

Spanish judge demands extradition of Argentine officers

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Judge Baltasar Garzon has renewed his call for 46 Argentine military officers to be extradited to Spain. He has demanded they pay nearly \$3 billion in compensation to victims of the 1976-1983 Argentine military dictatorship in which they participated.

Garzon first indicted 98 officers four years ago for genocide and torture of Spanish nationals during the years of military dictatorship in which an estimated 30,000 people were killed or “disappeared”. Amongst the officers indicted were former President General Jorge Videla and navy chief Admiral Emilio Massera.

Garzon is one of six members of Spain’s National Court (Audiencia Nacional) who have the power to investigate crimes and recommend prosecution. He has taken up the case of Spanish victims of the “dirty war” in Argentina, applying the principle of “universal jurisdiction” whereby those who have committed human rights abuses in one country, regardless of when they were carried out, can be prosecuted in another country.

Because the International Criminal Court (ICC) cannot address crimes retrospectively and only covers those committed in the territory of signatories to the court, human rights organisations see universal jurisdiction as a vital additional tool in human rights cases. However, the United States sees the ICC and the principle of universal jurisdiction as contrary to its national interests given its colonialist ambitions. The US has agreed with 48 countries that they will not send US citizens to the ICC, often threatening to withhold aid if they did not agree. According to White House spokesman Ari Fleischer, “protecting US persons from the ICC will be a significant and pressing matter in our relationship with every state.”

The US administration has also forced Belgium to drop its universal jurisdiction law, after prosecutions were threatened against General Tommy Franks, George Bush Senior, Colin Powell and Norman Schwarzkopf.

Garzon was responsible for extradition proceedings against former Chilean dictator General Augusto Pinochet and has attempted to question former US Secretary of State Henry Kissinger about Operation Condor—the military intelligence agreement between several South American countries that resulted in cross-border abductions and assassinations in the

1970s.

Garzon’s revitalised efforts concerning the 46 Argentine officers is a byproduct of his recent success in getting the Mexican authorities to allow the transfer one of their number, Ricardo Miguel Cavallo, from Mexico to Spain.

According to José Miguel Vivanco, executive director of Human Rights Watch, the Cavallo case “represents a real victory for international justice. Mexico will become the first Latin American country to extradite someone for gross human rights violation under the principle of universal jurisdiction.”

But what lies behind Cavallo’s handover are the attempts by the Argentine ruling class to control the social explosion in Argentina by sacrificing one of the 2,800 military and police personnel who have been identified as torturers for the former dictatorship.

Cavallo was arrested at Mexico’s Cancun airport in August 2000 as he was boarding a plane for Buenos Aires. He was arrested not for human rights violations, but on corruption charges in connection with his job as director of the Mexican National Register of Motor Vehicles. By chance, Cavallo was recognised by some of his alleged victims when the corruption scandal involving importation of stolen cars first hit the news. The *La Reforma* newspaper then published the victims’ testimonies.

As soon as Cavallo was arrested, Garzon—who had built up a dossier of human rights abuses in Argentina on behalf of Spanish victims of the military junta—called for his extradition to Spain. He charged Cavallo with the torture of Thelma Jara de Cabezas and the execution of Mónica Jauregui and Elba Delia Aldaya. He stated it was “clear that [Cavallo] participated in the whole system of repression, disappearances and elimination of people” and linked him to the execution of 21 people and the disappearance of a further 227 people whilst he worked at the notorious Naval Mechanics School (Escuela de Mecanica de la Armada, ESMA) in Buenos Aires from 1976 until early 1979. The vast majority of the estimated 4,000 people who were illegally detained at ESMA never survived. Two former naval officers admitted in 1994 that torture was routine at the military establishment and a year later Captain Adolfo Scilingo admitted that between 1,500 and 2,000 detainees at ESMA were drugged and thrown out of aircraft over the Atlantic

Ocean.

Among the first to testify at an extradition hearing in Spain was Federico Gomez, whose father, a lawyer, was taken in 1977 to ESMA, where he was tortured and then executed. He charged that Cavallo had personally expropriated the family's property and business interests, which were the foundation of the ex-torturers multimillion-dollar personal fortune. Other former detainees said that it was a common practice to force people to sign over their property under torture before killing them.

Despite the occurrence of these terrible atrocities no one has ever been punished for them. Successive Argentine governments have bowed to military pressure and prevented a full reckoning with the horrors of Argentina's "dirty war" against leftist opponents.

Following the collapse of the military dictatorship after its defeat in the Malvinas/Falklands War against Britain, several junta leaders including Videla and Massera were sentenced to life imprisonment in 1984 for crimes against humanity. However, President Raul Alfonsin passed an amnesty law in 1987 after a military mutiny and three years later his successor Carlos Menem pardoned all the officers who had been convicted of human rights crimes in the name of securing "national pacification".

The government set up "truth trials", but few military personnel testified and files were kept under lock and key. Videla and Massera were again in court in 1998-1999 for activities related to ESMA not covered by the amnesty laws or pardons, allowing the illegal adoption by military couples of babies belonging to disappeared mothers. By the end of the 1990s, there had been only 10 people convicted—all of whom were subsequently pardoned and released.

Garzon first issued arrest warrants for the Argentine officers in 1999. Menem complained that any talk of extradition was "totally out of the question and out of place. This is an absurd intervention in the internal affairs of a sovereign country."

The Spanish Foreign Minister Abel Matute expressed the hope that Garzon would not pursue a request for extradition and the Spanish Public Prosecutor argued that Spanish courts did not have jurisdiction.

However, the fortuitous arrest of Cavallo in 2000 opened up the possibility of extradition under a 1980 Spanish-Mexican treaty. A Mexican district court judge Jesus Luna ruled that that extradition was permissible. In addition, the British House of Lords had just established in the Pinochet case that former heads of state were not immune from prosecution, although the British government was to release him on spurious medical grounds. (It has since emerged that a previous British government—that of Margaret Thatcher—had ordered the release of Cavallo when he was captured by British troops during the Malvinas/Falklands conflict.)

The Mexican Supreme Court confirmed the terrorist and genocide charges, but dropped those related to torture. The

Argentine President Fernando De la Rúa demanded the Mexican government refuse to carry out Cavallo's extradition saying, "The government of Argentina insists on the principle of territoriality in the application of criminal law." At the same time, Argentina was about to become one of the first countries to ratify the International Criminal Court declaring that disappearances should be regarded as crimes against humanity and that the court should have wide powers of investigation.

The Cavallo case in all likelihood would have dragged on for more than the current three years had it not been for the social explosion or *Argentinazo* in December 2001 that ousted De la Rúa.

Over 40 officers including General Leopoldo Galtieri have been held under house arrest since July 2002, after an Argentine judge ruled that the amnesty laws violated Argentina's constitution. Opposition to Cavallo's extradition ended when Nestor Kirchner became Argentine president on May 25 this year. Kirchner was elected on a populist programme critical of the International Monetary Fund and the social catastrophe produced by years of free market policies. His government was the first to be elected since the *Argentinazo*.

Although Kirchner received only 22 percent of the vote in the presidential elections he now has an 80 percent approval largely as a result of his human rights policies. He has forced half of the admirals and generals to retire and promised to annul the amnesty laws. But his aim is to safeguard the future of the Argentine state. He told a meeting of senior military leaders, "To preserve the [military's] historical, political and strategic role it is necessary to separate the wheat from the chaff, each one taking responsibility for his actions without hiding behind the prestige and glorious history of our armed forces."

To that end he reversed De la Rúa's opposition to Cavallo's extradition, paving the way for the Mexican government to authorise his transfer to Spain.

That Cavallo will finally face trial and punishment is still by no means certain. The Spanish state prosecutor's office has argued in court that he should be released on the grounds that the Spain does not have jurisdiction over crimes committed in Argentina. Acting in tandem with Cavallo's defense attorneys—and in accordance with the wishes of their superiors in the right-wing Popular Party government of Jose Maria Aznar—the prosecutors are appealing the decision to jail Cavallo to a higher court.



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