to which both Spain and the U.K. are signatories, arguably provides the justification under international law for the actions taken by both countries.¹⁶ The 1957 European Convention on Extradition served as the basis for Spain's extradition request.¹⁷ Both are available in *International Legal Materials*, a bi-monthly publication compiling key international documents, as well as the *European Treaty Series*. These Conventions are also accessible through the fee-based United Nations Treaty Collection, <http://untreaty.un.org>.

16. See Convention on Terrorism, *supra* note 7.

17. See European Convention on Extradition, Dec. 13, 1957, Europ. T.S. No. 24.

2. Court Documents

While the Pinochet case directly involved Spain, Chile and the U.K., the key court decisions are those issued by the Chilean and British benches. Spain merely issued a request for extradition, while the U.K. courts exclusively dealt with the actual legal proceedings surrounding the request for extradition. Chilean prosecutors did not initiate proceedings against the former dictator until his return in March 2000, but were entertaining over one hundred criminal complaints against him by May 2000.

A highly authoritative court reporter for the British House of Lords is *Law Reports*, available in print at locations such as Brooklyn Law School Library and the New York University School of Law Library. All House of Lords decisions since November 1996 are conveniently available on the Internet at <http://www.parliament.thestationeryoffice.co.uk/pa/ld199697/ldjudgmt/ldjudgmt.htm>. Some key Pinochet proceedings took place in the lower courts, namely the Magistrates' Court and the Divisional Court. The texts of those decisions are also available online, on the Equipo Nizkor website discussed below. Regarding Chile, *Revista de Derecho de Jurisprudencia y Gaceta de los Tribunales* is available in print at Yale Law School Lillian Goldman Library.

3. Books

The Pinochet case is still rather recent. A researcher can review the works below and can use the finding tools described in Part IV of this guide to locate supplemental sources. *The Pinochet Case: A Legal and Constitutional Analysis*,¹⁸ is a compilation of writings by numerous authors edited by Diane Woodhouse and is available at the Brooklyn Law School Library. It is particularly helpful because it is one of the most up-to-date sources as of the publication of this guide. It provides not only a detailed calendar of events leading up to Pinochet's arrest, but also an in-depth analysis of the most important international legal issues, such as sovereign immunity and universal jurisdiction.

18. THE PINOCHET CASE: A LEGAL AND CONSTITUTIONAL ANALYSIS (Diana Woodhouse ed., 2000).

When Tyrants Tremble: The Pinochet Case,¹⁹ is written by Sebastian Brett and published by Human Rights Watch. This book provides helpful information and critical perspectives on the Pinochet case. Brett details the Chilean political history leading up to Pinochet's dictatorship, follows Pinochet through his fourteen years in office, and explains the implications of Spain's accusations. He then discusses the actual legal arguments entertained by the House of Lords in the proceedings. Finally, Brett concludes by addressing reactions in both Chile and the United States. Both the Arthur W. Diamond Law Library at Columbia Law School and the Fordham University Law Library own this title.

Another valuable work is *United Kingdom: The Pinochet Case: Universal Jurisdiction and the Absence of Immunity for Crimes Against Humanity*,²⁰ published by Amnesty International. This title is highly technical in its legal discussion of Pinochet's dictatorship and thoroughly examines the Chilean constitution, relevant Chilean laws and the role of the Chilean military courts. It provides an exhaustive analysis of the applicable international legal principles, citing provisions of the key treaties along the way. It even offers a comprehensive history of the international jurisdictional principles at play. Explicitly limiting itself to only three of the topics argued in the Pinochet proceedings, this book is an essential resource for all researchers of this subject and is available at the St. John's University School of Law Library.

4. Periodicals

With minimal effort, any researcher may locate numerous helpful legal periodical articles discussing the Pinochet case. One thorough discussion appears in *The Law and Politics of the Pinochet Case*,²¹ written by Michael Byers and published by the *Duke Journal of Comparative and International Law*. This piece is particularly helpful for researchers looking for a de-

19. SEBASTIAN BRETT, *WHEN TYRANTS TREMBLE: THE PINOCHET CASE* (1999).

20. AMNESTY INT'L, *UNITED KINGDOM: THE PINOCHET CASE: UNIVERSAL JURISDICTION AND THE ABSENCE OF IMMUNITY FOR CRIMES AGAINST HUMANITY* (1999).

21. Byers, *supra* note 3.

tailed discussion of the actual proceedings. Byers personalizes the key players by recounting the court room antics of the barristers and the judges.

For a slightly different angle on the Pinochet case, one will certainly want to read *Reflections on Pinochet*,²² written by Clive Nicholls, leading counsel for Pinochet in the British courts. He comprehensively explains why Pinochet was not able to be tried in the U.K. for the crimes Spain alleged against him. He also asserts that, had a suitable international criminal court existed at the time of the Pinochet proceedings, Pinochet would have stood trial and been held accountable for his actions as dictator. Nicholls' article was published by the *Virginia Journal of International Law*, and is available at most law school libraries.

Jurisdiction in the Pinochet Case: The View From Spain,²³ by Leslie Turano Taylor, provides an interesting and unique comparison of the Spanish Criminal Court's approach to the same issues that were before the House of Lords, namely terrorism, torture and jurisdiction. Taylor's article was published by *European Public Law*, which may be found in both Fordham University's and New York University's libraries.²⁴

C. Internet Resources

The Internet provides an abundance of information on the Pinochet case and, due to the very nature of this tool, is more up-to-date than either the books or periodicals described previously.

Equipo Nizkor, a Spanish organization specializing in the promotion and awareness of human rights, sponsors an extremely useful website for purposes of Pinochet research. Located at <http://www.derechos.org>, this site is devoted to the human rights issues that underlie the Pinochet trial, particularly terrorism and persecution. Clicking on "Site Map" on the main page of the website leads one to a list of topics organized

22. Clive Nicholls, *Reflections on Pinochet*, 41 VA. J. INT'L L. 140 (2000).

23. Leslie Turano Taylor, *Jurisdiction in the Pinochet Case*, 6 EUR. PUB. L. 613 (2000).

24. *Id.* Another equally informative article is Andrea Bianchi, *Immunity Versus Human Rights: The Pinochet Case*, 10 EUR. J. INT'L L. 237 (1999), available at Fordham University's and New York University's libraries.

by category. The first category, "Human Rights Issues," offers a hyperlink to information on Pinochet. By clicking on this link, a researcher will have immediate access to articles and publications on the Pinochet trial, as well as links to the actual British House of Lords documents. This website furnishes information in both English and Spanish. It also equips the researcher with links to rather obscure information, such as links to declassified U.S. government documents relating to the Chilean coup d'état in the 1970's.

Another useful website is sponsored by Human Rights Watch, an organization with goals similar to that of Equipo Nizkor. Located at <http://www.hrw.org>, this website supplies the researcher with access to key articles on the Pinochet case. While it does not offer hyperlinks to the underlying British court decisions or international treaties, it does furnish the researcher with critical commentary on the Pinochet proceedings and will prove indispensable to those interested in learning more about Pinochet. One should go to the main webpage at the above address and click on "Campaigns." Clicking on "Americas" and again on "More News Releases" will lead a researcher to a link entitled "The Pinochet Decision," which contains the available Pinochet information on this site.

Amnesty International also provides a useful website, located at <http://www.amnesty.org>. By clicking on the "Search" option, and typing "Pinochet" into the query box, one will encounter a lengthy list of relevant articles published by this organization.

IV. DATABASES AND FINDING TOOLS

A. *Library of Congress*

The most appropriate Library of Congress subject heading to use for research purposes is "Pinochet Ugarte, Augusto." There are, however, several other subject terms that will prove useful to researchers looking for more obscure sources on this topic. "Criminal jurisdiction: Great Britain," "Extradition: Great Britain" and "Crimes against humanity: Chile" will all yield informative resources.

B. *Reynolds and Flores*

Thomas Reynolds and Arturo Flores, from the University of California, Berkeley, maintain a fee-based website that has proven to be an indispensable tool when conducting foreign legal research. Their online *Foreign Law Guide* provides extensive overviews of legal systems around the world.²⁵ Not only do they discuss the political histories of over 150 jurisdictions, but they also identify the official legal resources of each. For example, by clicking on "Chile" in the country menu on the left of the opening screen, one will encounter a brief but detailed summary of Chilean political history; one will also find the names of key court reports, as well as the names of major codifications. Reynolds and Flores will also direct the researcher to other helpful Internet sources.

C. *Globalcourts Website*

Through *Globalcourts.com*, Chief Judge Stein Schjølberg of Norway provides a useful and free Internet service for anyone researching court decisions of foreign jurisdictions. Located at <http://www.globalcourts.com/decisions.htm>, this site provides access to supreme court decisions from around the world. In most cases, the links will take a researcher directly to the official court website for a given jurisdiction.

D. *First Search/World Cat*

First Search, a fee-based database available at Brooklyn Law School Library, offers access to the *World Cat* online union catalog. A search on *World Cat* will provide a researcher with bibliographic information about books on a given topic and will direct the researcher to the libraries that carry those titles. By conducting an advanced search in *World Cat*, and limiting the search to titles that contain "Pinochet" and titles that are in the English language, the researcher will retrieve bibliographic information for ninety-six sources, as well as the location of each source. If one does not limit by language, a *World Cat* search by subject "Pinochet Ugarte, Augusto" produces 220 re-

25. Brooklyn Law School Library has access through the use of a password obtainable at <http://brkl.brooklaw.edu> > "Online Subscription" > "Reynolds & Flores."

cords. *World Cat* permits the researcher to view bibliographic records for the most recently published works first in the results list.

E. Index Master

Index Master searches indexes and tables of contents to over 8,000 legal treatises. This finding tool is available at Brooklyn Law School Library. Recommended search terms are: "Pinochet," "extradition" and "sovereign immunity." Focus on recently published works.

F. Index to Foreign Legal Periodicals

The *Index to Foreign Legal Periodicals* provides citations to many international and comparative law periodical articles and is the "secret weapon" for foreign legal research. By looking in the subject index under the term "extradition," one will encounter a list of countries and the bibliographic information for relevant articles. In a recent issue, under the heading for Spain, the author found a reference to an article published by *Human Rights Quarterly*, *Prosecuting Pinochet: International Crimes in Spanish Domestic Law*.²⁶ Oddly enough, many of the other databases and finding tools will not direct the Pinochet researcher to this interesting article, which is why this index is so important.

G. Westlaw

Westlaw, a fee-based database located at <http://westlaw.com>, also proves extremely valuable to anyone researching this topic. *Westlaw* offers the *Legal Journals Index* ("LJI"), a database that indexes articles from legal journals published in the U.K. and Europe, covering over 430 English language journals since 1986. Many searches will provide only abstracts of full-length articles; however, this system allows a researcher to quickly identify the most useful articles and then focus on locating the journals that published them. Entering the LJI database and searching for "Pinochet" in the title and index fields retrieves a manageable thirty-nine abstracts. By conducting

26. R.J. Wilson, *Prosecuting Pinochet, International Crimes in Spanish Domestic Law*, 21 HUM. RTS. Q. 927 (1999).

the same search in another database, *Journals and Law Reviews Combined* ("JLR"), a researcher will obtain full-text articles available through *Westlaw*, some of which are described above. JLR's coverage is not limited to European legal journals.

H. Public International Law: A Current Bibliography of Books and Articles

The online version of *Public International Law: A Current Bibliography of Books and Articles*, located at <http://www.virtual-institute.de/en/hp/e-pil.cfm> and sponsored by the Max-Planck Institute, is a valuable tool for locating books and articles. By clicking on "Online Documentation of Articles" on the opening page of the website, one will see a subject classification list. To identify a specific subject, a researcher can use the "find on this page" feature of one's web browser. The classification most appropriate for purposes of Pinochet research is "VR 18.5 - Extradition." After clicking on the "Extradition" hyperlink, one can peruse the bibliographic contents of over 100 titles. As of the publication of this guide, there were six titles devoted solely to the Pinochet case. There are semiannual updates to this bibliography.

V. CONCLUSION

This Pathfinder is intended to help both seasoned and beginner international researchers locate material on the Pinochet case. While the court decisions were handed down only a few years ago, they have already sparked an abundance of legal discourse on extradition and sovereign immunity. The sources in Part III detail the current situation, while the databases and finding tools in Part IV will help the Pinochet researcher locate future articles and books.

