

OPINION ON THE LIKELY EFFECT OF EXTRADITING GENERAL AUGUSTO  
PINOCHET UGARTE ON INTERNATIONAL RELATIONS BETWEEN CHILE  
AND THE UNITED KINGDOM

CONFIDENTIAL

1.- General.

This opinion has been prepared by Professor Francisco Orrego Vicuña at the request of Kingsley and Napley, solicitors. The author is a professor of international law and international relations at the Institute of International Studies and the Law School of the University of Chile. This Institute was established in cooperation with the Royal Institute of International Affairs in 1966 and performs similar functions. The inaugural lectures of the Institute were delivered by Arnold Toynbee and since then a host of distinguished British officials and academics have visited the institution, including H. M. the Queen, Secretaries of State and Ministers.

Professor Orrego Vicuña obtained his Ph. D. (International Law) at the London School of Economics and Political Science, University of London, and has published extensively in Chile, the United Kingdom and other countries. He is a member of the British Institute of International and Comparative Law, the International Institute for Strategic Studies, the Royal Geographical Society (FRGS) and the Royal Institution (MRI). Professor Orrego Vicuña was Ambassador of Chile to the United Kingdom in 1983-1985.

Parts of the information contained in this Opinion may be subject, in respect of British officials, to the United Kingdom Official Secrets Act.

2.- An historic tradition of reliable partnership.

Chile and the United Kingdom have established a well founded historic tradition of reliable partnership. This was evident already at the time of independence from the Spanish colonial rule in 1810, when Britain supported the independence of South American countries and their claims to free trade. A number of distinguished British officers fought in the wars of independence, most notably Lord Cochrane, giving place to a long-standing close connection between the Chilean Navy and the Royal Navy. Current attempts by Spain and other European countries to exercise extraterritorial jurisdiction over General Augusto Pinochet Ugarte, and have him extradited by the United Kingdom, are perceived in Chile and South America as a revival of colonial practices being expected that the United Kingdom will once again oppose such pretensions.

An important number of British companies were established in Chile as from the nineteenth century in the light of these shared values of economic freedom and political independence, some of which continue to operate until this day. Political and strategic cooperation between the two countries have also been a key feature of their relations.



Such understandings were again evident in the war between Chile and Peru-Bolivia (1879), which was not alien to the British interests in the nitrate mining industry that Chile protected by means of military intervention. So was also the case in the first world war, during which Chile, in spite of being a neutral, allowed British naval operations in the Strait of Magellan, the Island of Robinson Crusoe and other Chilean maritime areas, leading among other results to the sinking of the *Dresden*.

In the second world war Chile sided at an early stage with Britain and the United States in spite of heavy pressure from Germany, Argentine nationalists and Spain's Franco government. Numerous Anglo-Chileans fought under the British flag.

### 3.- Contemporary reliability and friendship.

These very elements of historic tradition have inspired contemporary relations between both countries. Economic partnership and political understandings in international affairs have again been the salient features of this uninterrupted relationship.

The Falklands war offers good evidence of having the government of General Pinochet been a particularly reliable friend of the United Kingdom. Three examples of the help given to the British war effort can be mentioned: (i) Chile's intelligence and signals gathering in respect of departure of Argentine combat aircraft was immediately relayed to the British services, thus preventing

surprise attacks and saving numerous lives; (ii) British commandos that landed in Chile after having operated in Argentina were not turned over to the Argentine government in spite of its pressure, and on the contrary were returned to Britain in disregard of Chile's obligation as a neutral to intern them; (iii) Royal Air Force combat aircraft that landed in Easter Island proceeding from the South Pacific in order to strike on Argentina from Chile, were not retained or its crew interned as required by the laws of neutrality but allowed to quietly return to their points of origin.

Current attempts to have General Augusto Pinochet extradited from the United Kingdom are perceived, if successful, as the breakdown of this historic and contemporary relationship of reliability and friendship. This situation is of particular concern for the government and the armed forces since it would prompt many changes in international relations, some of which will be discussed below, as well as to the large Anglo-Chilean community that has taken great pride in the building of both business connections and political understandings. Statements of concern from various British institutions in Chile are attached to this Opinion. Chile would not like the United Kingdom to be seen as an unreliable partner.

#### 4.- Human rights issues.

In the light of the press coverage and stories run by the European media on occasion of the detention of General Pinochet in London, it is necessary to clarify that his government was not



insensitive to human rights issues. True, many abuses took place but this was not entirely unexpected in a context of a virtual civil war, a situation which regrettably also occurred under the government of President Allende when at least one prominent member of the opposition and member of parliament was tortured by the secret services.

In furtherance of this concern, the Chilean government recognised since the outset the competence of international organisations to deal with human rights issues, unlike the attitude of many other countries that did not accept such role, i. e. Yugoslavia, Algeria and a host of African and Asian nations. It is important to note that Chile did not accept that other countries individually might seat in judgment of Chilean events, what is what the Spanish request for extradition is now trying to obtain.

Cooperation with the Inter-American Commission of Human Rights was extensive and its members were allowed to visit freely detention centers. Similar was the cooperation with the United Nations Human Rights Commission, which appointed with the agreement of the Chilean government a five member panel to visit Chile and which had the occasion to interview as many people as it wished. A special Rapporteur was also accepted in this context, who acknowledged the cooperation of Chilean officials.

In spite of opposition from some government and military circles to this policy of cooperation, President Pinochet himself adopted the decision to keep with these commitments, a decision which proved essential to control abuses by security

services. Chile also supported the Uruguayan proposals that led to the establishment of the United Nations High Commissioner for Human Rights.

It is also appropriate to note that the Chilean government took duly into account the British views on the matter and while the author of this Opinion was Ambassador to the United Kingdom established the first contacts with Amnesty International in London, which at the time was headed by a distinguished Chilean lawyer and human rights specialist.

#### 5.- Broader strategic implications.

Remote as Chile may be from the United Kingdom, the good relations between the two countries have secured a framework of stability in a broader regional and international context. Such framework would inevitably be harmed if the extradition of General Augusto Pinochet is granted, as can be illustrated by the following situations:

-Any alteration of the political stability in Chile will have spillover effects in the rest of South America. This does not necessarily entail the hypothesis of a constitutional breakdown, but will be rather related to a more difficult, tense and prolonged transition to full democracy. Many countries in the region affected by these problems will face difficulties emerging from the Chilean experience. It must also be kept in mind that General Pinochet is a well respected military leader in South America, having recently



presided over the meeting of commanders in chief of the armies of the Western Hemisphere.

-The same may be said of countries in other regions undertaking transitions based in part on the Chilean experience, notably South Africa, whose leaders have already expressed concern in this respect.

-An extradition of General Pinochet would also send the wrong signals to any authoritarian leader who could be considering the eventual handover of power, since he would then be exposed to a similar fate. Cuba, Indonesia, Malaysia come to mind in this context, as well as China or Iraq in the future.

-The extradition would also mean in practice the derogation of amnesty laws throughout the world since there would be no guarantee of respect for these arrangements which are crucial for transition to democracy. Argentina and Uruguay are two relevant examples of countries that would be affected by this situation. It should also be noted that numerous persons associated to revolutionary or terrorist activities have also benefited from amnesty in Chile, not only the military, whose cases could be reopened in the context of a failed amnesty arrangement.

-Chilean foreign policy would also become more closely associated with that of Argentina. While this is not negative in itself it would have implications for British interests in the region, particularly in respect of both the future of the Falkland Islands and the issues associated with the Antarctic Treaty System.

-The fact that Argentina has been recognised by the United States as an strategic ally aside NATO has prompted reactions of concern in Chile. If prominent NATO members, such as the United Kingdom, France or Spain, are perceived as antagonising Chile on the question of General Pinochet, this may deepen the reactions of concern and eventual exploration of options available to Chile.

-Among such options a growing connection with China is already on the horizon, not only in trade and economic cooperation as it stands at present but also in terms of broader political and strategic considerations. It must also be noted that General Pinochet is a friend of China, where he has been repeatedly received with dignity and honour. China has also expressed its concern about the situation of General Pinochet in London, as have a number of other significant countries beyond Western Europe.

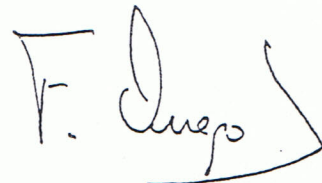
#### 6.- Conclusion.

In the light of the above considerations and of the long-standing tradition of mutual respect and reliability characterising the relations between Chile and the United Kingdom, it is the conclusion of this Opinion that the extradition of General Augusto Pinochet to Spain or any other country would deeply upset such important goals and objectives pursued by both countries. Conversely, a refusal of such requests by H. M. Government would



reaffirm the values and benefits of this partnership and greatly enhance cooperation between Chile and the United Kingdom.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'F. Orrego', with a large, sweeping flourish extending to the right.

Francisco Orrego Vicuña

21st. November 1998