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ARGENTINA

RELUCTANT PARTNER

The Argentine Government's Failure to Back Trials of Human Rights Violators

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I. SUMMARY AND RECOMMENDATIONS

A decade ago, Argentina seemed to have closed the books on the grave and systematic human rights violations committed under the military juntas that ruled the country from 1976 to 1983. But now, Argentina has a rare opportunity to finally provide truth and justice for thousands of relatives of victims who have suffered for decades with neither. Like Chileans, who are now at last bringing to account military human rights violators responsible for atrocities in the 1970s, the Argentine courts have revitalized cases that seemed utterly stagnant just a few years ago. Courageous efforts by victims' relatives, human rights organizations, prosecutors, and judges in Argentina have been reinforced by the determined efforts of their counterparts in Spain, France, Italy, Sweden, and Germany to see justice done for their own citizens who were "disappeared" and murdered by the military in Argentina.

On November 9, 2001, the Federal Court of Buenos Aires made history by nullifying Argentina's "full stop" and "due obedience" amnesty laws. The three-judge appeals panel unanimously affirmed a March 6 decision by Federal Judge Gabriel Cavallo that found the 1986 and 1987 amnesty laws to be unconstitutional and contrary to Argentina's international human rights obligations. The Federal Court ruling allowed the first trial since 1987 of an officer for torture and "disappearances" committed during Argentina's so-called dirty war to proceed, and opened the door to further prosecutions.

While dispensing justice is a matter for the judiciary, the executive branch of government must cooperate in the process. Government officials have a duty to support the actions of the courts, by removing legal obstacles to prosecutions and ensuring the full cooperation of their institutions and of the armed forces. Unfortunately, the government of Argentine President Fernando De la Rúa lacks a clear policy of support for the vital efforts now being made to bring truth and justice. Government officials have expressed unease over the new judicial efforts and, perhaps more importantly, have failed to ensure that the military cooperates with the courts. Equally damaging, the government has refused to cooperate with non-Argentine courts. On August 14, 2001, it denied extradition requests from Italy and France for naval intelligence officer Alfredo Astiz, wanted for the "disappearance" of French and Italian citizens living in Argentina during the military dictatorship. On November 16, 2001 it rejected other requests from Spain and Germany for the extradition of nineteen former officers accused of murder and torture.

The denial of extradition dealt a severe blow to the unfolding process of justice for military atrocities in Argentina. There is an urgent need for the Argentine government, now, itself, to initiate promptly the prosecution of those accused. In addition, the government must extend its full support for ongoing court efforts for other human rights crimes and insist that the Argentine military do the same.

When Argentina first confronted the issue of human rights trials after the return to civilian government in 1983, society had just emerged from seven years of brutal military rule. Democratic institutions were understandably weak and easily intimidated by military threats. Now, eighteen years later, Argentine democracy is much stronger, while the military has lost much of its power and influence. It is time for Argentina to exorcise the ghost of its tragic and brutal past.

In a historic trial beginning in 1984, a civilian court tried the military rulers and sentenced Gen. Jorge Videla, the first military president, and naval commander Adm. Emilio Massera to life imprisonment on charges of murder and torture. Three other junta leaders also received prison sentences. After the hearings ended, the courts continued to investigate criminal complaints involving hundreds of senior and lower level officers. In 1987 hard-liners in the army rebelled in protest. Faced with this challenge, the government of Raúl Alfonsín passed two laws — the full stop ("punto final") and due obedience laws — in the name of restoring democracy and protecting order, which brought most of the trials to an end. After another violent army revolt, in 1989 and 1990, Alfonsín's successor as president, Carlos Menem, issued pardons benefiting all those who had been convicted and many whose trials were continuing. Altogether, the courts had convicted ten senior officers since the last military junta stepped down, yet all were freed.

Societies that have experienced traumatic episodes of state violence are not easily reconciled, especially if the truth about the past is concealed. A complicity of silence and impunity have a corrosive effect on the legitimacy of

successor governments and the credibility of democratic institutions. The only effective antidote in the long run is for the judicial institutions, which have the onerous task of deciding guilt and innocence, to function, and be seen to function, impartially and without impediment. The renewal of this process in Argentina is cause for hope for long-term reconciliation. For the sake of democracy and human rights, the government should do all that it can to protect and promote this process.

Over the last three years a second wave of human rights prosecutions has gathered momentum, not only in Argentina, but also in its Southern Cone neighbors, Chile, and to a much lesser extent, Uruguay. The three countries were all governed by repressive military regimes in the 1970s and 1980s, suffering a similar pattern of human rights violations: political imprisonment on a huge scale, denial of due process, torture, extrajudicial executions, and "disappearances." (The number of "disappearances" in Argentina was much higher than its neighbors. Although the precise numbers are disputed, the Argentine military is believed to have committed more than 15,000 "disappearances.") Many political dissidents from Chile and Uruguay were also abducted in Buenos Aires, where the Argentine security forces cooperated with their counterparts in other countries in a secret plan known as Operation Condor. In Chile, over the past two years, courts have accomplished what would have been hard to imagine a decade ago: they have indicted former dictator Augusto Pinochet and key army generals responsible for abductions and murder. A parallel dynamic has been evident in Argentina. At this writing, both Videla and Massera were under house arrest facing prosecution for organizing the theft of babies born of mothers held in secret detention, crimes excluded from the Alfonsín amnesty laws. Also in detention and facing similar charges were former Commander of the First Army Corps Gen. Carlos Guillermo Suárez Mason; the last president of the military junta, Gen. Reynaldo Bignone; two other members of the last military junta, and some lesser rank officers. A Buenos Aires court, meanwhile, was seeking Pinochet's extradition from Chile to answer for his role in Operation Condor.

The new impetus that has driven the courts once more into action has come in part from the new tide in favor of international justice affecting countries in four continents. The watershed for Latin America was the arrest of Pinochet in London in October 1998 at the request of Spanish Judge Baltasar Garzón. Almost overnight, this landmark event transformed issues of state sovereignty and extraterritorial justice from largely academic issues into matters of global debate. In terms of justice and the accountability of former dictators and their cohorts, the world has grown smaller and frontiers more permeable since Pinochet's arrest. It is now increasingly recognized that those who commit crimes against humanity may in principle be judged anywhere.

Of all countries in Latin America, Argentina has been the most affected by the tide of transnational justice. Over the past few years extradition requests have crossed the Atlantic with unprecedented frequency, deriving from Garzón's criminal investigations and other cases under study in Italy, France, and Germany, while, at this writing, others were being prepared in Switzerland and Sweden. Even in the United States, one of the countries least sympathetic to transnational justice, Argentine cases helped shape the jurisprudence which led in 1992 to the Torture Victims Protection Act, a major advance in international accountability. Moreover, the flow of extradition traffic has not been limited to the highways linking developed and developing countries. Over the last two years, Argentina has asked for the extradition of Chileans, Uruguayans, and former Paraguayan dictator Alfredo Stroessner, in exile in Brazil, for crimes committed in the context of Condor. Mexico has agreed to extradite an Argentine torturer to Spain.

It would be an exaggeration, however, to explain the revitalization of Argentine justice entirely as resulting from a demonstration effect of actions by foreign courts. Most of the credit must go to the country's vigorous human rights organizations, a free and inquisitive press, and a small, but apparently growing number of judges who take the principles of international human rights law seriously and have tried to reflect them in their judicial decisions.

In the early 1990s the full stop and due obedience laws, passed by the government of Raúl Alfonsín in 1986 and 1987, seemed to have foreclosed any hope of the successful prosecution of the thousands of human rights crimes then facing the courts. The full stop law prevented the initiation of any new criminal complaint, while the due obedience law automatically exempted from prosecution all but officers who had been in top positions in the armed forces. Between them the laws had benefited an estimated 1,180 people accused of human rights crimes. Some of the

officers who were excluded by their rank from the due obedience law had been tried, convicted and pardoned. None could be tried twice for the same offenses. In January 1998, the Argentine Congress repealed the full stop and due obedience laws, but the repeal did not have retroactive effect, meaning that judicial decisions based on the laws were safe from challenge.

In 1995 the horrifying confessions of former officers who had participated in the so-called death flights ─ in which the military drugged defenseless prisoners and dropped them alive from planes into the Atlantic ─ reopened the public debate about the past. Relatives of victims and human rights attorneys grasped the opportunity to present cases once more to the Federal Appeals Court in Buenos Aires (which had tried junta leaders ten years before). They demanded not sentences and punishment, but merely judicial investigations to search for the truth about the fate of the "missing." Thus began the so-called truth trials, a legal innovation apparently without precedent in the continent. While individual judges in other countries had sought to pursue judicial investigations despite sweeping amnesty laws (Chile is a case in point), their efforts were frowned on, and even penalized, by their seniors.

Currently, at least twenty-eight courts across Argentina are conducting such investigations, with powers to subpoena military witnesses to appear and testify under oath, but with no powers to charge or convict them. Most military witnesses, however, refuse to testify, and the truth that has emerged has owed little to them. Yet, the trials have established the principle that judicial investigation of crimes against humanity such as "disappearances" must continue, regardless of laws passed to prevent the prosecution of those responsible. This principle was upheld by the Inter-American Commission on Human Rights in a friendly settlement with the State of Argentina signed in November 1999, by which Argentina agreed to "accept and guarantee the right to truth, which consists in the exhaustion of all means to obtain clarification of what happened to disappeared persons."

One of the most tragic and unsavory aspects of the repression under the military juntas was the fate of at least 240 children and unborn infants who "disappeared" with their parents. Many babies born while their mothers were held in secret detention were given to military couples who falsified birth certificates and raised them under their own names. Each government since the military relinquished power in 1983 has devoted state resources to the recovery of these children. In 1992 a National Commission for the Right to Identity (Comisión Nacional por el Derecho a la Identidad, CONADI), which includes the Association of Grandmothers of the Plaza de Mayo (Abuelas de la Plaza de Mayo, hereinafter Abuelas), their attorneys, state prosecutors, and the undersecretary for human rights of the Menem government, centralized and coordinated the search for the missing children. A National Genetic Data Bank has enormously helped efforts to identify the children. The crimes of baby theft and falsification of public documents were expressly excluded from the amnesty laws, making this one of the few crimes for which prosecution and punishment are still possible. Trials aimed at recovering the stolen children began in the early 1990s and led to the conviction of some of the couples responsible after the children had been traced and identified. The major advances, however, came in the late 1990s.

Piecing together the evidence, two judges, Robert Marquevich and Adolfo Bagnasco, concluded that the practice had been planned by top commanders. In July 1998, Marquevich ordered the arrest of the first chief of state of the military government, Gen. Jorge Videla. The following November, Judge María Servini de Cubría placed in custody Admiral Emilio Massera, who had ultimate responsibility for a clandestine maternity unit at the notorious detention center of the Navy Mechanics School (Escuela Superior de Mecánica de la Armada, ESMA). Both had received life sentences in the trial of the junta leaders in December 1985, but had been pardoned by President Carlos Menem. Judge Bagnasco cast his net wider and also ordered the arrest and prosecution of Gen. Reynaldo Bignone, president of the caretaker government before the election of Alfonsín, and two members of the final junta, army chief Lt.-Gen.Cristino Nicolaides and naval commander Rubén De Franco, accusing them of attempting to conceal the crimes. Also arrested and charged were ten army and navy officers implicated in the day-to-day operation of the clandestine camps where the babies were born.

In September 1999 the Federal Appeals Court in Buenos Aires rejected appeals by Videla and Massera, who both argued that the crimes had been included in their earlier trial and were subject to a statute of limitations. The

appellate court's decision broke new ground in several respects. The most important was that it considered the crimes involved to be crimes against humanity, noting that under international law prosecution could not be barred by a statute of limitations. Moreover, invoking a constitutional amendment introduced in 1994, the court considered that international human rights law principles overrode domestic legislation and were binding. It also ruled that the indictments did not violate the rule of double jeopardy and confirmed the jurisdiction of civilian judges (the defendants had insisted on being tried by military tribunals). The court decision endorsed many of the same legal concepts employed by Judge Garzón in his pathbreaking investigation of the military juntas. It also made abundant reference to precedents in other countries on the justiciability of international crimes, such as the British House of Lords decision on the Pinochet case, and the Forti v. Suárez Mason case in the United States (described in Chapter XI). Appeals lodged by the defendants against the appellate court await a decision by the Supreme Court.

In a landmark decision on March 6, 2001, Federal Judge Gabriel Cavallo, investigating the "disappearance" of a couple and the theft of the pair's daughter, accepted a plea entered by human rights attorneys and became the first Argentine judge to declare the amnesty laws unconstitutional and null. His 188-page ruling, solidly based on international human rights law and precedent, argued that the full stop and due obedience laws violated Articles 29 and 118 of the Constitution, and conflicted with Argentina's obligation to bring to justice those responsible for crimes against humanity. The two police agents who were defendants in the case became the first officers to be charged for "disappearances" since 1987. Since the annulment of a law is retroactive, if Cavallo's decision is upheld on appeal by the Supreme Court, those exonerated under the amnesty laws before their trial was completed could in principle be indicted again and eventually convicted.

The commander of the Army has publicly criticized these court developments, which have also caused evident unease in government circles. If there have been advances in the courts, the army's position on human rights investigations has gone into reverse since Gen. Ricardo Brinzoni replaced Martín Balza as chief-of-staff in December 1999. In April 1995, Balza made an historic announcement on television acknowledging the army's responsibility for systematic human rights violations and ordering his troops to disobey immoral orders in the future. Balza fired officers who continued to vindicate the actions and goals of the military juntas, and ordered the troops to respect court summonses. By contrast, Brinzoni has stated publicly that the truth trials "led to nothing"; dispatched army officials to express solidarity with in-service officers detained for refusing to testify before the courts; backed their legal appeals; appeared in public at army ceremonies with members of the military government; and filed legal actions to gain access to the files of both governmental and nongovernmental human rights organizations. Moreover, Brinzoni himself currently faces criminal accusations for his alleged role in a notorious massacre of prisoners in December 1976.

Constitutionally, the armed forces are directly subordinate to the president of the nation as their commander-in-chief. As the hiercharchical superior of each of the service chiefs, the president's orders have to be obeyed. The De la Rúa administration has publicly declared its respect for the independence of the courts. The president has the duty to issue clear orders to the armed forces chiefs to ensure that serving officers cited to appear in court do so without comment or question. Rather than intervene to back the authority of the courts, however, the president has generally preferred to remain silent, while some of his ministers have openly criticized judicial decisions such as the Cavallo ruling.

Like the government of Carlos Menem (1989-2000), the De la Rúa administration has publicly opposed the extradition of Argentines to stand trial for human rights abuses in other countries. Not a single extradition request so far has been granted, and, as noted above, the Foreign Ministry recently rejected requests from Italy and France for the extradition of Alfredo Astiz. The government must recognize that under international law Argentina is obliged either to try those responsible for crimes against humanity or extradite them, if requested, to a country with jurisdiction to do so. International law does not allow states to have their cake, and eat it, too: that is, preserve impunity within their borders *and* bar extraditions.

During the period of military government, the United States veered from policies that supported human rights to those that gave comfort to human rights violators in Argentina. After its initial reluctance to recognize the gravity of

the human rights situation, the United States under President Jimmy Carter made hundreds of representations to the Argentine government on cases of abuse. In 1978, Congress passed the Humphrey-Kennedy amendment to the Foreign Assistance Act, prohibiting military sales, aid, loans, or training to Argentina because of its human rights record. By contrast, President Ronald Reagan went to great lengths to patch up relations between the two countries damaged by Carter's human rights-based policies, inviting Argentina's military leaders to Washington, exaggerating improvements in respect for human rights, and moving to repeal the Humphrey-Kennedy amendment.

During the early 1980s Argentine army officers participated in U.S. counterinsurgency assistance to governments in Central America, particularly Honduras. According to official Honduran government data, more than one hundred Hondurans "disappeared" while this secret program was underway, a form of human rights abuse not seen in Honduras before or since. Washington's silence about these events is deeply troubling. The U.S. owes an explanation both to Argentina and Honduras as to how Argentine officers implicated in grave human rights abuse were allowed to participate in this training under U.S. auspices.

Recommendations

To the Argentine government:

The recent efforts of Argentine courts to hold accountable those responsible for the gross human rights abuses of the 1970s are a welcome and positive development both for the families of the victims and for Argentine democracy.

These efforts have the potential to destroy the wall of impunity that was erected with the full stop and due obedience laws in violation of international human rights law. Unfortunately, to date, the government of President Fernando De la Rúa has failed to support the process of establishing truth and justice in Argentina.

The investigation and adjudication of crimes against humanity are matters for the courts alone. The government, however, is obliged to ensure that the courts have the resources and independence necessary to function effectively. Moreover, the government must guarantee the cooperation of executive branch officials ─ including the military ─ with court proceedings.

To facilitate the courts' work, the government of President De la Rúa should:

- Instruct the chief of staff of each branch of the armed forces to ensure the full cooperation of the military with all court proceedings.

- Initiate the prompt prosecution of former naval officer Alfredo Astiz for the numerous cases of "disappearance" of which he has been accused, or authorize his extradition for trial outside Argentina.

- Propose legislation to annul the full stop and due obedience laws, to ensure that they no longer block court prosecutions.

- Forward extradition requests to the courts, where decisions should be made solely on their legal merits. The government should carry out the findings of the courts unless there are exceptional circumstances involving the security of the state or public order;

- Issue clear orders to the chiefs of staff of the armed forces to avoid making public declarations about court decisions and the circumstances surrounding them, and instruct them to guarantee the full cooperation of the military.

- Pass legislation to ensure the continuation of the National Commission on the Right to Identity (CONADI) and provide it and the National Genetic Data Bank with sufficient funds and other resources to enable them to continue their important work;

To the United States government:

We urge the U.S. government to declassify and release to the public documents, including those of the Central Intelligence Agency (CIA), that contain information on human rights violations under the military governments in Argentina. Classified documents pertaining to the recruitment and participation of Argentine intelligence agents as advisers to the Honduran army and the Nicaraguan *contras* should also be published to contribute to efforts to bring to justice the perpetrators of grave human rights abuses committed by both these forces.

II. BACKGROUND

From 1976 to 1983, Argentina was governed by a military dictatorship that committed horrendous human rights crimes, including torture, extrajudicial executions, and the imprisonment of thousands without trial. The hallmark of political repression in Argentina, however, was the practice of enforced disappearance. During what Argentines call the "years of lead" (*años de plomo*), military task forces in unmarked cars (usually Ford Falcons) snatched defenseless men and women (sometimes with their children) from their homes or places of work, took them to clandestine camps, tortured them mercilessly, murdered them, and disposed secretly of their bodies. On March 24, 2001, the twenty-fifth anniversary of the 1976 military coup, tens of thousands of Argentines took to the streets to protest these atrocities. The size of the turn-out showed that feelings about this tragic period of Argentinian history were as deep as ever.

In its report *Nunca Más* ("Never Again"), the National Commission on Disappeared Persons (Comisión Nacional Sobre la Desaparición de Personas, CONADEP), set up by elected President Raúl Alfonsín in December 1983, listed 8,960 victims of "disappearance." The most recent official figures put the number at about 14,000. Many experts believe it to be even higher, due to unreported cases, especially in rural areas. It far exceeded the number of "disappeared" in any of the neighboring countries ruled by military governments at the time, and dwarfed the number of victims whose bodies were found and identified (1,898).[1] *Nunca Más* described 365 clandestine detention centers under the jurisdiction of the army, navy, and airforce and of various police forces, which were used to interrogate prisoners in secret under torture. Recent government information lists more than 600 such centers.

[1]The figure is from the Permanent Assembly on Human Rights (Asamblea Permanente de Derechos Humanos, APDH), cited by Sergio Ciancaglini and Martín Granovsky, *Nada Más que la Verdad* (Buenos Aires: Planeta, 1995), p. 359.

Five days after being sworn in on December 10, 1983, President Alfonsín ordered the prosecution of all the members of the first three military juntas for the human rights atrocities committed since the 1976 coup.[2] His ability to take this bold step, unprecedented before or since in a country emerging from authoritarian rule in the region, was largely due to the discredit and unpopularity of the military following their recent defeat in the Falklands/Malvinas conflict. Even so, as later events were to show, Alfonsín's room to maneuver was very limited. The armed forces still held enormous power in Argentine society and were led by men who continued to fervently defend the military's actions in what they called the "dirty war." In a twin decree, Alfonsín ordered that the leaders of the left-wing guerrilla organizations whose violent activities prompted the military intervention in 1976, the Peronist Montoneros and the Revolutionary Peoples' Army (Ejercito Revolucionario del Pueblo, ERP), also be brought to trial.[3] By doing so, Alfonsín hoped to signal to the armed forces that his government was not embarked on an anti-military crusade.

Alfonsín's strategy to neutralize military opposition to human rights trials included two other elements: trial by military court and exemption on grounds of "due obedience." First, he determined that the trial of the military juntas should be conducted, at least in the first instance, by a military tribunal, the Supreme Council of the Armed Forces, using procedures established in the Code of Military Justice. In theory, this strategy would give military courts the opportunity to put the armed forces' house in order without civilian intervention, while avoiding the appearance of a "political trial." As a safeguard, however, decisions by the Supreme Council could be appealed to Federal Courts of Appeal, and if the Supreme Council failed to complete each trial within six months, the Courts of Appeal were empowered to take over jurisdiction. As it turned out, the Supreme Council refused to cooperate, and the trial was eventually transferred to civilian jurisdiction. The trial, known as "Case 13," was held in oral proceedings by the Federal Court of Appeals for Buenos Aires, starting in April 1985.

At the conclusion of the historic eight-month hearings, the Federal Court unanimously sentenced Videla and Massera to life imprisonment. Agosti received a prison sentence of four-and-a-half years; Viola, seventeen years; Lambruschini, eight years. Their crimes included aggravated homicide, torture, unlawful arrest, robbery, violence, and threats. Graffigna, the air force commander of the second junta, was acquitted, as were all three members of the third military junta. The trial was based on only 700 of the thousands of cases to which the court had access.

[2]Decree No. 158/83. The accused were president and army commander Lt. Gen. Jorge Videla, navy commander Adm. Emilio Massera, and air force commander Brig. Orlando Agosti (first junta); president and army commander Lt. Gen. Roberto Viola, navy commander Adm. Armando Lambruschini, and air force commander Brig. Omar Graffigna (second junta); president and army commander Lt. Gen. Leopoldo Galtieri; navy commander Adm. Jorge Anaya, and air force commander Brig. Basilio Lami Dozo (third junta).

[3]Decree No. 157/83. The guerrilla leaders included Mario Firmenich, Fernando Vaca, Enrique Gorriarán and Roberto Perdía. Mario Firmenich was extradited from Brazil in 1986 and sentenced to thirty years in prison.

The second element in the government's strategy related to to the controversial concept of "due obedience."[4] Alfonsín distinguished three levels of responsibility for human rights violations: those who gave the orders, those who followed them, and those who exceeded the orders, committing aberrant and atrocious acts or benefiting for personal gain. Alfonsín's position was that those who merely followed orders had less criminal culpability than those who gave the orders, and those who committed excesses. Although international human rights law explicity rejects the doctrine of "due obedience,"[5] the policy appeared to have some practical advantages. By favoring middle and lower-ranking officers on active duty, it lessened the possibility that the military would close ranks to protect itself from what could be perceived as an anti-military crusade. It might produce chinks in the pact of silence that so far had prevented details of counterinsurgency operations, particularly information on the fate of the "disappeared," from being revealed. Accordingly, a "due obedience" clause was written into the legislation establishing the judicial procedures for the trial.[6]

In the congressional debate, however, concerns raised by human rights groups led to amendments to ensure that this clause not be used indiscriminately to block prosecutions. In its final version, the law established that subordinates were not to be held legally accountable for crimes committed in the execution of orders unless, among other circumstances, they involved the commission of atrocious and aberrant acts. Since most of the acts in question were clearly atrocious and aberrant, but were also committed on official orders, the law contained a fundamental ambiguity: should pleas of immunity be accepted in such cases? It was left to the courts to determine whether or not the clause was applicable in individual instances. For this reason, its legal effect was unpredictable and it was far from an iron-clad guarantee of impunity.

With regard to the prosecution of subordinates of the military commanders, the Federal Court resolved to request the Supreme Council of the Armed Forces to file charges against those accused who were superior officers in command of military zones or with operational responsibilities. This decision, known as Item 30, implied that those officers would not benefit from "due obedience" immunity. By opening the door to further prosecutions, Item 30 frustrated the government's hope that the trial of the military juntas would close the books on the "human rights question."[7]

Under Item 30, hundreds of officers ran the risk of being out on trial. When the trial of the juntas ended, some two thousand criminal complaints were already pending against members of the military and police forces, involving up to 650 defendants, one third of whom were estimated to be on active duty. Particularly important were the trials involving those responsible for the illegal detention, torture, and murder of prisoners in the notorious Navy Mechanics School (ESMA), where an estimated 5,000 "disappeared" prisoners had been held. Another emblematic case was "Case 44," concerning crimes committed by Gen. Ramón Camps, chief of police of the province of Buenos Aires. On December 2, 1986, the Federal Court sentenced Camps to twenty-five years in prison; his successor, Ovidio Ricchieri, to fourteen years; Miguel

[4]The concept of "due obedience"had first been proposed as an exculpatory argument by the military in an Institutional Act (the legal instrument through which the junta amended the constitution or legislated in extraordinary matters) promulgated before the elections that would restore government to civilian hands in May 1983. The act declared that all operations against subversion and terrorism conducted by all security forces complied with plans approved and supervised by the high command and constituted "acts of duty."

[5]According to article 8 of the Charter of the International Military Tribunal that judged Nazi war criminals at Nuremberg, "[t]he fact that the Defendant acted pursuant to order of his Government or of a superior shall not free him from responsibility, but may be considered in mitigation of punishment if the Tribunal determines that justice so requires." Similarly, article 2(3) of the Convention against Torture and Other, Cruel, Inhuman or Degrading Treatment or Punishment states that "an order from a superior officer or a public authority may not be invoked as a justification of torture."

[6]Article 11 of the Law to Amend the Code of Military Justice (Law No. 23049), enacted on February 9, 1984.

[7]See, for example, Carlos Acuña and Catalina Smulovitz, "Militares en la transición argentina: Del gobierno a la subordinación constitucional," in Acuña and others, *Juicio, castigos y memorias: Derechos humanos y justicia en la política argentina* (Buenos Aires: Ediciones Nueva Visión), p. 58.

Etchecolatz (ex-director general of the police investigations branch) to twenty-three years; and Jorge Bergés, a police doctor, to six years. Apart from Case 13, this was the only human rights trial that resulted in convictions. Meanwhile, Gen. Carlos Guillermo Suárez Mason, commander of the First Army Corps and chief of Security Zone 1 during the "dirty war," faced trial for thirty-nine murders.

However, action by the Defense Ministry in April 1986 set off a chain of events that would soon bring prosecutions to a grinding halt. The ministry's controversial "instructions" to the military prosecutor required the dropping of charges in all cases where "due obedience" was invoked. The "instructions" stipulated that officers should be held responsible for aberrant acts only if they exceeded orders, greatly reducing the number of possible defendants. Applying the "instructions," the Supreme Council of the Armed Forces acquitted two well-known defendants, Alfredo Astiz, a notorious undercover agent who operated from ESMA, and Luciano Menéndez, former commander of the Third Army Corps. The controversial new rules provoked dissent and resignations both in the judiciary and in the ruling Radical Party, forcing the government to restate its commitment to human rights trials.[8]

As pressure from the military mounted, Alfonsín decided to effect by law what attempts to influence the trials had failed to achieve. At his insistence, two laws were rushed through Congress on December 24, 1986, and June 5, 1987. The first of these, the so-called full stop law (Law No. 23,492), set a sixty-day deadline for the initiation of new prosecutions, and required the Supreme Council of the Armed Forces to submit cases to the Federal Appeals Courts within forty-eight hours for a decision to be made on whether to press charges. Undaunted, the courts and Argentine human rights groups set to work to meet the deadline. By the time it expired more than three hundred officers, including more than forty generals and eight admirals, were facing charges.[9] Many others on whom information was incomplete, however, escaped justice.

Because it notably failed to halt the trials, the law failed to appease the military. Over the Easter weekend in 1987, middle-level officers led by Col. Aldo Rico revolted in Córdoba and Buenos Aires demanding a full-scale amnesty law. Although Alfonsín was opposed to an amnesty, he resolved the crisis by conceding essential points to the rebels. On June 5, 1987, Congress enacted a "due obedience" law (Law No. 23,521).

Under the rules governing the trials of the junta, as noted above, "due obedience" only constituted a *presumption* of innocence, and courts had discretion over its application. However, under the terms of the due obedience law, this presumption was treated as unrebuttable, with no exception for atrocious and aberrant acts. The law granted automatic immunity to all ranks of the armed forces and police below that of colonel, and applied also to more senior officers, unless it could be shown that they had decision-making powers. The law went into effect immediately.

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[8]The Federal Court of Buenos Aires, which had been responsible for the trial of the military juntas, threatened to resign *en bloc*. The government found itself caught between the urgings of its own supporters and the insistent demands of the military. As Americas Watch commented at the time, it was "by no means the first time that the government resorted to what its critics have come to call the "double message." With the Defense Ministry "instructions," officers on active duty were told that the government was taking steps to ease their plight, while the public was told that there was no change in the government's intention to assert the rule of law and to prosecute the crimes of the "dirty war." Americas Watch (now the Americas Division of Human Rights Watch), *Truth and Partial Justice in Argentina* (New York: Human Rights Watch, 1987), p. 64.

[9]Ibid., p. 67.

Courts had five days to absolve the accused and cancel summonses to testify. On December 23, 1987, the Supreme Court ruled that the due obedience law was constitutional, rejecting an appeal lodged by human rights groups that it violated article 16 of the Constitition, which guarantees equality before the law.

Among the hundreds of military and police officers exonerated under the due obedience law were many who were accused of participating directly in torture and murder, as well as others who had run the clandestine detention centers. The officers in the task force responsible for day-to-day operations at ESMA, Captains Jorge Raúl Vildoza, Jorge Acosta (alias, "El Tigre"), and Luis D'Imperio, as well as many junior officers stationed at the camp, were released from prosecution. The courts dropped charges against navy Capt. Alfredo Astiz, implicated in the "disappearance" of two French nuns, Sister Alice Domon and Sister Leonie Duquet, who were last seen alive at ESMA by others who survived incarceration there. The prison sentences of Etchecolatz, Bergés, and Cpl. Norberto Cozzani for multiple counts of torture were vacated, and they regained their freedom. Many lower level officers accused for human rights atrocities committed by units under the orders of Gen. Carlos Suárez Mason also escaped trial. Other beneficiaries were Colonels Roque Presti, Guillermo Minicucci and police agent Juan Antonio del Cerro (alias "Colores"). Capt. Ernesto Barreiro, the principal interrogator at the clandestine detention center La Perla, whose arrest order provoked the Easter crisis, also gained his freedom.[10]

Unrest in the armed forces was spearheaded by a small group of commandos, the so-called *Carapintadas* (painted faces), led by Rico and a charismatic army colonel and Malvinas veteran, Mohamed Ali Seineldín. The Easter rebellion was followed by three other military revolts, the last and most violent of which, in early December 1990, claimed twenty-one lives. The Carapintadas' defiance of the civilian government and the generals over human rights trials and what they considered a campaign to humiliate the armed forces enjoyed wide support in the military. The army's permissiveness toward the rebels made it impossible, as former officials now admit, for the government to enforce discipline without major concessions.[11] Human rights increasingly took second place to a more pressing priority: to reestablish order in the armed forces and consolidate the endangered constitutional chain of command.

Amid a serious economic crisis, Alfonsín resigned in June 1989, five months before completing his term. On October 6, his successor, President Carlos Menem, a Peronist, decreed a general pardon. It covered officers convicted of responsibility for the Falklands/Malvinas conflict, others convicted for participating in the military rebellions of the previous years, civilians convicted for politically-motivated crimes, and thirty-nine senior officers facing charges for abductions, torture, and murder. The comprehensiveness of the measure made it look like a magnanimous gesture of clemency benefiting various groups. In reality, it was a major reversal for the the principle of justice and accountability.[12] Excluded from the pardon were the convicted junta members, as well as Generals Camps, Richieri, Suárez Mason, and the guerrilla leader Firmenich. However, another decree announced on December 29, 1990, extended the pardon to cover them all.

The firm crushing of the Carapintadas' final rebellion and this final conciliatory measure by Menem ended the military revolt and restored the president's control of the armed forces. By the beginning of the 1990s, all this judicial action had resulted in only ten convictions for human rights abuses and all of those convicted had been pardoned and released.

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[10]For more details on each of these cases, see Americas Watch, *Truth and Partial Justice*, pp. 40-58.

[11]According to Jaime Malumud Goti, an advisor to President Alfonsín and one of the architects of his human rights policy, "the situation was critical, especially so when it became doubtful that officers indicted by the courts could actually be brought for questioning. The government decided to counter the crisis by drastically limiting the trials." Jaime Malamud Goti, *Game Without End: State Terror and the Politics of Justice* (University of Oklahoma Press, 1996), p. 66.

[12]The measure was deeply unpopular. In September 1989, about 200,000 people protested in the streets when Menem's plans were announced. Surveys showed that more than 68 percent of the population opposed the pardon. Acuña and Smulovitz, "Militares en la Transición," p. 81.

III. 1995: A YEAR OF CONFESSIONS

Although the CONADEP report had placed on public record a harrowing official account of the military repression that followed the 1976 coup, its findings were based largely on the testimony of relatives of victims and on information collected over the years by Argentina's main human rights organizations. Under the Menem government, the investigative work begun by the commission continued in the human rights office of the Ministry of the Interior. By the end of the decade the files assembled by CONADEP had quadrupled in number. The paucity of information provided by the military, however, was notable. This generated a debate that still continues about whether their silence was due to a secret pact, or to the systematic destruction of files at the close of the military government. The methodology applied in the Interior Ministry's investigative work involved mainly patient correlation and cross-checking of existing official records and new ones as they became available.[13] It attracted little publicity.

With action in the courts stifled by Alfonsín's impunity laws, human rights organizations still sought in annual Senate hearings to block the promotion of officers implicated in the worst abuses. Several middle-level officers, angered at their blocked promotion and shielded by their immunity from prosecution, confessed publicly their responsibility for atrocities, insisting that they had been scapegoated for following orders. It was these dramatic confessions that brought intense public pressure for the re-opening of human rights trials.

In November 1994, a Senate ratifications committee refused to authorize the promotion of Navy Captains Antonio Pernías and Juan Carlos Rolón, both intelligence officers at ESMA. Pernías had been detained in 1987 in the case of the "disappeared" French nuns, but was released under the due obedience law. He declared his innocence in the Senate hearing, but testified that the navy was indeed responsible for kidnapping and killing the nuns. Moreover, contrary to all previous assertions by the military, with some rare exceptions, he described torture as a routine practice in ESMA. Protected from prosecution by the full-stop law for the crime in which he was implicated, the January 1977 abduction and murder of Mónica Jáuregui, Rolón said that he took his orders from superiors who had since been promoted to admiral with Senate consent.[14] It had been navy policy, he pointed out, for all its members to spend some time in the task forces, so as to involve the whole institution in the repression.

Returning to the country after a visit abroad, President Menem made several comments on the controversy over the appointments, apparently aimed at rescuing the military leadership from humiliation. In effect, they amounted to a public defense of the junta's actions, which Menem referred to as a defense of "the rule of law" (*la vigencia de la ley*). "Apart from the errors committed, the subversive apparatus disappeared and we owe that to the men of arms," Menem insisted on radio.[15]

The admissions of Rolón and Pernías were followed by further revelations by other officers angered at the silence of their superiors. The most detailed and shocking were the interviews given by another ESMA naval officer, Capt. Adolfo Scilingo, to journalist Horacio Verbitsky, and published in Verbitsky's book *El Vuelo* (The Flight) in March 1995. According to Scilingo, between 1,500 and 2,000 detainees held at ESMA were drugged, stripped of their clothing, and thrown alive from planes into the Atlantic Ocean between 1976 and 1977. Scilingo, who himself participated in the flights, declared that he first received the orders from Adm. Luis María Mendía, then Naval Operations Commander. Before contacting Verbitsky, Scilingo had written to Videla giving details of the flights he

[13]For a useful summary of the advances achieved during this period by the Ministry of the Interior's human rights office, see Alicia Pierini, *1989-1999: Diez Años de Derechos Humanos* (Buenos Aires: Ministerio del Interior, 1999), pp. 71-99.

[14]Horacio Verbitsky, *El Vuelo* (Buenos Aires: Planeta, 1995), pp. 14-16.

[15]Ibid., p. 24.

participated in and warning him that he would publish the letter if Videla did not publicly assume responsibility. Videla never replied.[16]

President Menem's reactions to Scilingo's revelations were again dismissive. He insisted that it was pointless and harmful to revisit the issue, which had been thoroughly investigated in the trials of the juntas. He referred to Scilingo as a petty crook *(fascineroso*) with a record of fraud and larceny. According to Verbitsky, before going public Scilingo had sent Menem a copy of his unanswered letter to Videla, and requested an audience with the president. But Menem had not replied either and the Navy remained silent.[17]

[16]Ibid., p. 17.

[17]Ibid., p. 18.

On April 24, an army sergeant, Victor Ibañez, revealed in an interview published in *La Prensa* that death flights like those described by Scilingo had departed regularly from El Campito, the clandestine detention center in the Campo de Mayo army headquarters near Buenos Aires. The victims were anaesthetized before being boarded on the planes, which left under cover of darkness. "I witnessed the interrogation of people who gave no information at all. I saw a man die on the *parrilla* (literally, grill, an iron frame to which victims of electric shock torture were tied) whom they were unable to get anything from. And there is no way of bearing the physical pain. If they said nothing it's because they knew nothing, This made me sick, as well as a whole lot of other people who now repent what they did."[18]

Before the impact of these new declarations could be felt, Menem's appointee as army commander, Gen. Martín Balza, intervened. In a television broadcast the day following Ibañez's declarations, Balza acknowledged for the first time the army's responsibility for gross and systematic violations of human rights. The military coup of 1976, he said, was a tragic miscalculation: "the armed forces, and among them the army, for which I have the responsibility of speaking, thought erroneously that society did not possess the necessary antibodies to confront the scourge [of violent left-wing subversion] and with the backing of many, took power." The armed forces, he said, were ill-prepared to combat urban terrorism and resorted to methods, such as torture and extrajudicial execution ("obtaining information by illegitimate methods even to the point of extinguishing life") that can never be justifiable. It was a crime, Balza said, to give immoral orders: "no one is obliged to follow such orders, and the person who does incurs the moral and legal consequences of their actions."

Balza worked with a team of five military advisors in drafting the statement. He did not clear it beforehand with President Menem or his cabinet.[19] Indeed, Balza took a rare step for an army commander in Latin America, by going over the heads of an elected government to communicate a powerful democratic message to the military ranks. Menem himself had previously ridiculed and attempted to discredit the confessions of Scilingo and others ("I suggest that if they want to confess, they talk to a priest," Menem had said).[20]

Balza told Human Rights Watch that after the initial shock at the harshness of his message wore off, many officers expressed their agreement with it, especially when soldiers found themselves being treated once more with respect in the streets. [21] However, opinion in the army remains deeply divided over Balza and his legacy.[22]

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[18]Quoted in *Nada Más que la Verdad,* p. 328.

[19]Human Rights Watch interview with Gen. Martín Balza (R), Buenos Aires, April 24, 2001.

[20]Cited in Centro de Estudios Legales y Sociales (CELS), *Informe Anual sobre la situación de los derechos humanos en la Argentina, 1995* (Buenos Aires: CELS, 1996) p. 128.

[21]Human Rights Watch interview with General Balza.

[22]In 2000, Balza was accused, along with former President Carlos Menem, of participating in a conspiracy to sell arms illegally to Croatia. Whether or not Balza had knowledge of the illegal arms deals, it was not this issue that preoccupied his army critics but the strong public position he took on human rights.

The truth-telling reopened a public debate about Argentina's past that had been dormant since Menem's pardons five years earlier. According to the Argentine human rights group, the Center for Legal and Social Studies (CELS): "It was evident from the beginnning that Scilingo's words had reached many ears, and little by little the suprising conversations that could be heard in bars and shops filtered through to the various institutions which until then had remained excessively silent."[23] But the debate provided no certainties, only more questions. Why did the armed forces continue to refuse to provide information on the fate of the "disappeared"? How could the search for truth and justice continue in the courts when the impunity laws prevented prosecutions? The solution for advocates of truth and justice was to persuade the courts to continue investigating, on the grounds that their responsibility to establish the truth was as great as their responsibility to dispense justice.

IV. THE "TRUTH TRIALS"

Given the renewed public interest in legal action, CELS decided to press the courts to investigate a few emblematic cases. The cases were chosen carefully to counter the most obvious legal objections. In each one, the relatives were founding members of CELS, giving the organization a stronger legal basis for making the presentation. Each involved the same agencies denounced by Scilingo, Ibañez, and others. These "truth trials" (*juicios por la verdad*), as they became known, were an innovation in Argentine justice, and possibly in the rest of the Americas.[24] They were unlike ordinary criminal trials in that judicial action was expressly limited to investigation and documentation, without there being a possibility either of prosecution or punishment. They were based on the right (both of the relatives and of society as a whole) to know the truth, and the right of the relatives to bury and mourn their dead (*derecho a duelo)*.

Explaining this rationale in 1995, then-director of CELS Martín Abregú wrote:

> The impossibility of pursuing the authors of these crimes in criminal proceedings did not mean simply the closure of any kind of judicial intervention. On the contrary, the social impact caused by the declarations of the former naval officer (Scilingo) highlighted another crucial issue about state terrorism: the right of the relatives to know the final destiny of their loved ones and the right of society to know in detail the methodology used by the military dictatorship to exterminate tens of thousands of Argentines. It was this need to know (in both its aspects, the personal right of the relatives and the collective right of the whole community) that was presented to the courts, pleading the "Right to the Truth."[25]

CELS sought to persuade the courts to uphold the doctrine and jurisprudence on the right to truth established over the years by international human rights bodies, especially by the Inter-American Commission on Human Rights and the Inter-American Court. The Argentine human rights groups believed that the information already gathered by the federal courts in the trials of the juntas and later trials in the 1980s, if coordinated and systematized, provided a strong basis for further investigation. Moreover, the courts had powers to obtain information from official sources, as well as to summon military and police personnel to testify. For the courts to assume this role, however, they first had to be

[23]CELS, *Informe Anual 1995*, p. 85.

[24]In Chile, another country in which human rights prosecutions were barred by a broad amnesty law, some judges refused to apply the law until the facts of the case and those responsible for the crimes committed had been identified. This position has gained increasing acceptance in the judiciary since Chile regained democracy in 1990, but in earlier years some judges who insisted on their duty to investigate, like Judge Carlos Cerda of the Santiago Appeals Court, were sanctioned by their superiors. Chile now has legislation protecting the right of relatives of the "disappeared" to pursue the truth about the fate of their loved ones.

[25]*Informe Anual, 1995*, p. 88.

convinced that the full stop and due obedience laws did not rule out further judicial investigation. After a promising start, this turned out to be an arduous uphill battle.

The two cases initially presented were those of Mónica Candelaria Mignone, the daughter of the late Emilio Mignone, founder of CELS and a figurehead of the Argentine human rights movement, and of Alejandra Lapaco, whose mother, Carmen Aguiar de Lapaco, helped found the Madres de la Plaza de Mayo, and was a board member of CELS. Mónica Mignone "disappeared" after being abducted on May 14, 1976 and taken to ESMA. Alejandra Lapaco and her mother were detained on March 17, 1977 and held in the "Athletic Club," an army detention center in Buenos Aires. Her mother was released two days later. Alejandra was never seen again.

In April 1995, the Federal Chamber of Buenos Aires ruled in the Mignone case to order the naval chief of staff to track down navy files on operations in ESMA, or, failing that, to reconstruct the data and make it available to the court, including the names and fate of infants born in captivity. The court acknowledged that in both international and domestic law and jurisprudence, the relatives had a right to know the truth about the fate of their loved ones and the court had a duty to use its powers to assist them.[26] This was reflected in the scope of the information sought by the court, which went far beyond the single case of Mónica Mignone.

The resolution on the Lapaco case was stronger still, and more extensively based on international law and jurisprudence. Accepting a petition by the relatives, the court ordered the Ministry of Defense to produce all the information the army possessed on the fate of Alejandra Lapaco and other prisoners who "disappeared" in the custody of the First Army Corps between 1976 and 1983.[27]

The advance was short-lived, however. The two judges who had consistently favored the investigations, Horacio Cattani and Martín Irurzún, now found themselves in a minority; their colleagues, apparently influenced by the refusal of the navy to cooperate in the Mignone case, decided not to continue the investigations. Faced by the navy's objections, some of the judges claimed that to pursue the case might violate the principle of double jeopardy, since the officials implicated in the "disappearances" had already been relieved of any criminal responsibility.

In August the court reached a similar conclusion in the Lapaco case, once more against the dissenting votes of Judges Cattani and Irurzún. Faced by the army's categorical denial that it possessed any information to clarify the fate of the "disappeared," the CELS lawyers petitioned the court to seek information from the files of other government departments. The majority judges, citing different reasons, turned down the petition, suggesting instead that the executive branch, specifically the under-secretary for human rights of the Interior Ministry, take over the inquiry. Lawyers for the relatives appealed to the Supreme Court. It was up to the courts to uphold the right to truth, they argued, rather than pass the buck to the government.

The Argentine Supreme Court took three years to decide on the appeal. In a fourteen-line judgment given on August 13, 1998, the court held by five votes to four that it would be pointless to allow the inquiry to be reopened, since the legal basis for a prosecution no longer existed.[28]

In response, in November 1998, Carmen Aguiar lodged a complaint with the Inter-American Comission on Human Rights. In May 1999, the Commission declared the petition admissable. On November 15 1999, it brokered a

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[26]The Federal Chamber admitted, for the first time, an *amicus curiae* brief submitted jointly by Human Rights Watch and the Center for Justice and International Law (CEJIL) citing international law arguments in support of the presentation by Mignone and CELS.

[27]Judges Horacio Cattani, Martín Irurzún, and Eduardo Luraschi consistently upheld the cause of the relatives; in the Lapaco decision they were joined by Judges Juan Pedro Cortelezzi and Raúl Vigliani.

[28]Corte Suprema de Justicia de la Nación, *Suárez Mason, Carlos Guillermo, homicidio, privación ilegal de la libertad*, September 29, 1998.

friendly settlement of the dispute, by which the State agreed to "accept and guarantee the right to truth which consists in the exhaustion of all means to obtain clarification of what happened to disappeared persons." The agreement required the government to award exclusive competence to the federal courts to continue the trials for truth, which could not be made the object of any statute of limitations. The agreement, therefore, made it an official obligation of the state to continue judicial investigations into the fate of the "disappeared." Human rights organizations celebrated this as a landmark victory.

Although the government formally acknowledged its commitment to further the truth trials, the army's cooperation has been minimal. Army officers called to give evidence in these proceedings have frequently refused to do so, and even more seriously, the army has given legal and moral support to officers who have been detained for contempt of court or perjury. The most senior officer in the army, Gen. Ricardo Brinzoni, has publicly criticized the trials. For example, apparently speaking in the name of the army, Brinzoni said in a July 2000 newspaper interview:

> We do not think that the trials are the most appropriate path, because they have not accomplished anything. The courts, for example, act according to different criteria. Some courts have powers to order arrests or incriminate for perjury. Others understand that this procedure should not be conducted in a court room. What we are demanding is that the rules be the same whatever the jurisdiction. A soldier is a citizen in uniform with obligations and rights. What we are demanding is that our obligations be carried out and our rights respected, because we are citizens like any other and no one can be forced to testify against themselves.[29]

Currently, truth trials are continuing in courts across the nation, some with considerable publicity, others with very little. Although federal appeals courts are conducting the best known investigations, most (at least sixteen) have been conducted by criminal trial courts, and still others by civil courts. No single legal mechanism has been used and individual judges have followed the procedures they considered most appropriate. Although part of the friendly settlement brokered by the Inter-American Commission was to regulate the truth trials, both the human rights groups and government human rights officials have considered the existing diversity to be beneficial.[30]

The most noted proceedings have been held by the Federal Appeals Court in Buenos Aires; the Federal Appeals Court of La Plata; the Federal Appeals Court of Bahía Blanca; and the Federal Court of Instruction No. 3 in Córdoba. In La Plata, oral public hearings have been conducted weekly on Wednesdays, in full court session, with witnesses being cross-examined not only by the judges but also by attorneys representing the human rights group that presented the case, the Permanent Assembly of Human Rights of La Plata. By contrast, the proceedings conducted by the Federal Chamber of Buenos Aires have relied much less on new oral testimony. Instead the court has sifted existing documents and testimony already collected in the trial of the juntas, as well as new documentary evidence from police files and other official sources.

The Federal Court of Buenos Aires, in which CELS chose to present the Mignone and Lapaco cases, had accumulated an enormous quantity of information as a result of the trials it conducted in 1984 against the military juntas and other high profile cases. Despite the official closure of these important cases under the full stop and due obedience laws, the Federal Court continued to assist relatives seeking information about the "disappeared." One of its

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[29]Eduardo Van Der Kooy and Walter Curia, "Brinzoni: los juicios por la verdad no lograron nada," *Clarín*, July 26, 2000.

[30]Human Rights Watch interview with Diana Conti, Under-Secretary for Human Rights at the Ministry of Justice and Human Rights, Buenos Aires, July 25, 2001.

most important tasks was the identification of remains found in common graves in public cemeteries, in which the court was assisted by U.S. forensic expert Clyde Snow, backed by the Argentine Team of Forensic Anthropologists. The court has now identified some thirty-seven victims of extrajudicial execution, previously considered "disappeared," by comparing fingerprints from military records, use of odontological records and DNA samples.[31]

[31] Human Rights Watch interview with judges Horacio Cattani and Martín Irurzín, Federal Court of Buenos Aires, April 27, 2001.

Beginning in April 1998, the investigation conducted by the Federal Court of La Plata has accumulated more than 2,000 cases of "disappearances", including many new ones not included in the CONADEP report.[32] In three years of weekly public hearings, the court has questioned some 400 people, including relatives, friends and associates of victims, former and serving military and police officers, priests, army chaplains, and doctors who signed death certificates for unidentified victims. The judges have personally inspected La Plata police stations, sites of former secret detention centers, and cemeteries, and have searched in police archives. Working around the edges of the impunity laws, the court charged a police doctor, Néstor De Tomás, with concealing evidence after it emerged that medical-legal records giving physical details of unidentified cadavers had disappeared (the victims were described in death certificates as having died from gunshot wounds to the head). Judge Leopoldo Schiffrin requested the court to subpoena the former investigations chief of the Buenos Aires police, Miguel Etchecolatz, on multiple counts of torture and murder, but after long deliberations the court declined to do so. In a hearing at which Human Rights Watch was present as an observer on April 25, 2001, the court questioned two recently promoted Buenos Aires police officers (Mario Jaime and Daniel Del Arco), both of whom had been implicated by several witnesses in abductions carried out in 1976. Jaime refused to testify, and Del Arco denied any participation.

The unusual status of the former members of the military and police called to testify in the truth trials has meant that judges have often differed over the procedural norms applicable. Since these are trials without defendants, military and police personnel usually have been summoned to appear and questioned as if they were ordinary witnesses. As a guarantee against self-incrimination, Argentina's legal system exempts those *accused* in criminal proceedings from being required to testify under oath when they take the stand. By contrast, witnesses, who may be arrested if they fail to appear, are required to testify under oath. As participants in crimes, many officers feared that their statements could incriminate them, whether in subsequent court proceedings or in trials conducted outside the country. For this reason, many refused to declare unless the oath was lifted. Some judges responded by ordering their arrest until they agreed to testify. Other military witnesses made untruthful declarations under oath and were charged with perjury.

Federal courts in Bahía Blanca and Córdoba have invoked articles of the Code of Military Justice and the Penal Code to arrest officers who appear in court but refuse to testify or reply to questions. The arrests provoked concern in the army leadership and in the government at alleged violation of the officers' right not to incriminate themselves, and led to legal moves to terminate the jurisdiction of the federal courts.

For example, in December 1999, Judge Hugo Cañón of the Federal Court of Bahía Blanca ordered the arrest of Lt. Col. Julián Corres, a former chief of security at "La Escuelita," a secret detention center run by the Fifth Army Corps, after Corres refused to testify and denied the competence of the court. The court was investigating allegations by a group of students from a local Bahía Blanca school that they had been detained and tortured in La Escuelita. After being obliged to testify under oath, Corres refused to acknowledge participating in torture sessions. The court charged Corres with perjury, making him the first officer on active service to be charged in a human rights case since the early 1990s.[33]

In 2000, courts responded to the refusal of officers to testify by ordering more arrests, which in turn spurred high level army protests. In July, following the detention (under similar circumstances to that of Corres) of two retired officers, Armando Barrera and Santiago Cruciani, Gen. Brinzoni dispatched army Secretary General Gen. Eduardo Alfonso to visit the detainees and to offer the army's moral and legal support. Since Cruciani was unable to travel to

[32]Human Rights Watch interview with Dr. Jaime Gluzmann, attorney for the Permament Assembly of Human Rights of La Plata, April 25, 2001.

[33]Gabriel Bermúdez, "Procesan a un Teniente Coronel," *Clarín*, December 16, 1999.

Bahía Blanca for health reasons, the Bahía Blanca court sent three judges to interview him in Mendoza. When he refused to testify he was promptly placed under detention in the military hospital there.

Similar tensions arose in a truth trial under way in the city of Córdoba, where Judge Cristina Garzón de Lascano of the Third Federal Court of Instruction was investigating "disappearances" and extrajudicial executions attributed to the Third Army Corps, under the command of Gen. Luciano Menéndez. In April 2000, when five former officers and a police agent refused to testify in a hearing about the murder of thirty political prisoners in 1976, Judge Garzón placed them under arrest. On April 29, General Menéndez, who had earlier received a telephone call from Brinzoni expressing sympathy, was himself detained for refusing to recognize the court's jurisdiction.[34]

On September 13, 2000, the National Court of Cassation ruled on an appeal lodged by Corres, Cruciani, Barrera, and two other officers against the jurisdiction of the Federal Appeals Courts, and against their arrest for refusing to testify under oath. The cassation court ruled that the judges' orders detaining Cruciani and Barrera indefinitely until they testified were illegal, and violated their constitutional right not to incriminate themselves.[35]

V. THE THEFT OF BABIES

The most striking advances in court investigations in recent years have concerned the theft of babies born to mothers held in secret detention and the illegal adoption of these babies by military couples under false identities. Cases dealing with the theft and concealment of babies and the substitution of their civil identity were excluded from the full stop and due obedience laws, nor were these crimes covered by the pardons decreed by President Menem.

There is no argument between the military and civil society about the obligation of the courts to find these children and to bring to justice those responsible for these crimes including the couples who falsified birth certificates and raised the children as their own. Even the army, the branch of the armed forces that has opposed and tried to limit the truth trials, has repeatedly declared its support for these investigations. The human rights office of the Ministry of Justice and Human Rights (formerly of the Ministry of the Interior under the Menem government) continues to support a national genetic data bank, set up by President Alfonsín to identify the missing children.[36] The formation in 1992 of a National Commission for the Right to Identity (CONADI), which includes the Association of Grandmothers of the Plaza de Mayo (Abuelas) and their attorneys, state prosecutors, and the undersecretary for human rights of the Menem government, centralized and coordinated the search for the missing children.

After information emerged showing the systematic nature of the crimes involved, court investigations led to the arrest and second prosecution of former members of the military juntas pardoned by Menem for other crimes. This issue has revealed an anomaly at the heart of Argentina's amnesty laws: while former officers may be prosecuted for crimes committed as a result of a decision to preserve the lives of children, they are currently protected from prosecution for

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[34]Mónica Gutierrez, "Menéndez se negó a declarar y la jueza lo dejo detenido," *Página 12*, April 29, 2001.

[35]Camera Nacional de Casación Penal, Causa No. 1996- Sala IV Corres, Julián Oscar, s/recurso de queja.
Article 18 of the Constitution states: "no one may be obliged to declare against themselves." The Cassation Court noted that *witnesses*, as well as defendents, have the right to refuse to declare under oath in order avoid incriminating themselves.

[36]The right of children to their own identity is expressly protected in Article 8 of the Convention on the Rights of the Child, ratified by Argentina in 1990, which requires governments:

> to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

The Convention was incorporated into the Argentine Constitution (Article 75:22) by a 1994 law.

the murder of children and parents who "disappeared." This anomaly formed one of the most powerful arguments advanced by Judge Gabriel Cavallo to annul the amnesty laws, as we note in the next chapter.

Out of 240 cases of missing children, the Abuelas, with the support of forensic experts and aided by the National Genetic Data Bank, have tracked down seventy-one children, most of them now young adults.[37] Some have been reunited with their grandparents, others, who were handed over to couples acting in good faith, remain with the couples that raised them. By dint of this patient legal work, many of the couples who received the babies and lied about their identity were arrested and sentenced to jail terms.

Strong coincidences in the circumstances of the clandestine birth of these children and their subsequent "disappearance" led to the arrest and prosecution of former members of the military juntas pardoned by Menem. In July 1998, Federal Judge Roberto Marquevich ordered General Videla arrested and held in custody pending trial in connection with the theft of babies born in army detention centers at Campo de Mayo, El Pozo Banfield, and Automotores Orletti. The former leader of the first military junta was accused of five counts of theft and concealment of minors under ten years of age, nine counts of forgery, and five counts of "suppression of the civil status of a minor." Among other senior army officers charged were the head of the Campo de Mayo, Gen. Omar Riveros, the commander of the First Army Corps; Suárez Mason, and Suárez Mason's second-in-command, Gen. Juan Sasiaín. At this writing, Videla remained under house arrest.

In September 1999, Judge Adolfo Bagnasco of the Seventh Federal Criminal Court indicted the other surviving member of the first military junta, Admiral Massera, on similar charges. Bagnasco charged Massera and six other officers with the theft of fifteen babies born to mothers secretly detained in the ESMA between December 1976 and November 1978. Among the other officers charged were Antonio Vañek, Jorge Eduardo Acosta, and Hector Antonio Febres. Vañek was the chief of the Naval Operations Command. Jorge Acosta was a notorious ESMA torturer. Febres was in charge of the detained mothers-to-be. Jorge Vildoza, the operational chief of ESMA, who himself appropriated one of the children, was a fugitive from justice at this writing.

The court cast its net beyond those officers directly implicated in the theft of babies (the great majority of cases occurred during the first military junta, from 1976-1978). Judge Bagnasco also indicted the last president of the military government, Gen. Reynaldo Bignone, and two members of the last military junta, Lt.-Gen. Cristino Nicolaides and naval commander Rubén Franco. They were charged with covering up the crimes. In April 1983, during their administration, the junta issued its Final Document on the War against Subversion and Terrorism, which declared the "disappeared" to be dead for legal purposes. Five months later the government promulgated a Law of National Pacification, a self-amnesty decree protecting the military from prosecution.[38] In January 1999, Nicolaides testified to Judge Bagnasco that he had given orders on November 22, 1983, for the destruction of all the documentation pertaining to the war against subversion.[39] General Balza sent the judge a copy of Nicolaides' original telegram to the Federal Police (ultimately responsible to Bignone as Head of State) ordering the destruction of the documents.

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[37]Human Rights Watch interview with Estela de Carlotto, President of the Abuelas de la Plaza de Mayo, July 24, 2001.

[38]The so-called Law of National Pacification was issued on September 23, 1983, two weeks before the election that brought President Alfonsín to power. Congress abrogated it unanimously on December 27, 1983.

[39]Nicolaides also claimed that an inventory had been kept of the documents destroyed, shifting the blame for concealing

At this writing twelve officers are in prison or under house arrest awaiting trial for various crimes related to the theft of minors. In 1999 the Federal Appeals Court confirmed the indictments on appeal. The Supreme Court has not yet ruled on appeals moved by the defendants. If the indictments are upheld, the cases will proceed to oral hearings and sentence.

Building his evidence on the cases of five children, Judge Marquevich concluded that these practices were part of a centrally coordinated plan ordered by Videla. According to the testimonies of nurses and orderlies, the Military Hospital in the Campo de Mayo ran a makeshift maternity ward disguised as an epidemiology unit, in which women were held, tied, and blindfolded. Strict orders were given for their identity to be concealed. Marquevich based Videla's personal responsibility for the orders on his chain-of command responsibility for the units in which the crimes were perpetrated. Regarding the motives, key evidence was provided by the deposition of Jorge Eduardo Noguer, a naval lieutenant whose daughter, María Fernanda, and granddaughter "disappeared." Noguer testified that the former commander of Campo de Mayo, Gen. Omar Riveros, told him that the purpose of the plan was "to avoid the children of leftist parents (*zurdos*) from ending up in any but ideologically well-constituted homes." Other testimony came from human rights leader Emilio Mignone, who described a meeting he held with General Baquero, a subordinate of Videla, after the "disappearance" of his daughter Mónica, in May 1976. Baquero told him that "a problem that we have to face is that of the children of the subversives, to avoid them from growing up with a hatred of the military."

Judge Marquevich concluded that:

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the information onto the army leadership of the time. In a public statement, the army under Balza vigorously denied that any such record had been left, and accused Nicolaides of having decided to erase any trace or record of what was done. "Balza suspendió las vacaciones y volvió para desmentir a Nicolaides," *Clarín*, January 20, 1999 (available at http://ar.clarin.com/diario/99-01-20/).

> these crimes were not, at least not exclusively, intended to facilitate "illegal and clandestine" adoptions by childless members of the armed forces, but had a wider and deeper purpose: probably to snatch the infants from the bosom of families considered linked to the activity of guerrilla groups or political opponents of the *de facto* regime, thereby preventing them from growing up in an environment "contrary" to the prevailing system of rule. Coupled with the psychological impact on the family group, its environment, and on the social fabric in general, this systematic practice was one more tool using terror as part of a system of social control imposed by an illegitimate *de facto* regime with hegemonic pretensions.[40]

Whether or not this ideological motive was uppermost, there is no doubt that the babies were coveted "war booty." Several judges who have had to reveal to children their true identity told Human Rights Watch that usually the military families did not "indoctrinate" the children. Indeed, the relationships that developed over the years between child and "parents" were often as close as in normal adoptions. Now young adults, many children refused to submit to DNA tests to establish their true identity for fear that their surrogate parents would go to prison.[41] The former under-secretary for human rights in the Menem government described the issue poignantly: "what these young people are saying is: the State first murdered my real parents, and now it wants to send my adoptive parents to jail. When will the State think of me?"[42]

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[40]Poder Judicial de la Nación, Roberto José Marquevich, Juez Federal: Videla, Jorge Rafael y otros, July 13, 1998, p. 2869 (translation by Human Rights Watch).

[41]Twenty-three-year-old Claudia Poblete Hlaczik, the daughter of José Poblete and Getrudis Hlaczik, a Chilean-Argentine couple who "disappeared" in 1978, appeared in court in June 2001 as a witness for the *defense* of the couple who raised her (Ceferino Landa and Mercedes Moreira). Claudia Poblete did not discover her true identity until February 2000. After identifying herself by her real name to the court, she told the judges, "for twenty-two years they were my parents and I love them." Poblete continued to live with her seventy-one-year-old "mother," who was under house arrest. Her grandmother, the mother of José Poblete, explained that she could not ask her to do more: "like her, we, too, are rebuilding a relationship." Victoria Ginzberg, "La confesión de identidad, *Página 12*, June 23, 2001. The case is discussed in the next chapter.

[42]Human Rights Watch interview with Alicia Pierini, April 3, 2001.

Military officials, including army chief Brinzoni, have denied that there was a systematic plan to kidnap babies.[43] Judge Bagnasco acknowledges that explicit and detailed orders regarding the children born to detainees have not been found. Nevertheless, these abductions were a systematic practice shielded by impunity. The maternity units set up in the Campo de Mayo and ESMA received pregnant mothers detained in other parts of the country or by other forces. Numerous former staff at these units testifed that a strict rule of anonymity was enforced to conceal the identity of the mothers and children.[44]

Judge Marquevich argued, furthermore, that the crimes were of such gravity that they should be considered crimes against humanity.[45] As such, under international law they are not subject to any statute of limitations, even though the laws and treaties establishing this principle were not in force at the time the crimes were committed.[46]

In September 1999, the Federal Criminal Appeals Court dismissed appeals by Videla and Massera against the charges. The defendants argued that they had been tried and acquitted on the same charges in the trials of the military juntas, and were therefore being subjected to double jeopardy (*non bis in idem*). In the Massera case, the court accepted this partially, in regard to the cases of four children.[47] However, that decision only covered the crime of the children's concealment until December 30, 1986, the date the sentence of the junta members was confirmed by the Supreme Court. Their concealment thereafter, and the theft and concealment of other children not mentioned in the earlier trial, were therefore *new* crimes to which the double jeopardy objection was inapplicable. Consequently, for these crimes Massera's indictment held firm. The court used similar arguments against the double jeopardy argument to reject Videla's appeal.

The Federal Appeals Court also endorsed two important points of doctrine: that "disappearance" is a permanent crime that continues to be committed until the moment the victim is found or established to have been killed; and that crimes against humanity may be judged at any time.[48] International human rights law, the court contended, "is not

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[43]Brinzoni made the declaration to journalists in Buenos Aires on March 13, 2000.

[44]Human Rights Watch interview with Judge Adolfo Bagnasco, April 24, 2001.

[45]"They consist of profoundly inhumane acts based on a systematic methodology, which, because of the scale of their brutality, offend against the humanitarian conscience of the international community as a whole which forms part of *jus cogen*s, thus being exempt from any statute of limitations." Poder Judicial de la Nación, Judge Roberto Marquevich, July 13, 1998.

[46]Argentina ratified the Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes Against Humanity in 1995 (Law No. 24,584). Article 1 of the Convention states that "No statutory limitation shall apply to . . . Crimes against humanity, whether committed in time of war or in time of peace . . . even if such acts do not constitute a violation of the domestic law of the country in which they were committed." As precedent, Marquevich cited the cases of two Nazi war criminals, Josef Franz Schwammberger and Erich Priebke, whom Argentina extradited to Germany and Italy respectively in 1990 and 1995. In the extradition hearings the courts held that international law did not permit statutes of limitations for crimes against humanity, and that international law trumped domestic legislation in such cases. Invoking articles 75 and 118 of the Argentine Constitution (as amended in 1994), which refer, respectively to the supremacy of human rights treaties over domestic law, and international law (*Derecho de Gentes)*, Marquevich held that the same principle must be applied to international crimes committed in Argentina itself. As we note in the next chapter, Judge Cavallo developed these arguments further.

[47]Massera and Videla had been previously acquitted in the abduction of Claudia Victoria Poblete, Simón Antonio Riquelo, the child of Alicia Elena Alfonsín de Cabandié and the child of Susana Beatriz Pegoraro.

[48]In ruling on an appeal by Videla claiming that the crimes were covered by a statute of limitations, the court found that the effects of the theft and concealment of a baby continued until the child was located and returned to its legitimate family, and that in the cases in which this had occurred insufficient time had expired for a statute of limitations to enter force. The court then argued that this point was made "almost redundant" by relevant international human rights norms, which declare "disappearances" to be subject to prosecution at any time.

something set in stone, but is in permanent and dynamic development . . . implying an appreciable change of the juridical panorama on the basis of which this case must be decided."[49]

VI. AMNESTY VOIDED: THE CAVALLO DECISION

[49] Cámara Federal de Apelaciones en lo Criminal y Correccional de la Capital Federal, Expdte. 30312 "Videla, J.R., s. Prisión Preventiva, September 9, 1999 (translation by Human Rights Watch). Among the standards cited by the court were the Declaration on the Protection of All Persons against Enforced Disappearance, approved by the General Assembly of the United Nations on December 18, 1992; the Inter-American Convention on the Enforced Disappearance of Persons; the Statute of Rome establishing an International Criminal Court, which Argentina signed on July 17, 1998; and the Convention on the Nonapplicability of Statutory Limitations to War Crimes and Crimes against Humanity, which entered force in Argentina in 1995. As jurisprudence, the court cited a successful punitive damages claim against Suárez Mason in the United States (*Forti v. Suárez Mason*, Nro. C-87-2058-DLJ, United States District Court of the Northern District of California) and the hearings of the extradition of Chilean Gen. Augusto Pinochet in the British House of Lords in November 1998). The Suárez Mason hearing in the U.S. is discussed below, in Chapter VI.

It was a court investigation into the theft of a child abducted with her parents in 1978 that led to what was unquestionably the most significant decision in recent years in Argentina on the impunity issue. On March 6, 2001, Federal Judge Gabriel Cavallo ruled that Argentina's amnesty laws were unconstitutional and null, reopening the prosecution of two police agents accused of the "disappearance" of the young couple. Cavallo's decision reflected the growing international consensus that crimes against humanity cannot be shielded by amnesties. The decision dealt a severe blow to the wall of impunity in Argentina.[50] It was followed in October by a similar ruling by another Argentine judge.

On November 28, 1978, a police task force abducted José Poblete Roa, of Chilean nationality, and his wife, Gertrudis Hlaczik, along with their eight-month-old daughter, Claudia Victoria. They were held, and tortured, in "the Olympus," a secret detention center in the Floresta district of Buenos Aire. During their secret detention, Claudia was taken from them on the pretense that she would be handed over to her grandmother. The "disappearances" of Poblete and Hlaczik were entered as cases no. 93 and 94 in the trials of the military juntas. After a long investigation assisted by the Abuelas, the grandmother found Claudia Poblete living with a retired police lieutenant colonel and his wife, who had hidden her real identity for twenty-two years.

Judge Cavallo indicted police agents Juan Antonio del Cerro (alias "Colors") and Julio Simón (alias "Julian the Turk") for stealing and giving the baby to the couple, and charged them with concealing her and hiding her true identity. The case would have progressed like other theft of minors cases, were it not for a legal action brought by CELS in October 2000, asking Cavallo to invalidate the full stop and due obedience laws and to charge Del Cerro, Simón, and seven other military and police officers also for the torture and "disappearance" of Poblete and Hlaczik. Cavallo ruled that the full stop and due obedience laws, which had prevented this case from coming to trial earlier, indeed violated Articles 29 and 118 of the Constitution, as well as Argentina's obligations under international human rights law. Cavallo charged Simón for the couple's illegal arrest and torture. Only his ill-health prevented Del Cerro from being indicted also. Both men appealed, and on November 9, 2001, the three-judge Federal Court unanimously confirmed Cavallo's verdict both in regard to the charges, which the court deemed to be crimes against humanity, and with regard to the amnesty laws which it agreed were unconstitutional and without legal effect.

At this writing, the two accused were expected to appeal to the Court of Cassation, a criminal appelate court, but the Argentine Supreme Court will eventually rule definitively on the validity of the amnesty laws. In Argentina a nullification ruling, once confirmed by the Supreme Court, not only invalidates the application of the law to the case in hand, but also overturns decisions taken when the law was in force. A final confirmation of the Cavallo decision would, therefore, open the way for prosecution of the police officers accused, and encourage the opening of other prosecutions. As noted in Chapter II, in December 1987 the Supreme Court ruled Argentina's amnesty laws to be constititional. The court, whose size has increased and composition changed significantly since then, would have to pronounce, in the final instance, against or in favor of its earlier decision.

Cavallo's 188-page verdict provided a comprehensive legal analysis of Argentina's amnesty laws, as well as of the political circumstances in which they were enacted. His first step was to demonstrate that the human rights crimes committed during the military dictatorship were of sufficient gravity and scale to be classified as "crimes against humanity," or international crimes subject to universal jurisdiction with no statute of limitations:

[50]See Anthony Faiola, "Argentine amnesty overturned: Ruling could bring trials of soldiers involved in "dirty war," *Washington Post*, March 7, 2001; Colin Barraclough, "Argentina tiptoes toward past," *Christian Science Monitor*, March 12, 2001.

> They offend juridical norms that reflect the most fundamental values which humanity recognizes as inherent to all its members as human persons . . . To analyze the events exclusively from the perspective of the Criminal Code would be to ignore or discard a series of legal tools designed by the consensus of nations especially for cases of extreme gravity like the present one.[51]

The norms of international human rights law, he argued, far from being foreign to Argentina's legal system, are integral to it and based on Argentina's long tradition of involvement in and contribution to the international legal system. Respect for these norms was expressly prescribed in the Constitution and laws. By contravening their express provisions, the impunity laws violated the Constitution.

Article 29 of the Constitution prohibits the legislature from giving the executive branch special powers that put the "life, honor, and fortunes of Argentines at the mercy of whatever government or person." Legislative acts of that kind are irremediably void, and those who propose, consent to them or sign them are guilty of "infamous treason." In Cavallo's assessment, by stripping the courts of their powers to provide remedy and justice to victims of the dictatorship, the amnesty laws were examples of legislative acts prohibited under Article 29.

Article 118 provides that crimes against international law (*Derecho de Gentes*), if committed outside Argentina's borders, must be judged by an Argentine court in the place designated by Congress in a special law. Crimes against humanity and universal jurisdiction are thus recognized and allocated a special conceptual place in the Argentine legal system. In a long analysis of precedent, Cavallo argued that the concept of Derecho de Gentes was a forerunner of the modern concepts that include that of crimes against humanity.[52] The content had evolved with time, he argued, but even so had always reflected a common core, namely that such crimes are offenses against people wherever they may live, that their punishment is part of *jus cogens* ("peremptory norms"of a universal and binding nature);[53] that they may be tried by courts anywhere (universal jurisdiction); and are not subject to any statute of limitations.[54]

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[51] Resolución del Juez Federal Gabriel R. Cavallo declarando la inconstitucionalidad y la nulidad insanable de los arts. 1 de la Ley de Punto Final y 1, 3 y 4 de la Ley de Obediencia Debida. III (translation by Human Rights Watch).

[52] Cavallo quoted some prescient writings by nineteenth-century jurist Juan Bautista Alberdi, father of the Argentine Constitution of 1853, to make his point:

> when the international rights of one or more individuals in a State are violated, that is, as members of humanity, even though it is by the government of their country, they may invoke international law and ask the world to make it respect their persons.

[53] A norm of *jus cogens* "is a norm accepted and recognized by the international community of states as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character." Vienna Convention on the Law of Treaties, Art. 53, May 23, 1969. These "principles and rules concerning the basic rights of the human person," are the concern of all states; "they are obligations *erga omnes*." International Court of Justice, The Barcelona Traction, Light & Power Co. (Belgium v.

There was also backing in Argentine jurisprudence for this interpretation, Cavallo argued. In an August 1989 decision of the Federal Appeals Court of La Plata to allow the extradition to Germany of Nazi war criminal Franz Schwammberger, Judge Leopoldo Schiffrin cited Article 118 to show that Argentina recognized international norms governing crimes against humanity. In the Priebke case, the majority view of the Supreme Court was that the war crimes of which the former Nazi was accused were crimes against humanity under the meaning of Article 118, and consequently not subject to a statute of limitations in Argentina. This permitted Priebke's extradition to Italy. Having determined that the torture and "disappearance" of Poblete and Hlaczik were crimes against humanity in the meaning of Article 118, Cavallo concluded that the amnesty laws violate that article by preventing the courts from investigating the crimes and bringing those responsible to justice.

Cavallo noted certain questionable assumptions in the due obedience law. First, he pointed out that the law was based on the hypothesis that those who committed atrocities were powerless to understand the immorality of the actions that they were ordered to commit, or to resist the orders. Both the fact that an order was actually given and that it was not possible to resist it are treated by the law as *premises*, rather than questions of fact. Moreover, the due obedience law expressly excludes some crimes from its scope, such as theft of property and the concealment of babies, without stating whether these crimes are excluded because they did not follow from orders, or whether the perpetrators received orders but, in the case of these crimes, had the option of refusing to obey them. Whatever the underlying assumptions, they led to absurd conclusions: the law exculpates those who kidnap, torture, and kill, while allowing those that steal property to be tried and convicted. The perpetrator of a murder and infanticide gets off, while the officer who saves a baby's life and hands her over to a military family goes to prison. The Poblete-Hlaczik case perfectly exemplified this anomaly.

Spain), 1970 I.C.J. 3, 32.

[54]Ibid., IV.

Cavallo pointed out that international law and treaty obligations take precedence over domestic laws in Argentina by express provision of reforms introduced into the Constitution in 1994.[55] To avoid any doubt as to whether such norms may be applied retroactively, he noted that the Supreme Court had stressed the precedence of international law in successive rulings, in the light of Argentina's obligations under the Vienna Convention on the Law of Treaties (incorporated in Argentine law in 1980). Article 27 of the Vienna Convention states that "[a] party may not invoke the provisions of its internal law as justification of its failure to perform a treaty." Having established this key principle, Cavallo went on to point out the incongruence of Argentina's impunity laws with human rights treaties ratified by Argentina, including the International Covenant on Civil and Political Rights (ICCPR), the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the American Convention on Human Rights, and the American Declaration on the Rights and Duties of Man. These treaties all oblige states parties to guarantee and protect human rights and require them to adapt all their internal legislation in order to comply with that objective.

[55] Article 75:22 of the Constitution states that Congress is mandated to "approve or discard treaties subscribed with other nations and with international organizations, and concordats with the Holy See. Treaties and concordats have superior status to laws." There follows a list of the human rights treaties to which Argentina is a Party.

On October 2, 2001, another federal judge, Claudio Bonadío, issued a second decision declaring the full stop and due obedience laws to be inconstitutional and null. Judge Bonadío, of the Second Chamber of the Federal Court of Buenos Aires, was investigating theft of property belonging to Conrado Gómez, who "disappeared" after his abduction on January 10, 1977 on suspicion that he was bank-rolling the Montoneros guerrillas. His captors, members of an ESMA task force, made off with the contents of his apartment and safe, including the deeds of properties worth almost $U.S. 20 million, and appropriated his car and several racehorses. They then allegedly transferred ownership of the assets to themselves using fictitious names and a realty company owned by Navy Adm. Emilio Massera and his son. The investigation began with crimes that were excluded from the amnesty laws, in this case criminal association and extortion. As in the Poblete case, however, the judge was confronted with the troubling irony that those responsible were immune from prosecution for much more serious crimes, such as Gómez's abduction and murder. Declaring the full stop and due obedience laws to be without legal effect using arguments similar to Cavallo's, Judge Bonadío indicted Adm. Emilio Massera as leader of a criminal association, and four members of the task force, Juan Carlos Rolón, Jorge Carlos Radice, Jorge Eduardo Acosta and Francis Whamond, not only for for criminal association, but also for illegal arrest aggravated by violence and threats.[56]

During the same week as the Bonadío decision, Graciela López de Filoñuk, the prosecutor in the case being heard in the "truth trial" in Córdoba,[57] requested Judge Cristina Garzón to declare Menem's presidential pardons of 1989, as well as the two amnesty laws of the Alfonsín government, to be unconstitutional. The only beneficiary of the pardons, in the Córdoba case, had been Gen. Luciano Menéndez, former commander of the army's Third Corps, who was pardoned when he was facing trial on hundreds of counts of torture and murder (all the Third Corps officers under Menéndez's command had been already exempted from prosecution under the due obedience law).[58] This was the first time that an Argentine judge had been called to pronounce on the constitutionality of the presidential pardons. If the judge agrees with the prosecutor's reasoning, the trial of Menéndez, a notorious human rights violator, could finally proceed.

VII. IMPUNITY UNDER INTERNATIONAL LAW

Judge Cavallo's decision is probably one of the fullest legal expositions dealing with the applicability of international human rights law to domestic criminal law in Argentine judicial history. On June 1, 2001, Amnesty International, Human Rights Watch, and the International Commission of Jurists presented an *amicus curiae* brief to the Federal Court in support of Judge Cavallo's findings.[59] Our legal arguments are summarized below.

The *Amicus* Brief

Under the human rights treaties which Argentina has ratified, the obligation to investigate and punish grave violations of human rights is considered to be an essential aspect of the state's duty to guarantee or ensure respect for human rights.[60] Over more than a decade, the Inter-American Court of Human Rights has repeatedly stressed this

[56]Susana Viau and Victoria Ginzberg, "la Justicia tardó pero llegó a los marinos," *Página 12*, October 3, 2001.

[57]The case is described briefly in Chapter IV.

[58]"Contesta Vista: Incidente de Nulidad e Inconstitucionalidad, Case No. 9,481, October 2, 2001.

[59]Amnesty International, *Argentina: Memorial en Derecho Amicus Curiae sobre la Incompatibilidad de las Leyes de Punto Final y Obedencia Debida con el Derecho Internacional* (AI index AMR 13/012/2001/S), presented to Sala II de la Cámera Nacional en lo Criminal y Correcional Federal, Buenos Aires, on June 1, 2001.

[60]The duty to try and punish those responsible for grave violations of human rights has its legal basis in the International Covenant on Civil and Political Rights (Article 2); the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Articles 4, 5, and 7); the American Convention on Human Rights (Article 1); the Inter-American Convention to Prevent and Punish Torture (Articles 1 and 6); the Inter-American Convention on the Enforced Disappearance of Persons (Articles 1 and 4).

obligation.[61] The state must also offer an effective remedy to victims; provide just and adequate reparation to them and their relatives; and establish the truth about what occurred. These components of the duty to guarantee respect for human rights are not optional alternatives, but are complementary and interdependent obligations, all of them mandatory.[62]

The duty to enforce respect for human rights overrides domestic legislation and even imposes limits on national sovereignty, as was explicitly recognized by the Inter-American Commission on Human Rights in the Chumbivilcas case:

[61]See, for example, *Velásquez Rodríguez* (July 24, 1989); *Godínez Cruz* (July 21, 1989); *El Amparo* (September 14, 1996); *Castillo Páez* (November 3, 1997); *Suárez Rosario* (November 12, 1997); *Nicholas Blake* (January 24, 1998).

[62]See Juan Méndez, "Derecho a la verdad frente a las graves violaciones a los derechos humanos," in Martín Abregu, Christian Cortis (eds.), *La Aplicacion de los Tratados de Derechos Humanos por los Tribunales Locales* (Buenos Aires: CELS, Editores del Puerto, 1997), p. 526.

> In other words, the States have a duty to respect and to guarantee the fundamental rights. These duties of the States, to respect and to guarantee, form the cornerstone of the international protection system since they comprise the States' international commitment to limit the exercise of their power, and even of their sovereignty, vis-a-vis the fundamental rights and freedoms of the individual.[63]

> Failure to investigate human rights violations and bring to justice those responsible for them amounts to a denial of justice and entails impunity. This latter concept is understood as "the total lack of investigation, prosecution, capture, trial, and conviction of those responsible for a violation of the rights protected by the American Convention."[64] A state that maintains a situation of impunity violates its international obligations and incurs international responsibility.

Amnesties and other similar measures which prevent the authors of grave violations of human rights from being brought before the courts, tried, and convicted, are incompatible with the state's obligations under international human rights law. The United Nations' Human Rights Committee has repeatedly reaffirmed this principle when examining amnesties adopted by state parties to the International Covenant on Civil and Political Rights, including Chile, Lebanon, El Salvador, Haiti, Peru, Uruguay, and Yemen. In the Barrios Altos case, the Inter-American Court recently ruled Peru's amnesty law to be null and devoid of legal consequences. It held that amnesty laws were, in principle, inconsistent with the letter and spirit of the American Convention on Human Rights:

> Provisions for amnesty, statutes of limitation, or the establishment of exemptions from criminal responsibility which seek to prevent the investigation and punishment of those responsible for grave human rights violations like torture, summary, extrajudicial, or arbitrary executions, and enforced disappearances, all of which are prohibited for contravening non-derogable rights recognized by international human rights law, are inadmissable.[65]

Argentina's full stop and due obedience laws have also been scrutinized by international human rights bodies. The U.N. Human Rights Committee concluded in 1995 that these laws contravened paragraphs 2 and 3 of Article 2 and paragraph 5 of Article 9 of the ICCPR.[66] According to the Committee:

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[63]Inter-American Commission on Human Rights, Annual Report 1995, Case No. 10,559, *Chumbivilcas* (Peru).

[64]Inter-American Court of Human Rights, *Paniagua Morales and others, Sentence of March 8, 1998,* Series C: Decisions and Judgments, No. 37, para. 173.

[65]Corte Interamericana de Derechos Humanos, Sentencia de 14 de marzo de 2001, *Caso Barrios Altos*, para. 41 (translation by Human Rights Watch).

[66]Final Observations of the Human Rights Committee: Argentina, April 5, 1995. U.N. document CCPR/C/79/Add.46; A/50/40, para. 153.

> The Committee is concerned that amnesties and pardons have impeded investigations into allegations of crimes committed by the armed forces and agents of national security services and have been applied even in cases where there exists significant evidence of such gross human rights violations as unlawful disappearances and detention of persons, including children. The Committee expresses concern that pardons and general amnesties may promote an atmosphere of impunity for perpetrators of human rights violations belonging to the security forces. Respect for human rights may be weakened by impunity for perpetrators of human rights violations.[67]

The Committee pointed out in its consideration of Argentina's report in 2000 that:

> Gross violations of civil and political rights during military rule should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice. The Committee recommends that rigorous efforts continue to be made in this area and that measures be taken to ensure that persons involved in gross human rights violations are removed from military or public service.[68]

The U.N. Committee against Torture concluded that the full stop and due obedience laws were "incompatible with the spirit and purpose of the [Convention against Torture and Other Cruel, Inhuman or Degarding Treatment or Punishment]."[69]

The Inter-American Commission on Human Rights considered that by passing and applying these laws, together with Decree 1002/89 pardoning those convicted of, or charged with, human rights violations, Argentina had failed to meet its obligation to provide access to a hearing by a competent, independent and impartial tribunal (Article 8:1 of the American Convention on Human Rights) as well as the right to judicial protection (Article 25).[70]

Given the Argentine government's frequent claim that domestic laws in force override the jurisdiction of courts, national or foreign, to try human rights offenders, it is important to note that the Inter-American Court of Human Rights has repeatedly stressed that domestic laws may never be invoked to justify the non-observance of treaty obligations. In a 1994 advisory opinion, the court found unanimously that:

> the promulgation of a law in manifest conflict with the obligations assumed by a state upon ratifying or adhering to the Convention is a violation of that treaty. Furthermore, if such violation affects the protected rights and freedoms of specific individuals, it gives rise to international responsibility for the state in question.[71]

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[67]Ibid.

[68]Final Observations of the Human Rights Committee: Argentina, November 3, 2000. U.N. document CCPR/CO/70/ARG, para. 9.

[69]Committee Against Torture, Communications No. 1/1988; 2/1988 and 3/1988, Argentina, November 23, 1989, para. 9.

[70]Inter-American Commission on Human Rights, report no. 28/92 (Argentina), October 2, 1992, para. 50.

[71]Advisory Opinion OC-14/94 of December 9, 1994. *International Responsibility for the Promulgation and Enforcement of Laws in violation of the Convention (Arts. 1 and 2 of the American Convention on Human Rights)*, para. 50.

Judges and governments often argue that courts cannot be held responsible under international law since they are constitutionally obliged to apply the laws in force. They contend that, in a democracy that respects the separation of powers, only the legislative branch may repeal, annul or modify the laws. Customary international law, however, considers *all* the branches of the state to be responsible for compliance with the state's international obligations. As Article 6 of the United Nations' Draft Articles on State Responsibility, under preparation by the International Justice Commission since 1955, states:

> The conduct of an organ of the State shall be considered as an act of that State under international law, whether that organ belongs to the constituent, legislative, executive, judicial or other power, whether its functions are of an international or an internal character, and whether it holds a superior or a subordinate position in the organization of the State.[72]

The judiciary, in particular, must comply with the state's international obligations by administering justice independently and impartially; observing judicial guarantees; investigating, prosecuting and punishing the perpetrators of human rights violations; and guaranteeing the right to justice and an effective remedy to victims of grave human rights violations and their families. The courts are still obliged to carry out these functions even when to do so would mean refusing to apply legislation in force. By applying laws that prevent them from guaranteeing internationally protected rights, they incur the state's international responsibility.

Extraterritoriality and Universal Jurisdiction

In the three years that have passed since the arrest of General Pinochet in London in October 1998, the principle of universal jurisdiction for grave human rights crimes has become ever more widely accepted. According to this principle, some crimes (defined as "crimes against humanity") are so serious that any court may prosecute those responsible for them, regardless of the nationality of the perpetrators or victims, or where the crimes were committed. A principal pragmatic reason why international law provides for universal jurisdiction is to make sure that there is no "safe haven" for those responsible for the most serious crimes. Although deeply rooted in international law since the Second World War, universal jurisdiction was exercised very sporadically until the late 1990s, when the number of such prosecutions multiplied.

Prosecutions conducted by non-Argentine courts into abuses committed by Argentine state agents in Argentina also grew in number during the 1990s, as a result of legislation blocking further human rights trials inside the country. Just as the impunity laws were introduced to stave off military revolt, successive governments have refused to cooperate with these trials for the same political reasons. So far, Argentina has failed to extradite a single defendant. Those who face, or have faced, justice in foreign courts have been arrested during trips or while living abroad, or have been tried *in absentia*.

As is usual in other countries, the law favors domestic courts over foreign ones if the extradition crime was committed by an Argentine in Argentina. An Argentine citizen facing extradition may opt, as an alternative to extradition, to be tried by an Argentine court.[73] If a crime for which extradition is requested also falls under the jurisdiction of an Argentine court, extradition would only be allowed if the collection of evidence were clearly easier in the foreign country.[74]

In short, the legal, as well as the political cards, are stacked against the extradition to foreign countries of former Argentines accused by foreign courts of human rights abuses committed in Argentina. However, this in no way diminishes the importance for accountability of prosecutions conducted in other countries. Under the principle of *aut dedere, aut judicare* (either extradite or judge), governments that refuse for whatever reason the extradition of citizens wanted for crimes against humanity are obliged to try them at home. Conducting such trials is the only satisfactory response of a government that consistently turns down extradition. This is why prosecutions by foreign courts advance accountability even though the obstacles to such trials being held abroad may be overwhelming.

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[72] Report of the U.N. International Law Commission on the work of its forty-eighth session, May 6-July 26, 1996, U.N. Document A/51/10, p. 6.

[73] Article 12 of the Law on International Judicial Cooperation.

[74] Articles 5 and 23 of the Law on International Judicial Cooperation.

VIII. TRANSNATIONAL JUSTICE

Prosecutions of former Argentine officers accused of crimes against humanity have continued in several European countries at a quickening pace over the last year. Close historical ties between Argentina and Spain, Italy, and France, and the pressure of activists from the sizeable Argentine immigrant and exile communities in these countries have been an important factor in these developments. Differences in the extraterritorial jurisdiction recognized in the legal systems of the countries concerned has influenced the scope of these investigations and the charges on which they have been based.

Spain's highest court, the Audiencia Nacional, derives its authority to try Argentines for human rights violations committed in Argentina from the rule of "universal jurisdiction": the principle that every state has an interest in bringing to justice the perpetrators of particular crimes of international concern, no matter where the crime was committed, and regardless of the nationality of the perpetrators or their victims. Spanish laws give its courts powers to try the crime of genocide wherever and by whomever it is committed. The trials conducted in Italy and France have been based more narrowly on the principle of "passive nationality," which gives their courts jurisdiction to try those responsible for crimes committed against their citizens wherever the crimes are committed.

Successive Argentine governments have refused to cooperate with these prosecutions. President Menem categorically opposed them as an unwarranted interference by other states in Argentine sovereignty. He claimed that Argentine courts had sole jurisdiction to try crimes committed in Argentina, even while domestic legislation and his own presidential pardons made such trials all but impossible. The position of the De la Rúa government, although discreetly muted, has been the same. Its August 2001 refusal to extradite naval intelligence officer Alfredo Astiz -- protected by amnesty laws at home -- all but guaranteed him immunity from prosecution for numerous cases of "disappearance."

By contrast, Argentina has given strong support to the establishment of the International Criminal Court (ICC) to deal with war crimes, genocide, and other crimes against humanity. As a signatory to the Statute of Rome and a member of the group of "like-minded countries" that played a key role in drafting the court's mandate (finally approved at the Rome Conference on July 17, 1998), Argentina insisted that enforced disappearances should be included as "crimes against humanity" and favored giving the court's prosecutors wide powers of investigation. Argentina ratified the statute on February 8, 2001, making it one of the first thirty-one countries to have done so. (Sixty ratifications are required under the treaty to bring the court into operation.)

Nonetheless, both the courts and the governments have mustered an array of political and legal arguments to justify their lack of response to the requests of foreign judges in cases with Argentine defendants. They have questioned the jurisdiction of foreign judges over crimes committed in Argentina, disputing the relevant laws of the countries concerned.

Where international crimes like torture and "disappearances" are concerned, a state is not justified in refusing, on territorial grounds, to cooperate with prosecutions in other countries if domestic legislation prevents such trials being mounted in its own territory. As noted above, where crimes against humanity are concerned, courts are bound under international law by the principle of *aut dedere aut judicare* (either extradite or try). A government is faced, in effect, with a choice between removing domestic obstacles to such trials or cooperating with prosecutions conducted elsewhere.[75]

[75]In the proceedings in the House of Lords debating the request by Spain for the extradition of General Pinochet, Lord Browne-Wilkinson described the principle of *aut dedere aut judicare* (either extradite or try) to be the essence of the United

Nations Convention against Torture. Lord Browne-Wilkinson, *Judgment – Regina v. Bartle and the Commissioner of Police for the Metropolis and Others Ex Parte Pinochet (On Appeal from a Divisional Court of the Queen's Bench Division)*, March 24, 1999.

Argentine politicians have advanced various arguments to oppose the jurisdiction of foreign courts. Fears have been expressed about juridical chaos, violation of sovereignty, the politicization of justice, or deprival of due process. In certain circumstances, such concerns might be justified. However, international law requires that they be founded on legal argument in each particular case. Sovereignty is usually an invalid reason for refusing the extradition of someone accused of a crime against humanity which is subject to universal jurisdiction, but it might be valid in other cases. Argentine extradition law actually prohibits extradition "where special reasons of national sovereignty, security or public order" are involved. While the government may have latitude in interpreting when these special circumstances may be invoked, such latitude cannot be limitless.[76] Argentine law also prohibits the extradition of anyone for political crimes, but explicitly states that war crimes, crimes against humanity, assassinations of heads of state and members of their family, and acts of terrorism, are not to be considered political crimes.[77] Further, extradition law normally prohibits extraditions to countries where the defendant would not receive a fair trial, or would be subject to the death penalty if convicted.

None of these arguments should be used in the abstract as a pretext for shrugging off extradition requests. Appeals to national sovereignty may have rhetorical power when extradition requests originate in former European colonial powers, like Spain, but they have no legal justification. Since most extradition requests have been launched from Europe, it was heartening that a Latin American state, Mexico, was the first to grant the extradition to Spain of a notorious Argentine torturer, in February 2001. The portrayal of the issue by many Latin American governments as interference by meddling European nations, has been a convenient excuse for governments unwilling to confront their responsibility to hold former officials accountable.

Supreme Court justices in Chile and Argentina have been dismissive and uncooperative in response to requests for the detention and extradition of citizens of both countries wanted for human rights violations. Among trial court judges, however, cooperation and cross-fertilization in the application of human rights doctrine and jurisprudence has become increasingly common. The arguments used by Judge Marquevich in the Videla case, for example, applied for the first time in Argentina doctrines used by Spanish judge Baltasar Garzón in his indictment of Argentine officials for genocide and terrorism. The June 30, 2001, decision by Judge María Servini de Cubría to comply with the request of an Italian judge for the arrest of naval officers Alfredo Astiz and Jorge Vildoza, both implicated in "disappearances" of Italian nationals at the ESMA, was the first time that an Argentine court had ordered the arrest of a national on the orders of a foreign judge. These developments are encouraging.

The Spanish Genocide Indictment

On November 2, 1999, Judge Baltazar Garzón of the Fifth Central Court of Instruction in Madrid filed charges against ninety-eight members of the Argentine armed forces for the crimes of genocide and terrorism. On December 21, 1999, orders were issued via Interpol for the arrest of forty-eight of them, including Videla, Massera, Galtieri, Suárez Mason, Bussi, Menéndez, Vildoza, Acosta, Astiz, and Pernías. The case originated in a complaint filed on March 2º, 1996,[78] by Spain's Progressive Association of Prosecutors (Unión Progresista de Fiscales) jointly with Argentine human rights groups in Spain and the political party Izquierda Unida (United Left). Initially, the investigation focused on some 600 Spanish nationals or Argentines of Spanish descent who were abducted and "disappeared" from 1976 to 1983.[79]

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[76]Ley de Cooperación en Materia Penal (Law No.24,767), Article 10.

[77]Ibid, Article 9.

[78]Case No. 19/97-L.

[79]For a fuller description of the background of the Garzón investigation, see Human Rights Watch, *When Tyrants Tremble: The Pinochet Case* (New York: Human Rights Watch, 1999), pp. 14-17.

Under its domestic law, Spain has jurisdiction to try certain serious crimes committed outside its territory. These include genocide, terrorism, piracy and the highjacking of aircraft, forgery of foreign currency, prostitution, and drug-trafficking.[80] Jurisdiction is exercised by the Penal Chamber of the Audiencia Nacional, Spain's highest court. Genocide is a crime against humanity under customary international law, and is proscribed by the Convention for the Prevention and Punishment for the Crime of Genocide, which Spain ratified on September 13, 1968.[81]

On November 5, 1998 the eleven members of the Penal Chamber of the Audiencia Nacional confirmed unanimously that Spain was qualified to investigate crimes of genocide, terrorism, and torture committed by members of the military governments of Chile and Argentina. The Audiencia Nacional also confirmed that the Spanish courts could exercise universal jurisdiction to try a non-citizen for crimes against non-citizens committed outside of Spain's national territory. This decision allowed the charges to be expanded to include crimes against non-Spaniards.[82]

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[80] Article 23.4 of the Spanish Organic Law of the Judiciary.

[81] Genocide is defined by the United Nations in the Convention for the Prevention and Punishment of the Crime of Genocide (1948) as "any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
(a) Killing members of the group;
(b) Causing serious bodily or mental harm to members of the group;
(c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
(d) Imposing measures intended to prevent births within the group;
(e) Forcibly transferring children of the group to another group."
Article 2, Convention on the Prevention and Punishment of the Crime of Genocide.

[82] Judge Garzón argued that the concept of genocide is applicable not only to the whole or partial elimination of groups based on nationality, ethnicity, race, or religion, but also to minorities sharing the same racial, ethnic or religious characteristics as the rest of the population, singled out solely on political or ideological grounds. The Spanish prosecutor challenged this interpretation as exceeding the terms of the United Nations Convention for the Prevention and Prosection of Genocide, but the Audiencia Nacional upheld Garzón's classification of the crimes as genocide.

Argentine courts refused to cooperate with the Spanish arrest orders. During the following year, 2000, Garzón's counterpart in Argentina, Federal Judge Alfredo Literas, stonewalled by raising formal defects and forwarding repeated requests for information to the Spanish court. Despite a bilateral judicial cooperation treaty in force between the two countries since 1987, Justice Minister Ricardo Gil Laavedra refused to comply with the arrest orders, citing the time that had passed since the crimes were committed. This foot-dragging by the De la Rúa administration was a less open rejection than Garzón's petitions had received from the Menem government, but its effects were the same.[83] (On January 26, 1998, Menem had issued a decree denying judicial assistance on grounds that the Spanish prosecution entailed a violation of Argentina's sovereignty.)[84]

[83]In a letter to his Spanish counterpart, dated January 15, 1997, Argentine Foreign Minister Guido Di Tella wrote: "Even if these defects are remedied it must be pointed out that the govenment of Argentina has decided to reject the request for judicial international assistance, since it refers to acts that occurred in the territory of our country, which, according to our legislation in force are of exclusive competence of our courts, which have already taken action on them, in some cases duly completing trials and in others declaring penal action to be extinguished on the basis of laws expressly referring to such cases." Providencia del Magistrado Juez Baltazar Garzón, Madrid, January 23, 1997.Available at http://www.derechos.org/nizkor/arg/espana/coop.html

[84]Decree 111 of January 26, 1998, published in the Official Gazette on February 9, 1998, with the signatures of Minister of Foreign Affairs Guido Di Tella, and Minister of Justice Raúl Granillo Ocampo.

In September 2001, Argentine Judge Gabriel Cavallo ordered the arrest of seventeen former military and police officers, and a civilian, Victor Brusa, implementing another warrant issued by Judge Garzón. Brusa, who was a federal judge until he was fired by a judicial review body in 2000, was accused of forcing tortured prisoners to sign incriminating confessions. On November 16, 2001, barely days before this report went to press, Defense Minister Horacio Jaunarena, acting for the Foreign Minister who was absent from the country, reasserted the territorial argument to deny Judge Garzón's request. Jaunarena asserted that, in some of the cases, it was impossible to continue with their trial "due to laws in force that were approved by the constitutional authorities of the Republic," a clear reference to the amnesty laws of 1986 and 1987.[85]

As a result of this refusal to cooperate, most of those on Garzón's list of indictees are still at large in Argentina, the only haven left to them while international arrest warrants remain in force. An exception was naval officer Adolfo Scilingo, who appeared voluntarily to testify before Garzón on October 7, 1997. After Scilingo confessed that he had participated in "death flights" in which detainees held at the ESMA had been drugged and thrown from planes into the Atlantic, the Spanish judge promptly ordered him arrested and taken to the Madrid prison of Carabanchel. On April 19, 1999, Garzon indicted Scilingo on charges of genocide and terrorism. Since January 1998 he has been free on bail, but prevented from leaving Spain. So far, Scilingo has lost all of his appeals. His trial continues.

Alleged torturer Ricardo Miguel Cavallo is the only one of Garzón's indictees who has been detained by a third country outside Spain and Argentina. According to the indictment, Cavallo, alias Serpico, Marcelo, or Miguel Angel Cavallo, was a member of the so-called 3.3.2. task force (charged with carrying out abductions at ESMA) in 1977 and 1978. From January 1979 until January 1980 he was in charge of the "fishtank," a special zone of the ESMA in which prisoners were forced to use their skills to promote the political campaigns of Admiral Massera.[86]

Members of Mexico's Federal Judicial Police arrested Cavallo, who held the job of director at Mexico's National Vehicle Registry, on August 24, 2000, at Cancún airport. Cavallo was trying to escape to Buenos Aires, after his real identity had become known.[87]

On January 12, 2001, Mexico's Sixth District Criminal Judge, Jesús Guadalupe Luna Altamirano, accepted a petition for Cavallo's extradition to Spain after confirming the extra-territorial jurisdiction of the Spanish court. Judge Luna also agreed with the Spanish court that the charges did not violate the principle of non-retroactivity, although he excluded torture as an extraditable charge on grounds that under Mexican law this crime was subject to a statute of limitations.

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[85]Resolution, Ministry of Foreign Relations, November 16, 2001 (translation by Human Rights Watch).

[86]He is accused of the torture of Thelma Jara de Cabezas and the extrajudicial execution of Mónica Jauregui and Elba Delia Aldaya on the night of January 10-11, 1977. The ESMA squad that murdered them kidnapped Jauregui's two children, two-year-old Emiliano Miguel Gasparini and his younger brother, Emilio Benigno. The children were held for two months in order to force their father, Juan Alberto Gasparini, who had been arrested also, to give information. Gasparini was systematically tortured until the children were finally handed over to their grandmother, and was not released until twenty months later.

[87]*Excelsior* (Mexico), "Arrestan al Director del Renave," August 25, 2000.

Argentina's initial silence at the decision was broken when then-Minister of Defense Ricardo López Murphy announced on February 1 that "things that have happened in Argentina must be judged in Argentina," and that no country "should be recognized as having the capacity to be a court of appeals for decisions adopted freely by Argentines."[88] On the following day, Mexican Minister of Foreign Affairs Jorge Castañeda, invoking an extradition treaty in force between Mexico and Spain, announced that the Mexican government had approved Judge Luna's extradition request. The Foreign Ministry decision was broader than Judge Luna's, since it did not exclude his extradition for torture, as well as the other crimes. Cavallo immediately lodged a *habeas corpus* appeal (known in Mexico as *amparo*). The appeal hearing was expected to reach the Mexican Supreme Court at this writing.

The Olivera Debacle

Just over two weeks before Cavallo's arrest in Cancún, on August 6, 2000, Interpol and Italian police arrested retired army Maj. Jorge Olivera in Rome's Fiumiccino airport, as he was about to board a flight back to Argentina. Olivera, a former *carapintada* and defense attorney for Massera and Suárez Mason, had been in Europe to file a complaint at the International Court of Justice against former British Prime Minister Margaret Thatcher for the sinking of the battleship General Belgrano in the Falklands/Malvinas war.

[88] "Pide Argentina respeto a la territorialidad en el caso Cavallo," *La Jornada* (Mexico), February 2, 2001.

On the previous July 20, French Judge Roger Le Loire had issued an arrest warrant for Olivera as the prime suspect in the "disappearance" of a French national, twenty-two-year-old Marianne Erize Tisseau, in the province of San Juan, in western Argentina on October 15, 1976.[89]

On September 19, after Olivera had been held for forty-two days in Rome's Regina Coeli prison, the Fourth Chamber of Rome's Criminal Appeals Court dismissed the French government's request for his extradition on grounds that the crime in Italy was subject to a statute of limitations. Olivera immediately flew back to Argentina. A throng of former comrades-in-arms welcomed him home in the VIP lounge of Buenos Aires' Ezeiza airport.

The court based its decision on a photocopy produced by Olivera's defense team during the hearing as evidence of Erize's death, now known to be a forgery. Far from being a valid death certificate, the document photocopied was a *request* for a death certificate lodged with the Civil Register of the City of Buenos Aires, on which the date and place of death had apparently been typed in afterwards. A comparison of the record concerned and the document produced in court pointed to a blatant adulteration.[90] On October 5, the City of Buenos Aires filed a criminal complaint for forgery of a public document against Olivera and his lawyers. The investigation ground to a halt, however, after the paper that helped Olivera gain his release mysteriously disappeared from the file of the court proceedings.[91]

Trials in absentia

The Argentine government and the Supreme Court have denied the legitimacy of trials of Argentine torturers completed *in absentia* in Italy and France. The Supreme Court has ruled that trials in the absence of the accused violate due process guarantees in the Argentine Constitution, in particular the right to a defense.

As a general principle, Human Rights Watch believes that everyone charged with a criminal offence has the right to be tried in their presence so that they can follow and challenge the prosecution case and present a defence. However, many countries allow trials in absence under exceptional circumstances. Italy, for example, allows such trials when the defendant is in "contumacy," that is, has refused to appear despite receiving sufficient advance warning of the trial. Before such a trial can start, the court must establish that the defendant received advance notification sufficient to mount a defense, and that the decision not to appear was voluntary and not the result of force

[89] According to witnesses, Erize had been taken to an army camping site used as a clandestine detention center, where she was tortured and raped. Jorge Bonil, a conscript who served in Olivera's unit, the 22nd Mountain Infantry Regiment, told her lawyer that Olivera boasted to the troops of raping "the Frenchwoman" before killing her. Her body was never found, however, and there was no death certificate "Gobierno Argentino mantiene 'bajo perfil' tras detención en Italia de ex-represor," *El Mostrador* (Chile), August 9, 2000 (http://www.elmostrador.cl); "Olivera de vuelto al refugio argentino," *Página 12*, September 20, 2000.

[90] For evidence of the forgery, see "La defensa de Olivera presentó pruebas falsas en Italia: otro grupo de tareas en acción," *Página 12,* September 22, 2000.

[91] Centro de Estudios Legales y Sociales, *Derechos Humanos en Argentina, Informe Anual 2001* (Buenos Aires: Siglo Veintiuno, 2001), p. 45.

majeure. Finally, the defendant must have normal rights of access and communication with a chosen defense lawyer. [92]

The U.N. Human Rights Committee has held that *in absentia* trials may be held in exceptional circumstances, similar to those permitted under Italian law. The committee pointed out:

> The right to be present at trial imposes duties on the authorities to notify the accused (and defence counsel) in sufficient time of the date and location of the proceedings, to request the presence of the accused and not to improperly exclude the accused from the trial.[93]

If these conditions are fulfilled, trials in absence may be justified, particularly when the extradition of the defendant is denied by the country in which they reside, and domestic laws make their trial in their own country impossible. However, Human Rights Watch believes that if the defendant is apprehended and extradited to the country where a verdict was rendered in their absence, the trial should be subject to a judicial review, and, if appropriate, a new trial conducted to ensure that the accused receives due process.

In 1983 court investigations began in Italy into the murder or "disappearance" during the military government of 117 Argentines of dual Italian nationality or Italian descent. The Argentine government failed to respond to a rogatory letter sent in 1994 requesting assistance. When Roman judge Antonio Capiello arrived in Buenos Aires to interview relatives in the court office of a federal judge who had offered to help his Italian colleague, the Menem government reportedly stepped in to prevent the interviews from taking place. Despite this lack of cooperation, the Italian consulates in Argentina and elsewhere took testimony from numerous relatives of the victims. The court eventually filed charges against former Naval Prefect Juan Carlos Gerardi, and four seamen of the Naval Prefecture, Luis Porchetto, Alejandro Puertas, Roberto Rossín, and Héctor Maldonado for the "disappearance" of trade unionist Astarsa Martín Mastinu and his brother-in-law, Mario Marras.

In addition, Guillermo Suárez Mason and Santiago Omar Riveros were charged for the disappearance of Pedro Mazzocchi, Norberto Julio Morresi, Luis Alberto Fabbri, Daniel Jesús Ciuffo, Laura Carlotto, and Carlotto's son, Guido.[94] On December 6, 2000, Rome's Second Criminal Court sentenced Suárez Mason and Riveros to life imprisonment, and Gerardi and his four co-defendants to twenty-four years in prison, all *in absentia,* on charges of kidnapping, torture, and premeditated murder. Army chief Ricardo Brinzoni told reporters afterwards "If the Italian courts think they have the powers to do it, that is their point of view. I don't share it."[95]

Alfredo Astiz

Before President De la Rúa took office, he stated that if his government received requests for the extradition of Argentine human rights violators he would submit them to the courts for a decision on their legal merits. In practice, however, he has failed to do this. Indeed, there has been nothing to distinguish the policy of his government on this

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[92]Alberto Luis Zuppi, "Los juicios *in absentia* en el procedimiento italiano - reflexiones sobre jurisprudencia de la Corte Suprema y el caso Suárez Mason" (unpublished manuscript), pp. 17-22.

[93]Mbenge v. Zaire, (16/1977), March 25, 1983, 2 Sel. Dec. 76, at 78.

[94]Laura Carlotto's mother, Estela de Carlotto, is the president of the Abuelas de la Plaza de Mayo.

[95]"Brinzoni en contra," *Clarín*, December 7, 2000.

matter from that of Menem. This was clearly seen in August 2001, when the Foreign Ministry rejected a request by Italy and France for the extradition of former naval intelligence officer Alfredo Astiz.

At the Italian court's request, on June 29, 2001, Federal Judge María Servini de Cubría of Argentina ordered Astiz's arrest, and two days later he turned himself in. The arrest order also included former Cap. Jorge Vildoza, alias "Gastón," a fugitive from justice since 1985. Both Astiz and Vildoza were wanted as suspects in the "disappearance" of three Italian-Argentines, Angela María Aieta, Juan Pegoraro, and his daughter, Susana, who gave birth to a baby daughter in ESMA in 1977. [96] Also wanted by Italy were Massera, Vañek, Acosta, and Febres. No request was made for their arrest, since all of them were already being held for the theft of babies in the Massera case (see Chapter V).

With Astiz in custody, France also filed an extradition request. As noted in Chapter II, Astiz played a key role as an undercover agent in the "disappearance" in 1977 of two French nuns, Alice Domon and Leonie Duquet, and Azucena Villaflor, a leader of the Mothers of the Plaza de Mayo. Astiz infiltrated the organization, won the women's confidence, and gave the signal for the abductions. For this crime, a French court sentenced Astiz in 1990 to life imprisonment *in absentia,* after Argentina refused either to try or extradite him. Another crime in which Astiz is accused is the "disappearance" on January 26, 1977, of seventeen-year-old Argentine-Swede Dagmar Hagelin, for which a Swedish court has long tried unsuccesfully to obtain his arrest and extradition.[97] The British army captured Astiz during the Falklands/Malvinas war, but Prime Minister Margaret Thatcher refused extradition requests by Sweden and France, and sent him home.[98]

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[96]Angela María Aieta was abducted from her home on August 5, 1976, and was later seen by ESMA survivors in the camp, one of whom testified that she had watched her being taken away, possibly for execution. A task force abducted Juan and Susana Pegoraro in a railway station on June 18, 1977, when Susana was five months pregnant. Her husband, Rubén Bauer, was abducted the same day in La Plata. All three "disappeared."

[97]See the vivid account of these cases in Tina Rosenberg, *Children of Cain* (New York: William Morrow and Co, 1991) pp. 79-141.

[98]Under the Alfonsín government, navy pressure led to the transfer of the Hagelin case to a military court, which quashed a civilian judge's order for Astiz's arrest. A few months later, the Supreme Council of the Armed Forces acquitted him. On appeal, the Federal Appeals Court of Buenos Aires finally closed the case on statute of limitations grounds on December 5, 1986. The courts dropped charges against Astiz in the French nuns case in June 1987 under the due obedience law. Human Rights Watch, *Truth and Partial Justice,* pp. 41-44.

In January 1998, Astiz, who continued to work for naval intelligence, boasted in a magazine interview that he was "the most highly skilled person in the country to kill a politician or a journalist."[99] Public outrage was intense and the Menem government finally cashiered him from the navy. In March of that year a court sentenced Astiz to a three-month suspended prison sentence for defending a crime *(apología del delito*). That conviction apart, he was unscathed by the action of Argentine courts.

German Warrant for Suárez Mason

Within two weeks of Astiz's detention, a Nuremberg judge issued an international warrant for the arrest of Suárez Mason for the abduction, torture, and murder of German sociologist Elisabeth Kaesemann. Kaesemann, who came to Argentina in 1968 to research an academic thesis, was kidnapped in Buenos Aires on March 9, 1977, and taken to the clandestine detention center known as Vesuvius. She was executed by gunshot on May 23, 1977.[100]On October 17, 2001, Judge Gabriel Cavallo placed Suárez Mason under arrest, pending receipt of an extradition request from Germany.

As noted in Chapter II, because of his high rank Suárez Mason did not qualify for immunity under the due obedience law, but two years after his 1988 extradition from the United States on thirty-nine counts of murder (see Chapter XI), President Menem pardoned him. However, as noted in Chapter VI, Suárez Mason was charged in November 1998 for the theft of babies, and was already in custody awaiting trial when Judge Cavallo issued his arrest warrant. Although the Argentine government could deny his extradition on the grounds that Suárez Mason was already on trial by an Argentine court, it could not legitimately stay the extradition permanently unless the defendant was tried in Argentina also for the Kaesemann killing.

[99]Gabriela Cerruti, "El asesino esta entre nosotros," *Tres Puntos*, January 15, 1998.

[100]Two months later, Suárez Mason announced that there had been an "armed clash" in which sixteen people, including Kaesermann, had died. Her father eventually recovered her mutilated body after paying $22,000. An autopsy performed in Tuebingen showed that she had been shot at close range in the back. Victoria Ginzberg, "El Nuremberg para Suárez Mason: Alemania pidió a Interpol la captura internacional del ex-general," *Página 12*, July 13, 2001.

On November 16 2001, the Argentine government rejected the German extradition request, asserting that his extradition "would go against the sovereignty of our country, since it would mean invalidating or overriding decisions adopted by legitimate authorities exercising public powers emanating from the national constitution, and would also infringe the principle of "non bis en idem" protected in our constitution." By implication, the decision legitimated the decision of President Menem to pardon Suárez Mason before his trial was completed.[101]

At this writing, German investigations were continuing into the fate of some twelve other Germans or Argentinans of German descent who "disappeared" under the military government.

IX. OPERATION CONDOR

During the mid-1970s Argentina participated in Operation Condor, a plan to coordinate intelligence activity between the military dictatorships of Chile (whose secret police chief Manuel Contreras set up the operation from Santiago), Argentina, Uruguay, Brazil, Paraguay and Bolivia. Its purported purpose was to exchange information on the activities of government opponents and exiles. However, the plan went much further than the exchange of information and intelligence. It also led to scores of assassinations, the secret detention and transfer of exiles to their home country, and, in many cases, their subsequent "disappearance." The security forces of the governments involved worked jointly in one another's territory, often covering up cross-frontier transfers by making it appear the detainee had been arrested locally, or had died abroad. To cover up transfers and assassinations, it stage-managed incidents that were then "reported" in the local media, making it appear that the victims had been killed in political disputes.

Some of the most notorious crimes attributed to Operation Condor, especially kidnappings and "disappearances," took place in Argentina and are now under active investigation by Argentine courts. At this writing, requests for the extradition of retired military officers who participated in human rights crimes in Argentina are awaiting decisions by Uruguayan and Chilean courts. In the case of Chile, they include Manuel Contreras and General Pinochet himself, who is wanted for his role in coordinating the operation, as well as for the murder in Buenos Aires of retired army general Carlos Prats.

The governments of the region have been just as averse to granting extradition requests from the courts in neighboring countries as they have to requests from European courts. In 1985 an Argentine court investigating the May 1976 assassination in Buenos Aires of the former President of the Uruguayan Chamber of Deputies, Hector Gutiérrez Ruiz, and fellow congressman Zelmar Michelini, requested the extradition of four infamous Uruguayan torturers, José Nino Gavazzo, Manuel Cordero, Jorge Silveira, and Hugo Campos Hermida. These officers, working from Automotores Orletti, Operation Condor's base in the Argentine capital, were responsible for the secret detention, torture, and "disappearance" of dozens of Uruguayans. The request got "lost" in the Argentine Foreign Ministry. President Menem included Gavazzo and the other Uruguayan officers in his 1989 pardons, reportedly at the personal request of Uruguayan President Julio María Sanguinetti. As a *quid pro quo,* Sanguinetti allegedly allowed two members

[101]Resolution, Ministry of Foreign Relations, November 16, 2001 (translation by Human Rights Watch).

of the Montonero movement, wanted in Argentina on terrorism charges, to remain unmolested in Uruguay, allowing Menem to benefit them, too, with a pardon.[102]

The Condor Case in Argentina

[102]The impending arrest of Gavazzo on human rights charges led to a civil-military crisis in Uruguay which culminated in the introduction of an amnesty law in December 1986, of which Gavazzo and the other three officers were beneficiaries. On May 13, 1996, then-Uruguayan President Sanguinetti issued a statement denying having persuaded Menem to concede pardons to the questioned Uruguayan officers. Sanguinetti later appointed Silveira advisor to army commander-in-chief Gen. Fernando Amado, ignoring protests from the opposition and human rights groups. See Samuel Blixen, "Menem y Sanguinetti: las culpas en la nuca," *Brecha* (Uruguay), May 17, 1996; Juan Gelman, "El Cóndor no se entrega," *Página 12*, March 19, 2000.

On June 20, 2001, Videla, already under house arrest in the "babies" case, appeared in an Argentine court to be questioned on charges of illicit association, illegal arrest, and torture in connection with Operation Condor.[103] Two months previously, investigating judge Rodolfo Canicoba had issued an international warrant for the arrest and extradition of former Paraguayan dictator Alfredo Stroessner, now in exile in Brasilia, and of Manuel Contreras, the former chief of the National Intelligence Bureau (Dirección de Inteligencia Nacional, DINA), Pinochet's secret police. Contreras had been released from prison in January after completing a seven-year sentence in Chile for Operation Condor's most notorious crime, the 1976 murder in Washington D.C. of former Chilean Foreign Minister Orlando Letelier and his assistant Ronni Moffitt. However, he was immediately placed under house arrest as a suspect in the abduction and "disappearance" of a former Chilean copper mine official. On July 3, 2001, in response to Canicoba's warrant, Judge Alberto Chaigneau of the Chilean Supreme Court ordered Contreras's arrest pending consideration of the Argentine extradition request. This was the first time a Chilean judge had ordered the preventive detention of a former military official pending an extradition hearing since the Letelier case made international headlines in the 1970s. The Argentine prosecutor in the Condor case, Miguel Angel Osorio, has also requested Uruguay to extradite Gavazzo, Cordero, Silveira, and Campos.

In Chile, the Prats family has waged a long legal battle to obtain the extradition to Argentina of General Pinochet and former intelligence officials of the Chilean military regime for the murder in Buenos Aires of Pinochet's immediate predecessor as army commander-in-chief, Gen. Carlos Prats, and his wife Sofía Cuthbert. The couple, who were living in exile in Buenos Aires, died when a bomb laid by the DINA exploded under their car on September 30, 1974. On November 19, 2000, the Sixth Federal Oral Court in Buenos Aires sentenced the only defendant present in Buenos Aires, former DINA agent Enrique Arancibia Clavel**,** to life imprisonment as an accomplice in the crime.

On October 26, 2000, Argentine Judge Juan José Galeano requested Interpol to arrest Pinochet pending his extradition and that of four senior DINA officials: Gen. Manuel Contreras, Brig. Pedro Espinoza Bravo, Brig. José Zara Holger, Gen. Raúl Iturriaga Neumann, and two civilian agents, Jorge Iturriaga Neumann, and Mariana Callejas. The judge accused Pinochet, Contreras, and Espinoza as instigators and conspirators, the Iturriaga brothers as accessories, and Callejas as co-author of the Prats crime. Supreme Court Judge Luis Correa Bulo gave orders for them to be prevented from leaving Chile, but stopped short of ordering their arrest. Correa Bulo, whose career was in tatters due to charges of professional misconduct, was removed from the case. Since then the extradition request has run afoul of procedural objections by the Chilean Supreme Court.

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[103]The investigation, conducted by Federal Judge Rodolfo Canicoba, concerned eight victims of Operation Condor: Cristina Carreno Araya, a Chilean woman who "disappeared" in Argentina on July 26 1978; Federico Tatter, a Paraguayan who disappeared in Argentina on October 15, 1976; Mónica Grinspon, of Argentine nationality, her husband Claudio Logares, and their two-year-old daughter, Paula, who were abducted in Montevideo on May 18, 1978; María Esther Ballestrino, Paraguayan, kidnapped in a Buenos Aires church on December 8, 1977, and Sara Méndez, Uruguayan, abducted from her home in Buenos Aires on July 13, 1976 with her infant son Simón Riquelo, and taken to Automores Orletti. Her captors returned Sara Méndez to Uruguay, where a military court sentenced her to five years of imprisonment. Since her release in 1981 she continues to search for Simón, who if still alive, would now be twenty-five. See Sara Méndez's website: www.simonriquelo.org.uy. On the Riquelo case, see Americas Watch, *Uruguay: Judiciary Bars Steps to Identify Child Kidnapped during Military Regime,* September 1, 1991.

X. OFFICIAL REACTIONS

Although this surge of activity to hold accountable those responsible for crimes committed a quarter of a century ago enjoys wide public support in Argentina, these initiatives have met with resistance from the armed forces and evident unease in government circles.

Constitutionally, the armed forces are directly subordinate to the president of the republic, who is commander in chief of each branch.[104] As the hiercharchical superior of each of the service chiefs, the president's orders have to be obeyed. The official position of the De la Rúa administration on all judicial decisions is to respect the autonomy and independence of the courts. The president, then, has the powers to enforce this rule in the military ranks by issuing clear orders to the service chiefs to ensure that serving officers cited to appear do so. In practice, however, military *esprit de corps* continues to be a potent bulwark against accountability, and the president has often seemed timid or unwilling to exert his authority to oppose it.

Army Chief of Staff Ricardo Brinzoni has frequently complained in public about human rights in contrast to the silence of the other service chiefs. During the year 2000, the Defense Ministry often seemed to be endorsing these complaints, or at least to be giving Brinzoni free rein to express them. Lately, however, the ministry appears to have taken some corrective measures to limit his interventions, which were undoubtedly bringing the government bad publicity. [105]

Hard core pro-junta officers, now mostly senior citizens in retirement, considered Balza's April 1995 acknowledgment of the army's institutional responsibility for the coup and the atrocities that followed it little short of treasonous.[106] Indeed, in January 2000, the Military Circle, an association of retired officers still dominated by those who participated in the repression, expelled Balza. It is more difficult to assess the reaction to Balza's stance among the current army leadership, now made up of officers in junior ranks at the time of the coup. Balza himself has stated that Brinzoni supported his public apology on behalf of the army, and since he replaced Balza as army chief-of- staff,

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[104]Article 99:12 of the Constitution. According to Article 99:14, the armed forces are at the president's "disposal."

[105]Human Rights Watch requested Angel Tello, vice-minister of defense, to arrange a meeting for us with General Brinzoni. We were told that Brinzoni was no longer authorized to make statements about human rights issues.

[106] Former navy intelligence officer Alfredo Astiz, for example, called General Balza a "cretin" for stating that army personnel had no obligation to obey immoral orders. See Gabriela Cerruti, "El asesino esta entre nosotros," *Tres Puntos*, January 15, 1998.

Brinzoni has repeatedly confirmed this support. However, according to Human Rights Watch's sources, including within the military, many officers who were on active service during the "dirty war" remain very critical of Balza's statement, and feel that the army is being made to "carry the burden" of its past, despite the efforts made to modernize it and however much contrition its leaders express. Brinzoni also referred to this.[107]

The vice-minister of defense told Human Rights Watch that the army today is more concerned about the drastic reduction in budget and salaries that it has suffered than it is about human rights. Other government officials, however, described both issues as equally sensitive. According to the vice-minister, only about 8 percent of current army and navy personnel are old enough to have potentially participated, as very junior officers, in abuses from 1976-1983.[108]

[107]Brinzoni's phrase was *cargar la mochila* (carry the backpack).

[108]The defense budget was between 4 and 5 percent of GNP at the time of the military juntas; it is less than 1 percent today. A director at a government ministry earns about $5,000 Argentine pesos (U.S. $5,000) a month, while a chief of staff of one of the three branches of the armed forces earns about $3,300. Human Rights Watch interview with Vice-Minister of Defense Angel Tello, July 25, 2001.

Brinzoni has publicly criticized the "truth trials" aimed at discovering the fate of the "disappeared." During the first six months of 2000, more than two hundred active service and retired members of the military were questioned in the hearings. As noted in Chapter IV, concern in the army grew when serving officers began to receive court summonses and were arrested when they refused to testify under oath. Not only did the army publicly defend the arrested officers, it backed their successful appeals to the higher courts to lift the detention orders and relieve them of their obligation to testify. Apparently underlying these legal moves was a strategy to remove the cases from the orbit of federal judges, widely seen as favoring the cause of victims of human rights violations. Some government officials have also voiced skepticism. For example, Alicia Pierini, under secretary for human rights under the Menem government, told Human Rights Watch that she was skeptical about the effectiveness of court investigations.[109] Her successor, Diana Conti, also expressed reservations about due process in the truth trials.[110]

Although concerns about the courts are expressed in terms of their alleged investigative inefficiency, slowness, and lack of coordination (all objections related to their capacity to advance the cause of "truth"), there are undoubtedly other reasons for them as well: notably the resentment of serving officers forced to appear, negative publicity for the armed forces, and the effect of the trials on civil-military relations.

Last year, government human rights officials seemed to broadly agree with the armed forces on the need to explore alternative political channels for obtaining information about the fate of the "disappeared."[111] The example of the Chilean civil-military dialogue, which aimed to reconstruct such information, had been widely noted. The agreement reached in June 2000, by which the Chilean armed forces agreed to search for information from their members on the fate of the "disappeared" in exchange for guarantees of "professional secrecy," sparked proposals for a similar solution in Argentina. However, the human rights community vehemently rejected Brinzoni's proposal to create a civil-military round table. Brinzoni's widely published comment that "partial memory is as unjust as forgetting" did nothing to inspire confidence. When it was evident that the idea was politically unviable, the then-ministers of defense and interior, Ricardo López Murphy and Federico Storani, immediately distanced themselves from it.

[109]Human Rights Watch interview with Alicia Pierini, Buenos Aires, April 15, 2001.

[110]Ms. Conti, however, stressed that it was government policy to support the trials.

[111]It is not known how much information on the fate of the "disappeared" remains on file in the hands of the armed forces, but since 1995 both the army and the navy have repeatedly denied to the courts that they have it. Appeals by both Balza and Brinzoni to active and former soldiers who participated in the repression to come forward with information, with guarantees that their identity would be withheld, produced no result. As noted in Chapter V, in January 1999, retired Gen. Cristino Nicolaides, army chief of the last military junta, testified to Judge Bagnasco that he had given orders on November 22, 1983, for the destruction of all the documentation pertaining to the war against subversion. The navy, the other branch of the armed forces most implicated in "disappearances," has denied having files on detainees held at its notorious torture camp at the ESMA.

President De la Rúa has generally kept a low profile on the human rights question, but his ministers barely conceal their disapproval of a reopening of human rights trials. Defense Minister Horacio Jaunarena, who served in the same post under Alfonsín when the impunity laws were promulgated, reacted to the Cavallo decision by claiming the impunity laws to be constitutional "because Congress approved them." In a speech at a military ceremony in Córdoba, Jaunarena said the prolongation of the trials was "not beneficial for anyone, neither for the victims or for those who might be accused."[112] These views closely reflected those expressed by the head of the joint chiefs of staff, Lt.-Gen. Juan Carlos Mugnolo, and the commanders of the navy and air force.[113] The government appeared to signal solidarity with the embattled junta leaders when Galtieri, Menéndez and Videla's minister of the interior, Albano Harguindeguy, appeared in public close to the presidential box at a military ceremony on May 29, 2001.[114]

Also troubling the military have been the frequent vetos of army promotions on the basis of information submitted by human rights organizations to the annual Senate review process, and the effects of the surrounding publicity on the questioned officers' careers. [115] In early March 2001, 663 army officers presented *habeas data* demands against CELS, the Permanent Assembly for Human Rights, and the Justice Ministry's under-secretary for human rights, enjoining them to turn over information in their possession that might implicate the officers in human rights abuse.[116] The officers' concern was apparently also based on fears that that they could be arrested on trips abroad. CELS alleged that, far from being spontaneous, the officers were encouraged to sign the petitions by the army's secretary general, Gen. Eduardo Alfonso, acting on behalf of General Brinzoni, and with the knowledge and support of then-Defense Minister Ricardo López Murphy. To facilitate its *habeas data* search, CELS requested information from the army on the officers' rank and service history, which the army refused to provide. Replying to the demand in April 2001, CELS revealed that it possessed evidence of human rights abuse against only nine of the officers. The undersecretary of human rights replied that it did not possess registers of military officers implicated in human rights crimes.[117]

General Brinzoni was himself on CELS's list of officers under question for their alleged participation in human right abuse. CELS alleged that, by promoting the *habeas data* action, Brinzoni had dragged officers with a clean past into the defense of a small minority whose records had been impeached, including himself. [118] On May 28, 2001, CELS filed a criminal complaint against Brinzoni and about thirty other soldiers and policemen, local government, and legal officials in connection with a notorious massacre of twenty-two political prisoners in Margarita Belén, Chaco province, on December 13, 1976.[119]

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[112]"La vía armada esta totalmente descartada: el fallo del juez Cavallo," *La Nación*, April 3, 2001.

[113]"Aumenta la protesta de los militares," *La Nación*, March 10, 2001.

[114]"Fueron todos los que no están presos: De la Rúa defendió la inocencia de Brinzoni en el Día del Ejército," *Página 12*, May 30, 2001.

[115]Under Article 99:13 of the Constitution, the president's proposals for promotions must be approved by a Senate vote.

[116]Article 43 of the Constitution allows anyone to file such an application to a court "to obtain information about the data about him or her and its purpose that may be held in public registers or data banks, or private ones used to provide reports." The procedures are established in Law No. 25,326.

[117]Affidavit dated March 8, 2001.

[118]CELS revealed that the lawyer representing Brinzoni in the *habeas data* action, Juan Torres Bande, was a close associate of a prominent neo-Nazi, and had appeared on television in September 2000 sharing a political platform with him. When Torres Bande's neo-Nazi connections were revealed in the press, Defense Minister Horacio Jaunarena ordered Brinzoni to dispense with his services immediately, and to send a letter of apology to the Association of Argentine Jewish Delegations (Asociación de Delegaciones Israelitas Argentinas, DAIA), which represents Argentina's large Jewish community. The question of possible links between some army officers and neo-Nazi activists, which has troubled civil-military relations in the past, is still a pressing and unresolved issue in Argentina.

[119]The prisoners were taken from their cells during the night, tortured in turn, and taken away in cars in the direction of Formosa. The cars took a side-road, halted, and soldiers shot the prisoners dead by the roadside . Even though there were no

Brinzoni, then with the rank of captain, and secretary general of the Chaco provincial government at the time, has recently admitted that the killings were extrajudicial executions, while denying personal responsibility. For any prosecution to proceed, Federal Judge Carlos Skidelsky will first have to pronounce the due obedience law without legal effect in the case, upholding the opinion of his colleague, Gabriel Cavallo. Indeed, the removal of all legal obstacles to a trial of those responsible for the Margarita Belén massacre is the only way that Brinzoni could establish his innocence, or conversely be removed from his command on the basis of evidence tested in court, in which he would have the opportunity to defend himself against the charges.

XI. THE ROLE OF THE UNITED STATES

Until the 1976 coup, and for months afterwards, the United States relied to a large extent on the armed forces as its main interlocutors in Argentina's turbulent politics. Unlike in Chile and Uruguay, where the U.S had backed reformist parties (at least until the emergence of a serious left-wing challenge in the early 1970s), it was consistently hostile to the most popular political movement in Argentina, Peronism. In the face of Peron's populist rhetoric, economic nationalism, and fascist sympathies, the military seemed to provide a moderate alternative, favorable to American investment, and just as staunchly anti-communist. Not only did it seem to offer the best hope of ending the country's chaotic violence: the military promised, as it had in Chile, to deal effectively with marxist subversion. Itself a cauldron of political violence during the mid-1970s, Argentina was home to hundreds of leftists exiled by the military coups in Chile and Uruguay.

The declassification of thousands of secret U.S. government documents on the Pinochet regime during the Clinton Administration has shed some light on Washington's relations with the Argentine juntas in the 1970s, as has additional information released earlier. Relatives of victims, Argentine human rights groups, European and Argentine judges, and members of the U.S. Congress have called on the U.S. government to authorize the declassification of more documents. In August, 2000, then-Secretary of State Madeleine Albright met representatives of the Abuelas and CELS during a visit to Buenos Aires, and in November she promised to declassify State Department documents on "disappearances," stolen children, and Operation Condor. At this writing (November 2001), the release of some 5,000 documents was shortly expected, unfortunately not including material from CIA or Department of Defense archives.

survivors, the army claimed that the deaths had occurred in a "firefight with subversive delincuents," according to CELS.

Previously declassified telegrams from the U.S. Embassy in Buenos Aires suggest that for most of 1976 a pro-military bias blinded officials from grasping the seriousness of the abuses that began within days of the coup.[120] In a cable to Secretary of State Henry Kissinger, Ambassador Robert C. Hill described the March 24 coup as " probably the best executed and most civilized coup in Argentine history."[121] For months, Ambassador Hill and his aides continued to describe junta chief Jorge Videla, now under arrest for crimes against humanity, as a "moderate." As reports of abductions and killings of leftists increased, the ambassador's reluctance to blame the military held firm, while his comments gave a hint of what was to come:

> Latest acts have sent a collective shiver through population which had hoped coup would bring some measure of tranquility from violence from both right and left. At present there is no, repeat, no evidence to support charges that right-wing style violence is officially inspired. However, if acts continue without either an effective crackdown against them or strong statements of condemnation from authorities, new government's reputation for moderation and lawful behavior could be severely tarnished.[122]

Even four months later, with state repression undeniable, Ambassador Hill still gave credence to the official junta version that the violence was the product of out-of-control right wing groups. But he was now much less optimistic that Videla would or could intervene against them:

[120]The cables cited below are from a collection of declassified State Department documents published jointly by the National Security Archive, a Washington-based freeedom of information advocacy group, and CELS, in October 2001: "El Estado Terrorista Desenmascarado: Documentos Desclasificados sobre Argentina del Departamento de Estado de los Estados Unidos - 1976" (available at www.cels.org.ar).

[121]Telegram to Secretary of State Henry Kissinger, March 29, 1976. Declassified on June 24, 1997.

[122]Telegram to Secretary of State Henry Kissinger, April 6, 1976. Declassified on June 24, 1997.

> If anything, the actions of paramilitary or parapolice groups have increased since March 24. The same unmarked Ford Falcons are being used and reportedly many of the same "off-duty" federal policemen who participated in the Triple-A[123] remain active in today's vigilante-style operations. Estimates of those who have been illegally detained run into the thousands and many have been tortured and murdered . . . . [Videla] does not wish to see his government's image damaged by human rights abuses. But, at the same, time his primary interest is the same as that of the hardliners: to defeat the left-wing terrorists. That will take precedence over everything. Including human rights. Videla will almost certainly not, repeat, not make an issue out of the latter if he believes that would risk bringing about ruptures within the armed forces, police rebellions, etc. He will tolerate excesses on the part of the security forces because he has to depend on them.[124]

So far, the public has not had access to memos and briefings from the CIA and other U.S. intelligence branches on the aftermath of the 1976 coup. However, it has been known for years that in May 1976, a bare two months after the coup, army commander Roberto Viola issued a secret order giving the armed forces a monopoly of counterterrorism operations, officially dissolving right-wing paramilitary groups with which the army had previously collaborated. This did not lead to an effective centralization of the repression, since local zonal commanders continued to act with great autonomy and without central oversight. It did, however, mean that the bulk of the abductions and killings were directly attributable to the state.[125]

With regard to Operation Condor, recently declassified documents show that, by August 1976, the U.S. Department of State was informed of "government-planned and directed political assassinations carrried out within and outside the territory of Condor members." In a telegram sent to U.S. embassies in Condor member states on August 16, 1976, Secretary of State Kissinger instructed the ambassadors to bring these concerns to the attention of "the highest appropriate official, preferably the chief of state." The ambassadors were to point out that "if these rumors were to have any shred of truth, they would create a most serious moral and political problem. Counterterrorist activity of this type would further exacerbate public world criticism of governments involved." Kissinger suggested offering "periodic exchanges of information with host governments on "communist and other terrorist activity in the region," while making it clear that such information should not include intelligence on individuals. "It is essential that we in no way finger individuals who might be candidates for assassination attempts."[126]

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[123]The Argentine Anti-Communist Alliance (Alianza Anticomunista Argentina, AAA) was an extreme-right wing terrorist group that carried out bomb attacks, kidnappings, and political assassinations in the early 1970s. Its main targets were left-wing guerrilla groups, in particular the Peronist Montoneros and the People's Revolutionary Army (Ejercito Revolucionario del Pueblo, ERP).

[124]Telegram to Secretary of State Henry Kissinger CHK, July 23, 1976. Declassified on June 24, 1997.

[125]DCJE 405/76, cited in Martin Edwin Andersen, *Dossier Secreto: El Mito de la Guerra Sucia en Argentina* (Buenos Aires: Editorial Sudamericana, 2000), pp. 230-31.

[126]Telegram from Secretary of State Henry Kissinger to U.S. ambassadors in Buenos Aires, Montevideo, La Paz, Santiago, Asuncion and Brasilia, August 16, 1976.

The U.S. did not explicitly denounce the systematic nature of the abuses until the beginning of the Carter Administration in January 1977. Thanks largely to two officials, Assistant Secretary of State for Human Rights Patricia Derian, and a political officer at the embassy in Buenos Aires, Franklin "Tex" Harris, Washington's policy changed from one of tacit support for the junta to a far more critical stance. Derian and Harris maintained close contact with people directly affected by the repression, including relatives of the victims. Not only did the administration's information notably improve, but the contact with U.S. officials was a lifeline to human rights groups at constant risk of government reprisal. Secretary of State Cyrus Vance announced plans to cut in half military aid to Argentina (from U.S. $32 million recommended by the Ford Administration to $15.7 million), explicitly due to Argentina's human rights record.

In 1978, Congress passed the Humphrey-Kennedy Amendment to the Foreign Assistance Act, which prohibited all military sales, aid, loans or training to Argentina. The administration voted against or abstained from twenty-three loans to Argentina from international financial institutions.[127]

Unfortunately, this policy ended with the Carter Administration. In the late 1970's the security concerns of the United States shifted to the Central American arena following the overthrow of the Somoza dictatorship in Nicaragua in 1979, and the feared export of the Sandinista revolution to El Salvador. The incoming government of President Ronald Reagan was quick to mend fences with the Argentine junta. In February 1981, it ordered its representatives before international financial institutions to stop opposing loans on human rights grounds to Argentina and other Southern Cone countries. It began a long certification battle in Congress to resume military sales, loans, and training programs to Argentina, arguing that human rights conditions had dramatically improved. It was true that "disappearances" had declined, but more than a thousand political prisoners were still being held without charges, and temporary "disappearances," arbitrary arrests, and torture continued.

In March 1981, the Reagan Administration invited the head of the junta, Gen. Roberto Viola, to Washington. His successor, Gen. Leopoldo Galtieri, made two visits in the same year, reciprocated by high-ranking officers of the U.S. armed forces. Yet this brief honeymoon, sealed by Argentina's committment to open trade and investment and to help the U.S. counterinsurgency effort in Central America, was brought to an abrupt end by Argentina's invasion of the Falkland/ Malvinas islands in 1982. After Secretary of State Alexander Haig's efforts to mediate between the "two friends" of the United States came to nothing and war became inevitable, the United States sided with the United Kingdom, confounding Galtieri's expectations.[128]

After Argentina's humiliating defeat in the war, the United States lost a vital opportunity to back the country's democratic forces and press for a transition in which the rule of law and the principle of accountability would be respected. Instead, in its eagerness to mend fences once more, the administration did not oppose the departing junta's efforts to draw a veil over the abuses of the past and exculpate its officers of responsibility. In its 1982 Country Reports on Human Rights Practices, the State Department stated erroneously that the Argentine government had provided information to family members on 1,450 "disappearances," whereas the information related, in fact, to victims listed as killed, not "disappeared."[129] The administration's criticism of the junta's exculpatory "Final Document on the Struggle Against Subversion and Terrorism" was shamefully lukewarm compared with the outright condemnation of other democratic countries. When the junta decreed a self-amnesty law three weeks before the elections that brought Alfonsin to power, the Reagan Administration was silent.[130]

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[127]Cynthia Brown (ed.), *With Friends Like These: The Americas Watch Report on Human Rights and U.S. Policy in Latin America* (New York: Pantheon Books, 1985), pp. 99-100.

[128]Ibid., p. 105.

[129]Americas Watch-CELS, *The State Department Misinforms: A Study of Acccounting for the "Disappeared" in Argentina* (New York: Human Rights Watch, 1983).

[130]*With Friends Like These*, pp. 106-08.

Advances in Accountability in U.S. Courts

In the U.S. courts, the story was quite different. Horror at the atrocities of Argentina's "dirty war" helped shape the evolution of U.S. jurisprudence on torture as a universal crime and the limits of sovereignty.

The landmark Filartiga v. Pena-Irala ruling of 1980 made history by awarding the first criminal damages against a torturer (a Paraguayan police agent) found to be in the United States.[131] The Court of Appeals for the Second Circuit established that, under the 1789 Aliens Tort Claims Act, U.S. courts have jurisdiction over claims for torture brought by aliens against torturers found to be in the United States. In 1992, Congress codified these legal advances in the Torture Victims Protection Act, which holds liable for damages any "individual who, under actual or apparent authority, or color of law, of any foreign nation . . . subjects an individual to torture." During the decade between these important events, U.S. jurisprudence was largely shaped by Argentine cases.

Amerada Hess Shipping Corp. v. Argentine Republic (1987), Forti v. Suárez Mason (1987), Martínez Baca v. Suárez Mason (1988), Ouiros de Rapaport v. Suárez Mason, (1989), and Siderman de Blake v. Republic of Argentina (1992) followed in the steps of *Filartiga*. The defendant in all but one of the cases was Gen. Carlos Guillermo Suárez Mason, whose clandestine presence in the U.S after fleeing prosecution in Argentina triggered lawsuits from several of his victims. As commander of the First Army Corps, Suárez Mason participated in the preparation of the 1976 coup, oversaw the operations of task forces, and was ultimately responsible for secret detention camps in the densely populated region comprising Buenos Aires and its suburbs, La Plata, Mar del Plata, and smaller cities. In four separate rulings, U.S courts awarded multi-million dollar punitive damages against him for torture or extrajudicial execution.[132]

Suárez Mason had left Argentina in early 1984 after a federal judge ordered his arrest for the "disappearance"of a young scientist in late 1978. For the next three years he lived in secrecy in the United States, where he spent periods in Miami, New York, and San Francisco. He was finally captured in Foster City, California, in January 1987, and extradited after eighteen months in prison to Argentina, to stand trial on thirty-nine counts of murder and one count of forgery. The United States complied with its obligation to extradite Suárez or try him in the United States. Yet justice was denied when President Menem pardoned Suárez Mason before his trial was completed.

The Honduran Connection

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[131] Amerada Hess Shipping Corp. v. Argentine Republic, 830 F. 2d 421 (2d Cir. 1987); Forti v. Suárez Mason, 672 F. Supp. 1531 (N.D. Cal. 1987); Martinez Baca v. Suárez Mason, No. C-87-2057-SC (N.D. Cal. Apr. 22, 1988); Quiros de Rapaport v. Suárez Mason, No. C-87-2266-JPV (N.D. Cal. Apr. 11, 1989); Siderman de Blake v. Republic of Argentina, 965 F.2d 699 (9th Cir. 1992).

[132] Americas Watch (as the Americas division of Human Rights Watch was then known) the Center for Constitutional Rights, the Southern California chapter of the American Council for Civil Liberties, and the San Francisco-based law firm of Morrison & Foester, litigated three civil suits for damages against Suarez Mason on behalf of the victims under the Alien Tort Claims Act. The information gathered for the lawsuits assisted in securing Suárez Mason's later extradition to Argentina.

The other face of U.S. policy toward Argentina at this time was shown by the sympathetic treatment Suárez Mason received from certain U.S. authorites. President Reagan's national security advisor, Oliver North, is reported to have arranged a false visa for Suárez to enter the United States. North had reportedly been discussing with him the possible establishment of a pan-american counterinsurgency force, a proposal that emerged out of ongoing cooperation between the CIA and the Argentine military, in which Suárez Mason was an important actor.[133]

[133]E-mail communication from Joshua Sondheimer, director of civil litigation at the Center for Justice and Accountability, San Francisco, August 15, 2001.

Beginning in 1980, Argentine army intelligence officers implicated in human rights violations during the "dirty war" played a key role in the U.S. anti-communist campaign in Central America. Following the overthrow of the Somoza dictatorship in Nicaragua, these officers oversaw an Argentine program of training and assistance to the Honduran army and the Nicaraguan *contras*, a U.S.-sponsored and funded guerrilla force notorious for its human rights abuses. The Argentine advisors trained both former members of the Somoza National Guard, in their new role as contra leaders, as well as the 3-16 Battalion, a Honduran death squad responsible for numerous "disappearances."[134]

The program was coordinated by an Extra-Territorial Task Force (Grupo de Tareas Exteriores, GTE) attached to Army Intelligence Battalion 601, in Buenos Aires. It was headed by José Osvaldo Ribeiro, a Battalion 601 member who had previously helped organize a clandestine detention center at the Campo de Mayo military base outside Buenos Aires, and had been an army intelligence chief in Mendoza and Bahía Blanca provinces. Some of its officers were former members of the AAA, such as Raúl Antonio Guglielminetti, who had operated in clandestine detention centers in Buenos Aires and Neuquen. Another Battalion 601 intelligence agent, Leandro Sánchez Reisse, accused in a kidnapping case in Argentina, testified in the U.S. Congress in 1987 that the group operated from Miami and Fort Lauderdale, Florida, under the cover of front businesses, and with the authorization of the CIA.[135] Both Guglielminetti and Sánchez Reisse were reported to have received intelligence training in the U.S. in 1976.[136] These covert CIA activities began during the Carter Administration, ostensibly without the approval of the White House or Congress.

Altogether, about 184 Hondurans "disappeared"from 1979-1989 at the hands of the Honduran police and army. While "disappearances" had been sporadic before, the practice became systematic between 1981 and 1984, coinciding with the arrival of the Argentines.[137] A preliminary report by the Honduran National Commissioner on Human Rights,

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[134]In May 1983, Héctor Francés García, a former agent of Argentine army intelligence's 601 Battalion, testified in a video shown to journalists in Mexico City that, beginning in 1980, he and other intelligence officers from the battalion travelled to Honduras and worked alongside the Honduran army and police, and the CIA. Miguel Bonasso, "El arrepentido del 601," *3 Puntos*, June 28, 2001; Norberto Bermúdez y Juan Gasparini, *El Testigo Secreto* (Buenos Aires: Verlap, S.A., 1999), pp. 40-42.

[135]United States Senate, transcript of hearings before the Subcommittee on Terrorism, Narcotics, and International Operations of the Committee on Foreign Relations, July 23, 1987, pp. 13-20.

[136]Ariel C. Armony, *Argentina, the United States, and the Anti-Communist Crusade in Central America 1977-1984* (Ohio University Press, 1997), p. 150.

[137]See Americas Watch, *Human Rights in Honduras: Signs of the "Argentine Method*," December 1982; *Human Rights in Honduras: Central America's "Sideshow,"* May, 1987; Amnesty International, *Honduras: Civilian Authority: Military Power*

Leo Valladares, published in 1993, listed fifteen Argentine officers involved in training Battalion 3-16.[138] Valladares's persistent efforts to obtain details of the Argentine connection from declassified official sources in the United States and Argentina brought meager results. During an official visit to Tegucigalpa, in May 1996, President Menem agreed to provide information on Argentine military operations in Honduras. Valladares travelled to Buenos Aires in October of that year, but "he was told by the Argentinian under-secretary for human rights, Alicia Pierini, that no official documents exist about past repressive military operations in Honduras. Pierini emphasized that 'we also seek to reconstruct the historical truth about the tragic National Security Doctrine.'"[139]

(AMR 37/02/88).

[138]Center for Justice and International Law (CEJIL) and Human Rights Watch/Americas, *The Facts Speak for Themselves: The Preliminary Report on Disappearances of the National Commissioner for the Protection of Human Rights in Honduras* (New York: Human Rights Watch, 1993), p. 208–211.

[139]Leo Valladares Lanza and Susan C. Peacock: *In Search of Hidden Truths, An Interim Report on Declassification by the National Commissioner for Human Rights* (Tegucigalpa, Honduras, 1998), chapter II.

The declassification of U.S. State and Defense Department and CIA documents ordered by President Clinton in response to requests from Valladares, beginning in 1993, also threw little light on the Argentine connection. The bulk of the information provided concerned specific "disappearance" cases raised by Valladares. The heavily excised documents contained almost no information on the CIA's involvement in training the Hondurans and the *contras*, or on the role of the Argentines. The declassified CIA Inspector General's report, published on August 27, 1997, admitted for the first time that the CIA had known about the systematic human rights abuses committed by 3-16 Battalion, but had failed to report on them.[140] How the United States allowed Argentine officers with a known track record of appalling human rights abuse to have taken the lead in training their Honduran counterparts, is a question that remains to be answered.

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Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. José Miguel Vivanco is executive director; Joanne Mariner is deputy director; Sebastian Brett, Robin Kirk and Carol Pier are researchers; Daniel Wilkinson is the Orville Schell Fellow; Jonathan Balcom and Marijke Conklin are associates. Stephen L. Kass is chair of the advisory committee; Marina Pinto Kaufman and David E. Nachman are vice chairs.

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[140] CIA Inspectorate General "Selected Issues Relating to CIA Activities in Honduras in the 1980's (96-0125-IG)," August 27, 1997 (available at http://www.gwu.edu/~nsarchiv/latin_america/honduras/cia_ig_report/). See also National Security Archive, "Secret CIA report admits: 'Honduran military committed hundreds of human rights abuses' and 'inaccurate' reporting to Congress," Washington, D.C., October 1998 (available at http://www.gwu.edu/~nsarchiv/news/19981023.htm.