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Profile of Dr. Juan E. Garcés, Chief Lawyer in the Spanish Case Against General Augusto Pinochet

by Steven Hernández and Sarah C. Aird*



On October 8, 1999, pursuant to Great Britain's 1989 Extradition Act, the Bow Street Magistrate's Court in London ruled in favor of Spain's request to extradite former Chilean dictator and Senator-for-Life, General Augusto Pinochet, who is currently being held in Great Britain. Deputy Chief Stipendiary Magistrate Ronald Bartle committed Senator Pinochet to

await the extradition decision of Great Britain's Home Secretary Jack Straw on 34 charges of torture and one charge of conspiracy to torture.

Dr. Juan E. Garcés, Spanish attorney and lead private prosecutor in the Pinochet case, envisioned this groundbreaking development in international law. He spearheaded the case, coordinating, and then heading a multinational team of ten lawyers representing nearly 4,000 survivors and families of survivors in approximately 3,000 cases of assassination, forced disappearance, and torture committed under Pinochet's leadership.

On October 25, 1999, the *Human Rights Brief* interviewed Dr. Garcés. What follows is both the personal account of a witness to some of the most egregious crimes of the twentieth century and a glimpse into the legal mind of a practitioner who represents the victims of these crimes.

The Lawyer Behind the Case

After receiving his law and political science degrees from the University of Madrid, Garcés completed his doctoral dissertation on the Chilean economic and political systems at the University of Paris at the Sorbonne in the late 1960s. His legal and political science background, coupled with a keen academic interest in Chile and

Recognizing that, under ideal circumstances, the Chilean courts would be the most appropriate forums for prosecuting the former dictator, Garcés believes that, at the moment, the Chilean courts are not a viable venue.

Dr. Salvador Allende's invitation to be his political advisor, brought Garcés to Santiago, Chile's capital, in July 1970. Dr. Allende was elected president of Chile in September 1970, and on September 11, 1973, the Chilean military, under the leadership of General Pinochet, overthrew Allende's civilian government. While the Presidential Palace was under siege, President Allende ordered Garcés to leave Chile so that someone would be left to "tell the story," something that Garcés has been doing ever since.

The Will to Prosecute

For more than 25 years, Pinochet enjoyed complete immunity from prosecution for the crimes against humanity his government orchestrated and committed at his behest. The 1978 Chilean Amnesty Decree, which is still in force, grants amnesty to all

persons involved in the coup and governments between 1973 and 1978, frustrating victims' attempts to obtain justice in Chile.

In July 1996, Garcés and his colleagues filed charges against Pinochet in Spain because the Chilean judicial system, which is plagued with corruption, made it impossible to seek justice within Chile. Even after Garcés's team of lawyers initiated the case against Pinochet, which was followed by separate investigations in other countries such as France, Belgium, and Switzerland, Chile remained politically unwilling to investigate the allegations of massive human rights violations against Pinochet. Recognizing that, under ideal circumstances, the Chilean courts would be the most appropriate forums for prosecuting the former dictator, Garcés believes that, at the moment, the Chilean courts are not a viable venue. A lack of political will, combined with the Amnesty Decree and the oversized military courts' jurisdiction, make efforts to prosecute Pinochet in Chile futile. As a consequence, Pinochet's victims, *en masse*, have come to Spain in their search for justice.

The ability of the Spanish courts to try Pinochet for internationally recognized crimes is the result of recent advances in international politics and law. The United Nations encouraged the use of universal jurisdiction for crimes against humanity in December 1946, when it recognized the principles of the 1945 Nuremberg Charter and the proceedings of the Nuremberg Tribunal. The international community, however, has lacked the political will to deal with such crimes. The international norms derived from the Nuremberg Tribunal remained dormant for 50 years as Cold War politics dominated international relations, preventing both the application of the law, as well as its subsequent development.

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With the ending of the Cold War in 1990 and 1991, the veil protecting those individuals responsible for crimes committed during the era lifted and the impunity that existed began to erode. For Garcés, the Spanish judicial proceedings against Pinochet are just one manifestation of the new political will to prosecute crimes against international law.

Legal and political advances in Spain were also necessary before Garcés and his colleagues could begin to consider bringing the case against Pinochet to trial. Garcés explained that it was not until 1985 that the Spanish judiciary obtained the jurisdictional competence to hear cases such as the one against Pinochet. In that year, the Spanish Parliament passed the Organic Law of the Judicial Power, granting universal jurisdiction to Spanish tribunals and allowing Spanish judges to consider prosecutions of certain international crimes, such as genocide, terrorism, torture, counterfeiting, prostitution, piracy, and drug-trafficking, regardless of the nationality of the perpetrators or victims.

According to Garcés, it is not only necessary that the law allow this type of case to be brought, but public support for the prosecution can be equally important to the success of the legal endeavor. Fortunately, by the time the case against Pinochet became public in October 1998, Spanish civil society had become accustomed to the Spanish judiciary prosecuting crimes of terrorism committed by state actors. In 1998, after years of police investigation and judicial proceedings, the Spanish Supreme Court condemned Spain's former minister of the interior, Felipe González, as well as his highest police officials, for their responsibility in the abduction of a Basque nationalist during the 1980s. Exposure to the concept that government officials should not be immune from prosecution for acts of state terrorism resulted in Spanish civil society's support of the Spanish judiciary's extension of this power over General Pinochet for crimes against humanity.

Furthermore, only recently have Garcés and his associates felt they could expect broad support from Chileans themselves. In 1995, Chileans expressed limited support for holding state actors accountable for the crimes Pinochet's government committed. In that year, the Chilean Supreme Court convicted Manuel Contreras, former director of Chile's National Intelligence Directorate (DINA), a state institution responsible for many of Chile's worst human rights violations. The Chilean court found Contreras guilty for the September 29, 1976, assassination in Washington, D.C. of Orlando Letelier, the former Chilean minister of defense and ambassador to the United States under President Allende, and Letelier's U.S. aide, Ronni Moffitt. This favorable ruling, however, has limited precedent value in Chile. Chile's 1978 Amnesty Decree exonerates all government officials implicated in crimes that the Pinochet government committed, with the one exception allowed for prosecution of those officials connected with the Letelier and Moffitt assassinations. Accordingly, Pinochet and many others remain immune under Chilean legislation.

Building the Case

In July 1995, with the international and national legal foundations set and evidence of expanding political will, the idea to prosecute Pinochet was born. Garcés and his colleagues began the arduous process of gathering testimony and accumulating evidence of the former dictator's crimes against humanity. Initial concerns in the Spanish judiciary about Spain's jurisdictional competence to try such a case complicated the process. After much debate and extensive consideration of national and international law, however, 11 magistrates of the Spanish National Criminal Court ruled that Spain did have jurisdiction over the case against Pinochet, and the court's approval of Magistrate Baltazar Garzón's request for the arrest and extradition of Pinochet to Spain was close to unanimous.

As representatives of the victims and their families, Garcés and his colleagues also faced the challenge of convincing governments to respect extradition obligations under the European Convention on Terrorism, which requires that signatories cooperate with each other's judicial procedures in matters related to terrorism. Spain

successfully invoked this treaty in the past for other international crimes, such as narcotics trafficking and terrorism, but never utilized the treaty for crimes against humanity.

Garcés and his associates had to decide the breadth of the investigation as well. They debated whether to prosecute other Chilean officials responsible for crimes against humanity or limit their investigation to the highest official responsible for these crimes, General Pinochet. Ultimately, they chose to limit their prosecution to Pinochet and a few military and political leaders. Garcés stated that he did not plan to prosecute lower officials. He noted that the case against Pinochet is already having a positive effect on the Chilean judiciary and he hopes that Chilean legislators will revoke the Amnesty Decree, allowing Chilean prosecutors to bring these secondary officials to justice in Chile. Garcés does not believe the Chilean judiciary will face the same level of political and military resistance as it did in the case against Pinochet.

The Impact of the Case against Pinochet

According to Garcés, the impact that the Pinochet case had on the Chilean judicial system is striking. In particular, the case has helped the Chilean judiciary gain a greater degree of autonomy. This is important because the Chilean judicial system has a history plagued by political and military control, frustrating the application of penal codes against political and military leaders. Until now, there has not been a tremendous outcry against the political influences in Chile that have restricted the judiciary's ability to deliver substantive justice. Today, however, there is a growing base of international and Chilean support for revising the Chilean judicial system. Accusing Pinochet of crimes against humanity reaffirmed the precedent that the conviction of Manuel Contreras set. The case against Pinochet may also encourage the Chilean public to rally for a repeal of the 1978 Amnesty Decree, allowing for the prosecution of other officials of the Pinochet government responsible for crimes against humanity.

Garcés hopes that in the next five to ten years, activists and prosecutors in other countries will bring similar cases against high officials responsible for crimes against humanity. Not only does he believe such cases would secure justice for the victims of such crimes, but they also might deter current government officials from committing similar crimes because they would fear being held accountable at a later date.

As a parting interview question, the *Human Rights Brief* asked Garcés if there is one detail largely overlooked in the discussion surrounding the case against Pinochet that he feels is crucial to a more comprehensive understanding of the case and its context. In response, Garcés explained that opponents of the judicial proceedings have made constant attempts to politicize the proceedings. Garcés believes these attempts detract attention from the victims and the crimes Pinochet had committed against them.

One of the most blatant examples of such an occurrence was on October 3, 1997, when the General Auditor of the Chilean Military made a special visit to Spain to justify, in political terms, Pinochet's 1973 coup and subsequent crimes committed until 1990. The General Auditor argued to the Spanish investigating magistrate that the case Garcés filed against Pinochet should be closed, and Spain's extradition request to the United Kingdom be retracted. The presiding judge invited Garcés, as the victims' counsel, to reply. Garcés and his colleagues in this case believed that responding to those political issues would politicize the case, drawing attention away from the real issues: that Pinochet committed egregious crimes and should be prosecuted for them to the fullest extent of the law. Garcés's greatest hope is that countries will learn to separate legal principles from compromising political considerations in their pursuit of justice. ☉

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