

(núm. 3864/09)¹

PARLAMENT ILLES BALLEARS

MOTION² approved in the Commission for Institutional Affairs

TTITLE: Universal Jurisdiction³

The existence of international courts devoted to persecuting crimes such as crimes of genocide, war crimes and crimes against humanity is a definite step forward in the international community's struggle against impunity. The Nuremberg and Tokyo Tribunals, created to try the crimes committed during the Second World War, constitute the main precedents. More recently, ad hoc tribunals have been created for crime committed in the former Yugoslavia and in Rwanda, amongst others. The International Criminal Court, created by the Rome Statute adopted in 1998 and which began to function in 2002, entailed a major step forward for universal justice.

The application of universal jurisdiction by the tribunals of certain countries is also a significant advance and is particularly appropriate for cases involving states that are not signatories of the Rome Statute. Spain is one of the countries in the world where crimes of genocide, war crimes and crimes against humanity can be prosecuted irrespective of the country in which they were committed and irrespective of the nationality of the victims and of the perpetrators. Universal jurisdiction is of a supplementary nature, in the sense that it operates when the tribunals of the country involved, or international tribunals, do not do so. The detention of General Pinochet, considered a turning point in the prosecution of major human rights violations, was possible by virtue of the application of this principle. Later, the National High Court initiated proceedings in respect to crimes committed in Tibet, Guatemala, El Salvador, the former Spanish Sahara and Rwanda. Last January, a magistrate of the National High Court allowed a lawsuit against a former Israeli Minister of Defense and six Israeli military officers for war action in the Gaza Strip in 2002

¹ Translated by Catherine Germman Priest

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³ Published officially the 29 April 2009

in which fourteen civilians were killed (Israel is not a signatory of the Rome Statute).

Shortly after this decision by the Magistrate Fernando Andreu, the Spanish government raised the possibility of changing the law in order to limit application of universal justice to cases in which there was a "Spanish connection", in opposition to the current arguments upheld by the Constitutional Court. In the event this modification became effective, it would constitute a serious step backwards for universal justice and for the struggle against impunity.

For all these reasons, the parliamentary group BLOC per Mallorca i PSM-Verds submits to the commission the following

RESOLUTION

The Parliament of the Balearic Islands declares its opposition to any modification of State legislation intended to limit universal jurisdiction for the prosecution of crimes of genocide, war crimes and crimes against humanity.

Seat of the Parliament, February 19th 2009⁴

The Commission for institutional and General Affairs of the Parliament of the Balearic Islands, at the session held on 29th April 2009, discussed the text of Motion RGE number 3864/09, regarding universal jurisdiction and approved the following:

RESOLUTION

"The Parliament of the Balearic Islands expresses its opposition to any modification of State legislation intended to limit universal jurisdiction for the prosecution of crimes of genocide, war crimes and crimes against humanity, giving preference to the International Criminal Court."

⁴ Approved 29 April 2009