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Chile: A Look Ahead at Letelier Case Developments

This study outlines the probable course through the Chilean legal system of the US request to extradite General Contreras and suggests that it could be a useful means of interpreting political developments in Chile over the next several months. It does not offer a judgment on the possibilities of President Pinochet's survival, but instead offers a framework within which to evaluate forthcoming substantive reports and information.

The Decision on Pinochet

Overshadowing the Letelier assassination case is the question of whether it will ultimately bring down the Pinochet regime. With the grand jury indictment publicly accusing three Chilean officers--including General Contreras, formerly a close associate of President Pinochet--the legal and political possibilities set in motion create fresh uncertainties as to the eventual fate of the President.

Whether the Pinochet regime stands or falls, however, ultimately depends upon the judgment of the Chilean armed services. Currently, they give the regime sufficient support to maintain it in power. But the unfolding of the Letelier case will force an institutional reconsideration of the consequences for the Chilean military. The officer corps' evaluation will certainly include an assessment of the costs and benefits of President Pinochet remaining in power, and at some later point in the Letelier case--perhaps at the very end, the Chilean armed forces will say "yes" or "no" to his presidency.

The military leaders will weigh three major factors:

- International opinion--its unanimity, strength, and persistence in demanding the removal of Pinochet.

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-- The degree of domestic civilian support for Pinochet.

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-- Actions taken by foreign governments and international organizations to press for the ouster of Pinochet.

Pinochet's opponents, in and out of Chile, are hoping--and have been freely predicting--that the cumulative impact of these factors will inevitably force the military to dismiss Pinochet. Whatever the final decision, the process leading up to it will take time and will go through several stages.

The Legal Stages

In the first stage of the Letelier case--public indictment by the US grand jury--the Pinochet regime seems to have emerged without significant damage. Opinion is difficult to gauge in authoritarian systems, but we have no evidence indicating a severe negative reaction to the indictment in either civilian or military circles in Chile. Pro-regime media have rallied to Pinochet and have produced xenophobic interpretations of the case. Even the semi-independent newspapers appear to be taking a wait-and-see attitude.

In responding to the indictment, the Pinochet regime revealed its short-term strategy to minimize the political consequences of the Letelier case. That strategy is to confine the problem to the legal arena for as long as possible and to focus attention on the legal aspects of the case. Pinochet and his advisers probably hope that legal issues may stall the progress of the case, blur the meaning of the indictment, and provide grounds for a political defense of the Pinochet regime.

Following the return of the indictment, neither Pinochet nor the Interior Ministry charged that it was the result of a political conspiracy or asserted the innocence of the defendants. While both noted that opposition elements would seek to use the indictment to injure the regime, they made an explicit attempt to depoliticize the indictment, claiming that the Letelier case is a matter for the courts to decide--both the US and the Chilean courts.

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Thus the preventive detention of the three accused Chilean military officers was presented as a legal response to a legal request, made by the US pursuant to a 1902 treaty with Chile governing extradition rights and duties. General Manuel Contreras, Colonel Pedro Espinoza, and Captain Armando Fernandez, all fellow officers of General Pinochet, were placed under house arrest, said Pinochet, because as the President of Chile he was bound by the legal requirements of the treaty between his country and the United States. At the same time, however, Pinochet carefully pointed out that the indictment does not establish guilt and that the defendants should be presumed innocent until proven guilty. 150

The same strategy will be repeated for the second stage of the Letelier case--when the US presents its formal request for extradition of the three officers. An official of the Chilean Interior Ministry has already noted that "the charges would be duly verified before the Chilean courts." Thus, the decision to grant or reject the extradition request would supposedly not be a political decision but one made by an "independent" judiciary.

The Chilean Supreme Court--neither dominated by the Pinochet regime, nor totally independent of it--has been subject to regime pressures in the past and will certainly receive more during the Letelier proceedings. Some members will be more responsive to those pressures than others, but it is doubtful if this will be decisive for the court will also be moved by nationalist sentiments, by its own pride in its legal reputation, and by its desire to reach a decision that will stand international scrutiny. A preliminary reading of relevant Chilean law indicates, however, that the court should be able to find sufficient leeway to render a sound legal decision whose political consequences are nevertheless not unfavorable to the Pinochet regime.

When the extradition request reaches Chile, the Supreme Court will have these options:

- It can find insufficient evidence to warrant an indictment for the crime charged and reject the request.

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- It can determine that the crime was political, which would also be grounds to deny the extradition request.
- It can find the evidence strong enough for an indictment and then either extradite the three defendants or try them in Chile.

If the prosecution's evidence is strong, the court will probably be forced to find it sufficient, but it will probably deny the extradition request and call for the three defendants to be tried in Chile. If, on the other hand, the evidence presented to the Chilean court is weak and could reasonably be deemed insufficient for an indictment, the Pinochet regime is likely to seek to make maximum political capital of the refusal of the highest Chilean legal authority to grant extradition. In fact, it could justifiably claim that the issue of extradition had been brought to an ending that was both legally and patriotically defensible.

Whichever way the Chilean court rules, international clamor for extradition would probably assist the regime to maintain and even increase its support at home because this would give Pinochet a nationalistic issue to use against his opponents. The President could argue that the international community was asking his government to overturn a ruling of Chile's highest court--in effect, calling on him to break the law of the land.

The extradition process can be stretched over a considerable period of time, but the Letelier case will eventually move on to its third stage: trial in the United States and, possibly, another trial in Chile. If the three Chilean officers are tried in Chile, it will be under Chilean law, which does not seem to regard as a crime the kind of conspiracy for which they were indicted by the US. The future may thus bring not only two trials, but two verdicts: one in the US and another in Chile. If General Contreras is brought to trial, either in the US or Chile, the crucial issue will be whether or not he alleges that President Pinochet gave the order for the assassination of Letelier.

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Wherever the defendants are placed on trial, the Pinochet regime will probably follow its present strategy, insisting that their guilt be proved conclusively. At the same time, it is likely to launch an extrajudicial campaign to create public doubt about the guilt of the officers. Some of the propaganda for this has already surfaced in Chilean newspapers.

No matter how many courtroom trials there are, there will be a number of concurrent "trials" in the various forums of public opinion around the world, and especially in Chile. Fierce partisans for and against Pinochet have already returned a verdict about the guilt or innocence of the three officers, and no evidence emerging from a trial will change their judgment. But there are probably significantly large groups who will be moved by the nature of the evidence and by the positions advanced in the media debate.

The fourth and final stage of the Letelier case will be the summing up that leads to a political attitude within Chile and abroad. The verdict, the evidence and foreign opinion--all of it filtered through their domestic media--will be used by Chileans to arrive at their conclusions. In various degrees, they will come to believe that Pinochet must be kept in office, that he must be eased out gently, or that he ought to be dismissed in disgrace. Waiting for all others to do their summing up will be the Chilean Armed Forces. Depending on how the case develops and how others react to the developments, the military establishment will be the final arbiter of Pinochet's fate. That decision seems some distance away.

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