

Why we need the principle of universal jurisdiction

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Madrid, where for the last two days I've been at the Teatro Goya discussing the principle of universal jurisdiction. I've been invited to this conference by the ever controversial Baltasar Garzón, the former judge now acting as a lawyer with a client list that includes Julian Assange. Madrid, where almost twenty years ago the principle of universal jurisdiction was enjoying its heyday in a series of criminal proceedings taken against dictators from around the world, long before the International Criminal Court had begun its work. The first cases focused on the former Spanish colonies in Latin America, reaching a spectacular climax on 16th October 1998 when Garzón acting as investigative judge ordered the arrest of Chilean dictator Augusto Pinochet in London. While Pinochet was never ultimately put on trial, he did spend a year in custody and under arrest. He returned to Chile a defeated man where he, his family and his henchmen became the subject of further investigations. Similar proceedings followed in neighboring Argentina directed against the military forces that held power during the 1970's. Lawyers described these developments as the 'Pinochet effect': while the cases taken in Europe did not lead to many convictions in European courts, combined with the constant pressure exerted by human rights movements in Latin America they did prompt authorities in the affected countries to finally begin pursuing perpetrators at home in an overdue dismantling of the culture of impunity. It was a promising beginning for the concept of universal jurisdiction. But while this approach had some further success in El Salvador and Guatemala, cases on Gaza, Guantánamo and Tibet soon became mired in delays as the states under investigation did all they could to bring the proceedings to a halt.

And Garzón? He was suspended from the judges' bench in early 2010 after he was accused of perverting the course of justice during his investigations into the crimes of the Franco era. Of all the issues he worked on, it's telling that his suspension should come on the back of these Spanish cases. Politicians from the global South have been persistently and justifiable critical of Europe's focus on the human rights violations committed in the former colonies while ignoring the many stains on their own human rights records. Garzón was always a firm believer in the concept of equality before the law. With the help of republican veterans, their families and an emergent historical movement he hoped the judiciary could help to discover the truth about the whereabouts of the many disappeared and to identify victims lying in unmarked mass graves. Had he achieved even only this, all the work undertaken in Spain would have been worth it. But he was and continues to be thwarted by conservatives in Spain and has ultimately ended up on the defendant's bench. Shortly before his trial began, Garzón – a judge who would routinely engage in very broad interpretations of criminal law and who could often give off an air of arrogance – told me that being on this side of the courtroom was a very different experience. He wasn't sure what charges would be levelled against him but he knew that whatever he said in defense would be turned against him. The kind of treatment predicted by Garzón is something experienced by defendants every day all around the world and serves as a reminder of the fundamental importance of the right to a fair trial. It's particularly jarring that it was Garzón's wrongdoings in the corruption cases against the

governing Partido Popular that led to his conviction and suspension; the massive corruption and wasteful spending of the Spanish elite was a significant factor in the country's current social and economic woes.

Against this background we need to support the courageous judges, prosecutors and lawyers in Spain who, despite the many changes in the law that have made their jobs more difficult, continue to work to bring about investigations on Tibet and Guantánamo. The project could be called a real success if it were to lead to a global practice of universal jurisdiction. Spain should not be left on its own to withstand the political pressure from China and the USA arising from these cases. It seems, however, that we can expect little help from the German government on this, a fact that was confirmed most recently by the state's remarkably cowardly response to Edward Snowden and his NSA revelations.