



Photo by Camilo Rueda Lopez.

## HUMAN RIGHTS

Mario Irarrázabal's sculpture of a hand in search of liberty, Madrid.

# No Safe Haven: Universal Jurisdiction Trumps Impunity

by Krystel Abi Habib and Celeste Kauffman

Since 1998, when he issued an arrest warrant for former Chilean dictator Augusto Pinochet under the controversial legal theory of universal jurisdiction, the Spanish judge Baltasar Garzón has been an influential figure in international human rights circles. In the ensuing years, he has continued to champion accountability for serious international crimes, such as crimes against humanity, war crimes and torture. In 2008, Garzón tried to bring accountability home, ordering an investigation into Franco-era human rights violations in defiance of Spanish amnesty laws, an act that led to his suspension and indictment for abuse of judicial power. During his visit to UC Berkeley's Center for Latin American Studies, Garzón discussed current developments and challenges in international justice, including universal jurisdiction,

the International Criminal Court (ICC) and the future of international accountability, in light of recent political developments in the Arab world and elsewhere.

In spite of his own difficulties, Garzón expressed optimism about advancements in international justice for grave human rights violations. Focusing specifically on universal jurisdiction and the ICC, Garzón discussed several of the most significant developments in this area.

Universal jurisdiction is a principal of international law that permits states to exercise criminal jurisdiction over individuals who have committed crimes outside the physical boundaries of the prosecuting state, regardless of the nationality of either the criminal or victim. The application of universal jurisdiction is reserved for crimes that the international community views as so abhorrent to

civilization that all states are legally obligated to prosecute accused offenders when the country possessing traditional criminal jurisdiction over the perpetrator fails to do so. Although principles of universal jurisdiction have been used for centuries to prosecute crimes such as piracy, it is only recently that states have begun to apply the theory to grave violations of international law such as crimes against humanity and war crimes. Indeed, it was Garzón's indictment of Pinochet that served as the catalyst for renewed global interest in universal jurisdiction.

The historic criminal investigation into Pinochet's crimes initiated by Judge Garzón led to a change in the international political climate. Other European countries such as Belgium, Germany and France began to make use of their own latent universal jurisdiction legislation. However, after initiating legal action against former members of the Chilean and Argentine dictatorships, the initial euphoria of human rights activists began to dim, as political debates raged regarding the unforeseen and far-reaching nature of such universal jurisdiction statutes. Following the investigations of Belgium and other European countries of U.S. Secretary of Defense Donald Rumsfeld and other top U.S. officials for the war in Iraq, the United States began to apply strong pressure against universal jurisdiction theories, causing many states to amend their domestic universal jurisdiction statutes. The revised statutes restricted the applicability of universal jurisdiction to crimes that were somehow attached to their own country, effectively curtailing the "universality" of universal jurisdiction.

Garzón praised the Rome Statute — the 1998 treaty that established the International Criminal Court — as the most important peace initiative of the 20<sup>th</sup> century, and he maintained that the ICC and its increasing number of States Parties are an example of increased international cooperation and commitment to victim's rights. An independent and permanent judicial body with jurisdiction over individuals charged with a limited set of international crimes, including crimes against humanity, war crimes, genocide and aggression, the ICC takes action when domestic criminal justice systems fail to hold perpetrators accountable. Before the establishment of the ICC, the international community struggled to address mass violations of human rights, creating a series of ad hoc tribunals, such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda as short-term solutions in specific countries. The permanent nature of the ICC represents the strengthening of the international community's resolve to prioritize justice for grave violations of international law.

There are currently 139 signatories and 115 States Parties to the Rome Statute, despite the failure of countries such as the United States, Russia, China and Israel to ratify the treaty.

For Garzón, initiatives like universal jurisdiction and the ICC make it possible to expand international cooperation beyond fighting terrorism and narco-trafficking to include bringing justice to the victims of human rights abuses.

Garzón stressed that universal jurisdiction is not a panacea to end all human rights abuses; such abuses will undoubtedly continue. However, universal jurisdiction can make it more difficult for governments to commit human rights abuses with impunity. In order for universal jurisdiction and other human rights norms to be effective, however, governments must do more than simply ratify treaties. Every citizen has a role to play in ensuring that international human rights norms and international and regional human rights jurisprudence are integrated into domestic legislation. While politicians are distrustful of handing too much power to judiciaries to investigate and prosecute violations of international law and states remain wary of holding other states' officials accountable for grave human rights abuses, citizens can demand that their governments not remain passive bystanders to torture and genocide.

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[A statue of Francisco Franco in Sardinero, Cantabria, Spain.](#)



Photo by Carlos Luna.

Additionally, states must address what is effectively becoming a double standard in international criminal justice. According to Garzón, it is morally and legally indefensible for states such as Spain to take one position on justice for human rights violations when they occur in foreign countries, while ignoring similar crimes committed by their own citizens. Though Spain has been a leader in universal jurisdiction, it remains defiant in the face of attempts to investigate its Civil War past, continuing to enforce the amnesty laws enacted during the dictatorship of General Francisco Franco, who ruled Spain from 1936 to 1975.

In spite of these challenges, Garzón is confident that the world community is making progress toward enforcing accountability for perpetrators of grave violations of international law. The only global language today is the language of human rights, Garzón argued, noting that institutions such as the ICC and the prosecution of former heads of state under universal jurisdiction would have been unthinkable only a few years ago. According to Garzón, the international community has a newfound commitment to responding to human rights crises. The UN Security Council was immobilized for years before making serious attempts

to address the human rights and humanitarian crisis in Darfur, while earlier this year, the Security Council authorized the ICC to issue an arrest warrant for Gaddafi just weeks after the uprisings in Libya. Garzón is optimistic about what such actions might mean for the protection of human rights in the Arab world as it undergoes significant transformation. Middle-Eastern dictators have long escaped accountability for crimes against humanity and war crimes. Nonetheless, Garzón maintained, these new developments in international accountability are an unexpected ray of hope for the region, and accountability for human rights violations is no longer considered an impossibility.

Baltasar Garzón is a Spanish judge and consultant to the International Criminal Court. He gave a talk for CLAS on April 27, 2011.

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Baltasar Garzón prior to his Berkeley talk.



Photo by Noah Berger.