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LADB Staff

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Chilean-Spanish Relations Tense on Eve of Pinochet Extradition Hearings

by LADB Staff

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In the last legal maneuver to block extradition hearings, a Spanish Appeals Court ruled Sept. 23 that former Chilean dictator Gen. Augusto Pinochet (1973-1990) does not have immunity from prosecution as a former head of state. Meanwhile, Chilean Foreign Minister Juan Gabriel Valdes said the government would take its dispute with Spain regarding Pinochet to the International Court of Justice at The Hague.

The Spanish court turned down the request by Spanish prosecutors to order Pinochet's release. The court upheld an earlier ruling by Spain's Corte Suprema that Judge Baltasar Garzon has the right to seek Pinochet's extradition from Britain, where he has been under house arrest since Oct. 16, 1998, to face charges of human rights abuses when he headed the Chilean military government (see NotiSur, 1998-10-23).

Last April, the British High Court ruled that Pinochet could only be extradited to Spain on charges of torture or conspiracy to torture committed after Dec. 8, 1988, when Britain signed the International Convention Against Torture. Judge Garzon has compiled evidence regarding sixty cases that occurred after that date (see NotiSur, 1999-04-23).

Efforts to block extradition intensify

Legal and diplomatic actions have become more intense in recent weeks as Pinochet's lawyers and the Chilean government attempted to head off the extradition hearing scheduled to begin Sept. 27 at Bow Street Magistrates Court in London. The administration of Chilean President Eduardo Frei claims that only Chilean courts have authority to try Pinochet. "We are not defending a person. We are not defending violations of human rights," Valdes said. "We are defending the right of Chileans to judge what happened in Chile by themselves."

Human rights groups, which have been very involved in efforts to bring Pinochet to justice, insist that he would never be tried in Chile. A spokesperson for the Chilean Committee against Impunity said, "The Pinochet case did not begin last year in London, but Sept. 17, 1973, in Santiago when this rebel general overthrew the constitutional president [Salvador Allende] and brought us a bloody dictatorship that lasted almost 20 years."

When efforts to negotiate Pinochet's return failed, Chile proposed the application of a bilateral arbitration treaty signed by Chile and Spain in 1927, 50 years before Spain's current Constitution took effect. The accord was never approved by the Spanish parliament, but rather imposed by then dictator Jose Antonio Primo de Rivera.

Spanish Foreign Minister Abel Matutes issued the official response to the request for arbitration Sept. 13, reiterating that the government's position was not to interfere with the work of the courts

and saying that the dispute could not be settled through arbitration or diplomatic negotiations. Chile then said it would take the case to the International Court of Justice at The Hague. Jaime Lagos, legal director of the Foreign Relations Ministry, will present the petition to the International Court. He said he would first meet with court officials to explain Chile's attempts to resolve the matter through negotiations and arbitration. But, he said, Spain's rejection of both avenues left the International Court as the only alternative.

Sources close to the International Court indicated that one alternative is for Chile to ask for "provisional emergency measures" to suspend the extradition process in London while the court at The Hague hears the case, a process that could take two years.

Foreign Minister Valdes also said Chile is still appealing for the release of the 83-year-old retired general on humanitarian grounds and British authorities are receiving regular reports on the state of his delicate health. Chilean diplomats are saying that the danger that Pinochet might die "is not imminent but it is permanent."

On Sept. 21 in New York, Valdes told British Foreign Secretary Robin Cook that Pinochet's health problems are serious enough that he should be returned home as soon as possible. But Cook said the British government could not take any action before the extradition hearing takes place.

Chile recalls its ambassador to Spain

In the heated exchanges in early September, Chile said it planned to review all its ties with Spain, including economic agreements. Right-wing legislators were demanding the cancellation of a contract for two submarines from Spanish-French consortium Bazan-DCN, and some called for breaking relations with Spain.

Chile called its ambassador home "for consultations," but stressed that breaking diplomatic relations was not being considered. "Breaking relations would be inefficient and not too intelligent," Valdes told Radio Cooperativa of Santiago. "We need an ambassador who is present and active, who is strong and capable of energetically representing Chile's stance in Madrid."

Valdes met representatives of Spanish companies with major investments in Chile to discuss the case. "I met the Spanish businessmen to tell them that I view the development of relations between Spain and Chile with great concern, that they play an important role in Chilean life, and that they also bear responsibility for this, in the sense that the way relations develop will have an effect on their activities," Valdes said in the interview.

Chilean Sen. Jaime Gazmuri of the Socialist Party (PS) called the government's reaction "disproportionate." He said bilateral agreements should not be reviewed, warning that an escalation of the dispute with Spain over the Pinochet affair could hurt Chile's relations with the entire European Union. Chile "should be very careful" before turning to the International Court at The Hague, said Gazmuri. "What will happen if we lose there? Winning an international suit over Pinochet is very difficult."

Ricardo Lagos of the PS, the center-left ruling coalition's candidate for the Dec. 12 presidential elections, also said the arrest of the former dictator did not merit the increasing tension in Chile's relations with Spain. While Spain and Chile have not resolved their differences regarding Pinochet, both decided, after a "frank and cordial" meeting of their foreign ministers in New York on Sept. 22, that it is in their best interests to lower the level of rhetoric.

Lawyers say outside influence will prevent fair hearing

When the hearing in London begins, Pinochet will not be in the courtroom. Some associates have said they are confident that the general's health will influence a favorable decision for his return to Chile. The hearing is expected to last about five days. Jose Maria Stampa Braun, one of Pinochet's Spanish lawyers, said he is concerned that the judges in Britain and Spain who will decide the fate of Pinochet will be influenced by outside factors, which could affect their decisions. "The outside contamination is of such magnitude that the external trial, the parallel trial, is becoming much more important than the authentic trial," said Stampa Braun.

In a meeting last month at the residence outside London where Pinochet is being held under house arrest, Stampa Braun said that the general authorized him to use whatever it takes to secure his return to Chile, even if this means a guarantee that he will stand trial in Chilean court. A few days after the meeting, Stampa Braun's associate Fernando Escardo shocked observers when he told a Spanish newspaper that his legal strategy would be based on the argument that "Pinochet has never tortured, just as Hitler never burned a Jew."

Stampa Braun quickly retracted the statement of his colleague, calling it an "intellectual lapse." He said the main defense argument would be that the Spanish courts have no jurisdiction in the case. [Sources: The Miami Herald, 08/11/99; Associated Press, 08/13/99, 09/17/99; Reuters, 09/14/99, 09/17/99; Inter Press Service, 09/15/99, 09/17/99; The New York Times, 09/17/99; Notimex, 09/09/99, 09/16/99, 09/19/99, 09/21/99; El Nuevo Herald (Miami), 09/21/99; Spanish news service EFE, 09/17/99, 09/19/99, 09/21/99, 09/22/99; CNN, 09/22/99, 09/24/99; BBC, 09/24/99]

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