

**PROCEEDING: SUMARIO 19/1997  
TERRORISM AND GENOCIDE**

**CENTRAL COURT OF INVESTIGATION  
NUMBER FIVE  
NATIONAL COURT  
MADRID**

**DON BALTASAR GARZON REAL, JUDGE-MAGISTRATE OF THE  
CENTRAL COURT OF INVESTIGATION NUMBER FIVE OF THE  
AUDIENCIA NACIONAL, WITH ITS SEAT IN MADRID (SPAIN).**

TO THE COMPETENT JUDICIAL AUTHORITY OF BERMUDA, Attorney General's Office of Bermuda, I attentively salute and notify you: That in this court proceedings are being conducted regarding alleged crimes of GENOCIDE, TERRORISM AND TORTURE in which, on this day, the court has decided to send the present Rogatory Letter, through diplomatic channels and through Interpol, because of the following:

**FACTS**

**ONE:** On 16 October, 1998, criminal charges were filed against **Augusto Pinochet** and others for the offences of genocide, terrorism and torture, as part of Investigation 19/97 Item III relating to the so-called "Condor Plan".

**TWO:** On 4 and 5 November 1998, a plenary session of the Criminal Division of the Spanish National Court unanimously held in two judgments that the events being investigated by this Court presumably constitute offences of genocide, terrorism and torture, and that the Spanish Courts have jurisdiction to investigate and hear same.

**THREE:** **Augusto Pinochet Ugarte**, born in Valparaiso (Chile) on 25 November 1915, with Chilean identification number 1.128.923, then Commander-in-Chief of the Armed Forces, by an agreement with other senior military personnel, so as to fulfil the prior plan clandestinely arranged to bring down Chile's constitutional government and end the life of the President of the Republic Salvador Allende Gossens and establish a de facto military government, led a coup d'État on 11 (eleventh) September 1973 which led to the overthrow and death of President Allende in the *Palacio de la Moneda*.

That same day and without a continuity solution the go-ahead was given by Mr. Pinochet Ugarte, and those who with him were directing the initiative, for a campaign of fierce repression against the lives, safety and freedom of persons and their property which would last from that date (11 September 1973) until 1990 -the year in which the accused left power.

**FOUR:** **Augusto Pinochet Ugarte**, from his commanding position, but pursuing an activity unrelated to the public duties entrusted to him as President and member of the Governing Junta formed after the coup d'État, using and taking advantage of this position, created and led within his country, in co-ordination with other Chilean military and civilian leaders, and abroad, in conjunction with the military leaders holding power at that time in other countries in the area, an international criminal organisation whose only purpose was to conspire, develop and execute a systematic criminal plan of illegal detentions, abductions, torture followed by the death of the persons concerned, the forced removal of persons and the selective disappearance of over 3,000 people, in order to achieve a series of political and economic objectives so as to reaffirm the bases of the conspiracy and spread terror among the citizens.

Thus, on the one hand, the main objective of the conspirators was the partial destruction of the Chilean national group formed by all of those who were ideologically opposed to them by means of the selective elimination of the leaders of each sector forming the group through abduction followed by disappearance, detention, torture and death so as to inflict extremely serious physical and mental injury on the group victims and on the group itself. However, this main objective was strengthened or complemented by the persecution, by the same means and orders, of Chileans or non Chilean, inside Chile or abroad, who were considered targets to be eliminated.

According to the estimates studied in the cause, more than 300.000 people were deprived of liberty; more than 100.000 persons were expelled or obliged to go into exile; those killed and/or disappeared amount to almost 5.000; more than 500.000 persons were submitted to torture.

**FIVE:** **Augusto Pinochet** and the other members of the Governing Junta engaged in this multi-faceted criminal activity, which was unrelated to the inherent tasks of government, within the framework of the so-called "Condor" Operation/Plan designed for the exchange of information and intelligence relating to political opponents, aimed at identifying and locating such persons in order to have them physically eliminated or moved to anywhere which was considered advisable by the assisting member country in order to have them interrogated, disappear or executed.

**SIXTH:** The facts as related could constitute:

1.- The crime of genocide according to Article 607, Paragraphs 1, 1st, 2nd, 3rd, 4th and 5th of the Penal Code.

2.- Crimes of terrorism, developed through numerous acts of executions, beatings, abductions, arson and bombings according to Articles, 515, 516 - 2nd, and 571 of the Penal Code.

3.- Crimes of torture under Articles 173 and 174 of the Penal Code, and Article 5.1.c) of the Convention against Torture and other Cruel, Inhuman and Degrading Treatment and Punishments approved on 10 December 1984 in New York and ratified by Spain on 21 October 1987.

**SEVENTH:** In its ruling of October 19, 1998, this Court decided:

*“1. To order the embargo, blockage and deposit of all balances in all bank accounts controlled by Augusto Pinochet Ugarte, either directly or through third persons, or that may be controlled by members of his family, and that are located in any country; therefore, as a preventative measure send the corresponding rogatory letters (...).”*

*“2. Request all documentation, transfer statements, and statements of the origin or destination of funds since the opening of these accounts until the present, even in the event that an account has been closed.”*

This Ruling has been confirmed by the Appeal Court on the 24<sup>th</sup> of September and the 5<sup>th</sup> of November 1999.

In its ruling of December 10, 1998, this Court decided to indict Augusto PINOCHET UGARTE, and also:

*“4. Declare provisionally, and without prejudice to what may eventually be definitively decided, the civil responsibility of the person indicted, confirming the embargo ordered on October 19, 1998.”*

### **LEGAL GROUNDS**

Bermuda laws and regulations intended to combat illicit financial transactions. These norms are mandatory for all insurance company managers and agents. They include:

1. The Proceeds of Crime Act (1997)
2. The Proceeds of crime (money laundering) regulations (1998)
3. The Guidance Notes on the Prevention of Money Laundering

The competent authorities for these matters in Bermuda are:

1. The National Anti-Money Laundering Committee
2. The Financial Investigation Unit of the Bermuda Police Service
3. The Bermuda Monetary Authority
4. The Department of Public Prosecutions
5. The Attorney General of Bermuda.

The laws and regulations of Bermuda oblige insurance agents and insurance management companies to follow the “know your client” rule (KYC). This rule obliges these parties to know not only who is the registered owner of a contract but also who may have any beneficial interest in the contract.

## **PROCEDURAL STEPS TO BE TAKEN**

To address a Rogatory Letter to the authorities of Bermuda ordering the embargo, blockage and deposit of the balances associated with insurance policies or insurance contracts of any nature, including bank accounts and/or deposits, shares of investment funds, and certificates of deposit, owned by Augusto Pinochet Ugarte either directly or through third persons, and those that members of his family may have in Bermuda, and in particular in:

- a) STANDARD LIFE OF CANADA (SLAC), a subsidiary of STANDARD LIFE OF EDINBURGH, with address at:  
1245 Sherbrooke Street West  
Montreal, Québec  
H3G 1G3  
Tel: (514)-499-8855  
Fax: (514)-499-4908
  
- b) the STANDARD LIFE OF CANADA (SLAC), branch in Bermuda, and
  
- c) the subsidiary in Bermuda of STANDARD LIFE OF EDINBURGH, with address at:  
75 Front Street, Hamilton, HMIZ  
PO Box HM 1125 Hamilton, HMEX  
Tel: 296-0333  
Fax: 295-6209
  
- d) the insurance agency Freisenbruch-Meyer Insurance Service, with telephone number 296-3600, in Bermuda, 75 Front Street, Hamilton HMIZ, 1125 Hamilton, HMEX
  
- e) the insurance agency Harnett & Richardson Ltd., with telephone number 292-3608, in Bermuda, 75 Front Street, Hamilton HMIZ, 1125 Hamilton, HMEX

At the same time it is requested that the corresponding Rogatory Letter request all documentation, transfer statements, and statements of the origin or destination of funds since the opening of these insurance policies, insurance contracts, credit titles, promissory notes, rights and credits of any nature, including bank accounts and/or deposits, shares in investment funds, and certificates of deposit owned by Augusto Pinochet Ugarte, directly or through third persons, and by members of his family, that might be in Bermuda, and particularly in the abovementioned businesses, branch, subsidiary and agencies up to this point in time, even if they have been closed.

2. Members of Augusto Pinochet Ugarte family:

His wife: Lucía HIRIART RODRÍGUEZ

His sons:

**Inés Lucía** Pinochet Hiriart,  
married with Julio Ponce-Lerou

**Augusto Osvaldo** Pinochet Hiriart

**María Verónica** Pinochet Hiriart,  
married with Hernán García-Barzelato

**Marco Antonio** Pinochet Hiriart

**Jacqueline Marie** Pinochet Iriart, married with Iván Noguera

Given the cordial relations between our respective countries, I hope that it will be considered worthy to agree to comply with that which is requested, and accepting reciprocal treatment in analogous cases.

Madrid, the twenty of April two thousand one

The Magistrate-Judge

The Secretary