



# Justice *without* Borders

The Viability of Universal Jurisdiction and the Spanish National Court's Historic

Lawsuit for Tibet By Karen Collier for the Centre for Peace & Conflict Studies, University of Sydney

SPAIN HAS LED THE WORLD in preparing a historic legal analysis of the consequences of China's invasion of Tibet and oppression of its people. The Spanish National Court, *Audiencia Nacional* received two lawsuits prepared by Spanish lawyers with *Comité de Apoyo al Tibet* and held evidence admissible against members of the Politburo standing committee of the CCP. This is the first judicial complaint ever filed against Chinese leaders for crimes against Tibetans. The lawsuits are an apt reply to the impediment of exile and the political restrictions within Tibet under Chinese rule. Limitations on the principle of *universal jurisdiction* have emerged as a consequence of the recent resolution by Spanish Congress restricting cross-border cases to *conditional jurisdiction*, following diplomatic pressure that now requires amongst other things, a discernible link to Spain, the prosecuting state. The modification of the law, which threatens both lawsuits, will be appealed. This article analyses the viability of universal jurisdiction vis-à-vis the historic lawsuits for Tibet and as a case study traces its precedents, namely the landmark case against Chilean dictator General Augusto Pinochet and the Nuremberg trials. Emphasis is placed on how legal action combined with documentation projects such as *The Tibet Oral History Project* and similar complementary social movements have proven fundamental in fighting impunity and seek a measure of justice for the Tibetan people over 50 years on. The development and application of the principle of *Universal Jurisdiction* by the Spanish Courts has been, perhaps the greatest contribution to the world in the defence of

human rights. A massive principle and "pillar of democracy" has almost fallen: the "universality" of Universal Justice. The benefits in Spanish lawyers pursuing such highly politicised and audacious cases, now halted by mounting foreign pressure, transcend the obstacles confronting the Court, consistently reinforcing the enlightened jurisprudential aspiration of *absolute universality* over the most heinous crimes against humanity. Surely this is worth defending.

Several specific international treaties have addressed the area of state jurisdiction in criminal law, however no general treaty provides a comprehensive solution of the jurisdiction of states in criminal cases. Historically, the application of the universality principle was recognised by *Hugo Grotius* in the 17th Century in relation to the crime of piracy on the high seas, the perpetrators of which were deemed to be *hostis humani generis*, "enemies of all mankind." Today, international law continues to regard piracy as universally cognizable. Beyond its extension to slave trading in the 19th Century, the principle developed in the wake of the Nuremberg trials to the drafting of the *Universal Declaration of Human Rights*, holding that "criminal accountability need not end with the home state." States practicing extraterritorial and universal jurisdiction continue to cite the *Lotus principle* of 1927 for support, established by the Permanent Court of International Justice (PCIJ) that: "States are free to adjudicate cases of genocide committed abroad, as long as third-party states cannot prove that extraterritorial jurisdiction is prohibited by international law."

## A Historic Legal Initiative

After meeting the Tibetan tragedy on a journey, a young Spanish man from a village in the mountains of Alicante, Dr. José Elías Esteve Moltó, studied law, driven by a desire for justice and completed his studies with a PhD thesis entitled; *"The Legal Status of Tibet in International Law."* His documented studies earned him a Magna Cum Laude, which encouraged and obliged him to prepare a criminal lawsuit against several Chinese leaders of genocide against the Tibetan people. His aspiration as a lawyer; that the Tibetan victims are heard and members of Hu Jintao's government are tried, convicted and jailed for genocide. Dr. Esteve (the main research lawyer and author of both lawsuits) is a tireless pioneer of human rights and shares the Buddhist philosophy.

Alán Cantos met with Tibetan Buddhism during a mourning period in a small monastery in the South of India, following the death of his mother. Deeply comforted and inspired by *The Tibetan Book of Living and Dying*, it was here, miles away from Spain that he somehow, "read the map of Tibet's suffering and wisdom" in the faces of his hosts. President of Madrid-based *Committee to Support Tibet* (CAT) also the main plaintiff and international coordinator of both lawsuits, Alán has been a research scientist in oceanography for over 15 years, educated at the University of South Hampton, UK (physics) and the University of Washington, USA (physical oceanography). Later in 2001, Alán's path met with that of José Elías, during

preparations for His Holiness the Dalai Lama's visit to Madrid. Previously, on a journey to Dharamsala, Alán and José had missed each other by days, where José Elías had been conducting research for his thesis, simultaneously, Alán had been collaborating with esteemed Judge Baltasar Garzón on international seminars on Tibet, including the 2005 *Torture and Terrorism Conference* at El Escorial, Madrid. Back in Spain, their fate was sealed in the first telephone conversation. "It was obvious that strong karmic forces had brought us together,"

Alán recalls. They didn't know at the time the extent and intensity of the journey that lay ahead, but Alán says he has since been "grateful to 'the choreographers of destiny,' for the privilege of meeting this extraordinary person, José Elías and helping him on this legal quest for justice in Tibet." This fateful meeting of two remarkable men and their bond with Tibet, has inspired my thesis: *"Justice without Borders."*

Dr. Esteve, currently Professor of International Law at the University of Valencia believes that the failure of the international community to take decisive measures on behalf of the Tibetan people, "reflects a biased passivity." The preference for non-judicial mechanisms to date, has limited the Tibetans' ability to gain meaningful reparations for the injustices they have suffered, he says. The lawsuits upheld by Spain's *Audiencia Nacional* in 2005, based on Article 125 of the Spanish Constitution under the principle of *universal jurisdiction*: a doctrine that allows courts to reach beyond national borders in cases of torture, terrorism, genocide and crimes against humanity are a culmination of almost ten years of dedication and academic research regarding human rights violations against Tibetans. An 80-page complaint originally filed by *Comité de Apoyo al Tibet* and co-plaintiffs *Fundación Casa del Tibet* and Thubten Wangchen, on behalf of the Tibetan victims, charged the Chinese government with: "genocide, crimes against humanity, torture and state terrorism." In a predictable response China labelled a "false lawsuit," demanding that the Spanish government block the ground-breaking investigation in the Spanish High Court, nevertheless a second lawsuit was

submitted by *Comité de Apoyo al Tibet* against the Chinese government just days before the Beijing Olympics in 2008 and admitted by Judge Santiago Pedraz. The further proceedings include investigation into the harsh crackdown on dissent in Tibet, commencing in March 2008 and the Nangpa La shooting of 2006 when a 17-year old nun, Kelsang Namtso, was shot dead by Chinese border forces while attempting to cross Tibet's border into exile—and the massive population transfer of Chinese into Tibet. The Chinese ministry was informed of rulings against two Chinese government ministers and five other officials, including the former President of China, Jiang Zemin and former Prime Minister, Li Peng. What has ensued has been an unprecedented legal battle. The two cases seek to hold Chinese leaders accountable for killings, torture and imprisonment in Tibet. Perhaps the most sensitive feature of the second lawsuit, is the targeting of three members of the current regime against whom there is evidence of having committed crimes against humanity: a generalized and systematic attack against the Tibetan civilian population: "causing 203 deaths; more than one thousand wounded and nearly six thousand people arrested illegally or disappeared," since March 2008.

The two cases were not without historical foundation. In July 1959, the International Commission of Jurists reported in: *"The Question of Tibet and the Rule of Law"* that: "[T]here is prima facie evidence that the Chinese Communists have by acts of genocide attempted to destroy the Tibetan nation and the Buddhist religion

“So this court case is important because it is a step towards seeking accountability. Nothing can bring my brother back. But this is the one thing I can do for him to speak about his life, to honour him.”

in Tibet." These findings were reinforced in Dr. Esteve's PhD thesis and in his book: *"Tibet: the Frustration of a State, The Genocide of a Nation."* Despite three United Nations General Assembly Resolutions (1959, 1960 and 1965) that condemned Chinese abuses and granted the Tibetan people the right to self-determination in 1960, there has been scarce international resolution to "promote universal respect for, and observance of, human rights and fundamental freedoms" for the Tibetan people. An essential complaint in the cases is the genocide of Tibetan people and

culture. The Nuremberg Tribunals (1945 -1949) established the principle that there were such things as "crimes against humanity, systematic crimes against civilians that can occur inside a country but that might be tried anywhere else." In 1948, the United Nations adopted the *Convention on the Prevention and Punishment of the Crime of Genocide* to give meaning to this principle. The Genocide Convention stipulates that: "persons charged with genocide shall be tried by a competent tribunal of the State in territory in which the act was committed or by such international penal tribunal as may have jurisdiction with respect to the Contracting Parties." The Chinese invasion and oppression of the Tibetan people is scarred with acts that fall within its definition. Due to the modification of the law in order to restrict the application of Universal Jurisdiction, the Spanish tribunals may not achieve either criteria now illustrating the conflict between the principles of Universal Jurisdiction and state sovereignty. "In launching this lawsuit, we are seeking a moral and legal answer to the acts committed upon the Tibetan people by the authorities of the People's Republic of China," says Alán Cantos. "We have great confidence in the Spanish legal system and we hope that it will be able to apply the universal law such as it is written and not as certain governments and dictators would wish it to be."

## Duty to Prosecute

As part of the legal proceedings, Judge Santiago Pedraz submitted a request to the Indian ministry of justice on 19 January and again on 19 July, 2009, seeking permission to travel to India and interview Tibetan exiled witnesses in Dharamsala,

in order to gather evidence for the cases. So far, no answer has been forthcoming to the judicial request. The Indian government declined an earlier request on the basis they do not recognize the principle of “universal jurisdiction” or the Spanish cases, despite signing the *Mutual Legal Assistance Treaty* with Spain in 2006. The treaty included assistance in legal cases by ensuring people could testify or cooperate with investigations. Additionally, there is a clause of “compulsory law,” *ius cogens*, dating back to the Nuremberg trials, tacitly agreed by all countries of the United Nations, binding governments to respond and cooperate in the event of certain international crimes.

Spain has been reputed internationally for its model of advanced democracy. Cases of Universal Jurisdiction have been pursued in Spain rigorously since Spanish Judge Baltasar Garzón, served an international arrest warrant against former Chilean President, General Augusto Pinochet in 1998 for crimes against humanity during his tenure, based on the *UN Convention Against Torture*. Ever since, Spain has taken the lead in prosecuting human rights violations beyond their own borders. It has been noted that the Pinochet case, exercising the principle of Universal Jurisdiction was “a triumph of justice”—together with Nuremberg, the most important international prosecution of the past 100 years. Spain applied the principle of Universal Jurisdiction to prosecute former Argentine military officer Adolfo Scilingo, convicted and sentenced to 1,300 years in prison for his role in the notorious “death flights,” where political opponents were drugged and flown out and dropped into the sea. Ricardo Miguel Cavallo, another Argentine, was extradited from Mexico to Spain in 2003 to stand trial for terrorism and genocide during Argentina's “dirty war.” Scilingo’s case provides an example of *absolute universality* actually resulting in a prison sentence and lasting proof that the principle is enforceable. Judge Santiago Pedraz issued international arrest warrants against eight senior Guatemalan officials in 2006 and in a historic move, the Guatemalan Courts responded by accepting the international warrants and arrested two of the eight defendants. These legal precedents have kindled the hopes of victims of torture and crimes against humanity sending a warning to future violators that they will be held accountable for human rights abuses.

Several States have prosecuted authors of international crimes on the basis of universal jurisdiction including: Germany, Australia, Belgium, Canada, Denmark, United States, France, Great Britain, Israel, the Netherlands and Switzerland. Scholarly opinion has characterised the case of *Polyukhovich v Commonwealth of Australia* [1991] HCA 32; (1991) 172 CLR 501, by the Australian High Court as a “manifestation” of Universal Jurisdiction. In January 1990, Ivanechko Polyukhovich, an Australian citizen and resident of South Australia, was accused in Australia, of: war crimes for the murder of 24 Jews including women and children and complicity in the murder of more than 850 others, between August 1941 and May 1943, during the German occupation of the Ukraine in World War II. Polyukhovich was prosecuted pursuant to the *War Crimes Act 1945* (Cth), providing that: “any person who committed a war crime in Europe between 1 September 1939 and 8 May 1945 was guilty of an indictable offense.” On 14 August 1991, Polyukhovich challenged the constitutional validity of the *War Crimes Act* that: “the Act purported to usurp the judicial power of the Chapter III courts.” By a majority of 4 to 2 (Brennan J not deciding) the High Court of Australia held that the statute did not invalidly usurp the judicial power of the Commonwealth and the trial proceeded.

## Against the Spirit of Universal Jurisdiction

Since 1985, Spanish Criminal Law had permitted the Court in pursuing criminal cases outside of Spain, “without limitations,” setting aside the direct link or “legitimizing” requirement. In

September 2005, the Spanish Constitutional Court declared in the case of human rights violations, the principle of Universal Jurisdiction “prevails over the existence of national interests.” However, with mounting political pressure in 2009, the Spanish Congress passed a law on 19 May that limits the competence of *Audiencia Nacional* under Article 23(4) of the Judicial Power Organisation Act. This decision now warrants fierce debate about the binding treaties that contradict this new law (*Geneva Convention, Rome Statute, Genocide Convention, Vienna Convention, Convention against Torture*). The reform by the Spanish government restricting the Courts to “conditional” jurisdiction came into force 5 November, 2009 after pressure from countries such as the United States, Israel and China. Prosecutors and judges of the cases affected will soon be taking decisions and positions around these restrictions. The parliament has sponsored a controversial change in the law, which limits the future scope of universal jurisdiction to cases which: the victims are Spanish; the alleged perpetrators are in Spain, or; some other clear link to Spain can be demonstrated.” In a response to the resolution, numerous open letters and manifestos were addressed to the President of Spain, Mr. José Luis Rodríguez Zapatero. Upon hearing the news of the shelved lawsuit, Dr. José Elías Esteve expressed his deepest disappointment and rejection over the ruling in a press release with *Comité de Apoyo al Tibet* on 1 March, 2010:

I’m ashamed that a country like Spain that calls itself a democracy has given in to the aspirations of dictators to bury the hopes of thousands of victims of international crimes. This decision not only insults the aspirations for justice of the most helpless, while allowing more deaths to take place with total impunity, but this morally vile act that is in opposition to what should be the aims of a state governed by rule of law, clearly shows us in whose hands our political leaders lie.



Tukna Jigme Sangpo (victim and witness), José Elías Esteve Molló (main research lawyer), Alán Cantos (Director of CAT), Palden Gyatso (victim and witness) on the day the first lawsuit was lodged at the Spanish National Court, 28 June 2005

Despite the new ruling, jurists and international human rights organisations are fervently challenging the restrictive interpretations of Universal Jurisdiction. Manuel Olle Sese, President of the *Spanish Human Rights Association* underscores the principle as “an obligatory instrument,” in persecuting the most serious crimes that destroy human dignity. Currently eleven international cases are being investigated by Spanish judges under the principle of Universal Jurisdiction, holding that some crimes are so grave, they can be tried anywhere regardless of where the offences were committed. The *Audiencia Nacional* has heard complaints of human rights abuses as far afield as Guatemala, Rwanda, Chile, Gaza, Guantanamo Bay and Western Sahara to name but a few. At the time of writing this article, the original lawsuit for genocide and various other crimes in relation to Tibet, admitted in 2005 is still open while the judge considers the viability of the case. The second lawsuit admitted in 2008 will be appealed.

## Peace with Justice

International Courts were established to deal with allegations of human rights abuses in Rwanda, the former Yugoslavia, Sierra Leone and by the International Criminal Court (ICC), under the auspices of the United Nations in 2002. Tibet's case falls outside the competence of the ICC preventing it from investigating crimes prior to 2002. Only when a case is assigned by the ICC signatory nations, or when the UN Security Council hands down a mandate can a case be pursued. Since China does not recognize the principle of Universal Jurisdiction, is not a signatory to the ICC's *Rome Statute* and as a permanent UN Security Council member able to veto any resolutions, including referrals to the ICC—China, therefore escapes the competence of this Court. Regrettably, China and the USA's lack of cooperation with the ICC will remain a crippling factor in the Courts' competence in establishing accountability for war crimes.

The International Criminal Tribunal for the former Yugoslavia (ICTY) is worth noting as a case study accentuating the symbiotic relationship between peace and justice. The ICTY was established by Resolution 827 of the UN Security Council in terms of its Chapter VII powers, to help restore peace and security. The establishment of the ICTY was unusual in many respects, most significantly, its simultaneous establishment as a mechanism for the "restoration of peace," while conflict continued to rage in the former Yugoslavia. Critics argued that such a step: "was counterproductive to initiatives aimed at promoting a negotiated settlement." This assumption "fails to identify the essential relationship between peace and justice," according to Richard Goldstone, former chief prosecutor of the United Nations ICTY and ICTR (Rwanda). The relationship *between* peace and justice is so profound, that peace negotiated in the absence of the pursuit of justice—"will be worth little more than the paper an ensuing peace agreement is written on," Goldstone argues. Comparably, the dualistic critique that the lawsuits for Tibet may impair fragile peace negotiations (*Sino-Tibet dialogues*) is unfounded. The dialogues have resumed parallel to the lawsuits, compatible with the Middle-Way Approach in redressing the basic human rights of six million Tibetans—while maintaining the commitment to resolving conflict through strategic non-violent methods.

## Transitional Justice – A New Landscape

Soon after his flight into exile, the Dalai Lama devised a transitional government in exile promulgating a Constitution based on "people's democracy," being officially adopted in 1963. Such a move has enabled the exiled community to maintain a strong sense of unity built on the foundations of democracy, with a diaspora of some 150,000 stateless refugees governed by the Tibetan Government in Exile (TGIE) committed to the hope of returning to Tibet. Although traditionally, most mechanisms of transitional justice are applied *following* a negotiated peace agreement, I argue that further to the establishment of a thriving democracy in exile, the Spanish lawsuits have marked the beginning of *transitional justice* for Tibet as an exception to this norm, in light of the protracted nature of the conflict and sheer complexity of political dynamics only further delaying redress for the Tibetan victims and their families. According to Kofi Annan, in the United Nations Secretary General's Report of 2004, transitional justice comprises:

[T]he full range of processes and mechanisms associated with a society's attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation. These may include both judicial and non-judicial mechanisms, with differing levels of international involvement (or none at all) and individual prosecutions, reparations, truth seeking, institutional reform, vetting and dismissals, or a combination thereof.

Key to all transitional justice mechanisms is the exposure of the truth and the acknowledgement of suffering of the victims. Key to understanding what informs transitional justice mechanisms adopted in conflict arenas are these "specific"

political power dynamics at play. When, where and how they can be applied is dependent on these dynamics and the stages of conflict to a certain degree. Since Tibet is currently occupied by a foreign power, these mechanisms and treaties have little practical relevance to the Tibetan people without international enforcement and political will to back them up. Evidently, the precedents set by the Spanish Courts have demonstrated that the legal infrastructure is *willing* to encourage such initiatives, but the lack of political will combined with *fear* and *ignorance* are the biggest impediments to the application of the legal principles and the numerous legal avenues available. In August 2007, Judge Baltasar Garzón maintained at the *Edinburgh Festival of Spirituality and Peace*, that "there is nothing to stop states implementing the legislation required to exercise universal jurisdiction."

Within a "new landscape" of transitional justice, Naomi Roht-Arriaza, Professor of Law at the University of California, describes transitional justice as, "involving anything that a society devises to deal with a legacy of conflict and/or widespread human rights violations, which aims directly at confronting and dealing with past violations of human rights and humanitarian law." Alex Boraine (former deputy Chairperson, South African Truth & Reconciliation Commission) in *Transitional Justice and Human Security*, broadens the vision of justice: which seeks to confront perpetrators; address the needs of victims and assists in the start of a process of reconciliation and transformation." In light of such theories, Emile Hunter of the international press office for CAT believes the lawsuits for Tibet will open up the truth of what has happened to Tibetans and possibly lead to better relations and understanding between ordinary Chinese and Tibetan people. The emphasis on transformation of relationships has become a key approach of His Holiness the Dalai Lama and the TGIE in garnering worldwide moral support and participation in the Tibetan movement, continually fortifying the non-violent struggle. However effective this *transformative* approach to peace-building has been, to consolidate peace *with* justice, the complementarity of judicial mechanisms will strengthen the Tibetans' ability to gain meaningful reparations, as argued by Dr. Esteve. The implementation and pursuit of justice plays an important role of providing detailed and accurate records of historical events. In Barcelona, April 2005, Dr. Esteve and Alán Cantos came to one of several conclusions following a Conference; "*Impunity as an Obstacle in the Process of Building Democracy*," that it is necessary to combine legal action with social movements, which has proven fundamental in the fight against impunity, (a root cause of conflict and structural impediment to long-term peace). Furthermore, their report concluded that:

Impunity understood as the exemption of responsibility for criminal acts committed from a position of power, has conditioned the processes of institutionalising democracy in some countries and of consolidating it in others, because only truth, justice and reparation are the basis on which genuine democracy can be built.

## The Untold Truth

The impact of social movements and grassroots community participation should not be underemphasized. Patricia Lundy highlights this observation in: "*Transitional Justice from Below*," citing the Ardoyne Commemoration Project – "*Ardoyne: the Untold Truth*." Lundy argues that these participatory approaches to development, post-conflict transition and justice making, "are clearly significant and should inform policy making and practice." Lundy illustrates these potential values in her analysis of the initiative developed in Northern Ireland, described as: "the foundation for a community-driven truth-recovery process," designed to deal with the legacy of past conflict and violence in Northern Ireland. A similar initiative was undertaken in Sydney, Australia between 2006 - 2007 in consultation with the Tibetan community of NSW, with 18 interviews transcribed

and published in 2009 in a book entitled: “*Eclipse of the Spirit*,” A personal and dialogical (social) narrative (or truth) of Tibetan refugees recalling torture, denial of their basic human rights, separation from their families and forced into exile. The initiative inspired a social dialogue that offered the political prisoners a platform to tell their stories, they regarded as part of—but not a substitute for seeking justice. The project, complementary to the judicial mechanism applied in Spain, engaged the wider community and local government in recognition of the ongoing suffering of the Tibetan people and has begun to address the gap between knowledge and *acknowledgement* of the Tibet issue. Similarly, “*The Tibet Oral History Project*,” (TOHP) based in India and the US, is a documentation initiative that mirrors the efforts of *Cambodia’s Victim Participation Project* at the Documentation Centre of Cambodia, “DC Cam,” a comprehensive database documenting the atrocities of Pol Pot’s Khmer Rouge regime. The aspiration of the *Tibet Oral History Project* is to document the oral histories of Tibetan elders living in exile for the purposes of education and preservation of the culture and history of Tibet. Now in their 80’s and 90’s these elders are the last generation to have lived in a free Tibet. Political and physical barriers currently restrict the pursuit of a more comprehensive data-gathering project, as in Cambodia, although the testimonies of Tibetan witnesses in Spain have transcended these barriers. Lodi Gyari, Special Envoy of The Dalai Lama has urged Tibetans inside and outside Tibet to record their experiences of suffering over the past 50 years. “It is vitally important, especially as a testament to those Tibetans no longer here, that we record our personal experiences of suffering. We should do this not to fuel resentments but to help the Chinese people understand our true history and to know that we are justified in our hopes for a future Tibet,” Gyari accentuates.

The Spanish legal proceedings have placed the victims central to the judicial process and its outreach and cultural sensitivity have shown deep respect for the cultural context of Tibetan Buddhism and empowerment. A measure of deep catharsis was experienced and articulated by the witnesses who gave their testimonies including co-plaintiff and Spanish citizen, Thubten Wangchen. “This offers each Tibetan an opportunity to gain legal recognition for their suffering,” he says. Another witness also reflected, “It means so much for me to be able to tell the judge about my brother. The Chinese want to silence us as Tibetans. They don’t want anyone to know about the death of my brother and of other Tibetans in prison, and they don’t want to be called to account for their actions. So this court case is important because it is a step towards seeking accountability. Nothing can bring my brother back. But this is the one thing I can do for him to speak about his life, to honour him.” Since the testimonies in Spain were given, including those of prominent activists, Tenzin Tsundue and political prisoners, Palden Gyatso, Tagna Jigme Zangpo, Rinzin Choenyi and the Drapchi nuns—Tibetan victims and their families have expressed their deep concern with the threat of being abandoned by Spanish justice midway of the “first glimmerings” of legal protection.

### Conclusion: Separation of Powers

The pragmatism sparked by the global financial crisis and political powers now reaching over to interfere with justice and cross without shame the “sacred gap” of separation between the judicial and executive powers that should be preserved in healthy democracies, has given way to an era of realism. Although, as *Newsweek’s* March issue reports, devoting a six page feature to: *The Downfall of Human Rights*, “the possibility remains that the old idealism will return, as the yearning for freedom remains.” Realpolitik within international relations, weakens the potential to effectively apply the principle of *Universal Jurisdiction* until an international treaty is established with unequivocal cooperation and enforcement from our governments. Only then, will the enlightened jurisprudential aspiration of *absolute universality* be

realized—shifting from a culture of impunity to a culture of peace, transcending national boundaries. Naomi Roht-Arriaza emphasizes this in; “*Institutions of International Justice*,” illuminating that: “only through combined pressure of non-governmental organizations and the long memories of survivors that have goaded states into creating those mechanisms that exist today, it will be increased pressure from below that will make them effective.” “With or without convictions, *Audiencia Nacional* has commendably shed light on dark acts committed by closed regimes,” reported: “*Spain Reins in Crusading Judges*,” June 2009. By bringing Tibet’s Nangpa La pass incident back into the spotlight, having featured in the preliminary investigations of an open court case—the victims have won at the very least, “a battle against silence.”

The issue of competency in the judge’s decision to close or not close a case under the new law is going to be vital. In the words of former Nuremberg prosecutor, Benjamin Ferencz: “There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance.” These institutions, now under threat from interference in the wake of events effecting world powers, amended with *dubious* political purpose that will generate impunity and without respect of the binding international treaties that contradict this new law, leave the Tibetans with their only weapon of *truth* to fight over half a century of injustices. At the heart of this analysis begs the question: where on this earth are the Tibetan people to seek justice if not the Spanish Courts? The consolidation of customary international law in the future, and the limits of Universal Jurisdiction will be truly tested by the unrelenting commitment of Spanish lawyers and judges in tackling impunity -- by the unparalleled courage of the Tibetans despite political hazards to pursue this case -- and by the conscience of humanity to defend it. Unarguably, unique circumstances are required for these cases to prevail. The “*Pinochet effect*,” will only galvanize China into resolving the Tibet issue as in her national interest when there is an end to the endorsement of impunity by global powers. Only then, will the Tibetan people be graced with poetic justice in their lifetimes.

The Spanish lawsuits have made astounding progress, considering the odds against them. In supporting Alán and José Elías and their perseverance with the historic Tibet case, we would be wise to recall the insights of Gandhi, who valued the process above the outcome in the face of epic human challenges, illuminating that means and ends are one in the same and truth-seeking, (*satyagraha*) above all, is fundamental to process. Also an example of the Mahayana Buddhist principles, combining wisdom and compassion—Alán Cantos and Dr. José Elías Esteve have carried these principles to great heights, while testing the limits of the Spanish judicial system *and* of the human spirit.

“A massive principle and pillar of democracy has *almost* fallen: the ‘universality’ of Universal Justice and the separation of powers,” says Alán Cantos. “We keep fighting because ‘impossible fights,’ (as with utopias) generate impossible strengths.” ■

*Dedicated to Spanish lawyers and judges whose ethics and integrity are unparalleled in their unrelenting pursuit of justice. May their efforts unshackle hidden injustices beyond international borders and uphold human dignity. Defending the principle of universal jurisdiction through international law strives for a culture of accountability – fostering the conditions for a world towards peace with justice. May the voices of the Tibetan people triumph over silence.*

**Sincere thanks to Mr. Alán Cantos and Dr. José Elías Esteve Molto**  
Written August 2009 in ‘*Transitional Justice & Peacebuilding*’, and revised in March 2010.  
kcol8605@uni.sydney.edu.au