

Garzon and the Trouble With International Law

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Last week Spanish authorities charged Baltazar Garzon -- an investigative judge famous for crusades against foreign leaders -- with abuse of his authority. Mr. Garzon will stand trial for opening an investigation into atrocities committed under Franco's dictatorship, which ended in 1975. He won't go to jail; at worst, he'll be stripped of his powers for a period of time. But whatever the outcome, this trial marks the end of a failed experiment in international justice.

In 1998, Mr. Garzon sought the extradition of Augusto Pinochet while the former dictator of Chile was in Britain for medical treatment. Mr. Garzon wanted to prosecute Pinochet in Spain for atrocities committed during his reign in Chile, despite the fact that Pinochet was a former head of state and had been granted amnesty as part of a deal that paved the way to democracy in his home country. The House of Lords ruled that Pinochet could be extradited.

Their opinion was widely hailed as endorsing the principle of universal jurisdiction. Universal jurisdiction means that a domestic court can try anyone, including foreigners, who commit serious international crimes such as torture and genocide anywhere in the world.

According to Amnesty International, more than 125 countries have a universal jurisdiction law. In Belgium, complaints were famously lodged against Ariel Sharon in 2001 on account of his alleged involvement in massacres at Beirut refugee camps in 1982, and George H.W. Bush in 2003 for the bombing of a civilian air raid shelter during the first Gulf War. In the United Kingdom, an arrest warrant was recently issued against former Israeli foreign minister Tzipi Livni for her involvement in Israel's recent intervention in Gaza. In Spain, investigations have been launched against Chinese, American and Israeli leaders. And the prominent British international lawyer Phillippe Sands predicted that former Bush administration officials traveling abroad would receive a "tap on the shoulder" from foreign police before being hustled off to some jail.

That, increasingly and thankfully, looks like a pipe dream. Even in the Pinochet case, the British government, citing dubious concerns about the ex-dictator's health, never extradited him to Spain. When he returned to Chile he received a hero's welcome from his supporters.

All told, only a few dozen trials based on universal jurisdiction have taken place, mostly involving Rwandans and former Yugoslavs. In most countries, prosecution on the basis of universal jurisdiction is under tight political control. Belgium repealed its universal jurisdiction law after the United States threatened not to locate NATO headquarters in a country where visiting American officials would be in legal jeopardy for actions taken pursuant to U.S. policy. British Prime Minister Gordon Brown recently announced that his government would curtail arrest warrants issued under its universal jurisdiction statute. Even Spain has moved to put restrictions on its universal jurisdiction statute.

Universal jurisdiction arose centuries ago to give states a means for fighting pirates. In recent years, idealistic lawyers have tried to convert it into an all-purpose instrument for promoting international justice. But supporters of this law turned a blind eye to the diverse and often incompatible notions of justice that exist across countries. Everyone can agree to condemn arbitrary detention, for example, but in practice people disagree about what the term means. Whether an amnesty should be issued so that a transition can be made to democracy (as in Chile or as in Spain), or exceptions to some rules should be made for the sake of national security are not questions for a foreign judge.

When Mr. Garzon indicted Pinochet, riots erupted in Chile. No matter, thundered the champions of international law: Let justice be done though the heavens fall. But when Mr. Garzon turned his sights on his own country, the gates of justice slammed shut. Spain's establishment was not willing to risk unraveling its own transition to democracy, and rightly so. But then on what grounds should Spanish courts pass judgment on Chile?

International idealists have taken comfort in the establishment of the International Criminal Court, set up in 1998 to provide a venue for investigations and trials of international criminals. But the ICC is an inconsequential institution. It has nominal independence but depends on wealthy states for its financing, and all of its member states for enforcement. (The court has no resources for capturing indicted suspects, collecting evidence or housing prisoners.)

The ICC's small group of employees are supposed to pick and choose what to investigate among an infinite variety of international criminal activity all over the world. With limited resources, it must select only a few crimes for its attention. When domestic prosecutors make these choices, they rely on common values and must ultimately answer to the people. But because nothing like this exists at the global level, the ICC's choices are inherently political. It has so far launched a handful of investigations in weak African countries where terrible things have happened, and for its troubles is now regarded as a neocolonial institution. Yet if the ICC picks on a big country to show that this is not true it will be squashed like a bug.

One cannot solve the perennial problem of "who will guard the guardians" by handing over authority to prosecutors and courts. But that is what the universal jurisdiction agenda boils down to. Mr. Garzon's comeuppance should be a warning to those who place their faith in the ICC to right the world's wrongs.

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