

## **International Court of Justice: The End of Impunity for Ex-Leaders?**

A spate of recent cases suggests that Latin American democracies are holding their heads of state and high-level officials more accountable for abuses committed during their time in office. The process may have begun with Pinochet, but it has expanded to include Argentina's Carlos Menem and Jorge Rafael Videla, General Manuel Contreras of Chile, Paraguayan General Lino Oviedo and, most recently, deposed Peruvian intelligence chief Vladimiro Montesinos.

Lawyer and human rights advocate José Zalaquett calls these cases a dramatic break with the past that suggests "a growing demand that government officials be held responsible for their actions." Yet, to what extent will the proceedings against these high-profile figures be able to overcome political pressures to pass down independent judgment? The decision to excuse Pinochet from a trial charging him with covering up 57 assassinations and 17 kidnappings during his rule on the grounds that he suffers from dementia sets a discouraging precedent.

The Pinochet case could have had a very different outcome if it had come before the International Court of Justice. One hundred and thirty United Nations countries signed the Treaty of Rome in 1998 establishing the court, but only 36 of the necessary 60 went on to ratify it. The treaty calls for a permanent international tribunal to try individuals accused of war crimes, genocide and crimes against humanity. Two temporary international tribunals are currently in place and are investigating cases stemming from the civil war in the former Yugoslavia and the Rwandan genocide of 1994.

According to international legal expert Eduardo González Cueva, the court will be an independent and impartial body with global jurisdiction. States that ratify the treaty that creates it will automatically and unconditionally fall under its jurisdiction and accept its authority in cases in which the state most responsible cannot or will not prosecute the crimes in question.

A necessary condition for making the court a reality is agreeing on a definition of the term "crimes against humanity" that all nations will accept. "The definition is complete, marking an important step in constituting the tribunal," reports Irune Aguirrezábal, the court's European coordinator.

Some critics question the wisdom of creating an international court, arguing that it could use its power to intervene in sovereign affairs. Those holding this viewpoint include some strange bedfellows, among them conservative US political interests and Colombia's FARC guerrillas, who have pressured the Colombian Congress not to ratify the treaty.

Fortunately, the tide of international opinion overwhelmingly favors addressing

cases of impunity by governments that commit crimes against humanity. This trend has fueled efforts to strengthen international law and will most likely play a role in making the International Court of Justice a reality.

Without slighting the significant efforts taken by various Latin American countries to bring to justice former leaders who are now in jail or facing prosecution, there is no doubt that the cases against these individuals would be more impartial and free of political pressures were they to be brought before an international tribunal.

According to González Cueva, "we can't lose hope that pressure on the part of civil society will influence governments reluctant to approve an independent and effective court. It is supremely important that public opinion mobilize itself to let governments know that the world will no longer tolerate putting the interests of the state before the interests of humanity, and that the rule of law will prevail over the rule of force." This shift will be instrumental in putting behind bars those guilty of crimes against humanity and in ending the armed conflicts whose effects linger in many Latin American countries.