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### Spain's 'Universal Jurisdiction' Power Play

By Andrew C. McCarthy

**A**s the U.S. government's myriad intrusions radically transform our economy, few seem to notice the dangerous progress of the international Left's assault on American sovereignty. Without firing a shot, transnational progressives are further along than the Soviet Union could ever have reasonably hoped to be, notwithstanding Lenin's prescient understanding that we would willingly participate in our own demise. In the Left's sights is the very concept of the American people's right of self-defense.

The *New York Times* [reports](#) that a Spanish court is considering filing human-rights charges, and issuing arrest warrants, against former attorney general Alberto Gonzales and five other Bush administration officials. The putative defendants did not carry out a single belligerent act, conduct a single interrogation, or direct the operation of any military or intelligence agents actually engaged in hostilities.

What these former White House, Justice Department, and Pentagon attorneys did do was to wrestle with complex, largely unsettled questions about the parameters of American law. Unlike their demagogic critics, they were engaged in a serious attempt to set the margins of permissible coercion, under wartime circumstances, against detainees who flout the laws of war, who are not covered by the Geneva Conventions' prisoner-of-war provisions, who are schooled in counter-interrogation techniques, who had just murdered nearly 3,000 Americans in a sneak attack, and who were promising more of the same.

War is a political exercise, not a legal one. The lawyers targeted by the Spanish "investigation" were not in the chain of command issuing directives to our war-fighters. They were asked to weigh in because the United States is a decent country. President Bush and the executive-branch officials who actually were in the chain of command wanted the opinion of their lawyers before making decisions about the handling of enemy combatants. But those decisions, and the orders later based on them, were not the lawyers' decisions; they were the commander-in-chief's. What's more, they were political decisions, not legal ones.

For all its bombast about enforcing the Geneva Conventions, the Left has never actually wanted them honored — just cherry-picked. As written, the conventions expressly hold that disputes

are to be resolved diplomatically. Controversies about compliance were never meant to be fodder for lawsuits, much less to be legal weapons in the arsenal of lawless barbarians. Had our diplomats had any inkling, when the conventions were adopted in 1949, that they were surrendering national-security decisions to politically unaccountable federal judges, let alone to foreign tribunals whose strings are pulled by perfervid anti-Americans, the conventions would never have been signed.

But they were. Now, in the hands of the Left's bottomless ranks of barristers, they have evolved into a cudgel, more effective than any armed force, for beating down our defenses. That cudgel is wielded under the auspices of an abstraction portentously called "the rule of law," which in fact is simply the whim of a post-sovereign professoriate in the service of savages.

The program includes another favorite weapon: the concept of "universal jurisdiction." The most fundamental building block of international law is the consent of sovereign nations to be bound by it. In contravention of this principle, universal-jurisdiction theory holds that certain wrongs are so heinous that the offending actors may be "brought to justice" in the courts of any country, at any time. It matters not where the offenses occurred or whether the allegedly offending nation has consented to submit to the alien court's jurisdiction. Nor does it matter how remote — or non-existent — is the interest of the nation purporting to invoke jurisdiction.

And it's not just a European power-grab. American courts are as responsible as any for this travesty, having revived an "alien tort" doctrine, dormant for nearly two centuries, to prosecute torture and other crimes that occurred outside our borders and affected none of our nationals. Now, as many of us have been predicting, the worm is turning. All that remains is for anti-American progressives to further pervert the "law of nations" — once finite but now endlessly malleable — so that, one by one, incidents related to national defense are judicially recognized as human-rights violations and war crimes.

So who is the heroic "human-rights" activist behind the effort to criminalize the provision of legal advice to America's commander-in-chief? The complaint was filed by one Gonzalo Boye, whom the *New York Times* charitably describes as a "Madrid lawyer." Unmentioned is how Boye came to be a Madrid lawyer. He obtained his law degree in a Spanish prison. According to reports in the Spanish press (read here), Boye, a Chilean, was a member of the terrorist Revolutionary Left Movement (MIR) when, in collusion with the ETA, Spain's Marxist-Leninist Basque terrorist outfit, he participated in the abduction of a Spanish businessman, Emiliano Revilla.

For 249 days in 1988, from Revilla's seizure at gunpoint until his family paid the multi-million-dollar ransom, the social-justice activists of MIR and ETA stashed their hostage in a cell that, as Revilla has recounted, measured 2 meters long, 1 meter wide, and 1.8 meters high. Apparently, he was not given Miranda warnings, access to counsel, or a date certain for his release. Boye was ultimately prosecuted and sentenced to ten years in prison, during which time he obtained

his law degree from something called the National University of Distance Education.

Like many another radical, Boye discovered he could get a lot further with a sheepskin. Besides defending ETA operatives in court, he has become a minor celebrity among the international Left's lawfare trailblazers. He was one of the "human rights lawyers" instrumental in Spain's universal-jurisdiction effort to prosecute his nemesis, Augusto Pinochet, for crimes committed in Chile — bringing his complaint to investigative judge and would-be post-sovereign emperor Baltasar Garzón, who succeeded for a time in having the former strongman detained in England.

More recently, Boye has worked with Palestinian "human rights activists" to bring suit — in Spain, of course — against Israel's former defense minister, and six others in his chain of command, for 2002 military operations against terrorists in Gaza — which, in the Madrid lawyer's considered opinion, were "disproportionate." And *Haaretz* reports that Boye was back in Gaza earlier this year, consulting with Hamas in anticipation of bringing war-crimes charges against Israel for its defensive operations in a war necessitated by the thousands of missiles Hamas fired at Israeli civilians.

Even if the very notion of pursuing charges against good-faith legal advisers at the behest of an anti-American radical drawn directly from the swamps of terrorism did not make the whole exercise a farce, Spain's maneuvering would still be provocative. Were it not camouflaged as legal process, it would properly be regarded as a hostile act: an explicit threat of capturing (i.e., "arresting") American officials for performing their official duties in defense of the United States during wartime. Self-defense is the natural right of sovereign states. The propriety of its manner of execution is a political determination for the American people, and no business of a Spanish court.

The question is: Do we have a president who is on our side, or on the side of terror's enablers?

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