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Geographies of Justice

President Barack Obama should ask George W. Bush to surrender his passport in the interest of national security. Now that former president Bush is out of office (and beyond the protective shield of diplomatic immunity), if he decides to travel outside the country he could risk arrest and possibly provoke a dangerous international incident. Bush and other outgoing administration officials are vulnerable to the increasing capacity of certain courts to prosecute crimes including torture, extra-judicial assassination and illegal detentions.

In an evolving geography of justice, crimes against humanity are the business of all peoples, everywhere. The creation of international tribunals and the increased willingness of certain national courts to prosecute the so-called "crimes of international concern" have transformed spaces of impunity and accountability.

International tribunals have been established for specific national territories: the former Yugoslavia, Rwanda, Sierra Leone, and Cambodia. Although these tribunals have reached into the upper-echelons of power (including prosecuting ex-presidents), to date the defendants have been from less powerful nations: Slobodan Milosevic of Serbia; Charles Taylor from Liberia; octogenarians in Cambodia. The International Criminal Court, the world's first permanent court with global jurisdiction, has so far indicted nationals from Africa: Sudan, the Democratic Republic of the Congo, and Uganda.

To date, the net of international justice has failed to catch nationals from the most powerful nations, such as permanent members of the UN Security Council. The International Criminal Court (ICC) turned down requests to investigate allegations of war crimes and crimes against humanity in Iraq, arguing that the scale of the atrocities

failed to justify the Court's intervention.

Former President George W. Bush will most likely have little to fear from the ICC. He will have to tread carefully if traversing Europe, where certain courts have been willing to invoke the principle of universal jurisdiction, which holds that certain crimes can, theoretically, be prosecuted anywhere. Indeed, courts are required to act, even if the accused is a citizen of another nation.

Belgium was an early site for the phenomenon. As an increasingly sophisticated network of human rights activists sought out sympathetic courts, dozens of suits have been filed, including cases in the United Kingdom, France, Spain and Germany. The growing number of such cases – the "justice cascade" – has delighted human rights advocates but alarmed many others.

The Belgian legislature, under pressure (former Secretary of Defense Donald Rumsfeld threatened to move NATO headquarters to Poland) took certain measures to reduce the scope of universal jurisdiction. The International Court of Justice (ICJ) in The Hague has intervened in the debate, ruling that sitting state officials enjoyed diplomatic immunity from foreign courts.

Universal jurisdiction appeared to be tamed, but far from defeated. The ICJ's decision protects serving state officials, but affirms the fundamental tenets of universal jurisdiction.

As recently as December 2008, Rose Kabuye, a senior official in the Rwanda government, was detained at the Frankfurt airport on a warrant issued by a French judge. German officials said that they were "bound to arrest her" because she was visiting Germany on private business. Citizen Bush should avoid German airports as well, where suits against high-level

administration officials have already been filed on behalf of Iraqi victims of torture.

If he were wise, Bush will stay put in Texas. But he may very well be as arrogant as Chile's ex-dictator Augusto Pinochet Ugarte, who, despite the warning of the existence of warrants issued by a Spanish judge, traveled in 1998 to London for medical treatment and subsequently found himself under house arrest. Pinochet escaped prosecution in Europe; the British High Court first upheld the extradition request, and then dismissed the case on technicalities.

One lesson Bush should learn from the Pinochet precedent is that activities in the international arena reverberate at home. After his legal ordeal in England, Pinochet returned to Chile to face nearly 200 civil lawsuits brought by a newly invigorated human rights community. Pinochet faced legal battles for nearly a decade. Ultimately, he was forced to declare himself demented in order to avoid a trial and probable imprisonment. Pinochet died under house arrest in December 2006.

Even enthusiastic advocates of universal jurisdiction generally acknowledge that local courts should be given the first shot at prosecuting their own offenders. Justice conducted from "afar" may have less meaning for the persons and communities most directly affected by atrocities. But, should national governments fail to prosecute their own, the international arena has prepared an infrastructure: courtrooms and computers, prosecutors and precedents.

In the event that the U.S. courts fail to hold Bush accountable for the criminal violence he has directed, it is quite likely that foreign courts will be compelled to do so. ■

Amy Ross
University of Georgia

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