

Henry Kissinger and Universal Jurisdiction

The BBC reported:

On May 29, 2001, a US embassy told a French judge probing the 1970s disappearance of French citizens in Chile that it did not want him to question Henry Kissinger. French Judge Roger Le Loire was looking into allegations that five French citizens who disappeared in Chile during General Augusto Pinochet's military regime were kidnapped and tortured. French justice officials delivered a summons to a Paris hotel where Mr. Kissinger was staying on a private visit. The US embassy in Paris told a French court that Mr. Kissinger had other obligations and was unable to appear. The former US Secretary of State under Presidents Richard Nixon and Gerald Ford, was under no legal obligation to answer the summons. A spokesman for the US embassy said officials wished the court had not gone directly to Mr. Kissinger with the request.

In July, 2001, Judge Juan Guzman initiated proceedings to put questions to Henry Kissinger about the murder in Chile of US filmmaker Charles Horman in 1973.

On August 10, 2001, a judge in Argentina announced that he would ask Mr. Kissinger to testify in an investigation of an alleged 1970s plot for South American military dictators to kidnap and kill dissidents. There have been consistent allegations that the US Government knew about the scheme, known as Operation Condor. More than 3,000 people were killed or tortured under the Pinochet regime in Chile between 1973 and 1990, while as many as 30,000 were killed in Argentina under the military rulers that governed from 1976 to 1983. Judge Oscar Aguirre said his request to interview Mr. Kissinger would be signed and then go through Argentina's justice ministry and foreign ministry before being passed to the US Justice Department.

Excerpts from article by Henry Kissinger in Foreign Affairs, July/August 2001, "The Pitfalls of Universal Jurisdiction"

RISKING JUDICIAL TYRANNY

IN LESS THAN a decade, an unprecedented movement has emerged to submit international politics to judicial procedures. It has spread with extraordinary speed and has not been subjected to systematic debate, partly because of the intimidating passion of its advocates. To be sure, human rights violations, war crimes, genocide, and torture have so disgraced the modern age and in such a variety of places that the effort to interpose legal norms to prevent or punish such outrages does credit to its advocates. The danger lies in pushing the effort to extremes that risk substituting the tyranny of judges for that of governments; historically, the dictatorship of the virtuous has often led to inquisitions and even witch-hunts.

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A DANGEROUS PRECEDENT

IT IS decidedly unfashionable to express any degree of skepticism about the way the Pinochet case was handled. For almost all the parties of the European left, Augusto Pinochet is the incarnation of a right-wing assault on democracy because he led a coup

d'etat against an elected leader. At the time, others, including the leaders of Chile's democratic parties, viewed Salvador Allende as a radical Marxist ideologue bent on imposing a Castro-style dictatorship with the aid of Cuban-trained militias and Cuban weapons. This was why the leaders of Chile's democratic parties publicly welcomed -- yes, welcomed -- Allende's overthrow. (They changed their attitude only after the junta brutally maintained its autocratic rule far longer than was warranted by the invocation of an emergency.)

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Perhaps the most important issue is the relationship of universal jurisdiction to national reconciliation procedures set up by new democratic governments to deal with their countries' questionable pasts. One would have thought that a Spanish magistrate would have been sensitive to the incongruity of a request by Spain, itself haunted by transgressions committed during the Spanish Civil War and the regime of General Francisco Franco, to try in Spanish courts alleged crimes against humanity committed elsewhere.

The decision of post-Franco Spain to avoid wholesale criminal trials for the human rights violations of the recent past was designed explicitly to foster a process of national reconciliation that undoubtedly contributed much to the present vigor of Spanish democracy. Why should Chile's attempt at national reconciliation not have been given the same opportunity? Should any outside group dissatisfied with the reconciliation procedures of, say, South Africa be free to challenge them in their own national courts or those of third countries?

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The advocates of universal jurisdiction argue that the state is the basic cause of war and cannot be trusted to deliver justice. If law replaced politics, peace and justice would prevail. But even a cursory examination of history shows that there is no evidence to support such a theory. The role of the statesman is to choose the best option when seeking to advance peace and justice, realizing that there is frequently a tension between the two and that any reconciliation is likely to be partial. The choice, however, is not simply between universal and national jurisdictions.