

AI INDEX: AMR 22/15/98
28 OCTOBER 1998

UK/Chile: High court decision: a dangerous setback for international law

Today's decision by the UK High Court granting Augusto Pinochet immunity from prosecution as a former head of state is an alarming setback in the international struggle against impunity, Amnesty International said today.

"This decision is extremely disappointing and dangerously out of step with existing international law which provides that there are no grounds for immunity in matters relating to crimes against humanity," the organization said. "It sets a worrying precedent for those who commit crimes against humanity using the state apparatus. It sends a message that these crimes can be committed without punishment."

"How can there be any credibility to the promises made by governments in the defence of human rights if international law is undermined by granting protection to those who commit crimes against humanity," Amnesty International added.

According to international law those implicated in crimes against humanity do not have any immunity as the obligation to exercise justice in these cases is absolute. This was established by the Statute of the Nuremberg International Tribunal and recognised as international law by the United Nations General Assembly in December 1946.

Amnesty International is urging the House of Lords to apply this principle, and thereby reiterate the commitment of the United Kingdom to prosecute crimes against humanity.

"The commitment to uphold international law in cases of crimes against humanity has been greatly undermined by the English High Court decision today," Amnesty International said.

"It is imperative that the UK authorities do not endorse the impunity under which these crimes have been shrouded. The UK authorities should now demonstrate their commitment to fully cooperate with the legal steps taken by Spain, Switzerland and Great Britain to punish these crimes."

These principles have been reaffirmed in the Statutes of the international tribunals for the former Yugoslavia and Rwanda, as well as the Statute for the International Criminal Court, adopted in Rome on 17 July 1998. The United Kingdom has contributed greatly to these and other efforts to create international penal justice.

"This makes today's decision all the more disappointing. Furthermore, it is a flat contradiction to the way the soon to be established International Criminal Court will operate," Amnesty International asserted. The agreement to establish the Court expressly gives the Court the power to try anyone including former heads of States.

Background

The Charter of the Nuremberg Tribunal provided: *Article 7: The official position of defendants, whether as Heads of State or responsible officials in Government Departments, shall not be considered as freeing them from responsibility or mitigating punishment".* The judgement of the Tribunal, established this obligation: *The principle of international law, which under certain circumstances, protects the representative of a state, cannot be applied to acts which are condemned as criminal by international law. The authors of these acts cannot shelter themselves behind their official position in order to be freed from punishment in appropriate proceedings".*

The United Nations General Assembly declared this principle to be international law in its Resolution 95 (I) of 11 December 1946. These principles were acknowledged by the United Kingdom as a party to the Nuremberg Charter which set up the Tribunal, on which British judges then served.

ENDS.../