22 The Human Rights Limitation to Diplomatic Immunity: The Pinochet Appeals Under Focus*

Ian Brownlie, Q.C., Blackstone Chambers

Honourable Chief Justice, Distinguished Justices, Mr. Chairman, Ladies and Gentlemen. First I would like to express my thanks to the Law Society for inviting me to Malta.

The two House of Lords Appeals to be discussed are reported as follows:

First: [1998] 3 WLR 1456

Second: [1999] 2 WLR 827

By way of introduction the facts must be outlined. In the Second Appeal they were presented as follows by the presiding Law Lord:

> On 11 September 1973 a right-wing coup evicted the left-wing regime of President Allende. The coup was led by a military junta, of whom Senator (then General) Pinochet was the leader. At some stage he became head of state. The Pinochet regime remained in power until 11 March 1990 when Senator Pinochet resigned.
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> There is no real dispute that during the period of the Senator Pinochet regime appalling acts of barbarism were committed in Chile and elsewhere in the world: torture, murder and the unexplained disappearance of individuals on a large scale. Although it is not alleged that Senator Pinochet himself committed any of those acts, it is alleged that they were done in pursuance of a conspiracy to which he was a party, at his instigation and with his knowledge. He denies these allegations. None of the conduct alleged was committed by or against citizens of the United Kingdom or in the United Kingdom.
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> In 1998 Senator Pinochet came to the United Kingdom for medical treatment. The judicial authorities in Spain sought to extradite him in order to stand trial in Spain on a large number of charges. Some of those charges had links with Spain. But most of the charges had no connection with Spain. The background to the case is that to those of left-wing political convictions Senator Pinochet is seen as an arch-devil: to those of right-wing persuasions he is seen as the saviour of Chile. It may well be thought that the trial of Senator Pinochet in Spain for offences all of which related to the State of Chile and most of which occurred in Chile is not calculated to achieve the best justice. But I cannot emphasize too strongly that this is no concern of your Lordships. Although others perceive our task as being to choose between the two sides on the grounds of personal preference or political inclination, that is an entire misconception. Our job is to decide two questions of law: are there any extradition crimes and if so, is Senator Pinochet immune from trial for committing those crimes. If, as a matter of law, there are no extradition crimes or he is entitled to immunity in relation to whatever crimes there are, then there is no legal right to extradite Senator Pinochet to Spain or, indeed, to stand in the way of his return to Chile. If, on the other hand, there are extradition crimes in relation to which Senator Pinochet is not entitled to state immunity then it will be open to the Home Secretary to extradite him. The task of this House is only to decide those points of law.
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> On 16 October 1998 an international warrant for the arrest of Senator Pinochet was issued in Spain. On the same day, a magistrate in London issued a provisional warrant ('the first warrant) under Section 8 of the Extradition Act 1989. He was arrested in a London hospital on 17 October 1998. On 18 October the Spanish authorities issued a second international warrant.
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> Senator Pinochet started proceedings for habeas corpus and for leave to move for judicial review of both the first and the second provisional warrants. Those proceedings came before the Divisional Court (Lord Bingham of Cornhill CJ, Collins and Richards JJ.) which on 28 October 1998 quashed both warrants. Nothing turns on the first warrant which was quashed since no appeal was brought to this House. The grounds on which the Divisional Court quashed the second warrant were that Senator Pinochet (as former head of state) was entitled to state immunity in respect of the acts with which he was charged. However, it has also been argued before the Divisional Court that certain of the crimes alleged in the second warrant were not 'extradition crimes' within the meaning of the Act of 1989 because they were not crimes under UK law at the date they were committed. Whilst not determining this point directly, Lord Bingham of Cornhill C.J. held that, in order to be an extradition crime, it was not necessary that the conduct should be criminal at the date of the conduct relied upon but only at the date of request for extradition.

* This paper was delivered on the 10th of January 2002, at a seminmar held by the GhSL.

> The Crown Prosecution Service (acting on behalf of the Government of Spain) appealed to this House with the leave of the Divisional Court. The Divisional Court certified the point of law of general importance as being 'the proper interpretation and scope of the immunity enjoyed by a former head of state from arrest and extradition proceedings in the United Kingdom in respect of acts committed while he was head of state.' Before the appeal came on for hearing in this House for the first time, on 4 November 1998 the Government of Spain submitted a formal request for extradition which greatly expanded the list of crimes alleged in the second provisional warrant so as to allege a widespread conspiracy to take over the Government of Chile by a coup and thereafter to reduce the country to submission by committing genocide, murder, torture and the taking of hostages, such conduct taking place primarily in Chile but also elsewhere.

The subject of this lecture is the family of issues concerning the exercise of criminal jurisdiction in situations in which this involves the co-operation of other States and possible resort to international criminal courts.

The background consists of the recognition of the existence of international crimes which attract the principle of universal jurisdiction.

Such crimes include piracy, war crimes, crimes against humanity and torture.

There are other forms of jurisdiction related to international crimes, for example, on the basis of standard – setting conventions such as the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971. Such conventions adopt the principle of imposing the duty either to punish or to extradite.

Ad hoc arrangements may be made by treaty as in the case of the trial of two suspects in the Lockerbie case by a Scottish Court sitting at Camp Zeist in the Netherlands.

A further development is the appearance of regional tribunals such as the International Criminal Tribunal for the Former Yugoslavia.

And at least some States will accept the jurisdiction of the ICC created by the Rome Statute.

Limitations on the procedure of extradition of suspects may derive from human rights standards, as in the Soering case, in which the European Court of Human Rights placed limits on extradition to the United States if the receiving jurisdiction exhibited the death-row phenomenon.

By way of further introduction, the role of municipal law has to be reckoned with. There is always a filter of local institutions and standards. Thus local constitutional principles may enforce the principle *nulla poena sine lege*.

A connected question is the recognition of customary international law by municipal courts. In the absence of treaty provisions incorporated into English law the English courts are reluctant to rely upon principles of customary law. The decisions of the House of Lords in the Pinochet Appeals hinged on the fact that the United Kingdom was a party to the Torture Convention.

I shall present a short history of the proceedings. First, obviously there was the Spanish Request on basis of the European Convention on Extradition.

In the Divisional Court, Senator Pinochet applied for habeas corpus and leave for judicial review. Various issues of statutory construction arose and in the result the warrants of arrest were quashed. There was then an appeal by the Crown Prosecution Service acting on behalf of the Government of Spain.

The first House of Lords Appeal involved six days of argument. The Decision was 3 : 2 in favour of the Government of Spain. There were interventions allowed at the special application by Amnesty International and five other intervenors on the basis of having the right to speak. Human Rights Watch was also allowed to intervene but on the basis of written argument and Mr David Lloyd-Jones QC appeared as *amicus curiae*.

In January 1999 there were some special proceedings. The First Appeal was annulled. This was on account of the disqualification of Lord Hoffmann for having a non-pecuniary interest in the outcome of the case. He had the status of the trustee of a charitable foundation supporting Amnesty International, my client. And so the appeal then had to be heard again.

So in the Second Appeal we had twelve days of hearings. The decision this time was 6 : 1 in favour of the Government of Spain. The Intervenors were the same as before, but the Government of Chile was also permitted to intervene in the Second Appeal.

These were interesting questions as to the status of the First Appeal in the second hearings. The first Appeal had been formally set aside. However, it had been published in the Weekly Law Reports and it had appeared also on the desks of the Judges in the Second Appeal. During the proceedings of the Second Appeal, it seemed to everyone common sense to refer to the speeches of the Law Lords in the first Appeal as a shorthand way of discussing the different aspects of the arguments. I think common sense prevailed.

The last step I regret to say was the ultimate decision of the Home Secretary, given in a letter to the Spanish Ambassador. On the basis of an independent medical report, it had been decided that in a criminal trial in England, Senator Pinochet would be found unfit to stand trial. On this basis it was said that a fair trial would not be possible either in England or elsewhere. Consequently Senator Pinochet was permitted to return to Chile.

The offences charged in Spain were as follows (in terms of the English equivalents) The first was Genocide under the

Genocide Act, 1969. The second was Torture; under Section 134 of the Criminal Justice Act, 1985. The third, hostage-taking under the Taking of Hostages Act, 1972 and fourth, conspiracy to murder under the Criminal Law Act, 1977.

The various positions adopted by the Law Lords in the two Appeals can now be summarized.

A. The conservative approach upholding immunity was adopted in the Speeches of Lords Slynn, Lloyd, and Goff.
B. The treatment of the act of State issue: The Law Lords did take an interest in the Act of State in the First Appeal but they did not regard it as relevant in the second Appeal. The presiding Law Lord, Lord Browne-Wilkinson told Counsel that they were not interested in the argument on the act of state. The principle explained was that if as in the law of extradition there is a clear matrix of law governing the subject, then there should be no role for something as ambivalent and vague as the act of State doctrine. So the act of State doctrine played no role in the Second Appeal.
C. Then there was the majority position, a strong majority position in the Second Appeal denied immunity by 6 votes to 1.
D. Lastly there was the position adopted by Lords Millett and Phillips, who took the view that there was no immunity even prior to the coming into force of the Torture Convention.

The statutory context of immunity must be explained. The context was the State Immunity Act 1978.

Part I: Section 16 (1) provides that nothing in Part I of the Act is to apply to criminal proceedings, and thus Part I is not applicable.

But Part III of the Act contains Section 20 (1) which provides:

> Subject to... any necessary modifications, the Diplomatic Privileges Act 1964 shall apply to –
> (a) a sovereign or other Head of State...
> as it applies to a head of diplomatic mission.

This involves a reference to Article 39 (2) of the Vienna Convention on Diplomatic Relations, 1961 but there are difficulties in applying these provisions to a former Head of State.

The next question is 'What is an Extradition Crime?' This involves the construction of Section 2 of Extradition Act, 1989.

The material date is that of the conduct, not the request for extradition. Thus the Second Appeal involved a change in view from the First Appeal.

The Torture Convention was ratified by the UK on 8 December 1988 following the coming into force of section 134 of the Criminal Justice Act 1988.

The requirement in Section 2 that the alleged conduct, the subject of the request, be a crime under UK law as well as the law of the requesting State involved the condition that the conduct be a crime in the UK at the time when the alleged offence was committed. This principle eliminated charges relating to alleged crimes committed before 1988. And so although the appeal succeeded in the Second Appeal in terms of the quantity of charges, it was not a substantial victory.

Was there an obligation to extradite those suspected of crimes under customary or general international law?

- The key question is whether the law recognizes such a duty.
- Much of the literature is silent on the question and the inference must be that the doctrine is reluctant to recognize such a duty. It is also to be recalled that the relevant resolution of the Institut de Droit International at the Cambridge Session in 1983, *Annuaire*, Vol. 60, Part II, makes no reference to international crimes.
- My preference is for the view that there is a duty to extradite those suspected of international crimes. This is a duty under general customary international law.
- This view is supported by a small number of writers, for example,

  (a) Sir Hersch Lauterpacht, as the editor of *Oppenheim*, Vol. II, 7th ed., 1952, pp. 588-9.
- He also expressed a similar view in an article in the *British Yearbook*, in 21 *BYIL* (1944), pp. 93-5.

  (b) The present speaker who expressed this view in *Principles*, 1st ed., 1966, p. 268., *Principles*, 5th ed., 1998, p. 318.

The case for the duty of extradition under general international law is quite simple. If a certain action is established as a crime under customary international law, the duty to extradite appears as a necessary corollary of such a principle.

I turn now to the difficulties which have prevented the acceptance or establishment of the corollary.

First, there is the assumption that the duty to extradite must consist of an autonomous principle which is developing separately in customary law, but has not yet crystallized.

Secondly, it is asserted that there is no international crime in existence unless certain pre-conditions are satisfied, such as the existence of universal jurisdiction in respect of the international crime concerned.

Lord Hope in the second Pinochet Appeal places emphasis on the criterion that the prohibition of the acts concerned should have acquired the status of *jus cogens*.

It is not clear to me that either of these two pre-conditions is a necessary condition of a duty to extradite.

The essential problem here seems to be that of the sources of International Law.

Can a principle of customary law have a purely logical extension? Thus, if an international crime is involved, logically there should be a duty to extradite.

Similar difficulties occur in relation to the question of the immunity of former or serving Heads of State. In other words, is there a necessary corollary, in this case denying

immunity, which flows from the status of the act, for which extradition is called for, as an international crime.

On the basis of such a corollary, the question of immunity as such does not arise. If the Head of State is charged with an international crime, the question of immunity is a non-issue. Seen in this way the problem becomes one of legal characterization and priority, as between different legal principles.

Unfortunately, the legal sources do not always assess the situation in this way.

The strange circumstance is that the standard authorities, and nearly all the cases, relate to the immunity of the State itself in civil cases, and not the immunity of individuals in criminal proceedings.

The trial of Eichmann (1962), the case of *Demjanjuk v. Petrovsky* (1985), and the Honecker (1984) case are exceptional. Moreover, as precedents, these decisions have idiosyncrasies.

The more significant evidence of the position in general international law must now be examined.

1. There is the Charter of the Nuremberg Tribunal, 1945, Art. 7, according to which

   the official position of defendants, whether as a Head of State or responsible officials in Government Departments shall not be considered as freeing them from responsibility or mitigating punishment.

2. On 11 December 1946 the General Assembly of the United Nations adopted the following Resolution (Resol. 95 (1)):

   Affirms the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal.

   Directs the Committee on the codification of international law established by the resolution of the General Assembly of 11 December, 1946, to treat as a matter of primary importance plans for the formulation, in the context of a general codification of offences against the peace and security of mankind, or of an International Criminal Code, of the principles recognized in the Charter of the Nuremberg Tribunal and in the judgment of the Tribunal.

   The Resolution is declaratory in form and was adopted unanimously in a General Assembly consisting of 51 States. It was a vehicle for the expression of State practice. This development is reported with approval in 1992 by the editors of Oppenheim's International Law (9th ed.: by Sir Robert Jennings and Sir Arthur Watts), pp. 505-506.

3. The Tokyo Charter (Charter of the International Military Tribunal for the Far East), dated 26 April 1946, provided in Article 6:

   Responsibility of Accused. Neither the official position, at any time, of an accused, nor the fact that an accused acted pursuant to order of his government or of a superior shall, of itself, be sufficient to free such accused from responsibility for any crime with which he is charged, but such circumstances may be considered in mitigation of punishment if the Tribunal determines that justice so requires.

4. The United Nations General Assembly Resolution 3074 of 1973, which proclaimed (*inter alia*) the following principles:

   1. War crimes and crimes against humanity, wherever they are committed, shall be subject to investigation and the persons against whom there is evidence that they have committed such crimes shall be subject to tracing, arrest, trial and, if found guilty, to punishment.
   4. States shall assist each other in detecting, arresting and bringing to trial persons suspected of having committed such crimes and, if they are found guilty, in punishing them.
   8. States shall not take any legislative or other measures which may be prejudicial to the international obligations they have assumed in regard to the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity.

5. The Statute of the International Tribunal for the Former Yugoslavia, adopted by the Security Council in 1993, provides as follows in Article 7:

   'Article 7. Individual criminal responsibility

   1. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.
   2. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment.
   3. The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.
   4. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

   (In addition Article 9 gives the International Tribunal and States' national courts concurrent jurisdiction.)

6. The Statute of the International Tribunal for Rwanda, adopted by the United Nations Security Council in 1994, which contains the same clause (Article 6) (and also provides for concurrent jurisdiction: Article 8).

And lastly

7. The Rome Statute of the International Criminal Court, adopted by 120 states in July 1998 (and signed, *inter alia*, by the United Kingdom, Spain and Chile), which provides as follows (in Article 27 (1)):

   Irrelevance of official capacity

   1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

   The more cautious Law Lords regarded these Treaty provisions simply as special instances of jurisdiction and not as evidence of emergent principles of general or customary international law.

The issues facing the English Courts can now be summarized.

1. The request of the Government of Spain by virtue of the European Convention on Extradition.
2. As a consequence, the Extradition Act 1989 applies. Do the crimes alleged constitute extradition crimes?
3. The Home Secretary did not authorize the proceedings to go ahead on the charge of genocide.
4. The identification of extradition crimes involved a temporal criterion which could be either the date of the request for extradition or the date of the conduct.

The conclusion of the Law Lords was that the conduct must be a crime under English law at the conduct date and not at the date the request for extradition was made.

5. In the result:-
   (a) Genocide had already been dropped by the Home Secretary.
   (b) There was no evidence of hostage-taking.
   (c) Charges of murder and conspiracy to murder were extraditable crimes, provided the murders took place in Spain.
   (d) Torture was an extradition crime after 1988 when Section 134 of the Criminal Justice Act came into effect.
6. Immunity from criminal jurisdiction existed under UK legislation but not in respect of international crimes and thus the immunity *ratione materiae* normally applicable to former Heads of State does not apply.
7. The more specific conditions for removal of immunity for Heads of State were as follows:
   (a) The UK and Chile are parties to the Torture Convention.
   (b) Torture must be a crime under English law at the date of the conduct alleged.
8. The Torture Convention did not preserve immunity *ratione materiae*.

   The other view of this was expressed by Lord Goff, who was a rather lone dissenter in the second Appeal. He took the position that waiver of immunity by treaty must be express.

   An important point of interpretation was involved here: was it reasonable to assume that the draftsmen of the Torture Convention accepted that the senior officials who are those most likely to authorize torture would be immune from responsibility? If that were the case, the Convention would be to a great extent nugatory. This point of interpretation played a major role in the proceedings.

I shall now move on to examine the Obligation to Extradite Those suspected of International Crimes under Customary Law – as seen in the House of Lords.

In the House of Lords' first Appeal

- Lord Slynn stated that crimes against humanity were recognized since 1946 but no rule as to the restriction of immunity had emerged. (pp. 1473-4).
- Lord Lloyd took the view that immunity was accepted by virtue of well established principles of customary law. (pp. 1488-91)
- Lord Nicholls stated that crimes against humanity had existed since 1946 and no immunity was accepted as a consequence. (pp. 1500-2)
- Lord Steyn took a sharper view (p. 1506). At least since 1973 genocide, torture, hostage-taking, and crimes against humanity were recognized (p. 1508). Consequently no immunity was available.
- Lord Hoffmann simply agreed with Nicholls and Steyn.

There is a certain oddity about the speeches in the first appeal. The most lengthy and well articulated speech was by Lord Slynn, who was in a minority. The speech by Nicholls was relatively short and so was Lord Steyn's. Hoffmann simply agreed with the other two.

A key distinction in the Appeals was between the two types of immunity.

The first type, immunity *ratione personae*, attaches to the person of the official while he is in post as a Head of State or diplomat. It is an immunity linked to status.

The second type, immunity *ratione materiae*, attaches to the official acts of States and is related not to the person but to the subject-matter and thus it is a subject-matter immunity. Normally, this immunity survives the loss of office by the Head of State or diplomat.

In the Second Appeal the majority view was that ex-Heads of State did not have the protection of immunity *ratione materiae*.

1. Lord Browne-Wilkinson, (pp. 844-8) held that if Pinochet

organized and authorized torture after 8 December 1988, he

was not acting in any capacity which gives rise to immunity *ratione materiae* because such acts were contrary to international law.

2. Lord Hope, (pp. 879-87 at p. 886-7) was of the view that there was no protection in respect of crimes committed after ratification of the Torture Convention.
3. Lord Hutton, (pp. 887-902 / pp. 898-9) adopted the same position.
4. Lord Saville, (pp. 902-4) held that as the result of the Convention, States had agreed to the exercise of jurisdiction and that there was no immunity *ratione materiae* (p. 903).
5. Lord Millett, (pp. 905-14 at p.913) was of the view that as a result of the Torture Convention there was no immunity.
6. Lord Phillips, (pp. 920-25) held that the Convention was incompatible with the applicability of immunity *ratione materiae*.

The Law Lords in the Second Appeal had different positions both on the criteria for the development of international crimes in customary law and on the degree of the immunity. The question may be asked "What was the most radical position adopted?" Even the less conservative Law Lords still accepted the application of immunity *ratione personae*.

Lord Millett still accepted that immunity *ratione personae* applies, even though he was the least conservative of the Law Lords in the Second Appeal (p. 905, p. 913).

Lord Phillips was of a similar opinion (pp. 923-7).

Lords Hutton and Phillips emphasize that the standard is set by International Law. Thus torture cannot constitute acts committed in performance of the official functions of a head of State. (See also Lord Steyn in the first Appeal (pp. 1505-7), Lord Millett (pp. 913-4), Lord Nichols, p.1501). But all the Law Lords recognized the principle of immunity *rationae personae* and that was a concession made by Counsel on behalf of the Government of Spain.

However, the principle emphasized by Lord Phillips should in principle apply also to serving Heads of State. This was the position of Amnesty International in the Appeals.

Furthermore, the majority of the Law Lords held that the Torture Convention did not preserve immunity *ratione materiae*. But is it not equally possible that it does not preserve immunity *ratione personae*?

The positions adopted in the Second Appeal were directly related to the special characteristics of the crime of torture and the prohibition of torture as a form of *jus cogens*.

However, it is difficult to restrict the reasoning exclusively to the case of torture. It is difficult to see why genocide or hostage-taking should be treated differently.

As I near my conclusion, it is necessary to emphasize the complex interests involved in extradition cases relating to international crimes.

First, there is the Rule of law interest.

This is directed to the goals of ensuring that the extradition process is applied in accordance with the law, and also that the rights of the suspect are sufficiently protected.

Secondly, there is the possible interest of the State of the forum in trying the offences concerned.

And, thirdly, there is the interest of the requesting State, in this case Spain.

There is, however, the interest of third States other than the requesting State. The preponderance of the crimes associated with the Pinochet regime were committed in Chile. The Chilean interest was recognized in that in the Second Appeal the House of Lords permitted the Chilean Government to appear as an intervenor. It is also the case that many Chileans who were opponents or victims of the Pinochet Government believed that he should be tried in Chile and not in the Spain.

By way of conclusion it is necessary to utter a caution. The logic of the decision of the House of Lords in the Second Appeal, inexorable though it appears to be, is not yet generally accepted.

Two pieces of evidence may be adduced for this view.

The first is the resolution adopted by the Institut de Droit International at the Vancouver Session last year, entitled Immunities from Jurisdiction and Measures of Execution of Heads of State and Former Heads of State in International Law. This resolution is very conservative in essence and continues to recognize the immunities of Serving Heads of State.

The second piece of evidence consists of three recent decisions of the European Court of Human Rights in which the Grand Chamber of the Court accepted that the right to a fair hearing in accordance with Article 6 of the European Convention had not been breached where State immunity had prevented the Applicants from pursuing cases in the domestic courts.

Thus, the Court observed that

> In al-Adsani, while noting the growing recognition of the overriding importance of the prohibition of torture, the Court did not find it established that there was yet acceptance in international law of the proposition that states were not entitled to immunity in respect of civil claims for damages for alleged torture committed outside the forum state.
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> The 1978 Act which granted immunity to states in respect of personal injury claims unless the damage was caused within the United Kingdom, was not inconsistent with those limitations generally accepted by the community of nations as part of the doctrine of state immunity.

> The application by the English courts of the provisions of the 1978 Act to uphold Kuwait's claim to immunity could not, therefore, be said to have amounted to an unjustified restriction on the applicant's access to court. It followed that there had been no violation of article 6.1.
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> Judges Rozakis, Caflisch, Wildhaber, Costa, Cabral Barreto, Vajic, Ferrari Bravo and Loucaides dissented.

One final observation is called for. A depressing aspect of the subject of extradition is the extent to which consistency in approach is subject to political circumstance and discretionary elements even in Rule of law States. Thus, there is a regional jurisdiction for the International Criminal Tribunal for the Former Yugoslavia and also one for Rwanda but not for other regions or situations. And even multilateral standard-setting conventions may be the subject of compromise, as in the Lockerbie case.

In conclusion there was a strong logical case for the denial of immunity both in relation to former and to serving heads of state. This was the position of Amnesty in the two House of Lords appeals. Unfortunately as we have seen, this position is not yet reflected in the sources of Customary International Law. The relevant majority of the House of Lords did not approve of the view that immunity could be restricted as a consequence of the principles of customary international law as opposed to express Treaty obligations.