

FOCUS

Law and Our Rights

The Universal Declaration of Human Rights, 1948

A Review of its Impacts

by Dr M Ershadul Bari

This anniversary can make an important contribution to the promotion and protection of human rights by reinforcing the fundamental and unremitting efforts on the part of governments, human rights advocates and United Nations agencies and programmes worldwide. It should be kept in mind that we still have widespread discrimination on the basis of gender, ethnicity, religious belief or sexual orientation and there is still genocide-twice in this decade alone. There are 48 countries with more than one fifth of the population living in what we have grown used to calling "absolute poverty." And poverty itself is a violation of numerous basic human rights.

THE standards set out in the Universal Declaration of Human Rights concerning human rights have been elaborated and codified in various multilateral and bilateral conventions. The International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, which were unanimously adopted by the General Assembly on 16 December 1966 and came into force in 1976, are virtually based on the Universal Declaration although the rights covered are not identical. Moreover, many of the principles described in the Declaration have been detailed and clarified in multilateral conventions which, citing the Declaration as their inspiration, deal with one or more particular aspect of human rights.

For example, the right to equality and non-discrimination on the ground of race is ensured by the International Convention on the Elimination of all Forms of Racial Discrimination, which was adopted by the General Assembly in 1965 and entered into force on 4 January 1969, based on Article 2 of the Universal Declaration. Similarly, on the basis of Article 4 of the Declaration, the right to be free from slavery and servitude is ensured by the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, adopted on 4 September 1965.

Furthermore, the Universal Declaration has also had a significant impact in shaping the formulation of regional conventions to promote and protect the enjoyment of human rights and fundamental freedoms by all individuals living in particular parts of the world. For example, the European Convention on the Protection of Human Rights and Fundamental Freedoms, which was the first multilateral regional treaty on human rights concluded in the framework of the Council of Europe and signed in Rome on 4 November 1950 and entered into force on 3 September 1953, refers to the Universal Declaration of Human Rights in the opening paragraph of its preamble and sets out in the fifth perambular paragraph the resolution of "the governments of European countries which are like-minded and have a

Movement have, at various summits (eg Havana in 1979 and New Delhi, 1983) reiterated their commitment to ensure respect for the promotion of human rights of individuals and the rights of peoples in accordance with the Universal Declaration of Human Rights.... No other specific human rights instruments are referred to in the non-Aligned documents."

Influence on National Constitutions

The influence of the Universal Declaration of Human Rights is evident in a number of national constitutions enacted since 1948, some of which reproduce the provisions of the Declaration verbatim. For example, in their constitutions of the Peoples of Guinea (1958), Madagascar (1959), Ivory Coast, Mali and Niger (1960), Gabon and Mauritania (1961), Burundi (1962), Algeria of the Congo, Senegal and Togo (1963), Zaire (1967), Dahomey and Upper Volta (1970) and Cameroon (1972) solemnly affirmed their devotion and adherence to the principles set out in the Declaration. The Constitution of Somalia of 1960 provides that Republic shall comply, if so far as applicable, with the Universal Declaration of Human Rights. The Constitution of Rwanda of 1962 states that fundamental freedoms, as set forth in the Universal Declaration of Human Rights, shall be guaranteed to all citizens. The Constitution of Equatorial Africa of 1968 provides that the state shall prohibit discrimination pro-

tection of newly emerged states has eloquently been portrayed in the words of the then Secretary-General of the United Nations U Thant, at the official International Conference on Human Rights in Teheran in 1988 convened in celebration of International Year of Human Rights: "There are no fewer than forty-three constitutions adopted in recent years which are clearly inspired by the Universal Declaration."

Influence on Municipal Legislation

The influence of the Universal Declaration of Human Rights on municipal legislation is found in all continents expressly quoting or reproducing provisions of the declaration.

A number of municipal laws and decrees promulgated in recent years for the purpose of eliminating discrimination refer to the principle of equality and non-discrimination set out in the Universal Declaration of Human Rights, among these are a series of anti-discrimination statutes enacted in various provinces of Canada. In Bolivia, a legislative decree issued in 1955 to establish a national system of education reaffirms the principle of equality of opportunity for all Bolivians, without discrimination, and declares that national education shall be inspired by the Universal Declaration of Human Rights. In Panama, a law enacted in 1956 to prohibit discrimination pro-

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Influence on Court Decisions

The Universal Declaration of Human Rights has influenced many decisions of national courts; it has been invoked in judicial proceedings of many national tribunals. For example, in *Sej Fujii v. California*, an intermediate Appellate Court of California observed in 1950 that restrictions contained in the California Alien Property Initiative Act of 1920 known as the Alien Land Law are in direct conflict... with Article 17 of the Declaration of Human Rights. In *Wilson v. Hacker*, the Court referred to the prohibition of the Universal Declaration against discrimination based on sex as being indicative of the spirit of modern times. In *Lincoln Federal Labour Union v. North-Western Iron and Metal Co. and American Federation of Labour v. American Sash S Door Co.* (Wherein the issue was to determine the constitutionality of state laws concerning right to work).

Justice Frank further (covering both cases) mentioned that Article 20(2) of the Universal Declaration forbade anyone's being compelled to belong to an association. In 1980, the US Court of Appeals held in the case of *Filartiga v. Pena-Irala*

that the prohibition of torture, as defined by the Universal Declaration of Human Rights, has become part of customary international law.

In a freedom of the press case, the Penal Chamber of the Supreme Court of the Netherlands interpreted the Constitution by reference to the Universal Declaration of Human Rights.

In 1951, the Supreme Court of the Philippines seems to have considered the Universal Declaration binding law in the two cases of *Borovsky v. Commissioner of Immigration and Director of Prisons*, and *Chinbok v. Commissioner Etal*. For the Supreme Court ordered the release from custody of stateless persons about to be deported, and placed him under the surveillance of the immigration authorities on the basis of *Inter Alia*, that the Universal Declaration proclaimed the right of everyone to life and liberty to the rights and freedoms set forth in the Declaration without distinction, the right of everyone to an effective remedy and the prohibition of arbitrary arrest, detention and exile. In 1957, the Federal German Constitutional Court in interpreting Article 6 of the Basic Law which provides that marriage and the family are under the special protection of the state, declared the provision in the Basic Law to Article 16 of the UDHR and it declared unconstitutional and void joint assessment of husband and wives tax which resulted in them being in a less favourable position than unmarried persons as regards tax. The case of *Filartiga v. Pena-Irala*, 1980 in which the judge held including by reference to the UDHR that the prohibition on torture was a part of customary international law is another such case.

The foregoing discussion reveals that, since its adoption on 10 December 1948, the Universal Declaration of Human Rights has become a "living instrument of incomparable importance in the field of human rights". Its provisions have been invoked in many resolutions of the United Nations and have inspired or been incorporated in many international and regional instruments on human rights. The influence of the Declaration on national constitution, municipal laws

and court decisions is also considerable. In fact, it laid the foundations for the entire global system of institutions for human rights protection.

Now it is like a brave banner flying from the highest tower in the world which no one can ignore" and its political authority is second only to the Charter itself. The Universal Declaration has become the *Magna Carta* of humankind. "The standards of the Universal Declaration of Human Rights have become a guiding star to international jurisprudence and the high tone of its exhortation continues to influence national policies and their legal applications."

The comment made by Lord Acton, a famous British historian of the 19th Century, regarding the two pages of the 1789 French Declaration of the Rights of Man that they weighed more than all of Napoleon's armies, is also applicable in the case of the Universal Declaration.

The entire history of the Universal Declaration, from its adoption on 10 December 1948 to the present, constitutes a watershed in the development of the international promotion and protection of human rights. The commemoration of the 50th anniversary of the Universal Declaration on 10 December 1998 should serve as the inspiration for determined and practical action in human rights for years to come.

This anniversary can make an important contribution to the promotion and protection of human rights by reinforcing the fundamental and unremitting efforts on the part of governments, human rights advocates and United Nations agencies and programmes worldwide. It should be kept in mind that we still have widespread discrimination on the basis of gender, ethnicity, religious belief or sexual orientation and there is still genocide-twice in this decade alone. There are 48 countries with more than one fifth of the population living in what we have grown used to calling "absolute poverty." And poverty itself is a violation of numerous basic human rights.

The writer is Professor and Dean, Faculty of Law, University of Dhaka.

The Attack on Iraq

Tomahawks' Targets

IF the largest military offensive of President Bill Clinton's time in office succeeds, Iraq's chemical and biological weapons capability will be reduced but not eliminated. And the United States will have to leave tens of thousands of US troops, scores of ships, and hundreds of tanks and warplanes in the Gulf region indefinitely.

By Thursday afternoon, senior defence officials say, the first waves will have sent 200 to 300 Tomahawk cruise missiles slamming into targets suspected of concealing key elements of Iraq's biological and chemical weapons programme.

The "serious and sustained" strikes described by Defence Secretary William Cohen, however, are not expected to eliminate Iraqi leader Saddam Hussein's arsenal or end the need for a massive US military presence in the Gulf.

Once the dust settles — probably sometime this weekend as the Muslim holy month of Ramadan begins — the situation will remain much as it has been since the end of the Gulf War in 1991.

"We're trying to degrade (Saddam's) capacity to threaten his neighbours with chemical, biological or nuclear weapons and the means to deliver them," Cohen said at a Pentagon news conference. "We're not seeking to eliminate it." After the strikes, Cohen said, "we will remain ready for an indefinite period of time to maintain our presence."

As dawn broke over Iraq Thursday, US spy satellites and U-2 spy planes carried out over-flight missions to assess the destruction wrought by the first wave of strikes. The attack started Wednesday at 2200 GMT — midnight Iraqi time — with sea-launched cruise missiles.

Primary targets for the Tomahawks were Iraqi military communications nodes and facilities within several of Iraq's sprawling presidential palaces believed to conceal supplies and manufacturing equipment for biological and chemical weapons, according to a senior defence official who spoke on condition of anonymity. By Friday, with the arrival of the USS Carl Vinson carrier battle group, the Navy will be able to launch upwards of 500 more cruise missiles at Iraq, defence officials said.

After the first cruise missiles were launched, Navy EA-6B Prowler fighters flying off the carrier USS Enterprise in the Gulf hit Iraqi air defence radars with HARM missiles.

Once those air defences are down, some of the 246 combat planes now in the Gulf or soon to arrive will launch follow-up strikes. Four Air Force B-1s, 15 B-52s, the latter capable of launching cruise missiles, dozens of bomb-dropping Navy F-14s and Air Force F-16s, 10 radar-evading F-117 stealth fighter bombers and an array of British combat aircraft are among the air armada.

The heavy reliance on cruise missiles and radar-evading aircraft point to a key Pentagon goal — so far successful — of avoiding casualties. Later

phases of the air campaign will involve "conventional US warplanes flying more dangerous bombing missions over Iraqi territory."

Top priority targets include suspected biological and chemical weapon manufacturing and storage sites, weapons delivery assets such as missile factories, and facilities to manufacture and store mobile missile launchers, defence officials said.

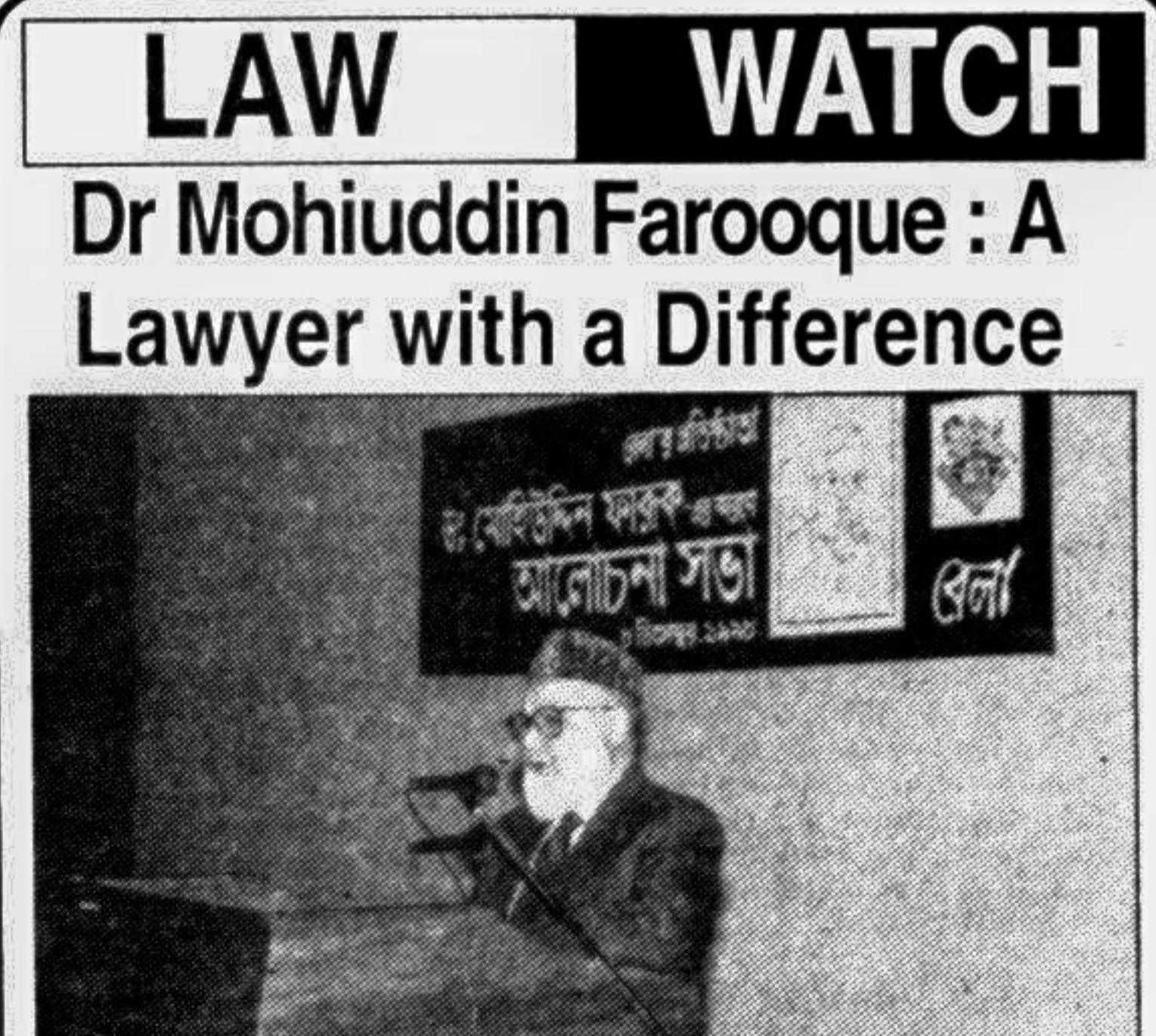
Army Gen Henry H Shelton, chairman of the Joint Chiefs of Staff, said other targets will include "the things (Saddam) uses to guard his facilities" an apparent reference to the elite Republican Guard forces.

The United States is sending

The lack of detailed battlefield information contrasted sharply from the Gulf War when the Pentagon released bombing video tape and gave detailed map-and-pointer briefings.

Even targets already targeted in the first wave will remain classified in case the first missiles missed and the military has to strike again.

— The Associated Press



Justice Mustafa Kamal, Judge, Appellate Division of Bangladesh Supreme Court was seen traversing down the memory lane

BANGLADESH Environmental Lawyers Association (BELA) organised a discussion to observe the first death anniversary of its founder Dr Mohiuddin Farooque on 8 December 98 at BIMAN Auditorium.

Mr Justice Mustafa Kamal, Judge, Appellate Division, Supreme Court, Mr Abdul Matin Khasru MP, Minister for Law, Justice and Parliamentary Affairs, and Dr Kazi Faruque Ahmed, Chairperson, ADAB attended the discussion as special discussant.

Mr Justice Mustafa Kamal said that Dr Farooque was in true sense a public interest lawyer who unlike many other lawyers acted beyond his own personal interest to protect the interest of the nation. He was as such a lawyer with a difference. As a genuine activist in the field of environmental law, Dr Farooque fought for the cause of his belief not for mere publicity but for promotion of public interest. Dr Farooque never compromised on the face of any threat or provocation rather always strive to uphold his ideology in favour of a sound environment. A versatile personality Dr Farooque was an exception and while the country needs such courageous leaders, it was unfortunate to loose a valiant fighter like him at such a early stage.

The Minister for Law said that what Dr Farooque has given to the judiciary through his wisdom would be long remembered by the nation. He emphasised on carrying forward with his vision by both the government and the non-governmental agencies.

In his speech, Dr Kazi Faruque Ahmed stated that Dr Mohiuddin Farooque made his appearance in the sector of non-governmental organisations as a devoted environmental activist through his own sincere endeavours. His far reaching vision made him a leader who would always be missed by the NGOs. His victory over the Constitutional issue of 'person aggrieved' liberated the concept of Public Interest Litigation (PIL) which was indeed a victory of the people of the nation.

The Chairman of the Discussion Professor KAA Quamrudin who was former Dean of the Faculty of Law commented that he has a special pride in introducing himself as the teacher of Dr Farooque as such an identity is the only expectation of a

Shafiqul Islam Chowdhury

Law Lords on Pinochet

A Consideration for Bangladesh

by Ahmed Ziauddin

Like most of the dictators, Pinochet found power to be too hot to hold on. Democratic aspirations of the people, dead-weight of international campaign, wind of change in the world, forced him to take different decision, to withdraw from seat of Presidency. His regime over long seventeen years, not only massively violated human rights, carried out systematic torture and crimes against humanity, he divided the Chilean society into two antagonistic camps.

Like most of the dictators, Pinochet found power to be too hot to hold on. Democratic aspirations of the people, dead-weight of international campaign, wind of change in the world, forced him to take different decision, to withdraw from seat of Presidency. His regime over long seventeen years, not only massively violated human rights, carried out systematic torture and crimes against humanity, he divided the Chilean society into two antagonistic camps. Those who received favour and developed vested interest in him, obviously back him as a messiah. On the other hand, his victims and large portion of populace consider him as a ruthless dictator.

Pinochet's democratic gestures, hold of presidential election and finally handing over the position of Chile's army chief, were mere cosmetic. In Chile, all members of the armed force retire at a certain age, but Pinochet made sure this provision did not apply for him. He put in place several mechanisms guaranteeing impunity and blocked judicial investigation. In 1978, Pinochet promulgated a decree of amnesty. The Decree 2191 effectively shield those responsible for human rights violations committed between 11 September and 10 March 1978, this Decree has made it impossible for the relatives to find the answers on the whereabouts of those Disappeared and to obtain justice.

Pinochet's lawyers filed a writ of *habeas corpus* in British High Court challenging his arrest and contested the warrant of arrest in Spanish High Court. The Spanish High Court (Audencia Nacional) on October 29 1998 rejected a challenge to the jurisdiction of the Spanish judiciary to try Pinochet.

In Britain, the High Court in a ruling on October 28 1998 declared Pinochet's detention unlawful. The Judges said, he enjoyed immunity from prosecution as a former head of state. Lord Chief Justice Bingham of Cornhill stated that neither Spain nor United Kingdom had criminal jurisdiction for alleged systematic murders of Spanish citizens in Chile. He said, under English law, a former head of state or parliamentarians, have complete immunity under law. Once inducted, a Senator for life, do not have to receive periodic mandate from the people. Finally, Pinochet became a Senator for life. Such a Senator has ten votes, which elected Senators have one.

The 1978 amnesty decree, according to Inter-American Commission on Human Rights, amounts to a self-ammunity, which is incompatible with international human rights law.

Legal Questions Relating to Extradition

Pinochet visited United Kingdom on a number of occasions, and like this time, received VIP treatment. At the airport, he uses VIP route. Ev-

erytime he when he would in Britain, the protesters would follow demanding justice. He was, however, arrested on October 16 by the British police after Scotland Yard received international arrest warrant for his arrest and extradition to Spain through INTERPOL, from a Spanish judge. The Judge, Mr. Justice Baltazar Garzon, accused Pinochet for insolvent in killing of Spanish citizens. The Judge served a second arrest warrant alleging that Pinochet was responsible for systematic acts in Chile and other countries of murder, torture, disappearance, illegal detention and forced transfers.

Pinochet's arrest sparked immediate controversy in Britain, Spain and Chile. British opposition Conservative party demanded that he be released because of his long-standing support for Britain, especially during Falkland war with Argentina. Conservatives also feared what might happen to Queen or other former Prime Ministers, while visiting abroad. Also questions were raised about selectivity, that Soviet leaders, despite equally despotic and brutal, had been treated differently.

In a recent case, the Court of Appeal in France referred this fundamental rule of international law in *National Federation of Resistance and Patriots vs. Barbie* (1993) and held, by reason of their nature, the crimes against humanity with which Barbie is indicted do not simply fall within the scope of French municipal law, but are subject to an international criminal order to which the notions of frontiers and extradition rules arising therefrom are completely foreign.

The question remains, what are crimes against humanity and whether alleged accusations against Pinochet come thereunder. Under international law, crimes against humanity include the practice of systematic or widespread murder, torture, forced disappearance, deportation, forcible transfers, arbitrary detention and persecutions on political and other grounds.

Each of these crimes against humanity have been recognised in various international conventions or other international instruments, including in Article 6(c) of 1945 Charter of the International Military Tribunal at Nuremberg (murder, deportation and other inhumane acts and persecutions), Article 6(d) of the Charter of the International Military Tribunal for the Far East (1946) (murder, deportation and other inhumane acts and persecutions), Article 2(10) of the Draft Code of Offences against Peace and Security of Mankind (1954) (murder, deportation and other inhumane acts and persecutions), Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (1993) (murder, deportation, imprisonment, persecutions and other inhumane acts), Article 3 of the International Criminal Tribunal for Rwanda (1994) (murder, deportation, imprisonment, persecutions and other inhumane acts), Article 18 of the UN Draft Code of Crimes against Peace and Security of Mankind (1996) (murder, torture, persecution, arbitrary imprisonment or forcible transfer of population, forced disappearance of persons and other inhumane acts) and Article 7 of the Statute of the International Criminal Court (1998) (murder, deportation, imprisonment, persecutions and other inhumane acts).

Pinochet's fate now lies at the hand of British Home Secretary. Under British law, he now has to decide whether the extradition proceeding against Pinochet should go-ahead or not. He is now at a quasi-judicial position. The Law Lords have declared that Pinochet's arrest was lawful. He will consider their remarks on position of British and international law.

While on with his other hat as a politician, the Home Secretary also will consider Britain's commercial interest, diplomatic fall-out with Chile. He already is under pressure from Chilean government. He can let Pinochet go only on compassionate ground. He also can sent Pinochet back home on Chile's promise to a trial, while he may decide against extradition on compassionate ground.

Meanwhile, a number of other European countries have queued up to extradite Pinochet. Switzerland, France, Belgium, Luxembourg but, noticeable absentee, is USA. US usually pursue very vigorously killing of any US citizens abroad by foreign governments, but, despite many US citizens being killed in Chile by forces under Pinochet's command, US government has no intention to seek Pinochet's extradition.

The International Military Tribunal at Nuremberg in its judgment made the position crystal clear. It declared, Crimes against international law were committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced. It rejected the argument that where the act in question is an act of State, those who carry it out are not personally responsible, but are protected by the