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The Inquisition, Part II?

By David Bosco
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There's no judicial activism quite like Spain's judicial activism.

Since the late 1990s, Spanish judges have launched criminal cases involving human rights abuses committed in more than a dozen countries, including Argentina, Chile and Rwanda. Dashing "superjudge" Baltasar Garzon has garnered worldwide headlines by leading many of these cases, most famously moving to indict ex-Chilean dictator Augusto Pinochet in 1998 and sparking a months-long, multi-jurisdictional dispute that finally ended with Pinochet back in Chile, under investigation by national authorities.

More recently, Spanish judges have set their sights on bigger targets -- the United States, China and Israel. In January, a judge opened a probe of Israel for alleged war crimes in Gaza. Then another sought to interview senior Chinese officials about the crackdown in Tibet. And last month, Garzon himself announced an investigation into U.S. detention policies at Guantanamo Bay, focusing on whether several Bush administration lawyers and advisers created a legal framework for torture.

The backlash was swift, with Fox talk show host Bill O'Reilly threatening a boycott of Spanish goods and former U.S. ambassador to the United Nations John Bolton decrying

<http://www.washingtonpost.com/wp-dyn/content/article/2009/05/05/AR2009050502884.html>> the "pending Spanish inquisition" and accusing the Spaniards of trying "to intimidate U.S. officials."

Multiple factors have made Spain a mecca for those seeking to redress international injustices. The country has a legal system that grants judges investigative powers and also a "universal jurisdiction" statute that permits Spanish courts to hear cases involving serious abuses committed abroad. It has a court, the Audiencia Nacional, that is dedicated to pursuing sensitive cases and is unburdened by the routine domestic caseload. Spanish law also allows citizens and advocacy groups to file criminal cases even when they are not directly affected, a so-called *acción pública*. Combine these tools with relentless personalities such as Garzon -- a judge who has dabbled in politics and has a keen public relations sense -- and you have a recipe for a crusading judiciary.

A few observers have wondered whether something deeper is at play in Spain's national psyche. Is the country working through the trauma of the

1939-75 dictatorship of General Francisco Franco by seeking to right the world's wrongs? Some Chileans and Argentines have detected a whiff of neocolonialism in this attempt to adjudicate Latin America's past sins. Is Spain seeking a judicial empire to replace its territorial one? "We want to be universal policemen," complained former President Jose Maria Aznar in a recent interview

<<http://www.larazon.es/noticia/el-psoe-vuelve-otra-vez-a-traernos-paro-y-pobreza>> in Spain's La Razón.

Spain's judicial adventurism has become an irritant for the country's diplomats and politicians, who must convince powerful allies and trading partners that their colleagues on the bench intended no offense. Israeli officials have accused Spain's judiciary of advancing a political agenda, whereas China has demanded "immediate and effective measures" to end the investigation.

Last week, the Spanish parliament overwhelmingly passed a measure that would require judges to take only cases that had some demonstrable link to Spain. If the measure is implemented, Spain will follow the path of Belgium, which scaled back its own universal jurisdiction law in 2003 after a Belgian judge opened an investigation of U.S. Gen. Tommy Franks for the use of cluster bombs in Iraq. An American threat to move NATO headquarters out of Brussels persuaded Belgium to alter its law.

For human rights groups, the proposed limits on the Spanish system would be a setback. Activists like Reed Brody at Human Rights Watch see universal jurisdiction as a valuable weapon for reaching otherwise untouchable perpetrators. Although Spain's prosecution of Pinochet might have been unsuccessful, Brody argues that it jumpstarted Chile's own judicial process and encouraged that country to grapple more fully with its past.

Moreover, by pursuing officials from powerful countries, Spain's judges are redressing a perceived shortcoming in the nascent international criminal system that has taken shape since the disintegration of Yugoslavia in the 1990s. The international courts and tribunals established to address crimes against humanity have focused on weak states, including Bosnia, Cambodia and Rwanda. The assumption is that these nations are incapable of fairly judging their own. The International Criminal Court, inaugurated in 2002, has investigated people in Uganda, Congo and Sudan, but so far has not investigated, let alone indicted, anyone from a Western country.

This apparent double standard has led to resentment among African leaders, many of whom defended Sudanese president Omar Al-Bashir when the ICC charged him in March with crimes against humanity. "This tribunal is only there to judge Africans," complained Senegalese President Abdoulaye Wade.

Through their investigations, Spain's judges have insisted that even

officials from liberal democracies such as the United States and Israel and powerful players such as China won't get a free pass. Spain may soon corral its roving judges, but the question of whether international justice should apply to the most powerful is here to stay.