

The Pinochet Precedent: Legal Obstacles and New Approaches to Prosecuting Crimes Against Humanity

by Teresa Young Reeves*

On March 26, 2001, the Washington College of Law (WCL) and the Institute for Policy Studies (IPS) co-sponsored a conference at WCL entitled “The Pinochet Precedent: Individual Accountability for International Crimes.” The conference addressed various legal obstacles encountered in the struggle to bring former Chilean dictator General Augusto Pinochet to justice, and to suggest new approaches for lawyers and human rights defenders in ongoing and future proceedings against individuals accused of violations of international criminal law. Among the conference participants were WCL Dean and Center for Human Rights and Humanitarian Law Co-Director Claudio Grossman, and WCL Professors and Center Co-Directors Richard J. Wilson, Robert Goldman, and Diane Orentlicher. WCL Professor Michael Tigar also participated, along with 15 other lawyers and human rights defenders who traveled from across the United States and from as far as Senegal and Argentina.

The introductory panel discussion outlined the historical and political events leading up to the 1973 coup in Chile and subsequent legal proceedings against Pinochet. Juan E. Garcés, the leading attorney in the Spanish case against Pinochet, opened the panel with a chilling personal account of the coup, a day on which late Chilean President Salvador Allende asked Garcés to take refuge in an embassy because “someone needed to live to tell the history of that day.” U.S. attorney Samuel Buffone spoke next. In 1976 he and Professor Michael Tigar brought a successful civil suit against the Chilean government for the deaths of Orlando Letelier, former ambassador to the United States and Defense Minister under President Allende, and Ronni Moffitt, a U.S. citizen and development assistant at IPS. In describing the *Letelier-Moffitt* case as an “uphill battle,” Mr. Buffone explained that 25 years ago, the prevalent belief was that Pinochet was beyond the reach of

the law because, as a former head of state, he had sovereign immunity for acts committed during his regime. At that time, the concept of universal jurisdiction—the legal principle by which any country can prosecute certain international crimes, regardless of the nationality of the parties or the locus of the crime—was neither sufficiently developed nor commonly understood. In the wake of Spain’s request to extradite Pinochet from Britain for international law violations committed during his dictatorship, the import of universal jurisdiction has gained increased recognition.

The second panel discussed lessons learned from other universal jurisdiction cases, including the recent case against Hissène Habré, the former dictator of Chad. Human Rights Watch Advocacy Director Reed Brody opened the panel analogizing a human rights cliché—“[i]f you kill one person, you go to jail; if you kill 20, you go to an insane asylum; but if you kill 20,000 people, you get invited to a peace conference”—to the *Habré* case. Habré, who fled to Senegal after losing power, allegedly murdered an estimated 40,000 Chadians and tortured an estimated 200,000 people. Plaintiffs represented by Mr. Brody and Pascale Kambale, who also participated in the conference, brought charges against Habré in March 2001. The Senegalese *Cour de Cassation* has dismissed the case for lack of jurisdiction.

Mr. Kambale commented on why the *Habré* case ultimately failed. First, Mr. Kambale blamed the lawyers’ inability to persuade the court of public opinion that Habré had in fact committed the atrocious crimes alleged. Second, he cautioned that Africa needs to train its human rights lawyers to become more pro-active in bringing alleged human rights violators to justice, rather than waiting for national governments to bring suits. Third, Mr.

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Dr. Kelly Dawn Askin, Acting Executive Director of the War Crimes Research Office of the Washington College of Law’s (WCL) Center for Human Rights and Humanitarian Law (Center), was a Distinguished Speaker at Georgetown University Law Center in March. She spoke on “Contemporary Developments in Prosecuting Gender Based Crimes in International Law.” Also in March, she was interviewed on National Public Radio’s “Diane Rehm Show” on “War Crimes Against Women,” and gave interviews concerning recent judgments rendered by the International Criminal Tribunal for the former Yugoslavia to the *New York Times*, the BBC, and the Associated Press. She also wrote an editorial for *Newsday*, entitled “Rape’s Black Day in Court.” In April, Dr. Askin’s article on the *Kunarac* case was published by the Institute for War and Peace Reporting. Two other articles, entitled “Precedent in the International Criminal Tribunals” and “Recent Developments in Prosecuting Sexual Violence in International Law,” were published by the Crimes of War project. Also in April, Dr. Askin chaired a

panel entitled “International Trials for Internal Armed Conflicts and International Crimes Committed Domestically” at the American Society of International Law (ASIL) Annual Meeting in Washington, D.C.

Claudio Grossman, Dean, Co-Director of the Center, and President of the Inter-American Commission on Human Rights (IACHR), spoke on the freedom of the press at the Inter-American Press Association Meeting in Fortaleza, Brazil, and lectured at the opening of a course for ombudsmen in Costa Rica in March 2001, where he shared the podium with Costa Rican President Miguel Angel Rodríguez. He participated in the IACHR’s *in loco* visit to Chile in April. Also in April, he presented at a seminar entitled “Truth Commissions and New Challenges in Promoting Human Rights” at Diego Portales University in Chile; spoke on fundamental human rights and the Free Trade Agreement of the Americas at a conference in Quebec, Canada, entitled “Inter-American Cooperation: Beyond Free Trade;” and represented the IACHR at the 2001 Summit of the Amer-

icas, also in Quebec. In May, Dean Grossman will moderate a panel on the death penalty in the United States, marking the 25th anniversary of the *Gregg v. Georgia* decision.

Robert Goldman, Professor of Law and Co-Director of the Center, attended the most recent regular session of the IACHR in Washington, D.C. He was re-elected to the Executive Council of the Inter-American Institute of Human Rights, headquartered in San Jose, Costa Rica. On March 30, 2001, he spoke at a conference in Chicago organized by Northwestern University on the relevance of the Inter-American human rights system for Canada, Mexico, and the United States. On April 2, 2001, he traveled to Chile to participate in a special session of the IACHR.

Diane F. Orentlicher, Professor of Law and Co-Director of the Center, spoke on March 1, 2001, as a Distinguished Visitor at Indiana University’s School of Law on “Nuremberg Reconfigured: The Pinochet

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Paradigm of Victim's Justice." On March 26, 2001, she spoke at a WCL conference entitled "The Pinochet Precedent: Individual Accountability for International Crimes," addressing the relationship between international tribunals and national courts. Additionally, on April 3, 2001, in Washington, D.C., Professor Orentlicher participated in a session of the United States Institute of Peace Working Group on International Humanitarian Law. This session explored the role of humanitarian assistance and relief organizations in the implementation and enforcement of international humanitarian law. On April 5, 2001, Professor Orentlicher participated as a panelist at the ASIL Annual Meeting in Washington, D.C., on "International Trials for Internal Armed Conflicts and International Crimes Committed Domestically."

Diego Rodríguez-Pinzón, Visiting Professor and Co-Director of the Center's Inter-American Digest Project, lectured at a seminar entitled "Military Operations in the Framework of Human Rights and Humanitarian Law," held in Santa Fé de Bogotá, Colombia, on March 26, 2001, for all high officers of the Colombian military. The lecture focused on the domestic implementation of human rights obligations, and the international, state, and individual responsibility arising from violations of these international standards. From March 26-28, 2001, he also participated, along with Claudia Martin, Visiting Professor and Co-Director of

the Center's Digest Project, in a training workshop for human rights professors in Bogotá, Colombia. The event was part of WCL's joint project entitled "Human Rights Legal Education Partnership," designed to enhance the academic capacity of human rights training in Colombia.

Herman Schwartz, Professor of Law and Co-Director of the Center, proposed changes to the Armenian Constitution. During the spring of 2001, he became Chair of the National Law Center on Homelessness and Poverty.

Richard J. Wilson, Professor of Law, Co-Director of the Center, Director of the International Human Rights Law Clinic (IHRLC), and Acting Director of the WCL Clinical Program, participated in a conference entitled "The Pinochet Precedent: Individual Accountability for International Crimes," held at WCL on March 26, 2001. He spoke on "The Pinochet Case: Origins and Impact." He also was a moderator and panelist for a program on March 30, 2001, called "Lawyer for the 21st Century: Comparative Perspectives on Public Interest Lawyering," sponsored by the Public Interest Committee at WCL. Additionally, Professor Wilson spoke at a conference entitled "The Inter-American Human Rights System and Civil Society in North America," held at Northwestern University on March 30, 2001, and co-sponsored by Northwestern University's Center for International and Comparative Studies and Center for International Human Rights. His

speech was entitled "Litigation in the Inter-American Human Rights System: A Case Study—The United States as Defendant." He also spoke on April 6, 2001, at the ASIL Annual Meeting at a session on "Teaching International Law Interest Group Program, Clinical Education in International Human Rights Law," and at an event on April 12, 2001, co-sponsored by the Law Library of Congress and WCL and entitled "The Legal Protection of the Vulnerable: Internally Displaced Persons." His talk addressed "The Role of Lawyers in Assisting Vulnerable Groups." Professor Wilson's recent and upcoming publications include an article in the South Western Journal of Law and Trade in the Americas called "Reflections on Judicial Review in Latin America," and an article published by the International Human Rights Law Group entitled "Promoting Justice Through Human Rights Lawyering: A Practical Guide for Developing Countries," co-authored with Jennifer Rasmussen. He also authored the chapter "Will History Repeat Itself? Case Studies of Systemic Constraints on Defense Counsel in International War Crimes Trials and the Need for Resource Parity" in the forthcoming book *Effective Strategies for Protecting Human Rights: Economic Sanctions, Use of National Courts and International Fora and Coercive Power*. Professor Wilson, with an outside consultant, Anne James, also recently received a U.S.\$30,000 grant from the Swiss government for the Project for the Advancement of Human Rights Law: Focus on Capital Punishment. 🌐



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