

從「皮諾切特案」看國際刑法和 國際人權法的發展

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1998年，正在英國就醫的智利前國家元首皮諾切特被英國當局拘捕，因為西班牙要求英國根據《歐洲引渡公約》把皮氏引渡到西班牙，以便西班牙法院就他在智利執政期間犯下的侵犯人權的罪行對他進行審訊。1999年3月，英國上議院法庭裁定皮氏被指控的部份罪行為「可引渡之罪」，又裁定皮氏不能享有作為一國的前國家元首免於在外國受刑事起訴的豁免權。此項判決被西方學界認為是國際刑法和國際人權法的發展史上的大事。本文旨在分析此案的背景和判決的法理依據，探討判決的意義和影響，並對有關國際刑法和國際人權法的演化，予以回顧和前瞻。

關鍵詞：皮諾切特、引渡、智利、人權、國家元首、豁免權、
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The Pinochet Case and the Development of International Criminal Law and International Human Rights Law

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ABSTRACT

In 1998, Augusto Pinochet, former Head of State of Chile, was arrested in England where he was receiving medical treatment, because Spain requested his extradition under the European Convention on Extradition to Spain to face trial for crimes of human rights violations committed by him when he was in power in Chile. In March 1999, the British House of Lords held that some of the crimes with which Pinochet was charged were extradition crimes, and that Pinochet was not entitled as a former Head of State to immunity from criminal proceedings outside his home country. Many scholars in the Western world believe that this case is a landmark decision in the development of international criminal law and international human rights law. This article analyses the background and legal basis for the House of Lords' decision, explores its meaning and significance, and reviews the evolution of the relevant international criminal law and international human rights law.

Key Words: Pinochet, extradition, Chile, human rights, Head of State, immunity, international criminal law