Spanish Practice in the Area of Universal Jurisdiction*

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1. INTRODUCTION: FROM THE ARGENTINEAN AND CHILEAN HEARINGS TO THE GUATEMALA CASE

The accusations filed by the Unión Progresista de Fiscales (union of progressive public prosecutors) against those responsible for the military regimes in Argentina¹ and

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* This paper forms part of the research project entitled “Derechos humanos, responsabilidad internacional y seguridad colectiva” (human rights, international responsibility and collective security), funded by the Ministry of Science and Technology and the ERDF (reference number BJU2002-00559).

¹ Accusation filed by the Spanish Union of Progressive Public Prosecutors giving rise to the hearings commencing on 28 March 1996 concerning the Spaniards missing in Argentina. This accusation was subsequently enlarged on the 9th and 18th of April, 1996. At the trial the popular prosecution was represented by the political group Izquierda Unida (the united left), the Asociación Argentina pro-Derechos Humanos Madrid (the Argentinean pro human rights association of Madrid) and the Asociación Libre de Abogados (free association of
Chile\textsuperscript{2} for their respective and coordinated policies aimed at the elimination of dissidents developed during the course of the dictatorships that afflicted these Latin American countries during the 70s and 80s, set off an exciting Spanish practice of exercise of universal jurisdiction that put Spain at the vanguard of the persecution of the most serious international crimes through the still controversial universality principle. If the objective was to hold the guilty parties accountable for the serious atrocities they committed, the so-called Argentinean and Chilean cases seem to have surpassed, to a certain degree, the very understandably pessimistic initial expectations.\textsuperscript{3} It is also true, however, that seven years hence not one of the accused has been sentenced.\textsuperscript{4} The arrest and opening of oral proceedings against A. Scilingo,\textsuperscript{5} the

\textsuperscript{2} Text of the accusation filed in Spain against General Pinochet and others for genocide and other crimes. Filed in Valencia on 1 July 1996. The accusation was subsequently broadened on 20 September 1996. At the trial the private prosecution was represented by the Agrupación de Familiares de Detenidos y Desaparecidos de Chile (union of family members of those arrested and missing in Chile) and approximately ten victims while the popular prosecution was represented by the Fundación Salvador Allende (Salvador Allende Foundation), Izquierda Unida (the united left), the Asociación Argentina pro Derechos Humanos-Madrid (the Argentinean pro human rights association of Madrid) and the Asociación Libre de Abogados (free association of lawyers). A large dossier of the hearing is also available on the Equipo Nizkor Web page: http://www.derechos.org/nizkor/chile/juicio (last visited on 21.5.03).


\textsuperscript{4} The main reason is rooted in the fact that the Spanish legal system does not make allowance for trials by default (Arts. 834 and subsequent of the 1881 Code of Criminal Procedure) coupled with the fact that the immense majority of the defendants were not to be found in Spanish territory and the Chilean and Argentinean authorities had voiced their opposition to the action taken in Spain. As regards this specific aspect, the important reform of 2002 does not affect the pre-existing regulation.

\textsuperscript{5} The former military captain Scilingo, allegedly responsible for a number of the atrocities committed in the sinister Escuela de Mecánica de la Armada (ESMA) (School of Navy Mechanics) and co-author of the so-called “death flights”, appeared voluntarily before the Spanish authorities in October of 1997 thus becoming the only defendant with respect to which oral proceedings were initiated.