

**INDICTMENT 19/1997
SEPARATE PROCEEDINGS**

TO THE CENTRAL INVESTIGATIVE COURT No. 5

JUAN MIGUEL SANCHEZ MASA, Solicitor of the Courts acting for the Presidente Allende Foundation, proponent of the popular action, and for Josefina Llidó Mengual, María Alsina Bustos, Laura González-Vera, Asociación de Familiares de Detenidos Desaparecidos de Chile (Association of Relatives of Missing Detainees in Chile), Agrupación de Ejecutados Políticos (Association of Victims of Political Executions) and other parties bringing the private action as set out in Indictment 19/1997, separate proceedings no. 3, arising from Indictment 1/1998 at Central Investigative Court No. 6, hereby appears before the Court and pursuant to applicable law states as follows:

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I.- Accompanying documentary evidence

I.- Whereas in relation to the facts described in our submissions of 19th July 2004, the following documentary evidence is attached hereto:

Doc. No.

1. As an antecedent of the **use of Riggs Bank in the alleged terrorist activities of DINA**, under the direct command of the accused August Pinochet, attached is a copy of the wire that the US embassy in Chile sent to the US Secretary of State, dated **October 1979**, which in its **point 7** (pp. 3-4) refers to "mysterious deposits and withdrawal of 25 thousand dollars late last year" in Manuel Contreras's account in Riggs Bank"¹:

"wireservice items appearing October 11 include a brief resume of a 'Washington Post' story on Manuel Contreras' Riggs Bank account, with its mysterious deposits and withdrawal of 25 thousand dollars late last year. 'Mercurio', the only paper to carry the story, buried it under subhead 'Letelier case' in its daily roundup of 'Chile abroad' items. This contrasted to the prominent treatment accorded by the press - 'Mercurio' in particular - to an Editorial published in Buenos Aires' 'Prensa' which supports the GOC position that the USG has no right to take reprisals against the GOC. The sense of the House resolution introduced by Reps. Harkin, Miller and Moffet received moderate play".²

2. Regarding the public knowledge of the relationship between the terrorist offences investigated in this case and Riggs National Bank, attached as doc. no. 2 is an **open letter dated 18th July 1979, signed by Michael Moffit**, husband of Mrs Ron Moffitt (killed together with Orlando Letelier in Washington DC on 21st September 1976) calling for a campaign to have the accounts in the bank closed in protest at loans granted to the Government of Chile which "in effect subsidize their policies of state terrorism."³
3. **Timeline of the accused Augusto Pinochet's concealment of assets** in relation to the extradition proceedings pursued in this case as from 16th October 1998, published in the US Senate Report of 15th July 2004.

Doc. No.

4. **Documentation relating to Ashburton Company Limited**, a notional company set up by A. Pinochet in the Bahamas with the assistance of Riggs Bank, consisting of:

- Certificate of foreign status in the US, numbered at the foot of the page as RNB 030077, dated **13th May 1996**, of **Ashburton Company Limited**,

¹ Manuel Contreras was A. Pinochet's personal appointee at the head of DINA from October 1973 to 1978; see document attached to the submission of 13.10.1998; Volume XXI, ff. 3744-3779, 4173-4191, 4217-4240; T. XI, ff. 394 et seq.; T. XXV, ff. 5717-5720.

² Source: US Department of State. State Chile Collections, at <http://foia.state.gov/Search-Colls/CollsSearch.asp>

³ Source: US Department of State. State Chile Collections, ibid.

Dehands House, 2nd Terrace West, Collins Avenue, Centreville, Nassau, Bahamas, P[ost] O[ffice] N 7120, identifying the accounts nos. 76715547; 81151950; 81152187.

- Profile of **Ashburton Company Limited** drawn up by Riggs Bank on 9th July 1998, approved on 17th April 1998 and revised on 6th April 1998, numbered at the foot of the page as RNB 030067 to RNB 030071 inclusive:

- a. RNB 030067 mentions account no. 76715547, opened on **31st May 1996**, of **Ashburton Company Limited**, with a confidential address at Deloitte & Touche, Dehands House 2nd Terrace West, Centreville, Nassau, Bahamas, tel. (242) 302-4859, P[ost] O[ffice] N 7120,
- b. RNB 030068 identifies the customer as an *"Existing Customer since 1985", "domiciled in the Bahamas used as a vehicle to manage the investment needs of beneficial owner, now a retired professional, who achieved much success in his career and accumulated wealth during his lifetime for retirement in an orderly way"*.
- c. The owner's identity is *"Kept in Vault"*;
- d. The customer's total personal net worth is assessed at approximately *"\$50 to \$100MM"*.
- e. RNB 030069 identifies the deposits as \$2,000,000 in Certificates of Deposit and \$4.3m in RIMCO [Riggs Investment Management Corporation].
- f. In the *"AMOUNT OF CASH expected to be deposited into account"* box, *"Not known"* has been typed in, and *"But based on past 1-3"* written by hand. In the *"NUMBER OF Deposits expected in one month period"* box, *"Not known"* has been typed in, and *"But based on past Records 1-to-3"* written by hand.

- Protocol of agreement dated **20th July 1998**, numbered RNB 030073 at the foot of the page, between the Bank and signatories on behalf of **Ashburton Company Limited** (Lionel E. Haven; Macgregor N. Robertson), listing the electronic means used for receiving the customer's instructions: facsimile instruction, telegraph, cable, teletype, telefax, telephone calls, confirmed by a telephonically transmitted facsimile instruction of any person authorized to issue instructions regarding the account;

- Tax identification form of **Ashburton Company Limited**, P[ost] O[ffice] N 7120, Dehands House, Nassau, Bahamas, dated **17th November 1998**, numbered RNB 030074 at the foot of the page, listing the accounts nos. 76715547; 81440234; 81152187; 81307599; 81386784; 81403302; 81151950; 81305710; 81372286; 81402764;

- Resolution dated **15th May 1996** of **Ashburton Company Limited**, numbered RNB 030079 at the foot of the page, designating Riggs National Bank in Washington DC as depository of the company's funds, and authorising the Bank to pay cheques and carry out instructions bearing the signature of any of the following people: J. Richard Evans, President; Lionel E. Haven, Treasurer; Claudette D. Sand, Secretary; S. Bruce Knowles, Assistant Secretary.

The sheet numbered RNB 030080 at the foot of the page bears the signatures of the four aforesaid persons and mentions the current account no. 76715547,

opened on **31st May 1996** with US\$1,100,000, together with the phone no. 809-3232-3426 of P[ost] O[ffice] N 7120 in Nassau, Bahamas;

- Certificate of foreign status in the US, numbered at the foot of the page as RNB 030076, dated **18th March 1998**, of **Ashburton Company Limited**, Dehands House, 2nd Terrace West, Collins Avenue, Centreville, Nassau, Bahamas, P[ost] O[ffice] N 7120, which does not specify the accounts.

Doc. No.

5. **Documentation relating to Ashburton Company Limited**, a notional company set up by A. Pinochet in the Bahamas with the assistance of Riggs Bank, consisting of:

- Profile of the company **Althorp Investment Ltd** drawn up by Riggs Bank in May 1999, approved on 17th April 1998 and **revised on 6th April 1998**, numbered at the foot of the page as RNB 029995 to RNB 030002 inclusive:

- a. Page RNB 029995 specifies **account no. 8460124**, opened on 16th April 1998, with an address at Dehands House, 2nd Terrace West, Centreville, Nassau, Bahamas, and with a postal at 800-17, SW, Washington DC;
- b. Page RNB 029996 indicates that the account was opened with £1,000,000; that *“Beneficiary owner has other investment company with Riggs”, “is retired. He was a senior member of his govt + has a long relationship with Riggs in this capacity. This trust was established for grandchildren”*. His total personal net worth is reckoned at about *“US\$5,000,000”*.
- c. Page RNB 029997 has the following written by hand: **“Note: refers to Althorp only”**, and *“These funds are static – just for grandchildren”*.
- d. Page RNB 029999 contains a questionnaire with the following written by hand: *“Approved and Reviewed 5/3/99”*, followed by three illegible signatures.
- e. Page RNB 030002 shows, under the signature of J. Richard Evans, with the date **16th April 1998**, the appointment of Lionel E. Haven as Secretary of the company along with the names of the people on the “A” list of appointed signatories authorized to act on the company’s behalf (J. Richard Evans; Carlton N. Mortier; Lionel E. Haven; Claudette D. Sands) with the countersignature of anyone on the “B” list (Macgregor N. Robertson; Raymond L. Winder; S. Bruce Knowles; Montgomery L. Braithwaite; Anthony S. Kikivarakis; Geoffrey D. Andrews; Mark E. Munnings).
- f. Page RNB 030001 shows, under the signature of J. Richard Evans, with the date **8th September 1999**, the appointment of Claudette D. Sands as Assistant Secretary of the Corporation along with the “A” list of appointed signatories authorized to act on the company’s behalf (J. Richard Evans; Carlton N. Mortier; Claudette D. Sands; Sandy C. Watkins) with the countersignature of anyone on the “B” list (Macgregor N. Robertson; Raymond L. Winder; S. Bruce Knowles; Montgomery L. Braithwaite; Anthony S. Kikivarakis; Geoffrey D. Andrews; Mark E. Munnings).

- g. Page RNB 030000 shows, under the signature of J. Richard Evans, with the date **12 June 2001**, the appointment of Claudette D. Sands as Assistant Secretary of the Corporation along with the "A" list of appointed signatories authorized to act on the company's behalf (J. Richard Evans; Carlton N. Mortier; Claudette D. Sands; Sandy C. Watkins) with the countersignature of anyone on the "B" list (Macgregor N. Robertson; Raymond L. Winder; S. Bruce Knowles; Montgomery L. Braithwaite; Anthony S. Kikivarakis; Geoffrey D. Andrews; Mark E. Munnings).
- h. EXHIBIT no. 3 (doc. no. 9 attached hereto) contains a list of 10 cheques drawn on **account no. 08-460-124**, dated 15th May 2001, each made out for an amount of \$50,000.00, to "*I.P.B.D. [International Private Banking Division] Clearing*".

Doc. No.

6.- Documentation relating to account no. 76 835 282:

- The sheet numbered RNB 029979 at the foot of the page shows an updated profile dated **29th March 2002** with movements in 1999-2000-2001 in **account no. 76 835 282**, opened on 24th March 1999 [the date of the House of Lords ruling establishing that Spain had jurisdiction to try Augusto Pinochet and that the extradition proceedings begun in this case should therefore follow their course].

- a. C/a holders: "*L. Hiriart y/o A. Ugarte (Augusto Pinochet Ugarte) (Lucia Hiriart R.)*".
- b. "*Confidential Address: Pedro Lira Urquieta n° 11286. Lo Barnechea. Santiago. Chile*";
- c. "*Telephone: through Mónica Anania. Office: 56-2-238_1520. Santiago Chile. Home: 562-216-1294*";
- d. The list of the customer's other accounts is "*in the bank's vault*".

On page RNB 029980:

- a. As "*External Referral Source: this relationship came to IPB [International Banking Division] through Riggs Embassy Division due to our close Professional Relationship with the Chilean Embassy in the US and the Diplomatic Missions stationed in Washington D.C.*";
- b. In the boxes it says: "*Attach at least one (1) bank reference...: Due to the long standing relationship with [illegible] Banking these were waived*";
- c. "*Source of Initial Funds/Wealth: Profits & Dividends from several business family owned*".
- d. "*Sources of Current Income: Investment income, rental income and pension fund payments from previous posts*"
- e. "*Estimated Annual Income (all sources) 300,000 to 500,000 (estimate). At present a Riggs officer is obtaining updates on this issue.*"
- f. "*Employer and Current Position: Retired Army General*".
- g. "*Purpose for the account...Transactions of small to medium size outside home country – Receipt of investment income at times*".
- h. "*(A) Checking Account. Number of checks expected in expected one-month period: 1-50. B) Expected Average Balances in Operating Ac-*

count: \$20,000.00. Deposits primarily come to account from checks and wire transfers. C) Amount of cash expected to be deposited into the account: up to \$5,000.00, 1-10 deposits expected in average one-month period.”

On page RNB 029981:

“Wire Transfers. Number of wire transfers expected one-month period: 1-10. To/From High Risk Countries (per OFAC [Office Financial Asset Control], FinCen [Financial Crimes Enforcement Network], etc): No. Highest expected per wire transfer: \$250,000 (...) List of Related Accounts: Yes, Vault”.

On the page EXHIBIT No. 3:

- a. a list of 8 cheques, drawn on **account no. 76 835 282**, dated 18th August 2000, each made out for an amount of \$50,000.00 to “A.P”;
- b. a list of 10 cheques, drawn on **account no. 08-460-124** [of **Althorp Investment Ltd**], dated 15th May 2001, each made out for an amount of \$50,000.00, to “*I.P.B.D. Clearing*”;
- c. a list of 10 cheques, drawn on **account no. 76 835 282**, dated 8th April 2000, each made out for an amount of \$50,000.00, to “*L. Hiriart*”;

On the page EXHIBIT No. 4:

- a. a statement of **account no. 76 835 282**, in the name of L. Hiriart and A. Ugarte, for the period 22.11.00 to 21.12.00, with an initial balance of \$173,831.43 and debit due to cheques of \$150,831.43;
- b. a statement of the same account for the period 23.2.2001 to 21.3.2001, with an average balance of \$23,336.15.

Doc. No.

7.- Memorandum dated **21st June 2002** from Stan Dore – then Riggs Bank officer in charge of compliance with the BSA [Bank Secrecy Act] – to Sean Terry, then head of Riggs International Banking Group. It mentions the following accounts:

- No. 76-750-393 [personal account opened with Riggs Bank, Washington DC, in December 1994, see p. 21 of the Senate Report];
- No. 76-835-282 [personal account opened with Riggs Bank, Washington DC, on 24th March 1999, replacing the above, see p. 21 of the Senate Report];
- N° 25005393 [personal account opened with Riggs Bank, London, on an unknown date and turned into personal account no. 74-041-013 in April 1997, closed in May 2000, see p. 21 of the Senate Report];
- No. 76.715-547, account of **Ashburton Company Limited**;
- N° 76-835-493, account of **Althorp Investment Ltd.**

8.- Emails

- On 16th July 2002 between **Lois Trojan** and **Joseph Boss**, employees of Riggs Bank (**exhibit no. 7a**);

- On 23rd, 22nd, 17th, 16th and 15th July 2002 between **Lois Trojan, Joseph Boss** and **R. Ashley Lee** (Chief Examiner of the US Government Office of the Comptroller of the Currency (OCC) between 1998 and 2002), **Exhibit no. 7b**; and 12th July 2004 (**Exhibit no. 7d**), providing additional evidence, according to page 87 of the US Senate Report (footnote on page 304), that **R. Ashley Lee**, then acting in his capacity as examiner in charge of the OCC examination (EIC) “*made a specific decision in 2002 to exclude the Pinochet examination memorandum and workpapers from the EV [Examiner view] database. A bank examiner wishing to read the referenced materials would not be able to access these materials on an OCC computer, but would have to track down the actual paper copies kept in storage at the specified OCC office.*”

Doc. No.

9.- **Riggs Bank interoffice memorandum, of 11th September 2002**, on the circumstances of how Augusto Pinochet’s accounts were examined by the Office of the Comptroller of the Currency. There follows a transcription:

RIGGS Risk Management Interoffice Memorandum

*To: Stanley M. Dore III [then officer in charge of compliance with the Bank Secrecy Act (BSA), p. 36 of the Senate Report, note 127]
Senior Vice President & Risk Manager*

*From: Paul D. Glenn
Vice President & Director of Compliance
Compliance Department*

Date: 11 September, 2002

*RE: Amount of Loss: \$0 Date Charged Off: /NA
[deleted line]
Customer Name: Augusto Pinochet Ugarte
[deleted line]
Referred to Law Enforcement: No*

When and How Discovered

As part of an Office of the Comptroller of the Currency Bank Secrecy Act Examination, the PCC identified activities that it considered unusual. The OCC brought the activities to the attention of Compliance on June 17, 2002 and continued to review materials and discuss the matter with Riggs employees on June 18, 20, 21, 24, 25, 26, 27, 28, 2002. Compliance met with the OCC’s examiner in charge on July 3, 2002.

Description of Events

The customer's accounts were involved in certain transactions as follows:

1. *On August 18, 2000, October 10, 2001, May 15, 2001, and April 8, 2002, respectively, the account holder withdrew funds from his bank account requesting the bank to issue multiple \$50,000 cashiers checks (8, 10, 10 and 10, respectively) payable to himself 'and/or' his wife. Each of those cashiers' checks was deposited on different dates in a bank account held in the customer's name in his home country.*
2. *The customer's stated intended use of the proceeds of the aforementioned withdrawals was described to the Bank, but the Bank has no way to confirm the actual use of the funds.*
3. *On March 26, 1999, promptly following loss of an English legal action, the customer closed a 'fixed deposit' Pounds Sterling account at the Bank's branch in London and opened a similar US Dollar certificate of deposit account at Riggs Bank in the United States by transferring funds from one Riggs account to the other*

The Bank confirmed the source of funds used to establish the accounts listed in Part I, line 14, but the Bank was unable to document the source of each and every deposit.

On August 6, 2002, the International Banking Group closed the account after wiring the funds to a different bank upon the request of the Bank's customer. The customer's wire transfer requests were made July 18, 2002. Riggs notified the OCC on August 7, 2002 that the accounts are now closed.

Control/Procedure Breakdown Contributing to Loss

None

New Controls/Procedures Established to Prevent Future Loss:

None

If you have any questions please call Paul Glenn on extension 5024

[deleted line]

Cc: R. Roane [Member of the Riggs Bank Board of Directors, p. 14 of the Senate Report]

Doc. No.

10.- Riggs Bank interoffice memorandum, of 4th October 2002, Exhibit no. 8, transcribed below:

RIGGS Risk Management Interoffice Memorandum

*To: The Board of Directors
Riggs Bank N.A
From: Stanley M. Dore III [then officer in charge of compliance with
the Bank Secrecy Act (BSA)]
Senior Vice President and Risk Manager*

Date: October 4, 2002

The following is a list:

<u>Category</u>	<u>Name</u>	<u>Loss</u>	<u>Exposure</u>	<u>Claim</u>
<i>[blank space]</i>				
<i>[deletion]</i>	<i>Augusto Pinochet</i>		<i>\$0</i>	<i>\$1,900,000</i>
				<i>\$0</i>

11.- Inventory of assets of the couple Augusto Pinochet Ugarte-Lucía Hiriart RODRIGUEZ, made as a result of the deed of separation of estates signed by the couple before the Notary Public Patricio Raby Benavente, whose office is at Calle Moneda no. 920, Santiago, Chile, dated **23rd April 1998**, i.e. four weeks after the **House of Lords ruling of 24th March 1999** giving authority for the extradition proceedings brought by this Court to go ahead.

The documents attached nos. 3 to 10 are part of the documentation gathered by the US Senate Investigation Subcommittee that drew up the Report of 15th July 2004. Document no. 9 is in the public domain in Chile.

II.- SPECIFICATION IN LAW OF THE FACTS DESCRIBED

II.1.- Regarding the alleged offence of money-laundering

Art. 301 of the Spanish Penal Code provides that:

“1. Any person who acquires, converts or transfers assets, knowing that they have their origin in a serious crime, or carries out any other act for the purpose of concealing or covering up their illicit origin, or of assisting another person who took part in the offence or offences to escape the legal consequences of their acts, shall be punished with a prison sentence of six months to six years and a fine of an amount three times the value of such assets.”

II.2. Regarding the alleged offence of concealment of assets

Art. 258 of the Spanish Penal Code provides that:

“[Insolvency to evade civil liability]. Any person responsible for any criminal act who, subsequent to the commission thereof, and for the purpose of evading the civil liability arising therefrom, disposes of his assets or enters into obligations reducing such assets, so as to make himself totally or partially insolvent, shall be punished with a prison sentence of one to four years and a daily fine of twenty-four months.”

III.- JURISDICTION AND COMPETENCE OF THIS COURT

III.1.- Regarding the alleged offence of money-laundering

Art. 301.4 of the Penal Code, in relation to arts. 23.4 and 65.e)⁴ of the **Organic Law on the Judiciary**, gives this Court extraterritorial jurisdiction:

Art. 301.4: “Those responsible shall be punished likewise even if the crime in which the assets have their origin, or the acts punished as specified in the previous sections, were committed, in whole or in part, in a foreign country.”

III.2.- Regarding the alleged offence of concealment of assets

The offence was committed in the country where the creditors’ claim was circumvented, namely Spain.

Even though the activity took place in part outside Spain, its effects occurred in Spain, according to the Supreme Court’s case-law on the *forum delicti commissi*, when the act and its consequences occur in different places, such as a shot fired in France hitting a person in Spain, or defamation in a letter, deemed to be committed not where the letter was written or where it was posted but where the addressee received it. In this case the creditors’ claim was formulated before a Spanish court. This court had ordered the

⁴ “Article 65. The Criminal Division of the National Court (Audiencia Nacional) shall have jurisdiction over: (...) e) Offences committed outside Spanish territory, when, pursuant to laws or treaties, the prosecution thereof is a matter for the Spanish courts. In any event, the competence of the Criminal Division of the National Court shall be extended so that it has jurisdiction over other offences linked to all those mentioned above.”

seizure of the accused's assets, and since the consequences of the circumvention of creditors took place in Spain, it is in Spain that the accused's self-imposed insolvency had effects. In short, the Spanish courts must have authority to protect the efficacy of their resolutions from the machinations of defendants aimed at circumventing their consequences.

IV. NON-PRESCRIPTION OF THE ALLEGED OFFENCES

IV.1.- None of the actions described may be deemed to have prescribed, as they were committed up to at least 2002, and the criminal and civil action was brought on 19th July 2004.

IV.1.1.- The alleged offences of **money-laundering** were a continuous practice starting at least in 1994, as stated on page 2 of the US Senate Report.

IV.1.2.- The **concealment of assets** began with the filing of the legal action that originated this case on **5th July 1996**. The accused's criminal intent was unequivocal as from his arrest for extradition purposes in London on **16th October 1998**, and the writ for seizure of assets issued on **19th October 1998**.

IV.2.- The offence continued in the form of multiple actions but with a single intent, as stated in pp. 17-37 of the US Senate Report, at least until the closing of the Riggs Bank accounts in **July or August 2002** (p. 24 of the Report).

IV.3.- The filing of the legal action for both offences on 19th July 2004 obviates any prescription.

IV.3.1.- The accused's concealment of assets is an independent offence (against the creditors' estate). The *dies a quo* for prescription would be the last act of self-imposed insolvency (July or August 2002, according to the US Senate): the removal of the accused's assets or the placing of a barrier between them and his creditors so as to protect them from the universal liability provided for in art. 1911 of the Civil Code. It is irrelevant, for these purposes, that the original, underlying offences (terrorism, genocide, torture) ended on 11th March 1990.

IV.3.2.- The offence of money-laundering is independent of the original, underlying offences, and its prescription would be calculated from the last instance of money-laundering.

V. REQUEST FOR THE SETTING UP OF SEPARATE PROCEEDINGS FOR THE OFFENCES OF CONCEALMENT OF ASSETS AND MONEY-LAUNDERING

Pursuant to **arts. 757 et seq.**, and in particular **art. 762(6) of the Law on Criminal Procedure** (LECriminal)⁵, the Court is hereby requested to establish the appropriate

⁵ "6. In order to prosecute the related offences included in this Title, where there are grounds to do so

separate proceedings so as to simplify and quicken the process; and, in due course, to prepare oral proceedings, as provided by **art. 779(4) of LECriminal**, to prosecute independently the linked offences of concealment of assets and money-laundering, and to try each of the accused.

The Supreme Court has established that separate proceedings may be brought, to be conducted under the Abbreviated Procedure separately from ordinary proceedings (**Ruling of 28th December 1999**, RJ 1999/9449, “Operación Pitón”, arising from Indictment 18/92, Central Court no. 1):

FJ5: “the difficulty, complexity or scale of the investigative proceedings in question should be taken into account; and, in this regard, it is to be noted that the investigative proceedings in this case have been complex and awkward (they have involved many people, manifold transactions and various offences), as shown by the need to divide the initial case (“operación Pitón”) into various separate proceedings, one of which is being conducted here.”

VI. EXTENSION OF THE LEGAL ACTION FOR CONCEALMENT OF ASSETS AND MONEY-LAUNDERING

VI.1.- The legal action is extended to the following persons:

- **Lucía Hiriart Rodríguez**, wife of the accused Augusto Pinochet, inasmuch as:
 - a. She is co-holder of **account no. 76 835 282** in Riggs Bank (doc. attached no. 6, page RNB 029979, exhibit no. 4);
 - b. She signed the contract for separation of assets of 23rd April 1998 (doc. attached no. 11);
 - c. *“On December 10, 2000, a British newspaper reported that Mr. Pinochet had over \$1 million in a bank account at Riggs in the United States.”⁹⁵ In late December or early January 2001, Riggs altered the official names on the personal account controlled by Mr. Pinochet in the United States, changing the names from “Augusto Pinochet Ugarte & Lucia Hiriart de Pinochet” to “L. Hiriart &/or A. Ugarte.”⁹⁶ By changing the official account names in this manner, Riggs ensured that any manual or electronic search for the name “Pinochet” would not identify any accounts at the bank.”* (p. 30 of the US Senate Report);
 - d. *“On May 15, 2001, Riggs (...) used Pinochet funds to issue ten, sequentially numbered cashiers checks, each in the amount of \$50,000, for a total of \$500,000.”¹⁰⁸ These checks were made payable to Maria Hiriart and/or Au-*

independently, and to try each of the accused, where there are several accused, the Judge may establish the appropriate separate proceedings so as to simplify and quicken the process.”

⁹⁵ ‘Revealed: Pinochet drug smuggling link’, The Observer (10/12/00).

⁹⁶ Compare, e.g., Riggs account statement for Account No. 76-835-282 for the period, 12/22/00 through 1/23/01, Bates RNB 00612, with the Riggs account statement for the period, 1/24/01 through 2/22/01, Bates RNB 006213.

¹⁰⁸ Riggs was unable to provide a written request from Mr. Pinochet for these cashiers checks, but did produce a letter of instruction signed by representatives of Ashburton. See OCC examination materials, Bates OCC 0000045860.

gusto P. Ugarte. They were sent by overnight delivery to Chile. ¹⁰⁹ *Mr. Pinochet, again, cashed the checks at several banks over the course of several months.* ¹¹⁰” (p. 32 of the US Senate Report);

- e. “*On October 11, 2001, Riggs repeated the action a third time, issuing ten sequentially numbered \$50,000 cashiers checks, drawn on Riggs’ own concentration account, for a total of \$500,000.* ¹¹² *Made payable to Maria Hiriart and/or Augusto P. Ugarte, these checks were, again, sent by overnight mail to Mr. Pinochet in Chile. Mr. Pinochet, again, cashed them over the course of several months.* ¹¹³” (p. 33 of the US Senate Report);
- f. “*On April 8, 2002, Riggs performed the same service (...), mailing ten sequentially numbered \$50,000 cashiers checks to Mr. Pinochet in Chile.* ¹¹⁴ *These checks were made payable to L. Hiriart and/or A.P. Ugarte, and totaled \$500,000. They were drawn directly from the Pinochet accounts rather than from the Riggs concentration account. Mr. Pinochet cashed them over several months.*” (p. 33 of the US Senate Report).

VI.2.- Ashley Lee, former Chief Examiner of the US Government *Office of the Comptroller of the Currency* (OCC) between 1998 and 2002 (doc. attached no. 7, Exhibits nos. 7b) and 7d), for the act described on page 87 of the US Senate Report (footnote on p. 304), namely that, utilising his position as inspector in charge of the examination (EIC) carried out by the OCC, he “made a specific decision in 2002 to exclude the Pinochet examination memorandum and workpapers from the EV database. A bank examiner wishing to read the referenced materials would not be able to access these materials on an OCC computer (...).”. This meant that a computer search for any reference to Pinochet would be fruitless, and the information could only be accessed by consulting the actual paper copies kept in storage at the specified OCC office. Following these activities, Lee left the OCC and was employed straight away by Riggs Bank in a high-ranking post, which would suggest that while he was at the OCC he may deliberately have betrayed the public duty entrusted to him;

VI.3.- Fernando Baqueiro and Raymond Lund, who personally handled the accounts of the accused Augusto Pinochet. The US Senate Report, attached to our submission of 19th July 2004, says in this connection that:

“Fernando Baqueiro, Managing Director for Latin America in the International Private Banking Department, also handled the accounts but has indi-

¹⁰⁹ Subcommittee interview of Carol Thompson (6/23/04); see also two handwritten notes from Ms. Thompson instructing a Riggs employee to send “10 checks totaling \$500,000” to “A.P. Ungarte” in Chile, (5/14/01), Bates RNB 029977-78.

¹¹⁰ See copies of these cleared checks, Bates OCC 0000045746-47, 45771-88.

¹¹² Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

¹¹³ See copies of these cleared checks, Bates OCC 0000045796-807.

¹¹⁴ Riggs produced a hand-printed letter of instruction signed by Mr. Pinochet requesting these cashiers checks. OCC examination materials, Bates OCC 0000045860.

cated having much less direct contact with Mr. Pinochet.⁴⁰ Both reported to the head of the International Banking Group.” (p. 19).

Fernando Baqueiro signed “a “KYC Profile” prepared by Riggs & Co. in March 2002, for Mr. Pinochet’s personal money market account.”⁷⁵ This profile notes that the account had been opened three years earlier, in March 1999. It marks the client as a “High Profile Customer,” and later point, the profile states: “Additional information on file with Group Head.” The form also states that a list of all related accounts is held in the “Vault.” The profile states that the Pinochet relationship came to the International Private Banking Department “though Riggs Embassy Division due to our close professional relationship with the Chilean Embassy in the US.” It describes Mr. Pinochet as a “retired Army General,” and says the source of his initial wealth was “profits & dividends from several business[es] family owned.” It states that the source of his current income is “investment income, rental income, and pension fund payments from previous posts.” It estimates his annual income at \$300,000 to \$500,000, and leaves blank his estimated net worth. It predicts wire transfers of up to \$250,000, but an average account balance of only \$20,000, suggesting an expectation that the account would be used as a quick pass through for large sums.” (pp. 26-7);

“When the OCC reviewed the assembled documentation as part of its 2002 examination of the Pinochet accounts, it determined that the information was insufficient to establish the source of Mr. Pinochet’s wealth and noted that Mr. Lund from Riggs had agreed with this assessment.”⁸¹” (p. 28);

“The International Banking Group head stated that Riggs independently confirmed that, over the relevant time period, the Chilean stock market had increased in value, and it was plausible that an investor could have earned a large profit. However, the bank made no specific inquiry into Mr. Pinochet’s claimed profits. Interview of Ray Lund (7/07/04).” (p. 28, note 80);

“In 2001, a Riggs Board member informed senior officials at the bank about the Pinochet attachment order, pending legal actions against Mr. Pinochet, and accusations concerning his involvement with wrongdoing.”¹²⁵ This memorandum’s addressees included Raymond Lund (pp. 31 - note 102 - and 36 - note 125).

VI.4.- With regard to the accused of US nationality, resident in the United States, we request, as in our previous submission, that their identity be supplied in the Letter Ro-

⁴⁰ See, e.g., OCC document, “Targeted Examination: Accounts related to Mr. Augusto Pinochet” (7/9/02), Bates OCC 0000517598; OCC examination materials, Bates OCC 0000045627 (“Then-Chairman Joe Allbritton, then-Head of International Banking Paul Cushman, and President of [Riggs National Corporation] Tim Coughlin asked Mr. Pinochet for his account.”).

⁷⁵ “Riggs & Co. KYC Profile,” (3/24/02), Bates RNB 029979.

⁸¹ OCC document, “Targeted Examination: Accounts related to Mr. Augusto Pinochet” (7/9/02), Bates OCC 0000517600.

¹²⁵ Fulbright & Jaworski memorandum from Steven B. Pfeiffer to Joseph Cahill and Raymond Lund (5/21/04), with attached materials, Bates OCC 0000045919-42.

gatory to the US Justice Department, with a view to giving the competent American authorities an opportunity to bring legal action in the US.

VII. REQUEST THAT THE ACCUSED AUGUSTO PINOCHET AND LUCIA HIRIART BE NOTIFIED OF THE LETTER ROGATORY BY THE SPANISH CONSUL

VII.1.- This is pursuant to art. 118 of LECriminal, and in order to allow the accused to defend themselves with all the guarantees provided by the Spanish Constitution and Spanish law, and by the European Convention on Human Rights.

It is further requested that such notice be accompanied by a copy of the legal action and that the accused be informed of their rights and given the relevant legal warnings.

VII.2.- For the purpose of notices to the accused Augusto Pinochet Ugarte and Lucía Hiriart Rodríguez, their domicile in Santiago de Chile is *Calle Pedro Lira Urquieta n° 11280. La Dehesa. Comuna Lo Barnechea. Santiago. Chile*. Telephone: through Mónica Anania. Office: 56-2-238-1520. Santiago, Chile. Home: 562-216-1294, as specified in Riggs Bank documentation (doc. attached no. 6).

VII.3.- We further request that the notice of the Letter Rogatory be served by the Spanish Consul in Santiago, Chile, to the accused Augusto Pinochet Ugarte and Lucía Hiriart Rodríguez, pursuant to the terms of the Inter-American Convention on Letters Rogatory, applicable in Chile and España (Spanish Official Journal (BOE) of 15 August 1987), and art. 5 of the Vienna Convention on Consular Relations.

On ratifying the Inter-American Convention on Letters Rogatory, Chile made the following declaration:

“Declaration made at the time of ratification, according to Article 16 of the Convention⁶”

“The instrument of ratification corresponding to this Convention contains the declaration “that its provisions cover the execution of letters rogatory in criminal, labor, and contentious-administrative cases, as well as in arbitrations and other matters within the jurisdiction of special courts”.

VII.3.1.- This declaration is applicable to what is provided in the Inter-American Convention on Letters Rogatory, which states that:

Art. 4. “Letters rogatory may be transmitted to the authority to which they are addressed by the interested parties, through judicial channels, diplomatic or consular agents, or the Central Authority of the State of origin or of the State of destination, as the case may be.

Each State Party shall inform the General Secretariat of the Organization of American States of the Central Authority competent to receive and distribute

⁶ “Article 16. The States Parties to this Convention may declare that its provisions cover the execution of letters rogatory in criminal, labor, and “contentious-administrative” cases, as well as in arbitrations and other matters within the jurisdiction of special courts. Such declarations shall be transmitted to the General Secretariat of the Organization of American States.”

letters.”⁷”

Art. 2. *“This Convention shall apply to letters rogatory, issued in conjunction with proceedings in civil and commercial matters held before the appropriate authority of one of the States Parties to this Convention, that have as their purpose:*

- a. The performance of procedural acts of a merely formal nature, such as service of process, summonses or subpoenas abroad;*
- b. The taking of evidence and the obtaining of information abroad, unless a reservation is made in this respect.”*

Art. 3. *“This Convention shall not apply to letters rogatory relating to procedural acts other than those specified in the preceding article; and in particular it shall not apply to acts involving measures of compulsion.”*

Art. 13. *Consular or diplomatic agents of the States Parties to this Convention may perform the acts referred to in Article 2 in the State in which they are accredited, provided the performance of such acts is not contrary to the laws of that State. In so doing, they shall not perform any acts involving measures of compulsion.”*

VII.3.2.- The current **Bilateral Agreement on Extradition and Judicial Assistance in Criminal Matters**, of 14th April 1992 (BOE, 10th January 1995), provides for the sending of letters rogatory (art. 30) and authorises consuls to perform actions permitted by the law of the receiving State (art. 41):

Art. 30. Forms of request. *1. The request for assistance shall take the form of a letter rogatory. 2. Requests for assistance shall be complied with pursuant to the law of the Party to which they are addressed, and such compliance shall be confined to the actions expressly requested. 3. When a request for assistance cannot be complied with, the Party to which it is addressed shall return it with an explanation of the reason therefor.*

Art. 40. Requirements applicable to requests for assistance.

1. Requests for assistance shall contain the following information:

- a) Authority issuing the request and nature of its resolution.*
- b) Offence to which the proceedings refer.*
- c) Insofar as possible, identity and nationality of the prosecuted or convicted person.*
- d) Precise description of the assistance requested and all the information considered useful to facilitate effective compliance with the request.*

2. Requests for assistance concerning any action other than the mere delivery of objects or documents shall also contain an outline of the relevant facts and the charge preferred, if applicable.

⁷ The competent Central Authority in Spain is the Technical General Secretariat (Secretaría General Técnica) of the Ministry of Justice, and in Chile, the Ministry of Foreign Affairs of the Republic of Chile, as Central Authority for receiving and distributing Letters Rogatory for the purposes provided for in the Convention.

3. When a request for assistance is not complied with by the Party to which it is addressed, such Party shall return it with an explanation of the reason therefor.

Art. 41. Transmission of the request.

1. The request for assistance shall be transmitted by diplomatic channels. Notwithstanding the foregoing, the Parties may also designate other authorities entitled to send or receive such requests.

2. The Parties may direct their Consuls to perform any actions permitted by the law of the receiving State.

VII.3.4.- For its part, the **Code of International Private Law (Bustamante Code)**, applicable in Chile and applied complementarily, provides as follows:

“Art. 389. The judge issuing the letters rogatory is to decide as to his own competence and the legality and propriety of the act or evidence, without prejudice to the jurisdiction of the judge to whom said letters are addressed.”

VII.4.- Form of notification of the Letter Rogatory. Without prejudice to any additional documentation that the Court deems appropriate to attach to the Letter Rogatory, and to the form that it wishes to give thereto, we suggest that it should include at least the information provided for in the established form, for the purposes of “*a letter rogatory from the Central Authority of the State of origin to the Central Authority of the State of destination*” [which is not the case in hand, inasmuch as it is here requested that notice be served by the Spanish Consul], in the Additional Protocol to the Inter-American Convention on Letters Rogatory, of 1975, promulgated by Chile on 21.11.1989 and published in the Official Journal on 12.02.1990, attached as annexes nos. 12 and 13, although this is not applicable where notice is served by the Spanish Consul.

VIII.- It is further requested that what is provided in **art. 385 of LECriminal** be fulfilled by means of a Letter Rogatory to the Republic of Chile requesting that the statement of each of the accused be taken, pursuant to what is provided in the Bilateral Agreement on Extradition and Judicial Assistance in Criminal Matters of 14th April 1992 arts. 28, 30, 37, 40, 41.1.

IX.- ADDITIONAL ACTIONS REQUESTED

In pursuance of what is requested in the legal action brought on 19th July 2004, it is hereby requested:

A) That, in order to ascertain the source and destination of the money deposited in Riggs Bank, for the purposes of **arts. 301 and 258 CP, Banco HSBC and Banco de Santander**, both domiciled at Plaza de Canalejas no. 1, Madrid-28014, be ordered to inform this Court of any accounts known to them, in any of the branches of Banco de Santander in Spain, Chile or any other country, of which the holder or assignee is or may have been **Augusto Pinochet Ugarte** and/or **A. Ugarte; Ashburton Company Ltd.; Althorp Investment Co. Ltd.; Belview International; Belview Inc.; Belview S.A., subsidiary of Belview Inc.**; the wife of the former, **Lucía HIRIART RODRÍGUEZ** and/or **L. Hiriart**, or their children or children-in-law:

Inés Lucía		Pinochet Hiriart, married to Julio Ponce Lerou
Augusto Osvaldo	id	id
María Verónica	id	id, married to Hernán García Barzelato
Marco Antonio	id	id
Jacqueline Marie	id	id, married to Iván Noguera

B) That, for the same purposes as the above (**art. 301 CP**), and also to ascertain whether any of the offences provided for in **art. 445 bis CP**⁸ have been committed, given the contents of the US Senate Report, the Spanish Defence Ministry be ordered to submit a detailed list of authorised transactions, contracts or dealings for the sale or transfer in any other form of arms, explosives or munitions, vehicles, ships, aircraft or any other military or dual-use equipment in the last ten years by the Spanish armed forces or by public or private Spanish manufacturers, directly or indirectly, to the armed forces of Chile.

C) That the Letters Rogatory previously sent within these proceedings to the **United States, the United Kingdom, Canada and Bermuda** be renewed, and that the standard Letter Rogatory be also sent to **Gibraltar, the Channel Islands, the Bahamas, the Cayman Islands, the Virgin Islands, Switzerland, the Netherlands and the Dutch Antilles**, for the alleged offences of money-laundering, concealment of assets, terrorism, genocide, torture and drug-trafficking, outlining the facts revealed in the US Senate Report of 15.7.2004, the acts of terrorism committed in Buenos Aires in September 1974 (murder of General Prats and his wife Sofia Cuthbert); the attack in Rome in September 1975 on Bernardo Leighton and his wife Anita Fresno; the murder in Washington DC in September 1976 of Orlando Letelier and Mrs Ron Moffit, along with the continuous nature of the offences, with the overall figures of instances of death, forced disappearance and torture given in the Indictment of 10th December

⁸ Article 445. [Offences treated jointly]. 1. Any persons who, either themselves or through intermediaries, use gifts, presents, bribes or promises to corrupt or seek to corrupt public officials of foreign authorities or international organisations in the exercise of their duty so as to benefit them or a third party, or who accept requests in this regard, for the purpose of their acting or refraining from acting in relation to the exercise of public functions so as to procure or to conserve a contract or other irregular benefit in the conduct of international economic activities, shall be punished with the penalties provided in article 423, in the respective cases. 2. If a guilty person belongs to a company, organisation or association, even temporarily, that is engaged in the performance of such activities, the judge or court may impose any of the consequences provided in article 129 of this Code."

1998, in order, with a view to clarifying the source or destination of the funds in Riggs Bank, for them to:

- provide this Court with all the information they have regarding accounts, opened or closed, held by **Augusto Pinochet Ugarte** and/or **A. Ugarte**, either directly or through the aforementioned members of his family, or through the companies controlled by him, in particular under the names of **Ashburton Company Ltd., Althorp Investment Co., Ltd.; Belview International; Belview Inc.;** and **Belview S.A., subsidiary of Belview Inc.;**

- order the seizure, freezing and attachment of the balances of any insurance policies, insurance contracts of any kind, credit titles, promissory notes and rights and credits of any sort, including bank accounts and/or deposits, investment funds, certificates of deposit, shares, securities, equity certificates and any other financial assets that Augusto Pinochet Ugarte may hold either directly or through third parties and members of his family, and/or **Ashburton Company Ltd. and Althorp Investment Co., Ltd., Belview International; Belview Inc.;** and **Belview S.A., subsidiary of Belview Inc.;**

- identify, in the event that accounts or any other financial assets are found, including closed accounts or cancelled assets, the source and destination of the funds, submitting a documentary record of the forms of payment used in each movement.

D) That any other appropriate actions be taken.

In virtue of which,

I REQUEST OF THE COURT: That, having received this submission, with the documents attached and copies thereof, it proceed to hold it admissible together with the attached documentary proofs; to give leave for separate proceedings to be established in respect of the alleged offences of concealment of assets and money-laundering, as justified in section V; to accept the extension of the legal action brought on 19th July 2004 to the persons specified in section VI, namely **Lucía Hiriart Rodríguez** and **Fernando Baqueiro** and **Raymond Lund**; to serve notice to those accused in the legal action of concealment of assets and money-laundering, on the terms and in the manner described in sections VII and VII; to hold admissible the actions requested in section IX, and to order that the proceedings follow their course.

Madrid, 2nd September 2004

Joan E. Garcés

Member of the Bar no. 18,774