

13. THE CAVALLO CASE: ONE YEAR LATER

by: Ellen L. Lutz and Naomi Roht-Arriaza*

A year ago in these pages we wrote, “If the Mexican Supreme Court decides to extradite [Ricardo Miguel] Cavallo to Spain for trial, it will mark the first time any country has extradited a defendant solely pursuant to [the] legal principle [of universal jurisdiction,] and could provide a substantial precedent for other countries.” Cavallo is an Argentine citizen accused of participating in over 200 cases of torture and disappearances during that country’s “dirty war” in the 1970s. He was arrested in Mexico in August 2000 and detained while Spain’s request for his extradition to stand trial for his Argentine crimes wended its way through the Mexican courts.

In February 2001, the Mexican Foreign Ministry approved Cavallo’s extradition to Spain to stand trial on charges of torture, genocide, and terrorism. Cavallo then filed a petition similar to a writ of *habeus corpus*, known as an *amparo*, which provides judicial review of allegations that the state has violated an individual’s constitutional rights. Cavallo asserted that Mexico’s extradition treaty with Spain had never been properly signed, that his alleged crimes constituted political offenses, that he already had been indicted and granted amnesty in Argentina, and that the statute of limitations had run. On June 10, 2003 the Mexican Supreme Court issued a detailed opinion denying the *amparo* and authorizing

Cavallo’s extradition on charges of genocide and terrorism. The Supreme Court upheld a lower court’s findings, which had been overruled by Mexico’s foreign ministry, that he could not be extradited to stand trial for torture because, under Mexican law, the statute of limitations for a torture prosecution had expired. He was extradited to Spain on June 28, 2003, where he is detained pending trial. In August, Spanish judge Baltasar Garzon began hearing testimony from former detainees and relatives of persons who disappeared after being taken to Argentina’s Naval School of Mechanics (ESMA) where Cavallo worked during the dictatorship.

The Cavallo case contributed to shoring up judicial and political confidence in Argentina to revisit prosecution of human rights crimes. Four days before Cavallo’s extradition, Argentine Judge Rodolfo Canicoba Corral issued arrest warrants for dozens of former military officers and one civilian indicted by Judge Garzon for torture, murder and other crimes associated with the “dirty war.” On July 4, 2003, the Argentine government announced its intention to revoke a decree that bars the extradition of members of its armed forces. All but two of those for whom Judge Canicoba signed arrest warrants were detained. Shortly thereafter, Argentina’s Senate voted to annul two measures decreed by President Raul Alfonsin in 1986 and 1987 that effectively granted amnesty for human rights crimes during the “dirty war,” and its lower parliamentary chamber is now debating the measure.

But despite the Argentine government’s change of heart regarding the extradition and trial of its human rights offenders, it was Spain that got cold feet. On August 29, 2003, the Spanish government refused to approve Judge Garzon’s request for the Argentines’ extradition on the grounds that Argentina’s courts were competent to try the alleged crimes. Notwithstanding Spain’s vote of confidence in Argentine justice, at the beginning of September Judge Canicoba released all those not already

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awaiting trial on other charges, including misappropriation of assets and abduction of babies during the “dirty war.” And the Argentine Supreme Court has yet to rule on the constitutionality of the 1986 and 1987 amnesty laws, and on the legality of their annulment.

Human rights organizations resoundingly hailed Mexico’s decision to extradite Cavallo. According to Reed Brody of Human Rights Watch, Cavallo’s extradition shows “that you can run but you cannot hide.” But the Mexican Supreme Court never squarely confronted the legality of universal jurisdiction, taking as a given that Spain could validly ask for extradition. Whether the case is the beginning of a trend towards ensuring that those who committed serious human rights or humanitarian law crimes can find no safe haven remains to be seen.