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A Tribute to Justice: Honoring Forty Years of Struggle to Advance Judicial Process for Crimes Against Humanity in Chile

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A TRIBUTE TO JUSTICE: HONORING FORTY YEARS OF STRUGGLE TO ADVANCE JUDICIAL PROCESS FOR CRIMES AGAINST HUMANITY IN CHILE¹

*A Conversation with Judge Baltasar Garzón Real, Sir Geoffrey Bindman,
and Joan Garcés, Moderated by Almudena Bernabeu*

ALMUDENA BERNABEU: Good afternoon, everybody. My name is Almudena Bernabu.² I have the beautiful and great honor to be

¹ These remarks were delivered as part of *A Tribute to Justice*, an event commemorating the 40th anniversary of the military coup d'état in Chile, presented by the Charles Horman Truth Foundation at the Third Church of Christ Scientist in New York City on September 9, 2013. Other speakers and honorees included Peter Weiss, Judge Juan Guzmán Tapia, Jennifer Harbury, Reed Brody, Peter Kornbluh, and Prof. Cynthia Soohoo. The program was co-sponsored by CUNY School of Law, the Center for Constitutional Rights, the Institute for Policy Studies, and the North American Congress on Latin America, with support from the Ford Foundation. The editors thank Joyce Horman for permission to transcribe the program, and gratefully acknowledge the assistance of Bridget Lombardozi and Southern District Court Reporters, P.C. The remarks have been edited for length and grammatical continuity. Videos of the entire *Tribute to Justice* program can be accessed at <http://www.hormantruth.org/ht/2013videos>.

² Almudena Bernabéu has served as International Attorney for the Center for Justice and Accountability (CJA) since early 2002. Bernabéu leads CJA's Latin America program, practicing U.S.-based civil Alien Tort Statute litigation against human rights abusers and universal jurisdiction criminal human rights prosecutions before the Spanish National Court. Bernabéu is also Director of CJA's Transitional Justice Program. Bernabéu currently serves as the lead private prosecutor on two human rights cases before the Spanish National Court: one filed on behalf of survivors of the Guatemalan Genocide and the other brought against senior Salvadoran officials for the massacre of Jesuit priests in 1989. Bernabéu has worked in human rights and international law for the past decade. She has published many articles on human rights litigation in national courts and its effectiveness in the struggle against impunity, as well as on reforming Spanish asylum and refugee law. She has lectured at universities in multiple countries, participated in numerous conferences internationally, and has conducted trainings for lawyers and government prosecutors. Bernabeu is also Vice President of the Spanish Association for Human Rights (www.apdhe.org), and serves as an advisor at the Human Rights Clinic at Santa Clara University. Bernabéu is a member of the advisory board of the Peruvian Institute of Forensic Anthropology (EPAF) (www.epafperu.org), a forensic group providing evidence on human rights violations investigations and prosecutions. In 2012, Bernabeu won the prestigious Katharine & George Alexander Law Prize, and the *Yo Dona* Magazine Award. She was named one of the 100 most influential people by *Time* magazine in 2013, and just received the SCEVOLA award for ethics and professional excellence. Ms. Bernabéu holds an LL.M. degree from the University Of Valencia School Of Law, where she specialized in Public International Law. Trained in Spanish and U.S. law, she is a member of the Valencia and Madrid Bar Associations and the American Bar Association.

the moderator and make an introduction. Hopefully I speak slow enough so you can all understand me. I apologize ahead of time. I do have a heavy accent, but it makes me more appropriate tonight because I'm from Spain.

I also want to thank Joyce Horman and the Charles Horman Truth Foundation for inviting all of us and for putting this beautiful event together and including me in it. Next to me, we have three people and a fourth great companion. I don't think they need an introduction, but I have the duty to do it. We have next to me Judge Baltasar Garzón from the Spanish National Court.³

³ Judge Baltasar Garzón Real is internationally renowned as the Spanish jurist who issued the first detention request, through Interpol, for former Chilean dictator Augusto Pinochet on charges of abductions, torture, murder, forced disappearances and terrorism. General Pinochet's subsequent arrest in London on October 16, 1998, marked the first dramatic application of the principle of universal jurisdiction—the right of third countries to prosecute crimes against humanity committed in other nations where the perpetrator is shielded from justice. Judge Garzón's effort to indict and extradite Pinochet to Spain resulted in his house arrest in London for over 500 days and stripped him of the "sovereign immunity" he had maintained from prosecution for his human rights atrocities. Judge Garzón relentlessly pursued the Pinochet case, eventually winning a ruling in London that Pinochet be extradited to Madrid to stand trial. For political reasons, the British government freed Pinochet to return to Chile instead, but he was immediately prosecuted there also. Garzón's precedent-setting prosecution transformed Spain into a center of international human rights accountability and paved the way for similar efforts to prosecute crimes against humanity committed in Argentina, Guatemala, and El Salvador.

In 2000, Judge Garzón began to investigate charges of genocide, terrorism, and torture committed by Argentine military officers during the dictatorship that lasted from 1976–1983. In 2003, Judge Garzón obtained the arrest and extradition of an Argentine Navy intelligence officer, Ricardo Cavallo, who was living in Mexico, on charges of genocide and terrorism. In April 2005, Judge Garzón convicted another Argentine naval officer, Adolfo Scilingo, for participating in "death flights" of 30 political prisoners and the National Criminal Court of Spain sentenced him to 640 years in prison in Spain. In 2009, Judge Garzón accused six officials of the administration of George W. Bush of authorizing and facilitating human rights abuses as part of the war on terrorism and urged Spanish prosecutors to investigate them in connection with the torture of prisoners at the U.S. military's Guantánamo Bay base in Cuba. Under pressure from Washington, revealed by the Wikileaks cables, Spanish authorities blocked efforts to apply universal jurisdiction to U.S. officials for those abuses.

In 2008, Judge Garzón opened the first inquiry into Franco's supporters' crimes against humanity committed during the war between 1936 and 1939 and during the fascist dictatorship established after it. Shortly after Judge Garzón declared his jurisdiction, he was accused by the Fascist Party of abusing his judicial authority for opening the inquiry. In what many observers believe was political retribution, Judge Garzón was suspended from serving as a judge for eleven years in February 2012. Judge Garzón has served on Spain's Central Criminal court, the Audiencia Nacional. As examining magistrate of the Juzgado Central de Instrucción No. 5, Garzón led the investigation of Spain's most important criminal cases, including terrorism, organized crime, and money laundering. In 2012, Garzón became senior legal counsel to the anti-secrecy group, Wikileaks, to help defend its founder, Julian Assange. Judge Garzón is a graduate of the University of Seville (1979). Between 1999 and 2008

Judge Baltasar Garzón is not only known for his role in the Argentine⁴ and Pinochet⁵ cases, but many other efforts of universal jurisdiction⁶ and international criminal law and international human rights, both investigations and prosecutions. He is now in private practice. We all know a little bit about his adventures in our dear home country, but he is definitely a person committed in his travel—from the international criminal court to national jurisdiction to national investigations—on many levels. Right next to Judge Baltasar Garzón is Cristian Farias, who is a student at CUNY School of Law, who is going to help me and help Judge Baltasar with the translation.⁷

On the other side of Judge Baltasar is Sir Geoffrey Bindman, a solicitor from the UK and also a very well-known person.⁸ If you

Garzón was awarded twenty-two *Honoris Causa* Doctoral Degrees. Judge Garzón received the Hermann Kesten Prize in 2009 and the International Hrant Dink Award in 2010. In 2011, Garzón received the first ALBA/Puffin award for human rights activism. The award committee cited his “exceptional courage in defense of human rights and his commitment to the recovery of historical memory regarding crimes against humanity.”

⁴ See Ciaran Giles, *Baltasar Garzon: The Spanish Judge Setting the World to Rights*, INDEPENDENT (Nov. 4, 1999), <http://www.independent.co.uk/news/people/profiles/baltasar-garzon-the-spanish-judge-setting-the-world-to-rights-743127.html> (describing Judge Garzón’s role in indicting Argentinian officials accused of human rights crimes).

⁵ General Augusto Pinochet was the leader of the coup d’etat which overthrew President Salvador Allende of Chile on September 11, 1973. He was responsible for the torture and death of thousands of his opponents. He was arrested in London in 1998 after Judge Baltasar Garzón issued a warrant charging him with human rights violations. See Jonathan Kandell, *Augusto Pinochet, Dictator Who Ruled by Terror in Chile, Dies at 91*, N.Y. TIMES (Dec. 11, 2006), <http://www.nytimes.com/2006/12/11/world/americas/11pinochet.html>. He was the first dictator to be humbled by the international justice system since the Nuremberg trials. See *The Nuremberg Legacy: Pinochet and Beyond*, U.S. HOLOCAUST MEMORIAL MUSEUM, <http://www.ushmm.org/confront-genocide/speakers-and-events/all-speakers-and-events/the-nuremberg-legacy-pinochet-and-beyond> (last visited Sept. 8, 2014).

⁶ See generally Kenneth C. Randall, *Universal Jurisdiction Under International Law*, 66 TEX. L. REV. 785 (1988) (providing an overview of universal jurisdiction and analyzing its applicability and potential to redress wrongs widely condemned by the global community).

⁷ CUNY Law Review Managing Articles Editor (2013–2014) Cristian A. Farias served as Spanish-English interpreter for Judge Garzón as he delivered his remarks.

⁸ Sir Geoffrey Bindman, QC is a British attorney specializing in human rights law who represented Amnesty International and Chilean victims’ interests in the case against Chilean dictator Augusto Pinochet in the late 1990s. Bindman was responsible for the arrest order against Pinochet during his visit to London in 1998. Bindman has served as Chair of the British Institute of Human Rights since 2005. In 2003, he won The Law Society Gazette Centenary Award for Human Rights, and was knighted in 2006 for services to human rights. In 2011, he was appointed to the Queen’s Counsel. In 1974, Bindman established Bindman’s, LLP with the vision of “protecting the rights and freedoms of ordinary people.” The firm offers a broad range of services to

read the book that Peter mentioned, *The Pinochet Effect*, he is also very well-portrayed in his role as a solicitor.

In a minute he'll tell you about human rights and civil rights in the context of the UK struggle over many years, and the important roles he played prior to the arrest of Pinochet. Right next to him is attorney and Professor Joan Garcés,⁹ who is from my hometown, Old Elysium, who lived in Chile, studied in France and worked in Chile for many years. He was the attorney who brought the criminal complaint that precipitated the Pinochet case, on behalf of the victims and a foundation in Spain that [represented] the Chilean refugees.

We've been hearing, through the first panel, references about the facts and adventures, as I call them, that these three gentlemen

private individuals, NGOs, companies, and other organizations. Bindman received a law degree from Oriel College in Oxford and qualified as a solicitor three years later. He served as a legal advisor to the Race Relations Board for seventeen years. Bindman was a legal advisor to Amnesty International and represented the satirical magazine *Private Eye*. In the late 1980s, Bindman visited South Africa as part of an International Commission of Jurists delegation sent to investigate apartheid and subsequently became editor of a book on the topic, *South Africa and the Rule of Law*. In September of 2012, Bindman told BBC Radio that he agreed with Desmond Tutu that British Prime Minister Tony Blair should be prosecuted on the basis that starting the Iraq War was a "crime of aggression" in breach of the United Nations Charter.

⁹ Joan Garcés is a Spanish attorney who has made major contributions to international human rights law in the fight against impunity for heads of government who commit crimes against humanity. When Salvador Allende became President of Chile in 1970, the newly elected President invited Garcés to serve as his personal advisor. He served in that capacity until the September 11, 1973 military coup forced him to leave Chile. Garcés fled to France to serve as personal advisor of UNESCO's Director General. He returned to Spain after the restoration of the representative form of government and became a member of the Madrid Bar in 1981. Garcés served as the lead counsel in the case that he initiated against Augusto Pinochet in Spain in 1996 using the principle of universal jurisdiction, heading a multinational team of lawyers representing survivors and families of survivors of more than 3,000 cases of assassination, forced disappearance, and torture committed under Pinochet's regime. When General Pinochet traveled to London in October 1998, Garcés filed a request with Judge Baltasar Garzón of Spain in order to obtain an arrest warrant and begin extradition proceedings against him. The path for this action was paved earlier by Garcés' legal and procedural work against crimes committed by the Pinochet regime. Pinochet's detention and the British Court's ruling granting his extradition to Spain marked the first time that a national court applied the principle of universal jurisdiction against a former head of state, declaring its legal right and ability to judge crimes against humanity committed in another country, despite self-granted local amnesty laws. Garcés graduated from the Universidad Complutense of Madrid and earned a doctorate in political science from the Sorbonne. He is a recipient of the Alternative Nobel Prize and France's National Order of Merit Award for his contributions to international law. He has been a professor of political science in leading universities of several countries.

went through and the struggle of those days in 1996 through 1998 and beyond, and up to the arrest of Pinochet in London.

What I wanted to say as a matter of introduction is that, back in October of 1998, when the arrest was about to happen, I was living in Spain, just graduated from law school, [and] passed the bar. I was working in a very boring law firm and, frankly, had no idea of what a career even meant to me, but I was trying to conceive that there [would] be, somewhere, somehow, a career for me to build. . . . In a very intuitive way, I don't think I knew enough. I was celebrating as I followed in the press [that] the arrest warrant was issued.

In those days, I remember with emotion and a little bit of agony, because it was not clear whether the arrest [would happen] and [if he would be held] in London. I remember putting a cheap bottle of champagne in the refrigerator to see if we could open it in the context of the arrest or not. We ended up dancing in the stairway of my apartment in front of my neighbors, who thought that I was a little nutty. But we celebrated the arrest of Pinochet. I don't think I knew entirely—well, now I am sure I didn't know—what that meant. It was the sense that something right was done, something historical.

I couldn't understand, much less anticipate, that I [would] become a human rights attorney, that I [would] do human rights defense in many countries, many of which happen to be in the Latin America region, and [that] the so-called "Pinochet effect"¹⁰ that I was going to witness from a privileged position for the next twenty years would mean so much.

But, really, I think the Pinochet arrest changed Chile. It had changed Chile forever. And I think that's true for the rest of the world. It was definitely true for my personal career.

We're here to discuss the future of universal jurisdiction and, hopefully, this doesn't sound super-pretentious, but I want to tell these gentlemen that I am the future of their work and [I admire] their courage in working in universal jurisdiction, because I make sense only in the aftermath of their effort and their ability to do it. They really brought justice to a dimension that we didn't know. We aimed for it after Nuremberg,¹¹ but nobody had the ability to bring

¹⁰ The arrest of Pinochet in London set a historic precedent in international law for holding accountable former heads of state accused of human rights crimes. See generally NAOMI ROHT-ARRIAZA, *THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS* (2006).

¹¹ See *Nuremberg Trials*, HISTORY, <http://www.history.com/topics/world-war-ii/>

it down to a more realistic terrain, and I think they did. With that, I wanted to open the questions, and then I want to do something unorthodox, which is to [share] three words to describe our speakers, because I happen to know them on a more personal level. Not a traditional introduction.

I would like to say about Sir Geoffrey Bindman [that] when I think about him, I think about solidarity, the consistent solidarity of the English community, civil rights and human rights. Since the 1970s, when the big load of refugees got to London, they always [found] support.

When I think about Mr. Joan Garcés, I think about commitment. Commitment and rigor; his heart is probably three-quarters Chilean. He had rigor and super-professional legal work, never deviating from the law for a second. That, I think, is an example for all of us young, a little precocious and brash lawyers, to take on.

And from Baltasar, courage, audacity, and the vision from his position. I believe and respect the people that take where they are in life and their professions and do the best they can, and don't question the high cost [to] their personal and professional life. Baltasar has done that.

With that, I'm going to ask the first question to Sir Geoffrey Bindman. I'm going to start to try to do it chronologically. My understanding is that you had attempted to arrest General Augusto Pinochet, life-sitting senator at the time, a few times prior to the successful effort in 1998.

SIR GEOFFREY BINDMAN: Yes.

MS. BERNABEU: I would like if you [could] explain a little bit, including the legal basis, because I don't think we understood the UK to be a country with provisions that may be similar to universal jurisdiction. I would like to know the legal basis for that process, solicitor.

MR. BINDMAN: Well, it's quite correct that before the arrest of Pinochet in London, I had tried to have him arrested on two previous occasions when he was visiting London. The [legal] basis was this. First of all, unlike the United States, we in Britain have the right for individuals to bring a prosecution. In order to do that, the individual has to go to a magistrate's court, [which is] the lowest

nuremberg-trials (last visited Sept. 8, 2014) (providing a historic and interactive overview of the Nuremberg Trials following the fall of Nazi Germany).

criminal court, and ask for a warrant of arrest for the accused person. Now, there is a snag to this. The Attorney General of the country has the power to stop a private prosecution, but he can only do that after it's been started. So we thought—and Amnesty [International] was involved in this—that if we at least could get started and get an arrest warrant issued against Pinochet, that in itself would make a big impact and it would put the government under pressure to stop it if they wanted to.

Unfortunately, on both those occasions, the magistrate was very reluctant to make a quick decision. He wanted to think about it, and he adjourned his decision. Meanwhile, Pinochet was alerted and left. On one occasion, he had come to visit an Arms Fair in Birmingham, England; on the other occasion, I think it was for medical treatment. But he got away on both those occasions.

The great difference and the great advantage of what Judge Garzón and Joan Garcés were able to do—and they are the real architects of Pinochet's arrest—was to use an established procedure of extradition. This put the onus and the burden on the British government, the British authorities and the British police to carry out the arrest and to pursue the legal case. So the legal case against Pinochet was actually presented by the British government. They had to do it because they were required to under the European extradition treaty between the Spanish government, the British government, and all of the other European governments.

Now, when that had happened and the arrest had taken place, there was an immediate response from Pinochet and his lawyers. They went straight to the high court to try and quash the arrest. They tried to say that Pinochet was immune from prosecution and, therefore, from arrest. The whole case in Britain, right up to the time that Pinochet was allowed to return to Chile, rested on the question of immunity of a head of state. That's a crucial issue which, in the last discussion, interestingly, did not feature so much as it might have. That was the crucial decision.

MS. BERNABEU: Now I want to turn the question to Joan. Tell us a little bit about the work that was involved, [over] many years. Walk us through the process that brought you to that complaint. If I understand the history, the complaint filed against the Argentine junta happened barely days before.

So walk us through the process that brought you to that complaint filed a few days after against Pinochet and others.

JOAN GARCÉS: Good evening. As every lawyer knows, an old case

goes to court, moves through the courts, and, in this case . . . without particularly strong facts, [results in a victory] against the individuals for their responsibility. This case begins on the 11th of September 1973, and continues for years for the victims and relatives who were seeking justice in the Chilean courts. They were building the case. But as the Judge said, the doors of those courts of justice were closed for the victims. Outside Chile, we were—in the '70s, the '80s, and until 1990—in the Cold War. This meant that each big power in its respective zone of influence was committing crimes against humanity, crimes of aggression, and was not very interested in looking at what the other big power was doing in its respective zone of influence. In this particular case, the territorial jurisdiction was not applied by the Chilean courts, and [under] the principle of universal jurisdiction [there was no] court where it could have any possibility for success. But the victims were building the case in Chile. Then the Cold War ended in 1990 together with the dictatorship of Pinochet. Both things are linked. Pinochet's regime was a crutch of the Cold War. When this war ended, he was dropped by the big powers that were backing him. Then the moment came when the victims could have the possibility of going to a foreign court under the principles of universal jurisdiction. That was the case in 1996 in Spain. And why in Spain?

First, because the courts in Chile were closed at this time. It was not that Spain came to Chile, but that the Chileans came to Spain looking for a court. In 1996, Spain was going through a big clash between the judicial power and the executive power around crimes of the state, crimes committed by the government of Felipe González. It started with extrajudicial executions of some Basque nationalists. The judiciary began to investigate those crimes, and Spanish society was following this case. It ended with the home minister, Felipe González, being indicted, charged and condemned to die. It was quite unusual how a minister was tried because of crimes committed by the police. But of course that was Spain in 1996. Society and the magistrates were sensible to those crimes, crimes committed by the state. In this context, courts were closed in Chile, it was the end of the Cold War, and Spain, traditionally being sensible to crimes of the states, led the first claim, which was introduced in 1996. Spain declared universal jurisdiction and the victims began to come to Spain with their testimony about the fights that were gathering in Chile during the years of the dictatorship. And for two and a half years, we prepared the indictment. That was very difficult. The public prosecutor's office

in Spain was absolutely against this case. Not only [did they not] give us help, but they were attacking, appealing each [of the court's decisions that gave the] case the possibility to go ahead. Then when Pinochet was in London, [it was feasible] for us to ask for his arrest under the treaty of the European Convention [on] Extradition because the evidence was in the court.

MS. BERNABEU: That's a perfect way of reaching my next question to Judge Garzón. So the case was filed in 1996, but my understanding is that actually it went as a matter of the law [to] the Spanish national court and went to a different judge. You were not the original judge in the Pinochet case. So will you explain how the opportunity came for you to be in charge of that arrest warrant.

JUDGE BALTASAR GARZÓN: First of all, I'd like to thank the Charles Horman Foundation for inviting me to be here in New York. It's a pleasure to be here with you all. I think that in this story, you need to begin to acknowledge who the true architects of the process [were]. And without a doubt, for me the great architect of the Pinochet case was not Judge Garzón or any other judge initially, but it was Joan Garcés.

Joan Garcés was with Salvador Allende on that last day on September 11, 1973. He left the presidential palace with a request and I think that he was able to carry it out. For many years, forty years total, he has dedicated his life to the law. I know he doesn't like to hear this, but that's his problem.

I think that he, alongside others, took a very important initiative that converged during a historic moment in Spain. . . . At that time, Spain was able to apply the principle of universal jurisdiction for the first time and, perhaps, in a stronger way than in the Argentina case. The Argentina and the Chile cases were parallel [and] very similar. Argentina was a little bit ahead, [but] in a way they were walking in lockstep.

The initial proceedings to accept this process were first established in the Argentina case, and the arrest of Pinochet occurred within the context of the Argentina case during what is known as "[Operation] Condor."¹² That explains the existence of two judges working at the same time.

¹² See generally JOHN DINGES, *THE CONDOR YEARS: HOW PINOCHET AND HIS ALLIES BROUGHT TERRORISM TO THREE CONTINENTS* (2004) (comprehensive look into the U.S.-backed Latin American military alliance known as Operation Condor, which would go on to carry out untold human rights crimes against left-wing opposition members and their sympathizers).

In my case I was investigating the different kinds of torture, repression, disappearances, [and] homicides that were being carried out during the Argentinean dictatorship after the complaint presented by the Progressive Union of Prosecutors in Spain. . . . They were also involved in presenting the case of Pinochet alongside Joan. . . . Within that dynamic, we arrived at October 1998.

I must warn you that by that point the tribunal of the Spanish National Court, which is the tribunal under which we operate, had not ruled positively regarding the jurisdiction of our court over this case. Once more, the prosecutor was in court actively opposing this measure [and was] decidedly against it, combative against it. We were about to throw punches at each other.

JUDGE GARZÓN: I must tell you that in those two proceedings beginning in October of 1998, I resolved more motions by that prosecutor than I have in thirty-two years of practice. That was the decision of the government at the time. It was opposed to the extradition [and] was doing everything possible so that [it] would not [advance].

To make a long story short, a week before October 16th, Joan Garcés came and saw me. He was not defending the Argentina case. And he informed me that Pinochet was, in fact, in London.

I told him, “Okay, very good. What do you want?” “Well, I want you to know that he’s in London.” “What can we do?” And I told him that I am the Judge from chamber number five not chamber number six, that they were out of a number of different chambers, that Judge number six has to make the decision. Then he told me, “Yes, that’s true, but let’s see how we can proceed with this.” So I told him—he won’t tell you this, but I’m going to tell you—“I’m going to take the affidavit or the deposition by Pinochet,” and I’m sure when you tell him that, he will be for it.

Something like that occurred because my colleague took initiative to present this request to take a declaration from Pinochet in London. The agreement that Joan and I arrived at is that whatever action I took in this case would be known as an action taken by the Judge in chamber six so that [all] the pressure from the media [would be] on chamber six. There was perhaps a small story on myself, but it wasn’t big. It never went anywhere.

My colleague was very burned down because the media was on him, asking, “Have you ruled on that request? Have you taken a declaration from Pinochet?” and all this. And he said, “Yes, I’m going to rule. Yes, I have ruled.” I must tell you that that request

was never honored. It [was] never issued because the events after that didn't allow it.

Meanwhile, I asked the British authorities whether Pinochet was, in fact, in London. It was evident that he was there, but we had to go through the formal request process. The answer that the British police gave me was something along the lines of, "Why do you care about this?" I was a little surprised, but then I got a phone call from the British embassy in Spain.

It's worth noting a small story within a story. A year before, I had a big controversy with the counsel or the ministerial counsel to the embassy because I was complaining that Gibraltar was not cooperating with Spain in a case relating to money laundering. He said, "You're being unjust with me. You have not made a request. If you make a request, we're going to try and work with you." And he said, "If you have any doubts, we can talk." Then I said, "Okay, let's talk." And at last we formed a very important relationship. When he called me that afternoon, he told me, "They have answered you inadequately from London. That will not happen again because that would break up the important relationship that Great Britain has with your court. Well, so then you can make your request again."

I can't tell this whole story in two minutes, but he said, "Okay, fine, if I'm going to receive another request. I shall answer that request." Then they tell me, "Yes, Pinochet is in London." They ask me, "What do you want to do with him? What are you accusing him of?" That's where I have to go to Joan, because the main process was going on in the other courtroom. I had an open case, which was the [Operation] Condor, so I told Joan, "Here we can proceed with this case." In fact, that's what I did.

At that point, different information and different kinds of files were being exchanged. On October 16th of 1998, they said that Pinochet wanted to leave. I asked for the option to send an interrogatory with the questions for Pinochet in order to get his testimony. I asked Joan to prepare the questions, and that's how everything finished that day. Around 1 p.m. on a Friday, we said, "Okay, let's go home." And around 2 p.m., I received a message from the British police telling me Pinochet was leaving tomorrow, so we won't be able to take this testimony from him. "You have to make the decision because he's going to leave," they said. There was no one left in the court, [except] one person. I made the decision to hold back this office worker from leaving [the court] because she was about to leave. And when I gave her the request by

hand, she came back to my office and said, "Are you sure about this?" And I told her, "Just write and be quiet."

And that's how the arrest warrant was issued. I asked the Spanish police to be quiet because the judge may do so if he decides. The request was filed. The ministerial council informed me of how the situation was going, and then I went back to my native home in Andalusia. It was a popular holiday in my hometown at that time. All the way home I was getting different messages from London. I must acknowledge that I wasn't too sure that this arrest warrant would actually take effect. I went to watch some bullfighting with my favorite bullfighter. Julio Romero is his name. It was a disaster. . . .

While I was still at the bullfight, I received a call from the ministerial counsel. He said, "The police [are] going to the home of the judge with the arrest warrant." I asked, "What do you mean they're going with the arrest warrant?" They asked, "Didn't you issue it?" I responded, "Yes, I did." It was about 8 p.m. at that time. I began to finally understand that this was, indeed, working.

[At] around 10 p.m. I got a call from him again and he said, "Pinochet has been arrested."

That's how it happened. A short anecdote right before I finish. Sometime after, I was with Luis Moreno O'Campo and the Chilean counsel at Harvard University. When the moment came to speak about the Pinochet case, I was still working on the case. Luis Moreno O'Campo said, "Judge Garzón cannot speak on the subject. I'm going to explain all about it." We were in a big hall with the students, and he begins to explain how the arrest of Pinochet occurred. He said, "Judge Garzón, with his team [of] fifteen people, all together issued [an arrest warrant.]" I was looking at him, and under the table, he was tapping me on my knee.

Everybody started clapping. And I asked him, "Why did you do this? Why did you explain it like that?" [And he replied,] "If I tell everyone that you and one office worker did all of this on your own, they would never believe it."

The truth is, the day after, I called Joan Garcés. I told him, "Joan, Pinochet knows he's [been] arrested. We need to reaffirm and complete the arrest order, because since all of this did not have the complete history of [crimes for which Pinochet was responsible], we only put one case there and then we added 104 more cases."

So we finished up the case, thanks to Joan, and we finished up the order in twenty-four hours with eighteen translators, without

sleeping, eating sandwiches there in the court. The order was issued. And thanks to that order, Pinochet remained arrested. Because the first English judge made a mistake and put in the writing that it was homicide, instead of [a] disappearance. The Hague Court issued the order and continued on the second arrest warrant that we [worked on].

MS. BERNABEU: My second question is about obstacles and problems, and I know that you guys all went through a lot of them. I would like to ask, you this question, Sir Geoffrey: It's been said that there's the "before" and "after" Pinochet—that it's the first time a head of state was prosecuted. [But] it was not the first time a head of state had been prosecuted. It was the first time that a head of state [was] still sitting in power when he was prosecuted. He was a senator at the time, so that precipitated a whole layer of complications that the House of Lords and the UK needed to deal with, because of immunity. I think [that's] the first and foremost obstacle that we needed to get over. Would you tell us [your] insights of that?

MR. BINDMAN: [After Pinochet was] arrested, his lawyers went to the [high] court in London to get the arrest quashed on the basis that Pinochet was immune as a head of state. Of course, he was no longer head of state, but he had been head of state when the crimes took place.

So the high court in London was presided over by our Lord Chief Justice, a very liberal judge. Our government presented the case against Pinochet. Unfortunately, they did not handle it very well. I only got involved because I was told this was going to be heard in the high court. I went along to the high court on behalf of Amnesty [International]. The case was very badly argued by the lawyers representing the Spanish government [and] our British government lawyers. The court said he was immune, but they allowed it to be appealed to the House of Lords.

Now, at that point I wanted to get the case properly argued, and I applied to the House of Lords to get permission for Amnesty [International] and also for families. I contacted various victims, including Sheila Cassidy and various other people, and we built up a whole group of people seeking to intervene in the case. This is another example of the rather informal way these things happen. I telephoned the House of Lords and said I wanted to apply for us to intervene. This was on a Friday, I think. The case was coming in on the Monday. Somebody in the office said, "Well, I think we've got

one of the judges here. I'll ask him." So the judge happened to be somebody I knew very well, a very liberal judge. And they said, "We'll call you back." A half hour later I got a call saying that the judge, Lord Slynn, looked at this, and he said [it was] fine. "Just send us a written petition." So that's how Amnesty [International] got involved.

I then put together a team of advocates and we were very lucky that Ian Brownlie, who was the professor of International Law at Oxford University, the most famous international lawyer in Britain, was very willing to help, and he became our leading advocate. We put together a very strong case. . . . [U]nfortunately, we had to do that because there was no real argument on international law from the British government representatives.

So, in effect, although I was not involved in the arrest itself, I can claim to have contributed to getting the arguments put before the court so that the issue of immunity was properly dealt with.

MS. BERNABEU: Would you explain briefly what the arguments were? What was the argument presented to the court?

MR. BINDMAN: Well, the argument was that, although everybody accepts that a head of state has immunity from anything he does while he's in office, an ex-head of state does not have immunity. That was our argument.

We also argued that, even if there is immunity, it can't apply to torture. Our case was based on torture. And we eventually succeeded in the House of Lords, but then a whole new question came up about whether one of the judges, Lord Hoffmann, who had connections with Amnesty [International], was qualified to sit or not. But that's a long story.

MS. BERNABEU: And, Joan, keeping with this theme [of obstacles] . . . and as Baltasar's beautiful story shows, how many [hurdles] you needed to jump. Tell us about the political conditions in Spain and Chile, two scenarios perhaps different than the particular instance.

In Spain, what was happening and what kind of political environment [did you have] to struggle [with] to keep this case alive and eventually successfully litigate it? And what was the political scenario in Chile, and how did that affect, if at all, your work?

MR. GARCÉS: We are talking about crimes committed by the state, with state officers or with the means of [the] state, and that means

politics. And it's not easy if you are trying to prosecute someone [who] is backed by political powers.

In this case, in our analysis, the international political situation was vital. As I said before, it was impossible during the Cold War. Even after that, we needed to find evidence. That work was done in two and a half years from Spain, after more than fifteen years in Chile. But we also needed a court of justice. And where was this court of justice? Pinochet and other people were being investigated in Spain, but he was not there. And then it was necessary to get his arrest and extradition. As I said, how could we get the order of arrest, the warrant of arrest? The judge explained that. But the problem was [whether] it could be executed, and for that we needed a court of justice with enough power and independence to execute the order. Once again, things happened because they can happen.

[Pinochet was in Ecuador] in March 1998, a few months before his arrest. I was informed of his presence in Ecuador. Someone told me, "Well, he's outside Chile now." And Chile never expected that an order of arrest coming from a foreign tribunal would ever be executed against Pinochet. My answer was, he's in Ecuador now, I guess, but I would not move one finger to get him arrested in Ecuador because the judiciary in Ecuador at that time could never implement the order of arrest in an effective way.

Pinochet then came to London and we got this case. We never imagined he would be in London, but it was our responsibility to react immediately and in a way that avoided political and other interferences. I learned about Pinochet's presence in London through the media. The Chilean media were saying that he was in London for medical treatment. [I began] to prepare the file for the court to order his arrest. I received a phone call from someone [who] worked with Amnesty International and was very interested in getting Pinochet arrested, but we couldn't get that without a judge ordering the arrest. They said, "We think that we can only get this order in Spain. Can you help us?" My answer was, "Thank you for the information, but I am very busy."

Who was he? I didn't know. And even if I knew, I would not say what I was doing over the phone. So the surprise effect was absolutely necessary. And that goes to your question. Political interference could take place at any moment and that was outside of our control, so we [had to] manage [and] handle those things in another way.

When the arrest took place, and the judge explained how, [it]

was very important what the United States government [would] do because of the special relationship between the United Kingdom and the United States. The case was being prepared in the United States since 1996. The Pinochet case is a second stage of the Letelier case. Orlando Letelier was the former Ambassador of Chile in the United States during the government of Salvador Allende, and he was murdered in a terrorist attack in Washington, D.C. in September 1976. Thanks to the work of two very good lawyers, Sam Buffone and Michael Tiger, with the backing of the Institute of Policy Studies in Washington, where Letelier was the director [at the time], ensured that an assiduous investigation took place. We had [the] benefit [of] this investigation in Spain.

Thanks [again] to the cooperation of those lawyers [who] reached [out] to get the U.S. Department of Justice to cooperate with the prosecutor in Spain. I was here in Washington [a] year and a half before the arrest of Pinochet with one of the other chaps investigating [the] magistrate that was [on] this case taking testimony from some witnesses. That meant that the cooperation between the Spanish justice and the U.S. justice was already established when Pinochet was arrested in October '98.

MS. BERNABEU: Mr. Garcés, you anticipated my next question. I have other questions about the victims and the large impact of these cases, but we may not have time. But I want to end with a note on the U.S. anticipat[ing] that. There's been an evolution in thinking about [the] obstacles [and] the evidence available. And there's no question, we heard Peter Weiss and Reed Brody talk today about the contradictions of cases not going forward. Although I'm hopeful in the ATS and ATCA¹³ cases, the civil suits, there's also been an evolution in the U.S., through the declassified documents. We have Peter Kornbluh here, Kate Doyle, experts at analyzing the documents and what they contributed.

So for you, my dear, [is it] possible that you think there is [a] more comprehensive ability for practitioners—that is prosecutors, lawyers—[or] for victims to successfully [bring] these cases and if the U.S. [particularly] contributed?

JUDGE GARZÓN: We can't talk about the victims, but I can't help talking about the victims. The Pinochet case would not have been

¹³ Alien Tort Statute, 28 U.S.C. § 1350 (2012) (imposing civil liability in federal district court for tort claims brought by foreigners claiming "violation of the law of nations or a treaty of the United States"). The law is also referred to as the Alien Tort Claims Act, or ATCA.

possible without the victims, without the support of the victims, without the human rights organizations and lawyers, Reed Brody, among them. He was working with others to bring this case forward.

The institutions went along with this. They did not take the initiative themselves. Maybe a magistrate or some prosecutor here and there. Fortunately they were where they needed to be in order for this to take effect, but it wasn't a state initiative. Once the case had been opened, the collaboration of the various countries was not uniform.

It's true that the message [President] Bill Clinton gave was very clear: that he was not opposed to the arrest. . . . The important thing about this is [that] the U.S. favored this investigation. For example, with respect to the monies that Pinochet was holding outside of the country, the Riggs case,¹⁴ was started here in the U.S. That bank was sanctioned, I believe, a \$17 million penalty. Finally, that bank closed down.

Thanks to the victims, the initiative of Joan Garcés, and the Salvador Allende Foundation, among others, my court ordered the money laundering charges against all of these bank executives, as well as the Bank of Chile, Pinochet, and all of his family, because they had \$27 million, if I remember correctly.

Finally, we obtained about \$8 million, and that's the only money that was related to Pinochet that went directly to the victims. I ordered that a distribution system was set up through the foundation.

The importance of the Pinochet case, and other cases such as the one[s] in Argentina and Guatemala that have been subject to universal jurisdiction, is that something that was once almost impossible—to obtain cooperation on the basis of documents that were once classified—was being opened up. . . . [This] had [also] happened in Spain with different state crimes, to the point that now it's almost one of the primary sources of information. So in that area, the cooperation aspect was very important.

There was a time where ten, twelve, up to fifteen countries

¹⁴ In July 2004, a report of the U.S. Senate's Permanent Subcommittee on Investigations stated that from 1994 to 2002 General Pinochet maintained at least six personal and corporate accounts at the Riggs National Bank in Washington, D.C., with deposits ranging from \$4 million to \$8 million. See Larry Rohter, *Pinochet Continues to Haunt Chile's Civilian Government*, N.Y. TIMES, July 18, 2004, at N12. In 2005, Riggs ultimately paid \$8 million to resolve the case filed in Spain in 1988 related to findings that General Pinochet ordered assassinations in the mid-1970s. Saul Hansell, *Riggs National Will Settle Spanish Suit Linked to Pinochet*, N.Y. TIMES, Feb. 26, 2005, at C4.

were cooperating side by side. The House of Lords consolidated the cases into one case of torture. In March of 1999, they gave us until April 11th of 1999 to complete the case, because on April 11th, the Jack Straw decision would be issued with respect to whether the case would go on or not. From March 24 to April 11, we added thirty-five more cases of torture to the proceeding so that the decision would be even stronger. We consolidated work from many countries, [such as] Switzerland, Chile, and Guatemala, [and] we got all of the victims to come forward and to cooperate in moving this matter forward.

And it's important to note one thing: Pinochet returned to Chile, but the extradition case was won. Judge Ronald Bartle decided in favor of the extradition to Spain for the 1,148 cases of disappeared people. Of course, the case did not move forward, but remained there for the jurisprudence of Great Britain.

MS. BERNABEU: Thank you so much to my three speakers. Thank you, everybody. Thank you very much.