TRUTH AND PARTIAL JUSTICE IN ARGENTINA:

AN UPDATE

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AN AMERICAS WATCH REPORT

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This report was written by Juan E. Méndez, Washington Director of Americas Watch. During the period since the reestablishment of democratic government in Argentina, Mr. Méndez visited Argentina on five occasions and, as indicated in the text of the report, attended several of the hearings of the trial of the members of the first three military juntas. In addition, throughout the period covered by this report, he maintained close contacts with many of those involved in the process including victims of abuses and members of their families, Argentine government officials, and independent human rights monitors. Several other representatives of Americas Watch took part in fact-finding visits to Argentina during the past four years. Americas Watch is grateful to all those who provided us with information for this report. Special thanks are due to the Center for Legal and Social Studies (CELS) in Buenos Aires with which Americas Watch maintains regular contact and with which we have cooperated on a number of projects.

I. INTRODUCTION

In the last ten years, Argentina has commanded the attention of the international community for two widely divergent reasons: atrocious human rights violations, and subsequent efforts to punish those responsible. Between 1976 and 1983, the country was governed by a military dictatorship that committed horrendous crimes against thousands of citizens on a scale that finds no precedent in Argentine history and with a ferocity comparable to any of the tragedies experienced by humankind subsequent to World War II. After President Raúl Alfonsín was elected in 1983, world public opinion focused on his efforts to reveal the hidden story of the crimes of the so-called "dirty war," and his government's efforts to hold its authors accountable. Almost instantly, Argentina lost its pariah status in the international community; indeed it became a model demonstrating the possibility of governance based on the rule of law and on ethical imperatives.

No armed revolution brought about this precipitous change; nor had the armed forces been totally decimated by a foreign power, though they had suffered a humiliating defeat. It was not so much that defeat, however, but national revulsion against the cruelties practiced by the armed forces that provided the basis upon which Argentina seemed to be establishing the rule of law. In a clear step backward, however, Argentina was pushed last June into adopting what amounts to an amnesty for the vast majority of the culprits of the dirty war era. The story has not yet ended, but these developments in Argentina have spotlighted the problems faced by democratic governments in many countries in dealing with violations of human rights committed by predecessor military regimes.

As a result of the Argentine experience and analogous developments in several other countries, the question of amnesty for military men who still enjoy a monopoly on armed force has quickly become a major issue for the international human rights movement and it has generated considerable debate among those concerned with democratic development. Questions arise: Is there a legal obligation, in domestic or in international law, to investigate and punish the crimes committed by former governments? If so, how can that obligation be met? When civilian governments face the threat of destabilization, how can they serve the demand for justice and, at the same time, satisfy their legitimate need to nurture and strengthen democratic institutions?

Many countries in Latin America in particular face this same problem. An

amnesty for the armed forces in Brazil and Uruguay was part of the price the military insisted upon in permitting a transition to democratic government; in Uruguay, however, an effort is underway at this writing to overturn the amnesty by means of a national referendum; democratic governments in Colombia and Peru have not been able to initiate significant proceedings against those responsible for abuses; in Guatemala, the armed forces amnestied themselves just four days before turning over the Presidential Palace to a civilian and the civilian government has gone along; in El Salvador, despite President Duarte's pledge to investigate and punish those responsible for notorious crimes, military officers remain immune against similar issues have aroused debate in such countries as the Philippines, South Korea, Guinea and Uganda.

The recent Argentine experience is certain to have great influence on the manner in which these issues are resolved elsewhere, as well as on our understanding of the problems of transition from repressive military rule to democracy. Lessons will be drawn, not only by democratic movements and leaders and by human rights activists, but also by the perpetrators of human rights violations and their supporters.

Americas Watch shares with many others throughout the world concerns both for the accountability of those responsible for gross violations of human rights and for the need to facilitate transitions to democratic government and for the survival of democratic governments threatened by the armed forces over which they are attempting to gain authority. As it is increasingly suggested that these concerns conflict, Americas Watch believes that this is an appropriate moment for the international public to take a close look at the recent Argentine experience. It is our hope that this report, in large part a historical narrative, will contribute to that examination.[1]

II. THE RECENT BACKGROUND

The 1970s were years of unprecedented political violence in Argentina. To analyze the roots and the consequences of that violence would exceed the scope of this report. We note only in passing that the capacity of the country's institutions to respond to violence while maintaining fidelity to the rule of law was profoundly affected, on the one hand, by the takeovers of power by military leaders in 1930, 1943, 1955, 1962, 1966 and 1975 in *coups d'etat* that, each in turn, interrupted the democratic process; and on the other, by the emergence, around 1970, of several small guerrilla organizations bent on achieving power by means of urban armed struggle. Two of these organizations, the *Montoneros* and the *Ejército Revolucionario del Pueblo* (ERP), achieved impressive growth and by the mid-1970s posed a serious challenge to the capacity of the armed and security forces to maintain order. Even so, the number of their adherents and their public support never reached a level that would have made them serious contenders for power; nor did they come close to being able to overthrow the government by force of arms.

In response to this serious threat, the security forces and right-wing elements within the government of Isabel Perón unleashed a campaign of assassinations that was undertaken largely by para-military groups operating under the guidance and protection of the authorities. The intimidation of the citizenry that resulted from the violent actions of both the guerrillas and of the paramilitary forces, as well as the corruption and incompetence of the government of Isabel Perón, were the reasons set forth for the *coup* of March 26, 1976, in which the commanders-in-chief of the Army, the Navy and the Air Force overthrew the elected government and instituted themselves as a Junta, and as the supreme power of the land.

The Junta appointed General Jorge Rafael Videla, commander-in chief of the Army, as the president; dissolved the Congress; and replaced eighty percent of the judges. The Junta "suspended" key articles of the Constitution and decreed several *actas institucionales* to have pre-eminence over the Constitution. Judges were made to swear to uphold this new institutional order. The Junta also promulgated sweeping and far-reaching legislation that altered fundamental principles of penal law and of criminal procedures, with the general intent of allowing military forces to participate in the repression of "subversion" unencumbered by judicial oversight. For example, the Junta gave the President the power to hold civilians in administrative detention, without

charges, for unlimited periods; military courts were instituted to try civilians, using the secret procedures of the Code of Military Justice; heavy penalties were provided for such relatively trivial offenses as "insulting" a member of the armed forces; the death penalty for political cases, expressly forbidden by the Constitution of 1853, was instituted.

The military dictatorship, however, made relatively little use of this array of discretionary "legal" powers. Instead, the Junta approved secret plans and gave secret orders to conduct the bulk of it "struggle against subversion" by clandestine means. This is the origin of the campaign of forced disappearances, which became the government's main weapon. Task forces of the armed services throughout the country, sometimes acting as combined forces, were detailed to arrest suspected subversives without warrant; to avoid identification of the captor; to take the detainees to clandestine detention camps, generally within military or police facilities; and to disclaim any knowledge of the whereabouts of their prisoners. In those camps, prisoners were interrogated under the most severe forms of torture to obtain intelligence about other potential targets. The camps were deliberately shielded from any judicial or administrative investigation so that the torturers could be free to use any methods, and to deny even the existence of their prisoners, without fear of punishment. Eventually, the high command of each region of the country had the power to release prisoners; to transfer them to acknowledged detention centers, for trial or for administrative detention; or to eliminate them and dispose of the bodies. The overwhelming majority of those who entered the system of "disappearances" were never seen alive again.

By 1980, the guerrilla groups were wiped out, as were a variety of political parties and social movements perceived by the armed forces to be leftist but that had pursued their goals by peaceful means. The definition of the enemy included all of them. General Videla himself made that clear to visiting journalists who asked him about a young woman who was bound to a wheelchair when she was apprehended: "A terrorist is not only that for killing with a weapon or placing a bomb, but also for encouraging other persons, through ideas that are contrary to our Western and Christian civilization."[2]

Although the guerrilla threat had been eliminated, the dictatorship showed signs of strain by the beginning of the 1980s. Political infighting among the generals had led to vicious power plays, and the mirage of economic prosperity of the late 1970s, created largely by opening wide the doors to foreign capital and products, led the way to some serious collapses in the financial sectors; to

new inflationary surges; and to the beginnings of significant labor protest. In early 1982, Argentines became more outspoken about their criticism of the military, including growing protest over the methods of the "dirty war." By then, General Leopoldo F. Galtieri was President, after having succeeded General Videla and General Roberto Viola, who was president for a few months in 1981. Galtieri had made warm contacts with the Reagan Administration and had arranged for the Argentine military to organize and train the *contras* in Honduras in collaboration with the Honduran strongman, Argentine-trained General Gustavo Alvarez; and with secret funding from the United States.

This *rapprochement* with the Reagan Administration after a period of estrangement from the United States during the Carter years, and the need to turn the tide of discontent in Argentina, led Galtieri to a tragic miscalculation. On April 2, 1982, Argentina invaded the Malvinas islands, off the coast of Argentina in the South Atlantic Ocean. The islands, called Falklands by the British, had been taken by force by the United Kingdom in 1833, and never returned to Argentina despite repeated international demands. The move was wildly popular in Argentina, although tens of thousands had protested the Junta's policies in the streets of Buenos Aires just two days earlier. At the same time, however, the invasion provoked similar nationalistic reactions in Great Britain. After clumsy attempts at mediation by then U.S. Secretary of State Alexander Haig, the two countries went to war. In the end, despite its indebtedness for the establishment of the *contras*, the United States sided with Great Britain, its closest ally in the world. The war was short but costly. The British forces were superior in every way, and confronted with a serious war, the Argentine military showed all the weaknesses of a force trained not to do battle, but to act as a vicious repressive force against an "enemy within." False information and doctored television coverage had persuaded the Argentine public up to the final days that the Argentine armed forces were winning the war.

The defeat accelerated the demise of the military regime. The human rights movement, until then isolated, gained strength as its concerns became national issues central to the transition to democratic rule. Under such circumstances, infighting within the armed services grew in direct proportion to their isolation from civilian society. A caretaker Junta was painfully put together in late 1982, and General Reynaldo Bignone was appointed to preside over Argentina's transition to elected civilian government.

III. THE TRANSITION

The main concern of the Bignone administration was to ensure that the transition to democracy took place without affecting the military's privileged role in society. The armed forces were so discredited, however, that they were largely unable to shape the transition, and the elections took place without pre-conditions and Raúl Alfonsín took over the government without being handcuffed by promises extracted by the generals.

Before the elections, in late 1982, as the political parties emerged from hibernation, and a calendar for the transition was agreed upon, the military government had sought "understandings" from the major political parties with respect to the future. At first, the outgoing military government's agenda included a long list of items such as the military's right to review economic policy; a commitment not to prosecute the crimes of the "dirty war;" the same with respect to the Falklands/Malvinas debacle; and a promise not to investigate what were euphemistically called *los ilícitos*, the cases of corruption involving high military officers. When the political parties and overwhelming public opinion rebuffed them, the generals restricted their demands to seeking a pledge from the parties that a future government would not investigate the violations of human rights committed during the "dirty war," and particularly the fate and whereabouts of the "disappeared."

In the post-Malvinas mood, no political party was willing to make such a pledge. As a result, the military government decided to take unilateral action to try to prevent future inquiries about the "disappeared," and future prosecutions for human rights abuses. By this time, early 1983, many relatives of the disappeared and survivors of the experience were overcoming their fears and bringing criminal accusations before the courts, or providing testimonies to the press. It was beginning to be clear that the issue would loom large under democratic government. Accordingly, on April 28, 1983, the Junta issued a "Final Document on the Struggle Against Subversion and Terrorism." The document attempted to put the issue of disappearances to rest. In fact, however, it provided no new information on their fate. The military report began with a lengthy and distorted account of the "root causes" in political violence that led the armed forces to take over the government in 1976. It went on to try to cover up the methods used in the counterinsurgency campaign: that is, the document denied that unacknowledged detentions took place, or that clandestine detention centers were maintained, or that prisoners were secretly

and summarily executed.

The "Final Document" then offered a series of disingenuous explanations for the disappearance of thousands of persons listed as missing after their arrest by the security forces (See Americas Watch, *The Argentine Military Junta's "Final Document:" A Call for Condemnation*, May 20, 1983). The day the document was released, the Junta issued an Institutional Act (the legal instrument through which the Junta amended the Constitution or legislated in extraordinary matters) declaring 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." The legal effect of that declaration was not immediately evident, though it appeared to provide a legal basis for not prosecuting junior officers, or at least for trying them before military courts instead of before the regular civilian judiciary.

In this document, for the first time the Junta offered the explanation that the "dirty war" had originally been ordered by the civilian government: in February 1975, President Isabel Perón ordered the launching of *Operativo Independencia*, calling on the Army to put down a rural guerrilla movement in the province of Tucumán; in September 1975, Italo Luder, acting as President during a leave of absence by Isabel Perón, called on the armed forces to "annihilate" subversion. Previously, the armed forces had boasted of taking over to end the chaos of the popularly-elected government. In later years, however, they would argue strenuously that those 1985 decrees legitimized everything that was done subsequently.

Issuance of the "Final Document" elicited an outcry of repudiation in Argentina and from many Western countries. In contrast with strong denunciation by the Vatican, by President Sandro Pertini of Italy, by the Spanish Foreign Ministry and by Hans-Dietrich Genscher, President of the European Economic Community, the Reagan Administration took two weeks to issue a bland statement, in response to press inquiries, that expressed a "sense of disappointment ... that an occasion has been lost to begin the resolution of this question."

Another measure taken by the Junta later in 1983 was its promulgation of a self-amnesty law that had been in preparation for months. In spite of overwhelming public opinion against it, the Junta issued what it called *Ley de Pacificación Nacional*, exactly two weeks before the election. It purported to establish a general amnesty for all criminal offenses committed during the "war against subversion" between May 25, 1973 (the date of the last amnesty for

political crimes) and June 17, 1982 (when the third successive Junta resigned, in the aftermath of the Malvinas defeat). In a feeble attempt to suggest that the purpose was national reconciliation, in addition to pardoning members of the armed forces the law contemplated a much more limited amnesty to benefit some of those who had taken up arms against the government. Many political prisoners who had spent years in detention immediately rejected the application of the law to them.

In the midst of the presidential campaign, promulgation of the self-amnesty law simply served to magnify the central question in the voters' minds: how willing was each candidate to break with the military dictatorship? The military's strategy backfired. The candidates for the presidency immediately condemned the self-amnesty, and promised inquiries on the disappeared after the election. Among other differences, Raúl Alfonsín was less ambiguous than Peronist opponent Italo Luder in his attitude toward the military. Alfonsín first promised to have the self-amnesty law repealed, and then went further and said he would seek its annulment. In contrast, Luder denounced the law, but asserted legalistically that it would have binding effects nonetheless. For the electorate, this was further evidence that the Peronists could not be trusted not to enter into secret agreements with the military. On October 30, Alfonsín -- who had been the underdog -- won in a landslide, obtaining 52 percent of the votes cast.

All this time, the Argentine human rights movement had been highly successful in keeping the question of the fate of the disappeared in the courts, in the press and on the streets. In the course of a few weeks, several courts and at least one appellate court that had begun investigations of past abuses declared the self-amnesty law unconstitutional or "non-existent" as a law. It was in the climate set by these developments that Raúl Alfonsín was inaugurated as democratically-elected President on December 10, 1983, known as "Human Rights Day" throughout the world because it is the anniversary of the signing of the Universal Declaration of Human Rights.

IV. A STRATEGY FOR TRUTH AND JUSTICE

Only a few days into his presidency, Alfonsín electrified the Argentine nation and, indeed, the world, by announcing an impressive series of actions to restore Argentina's adherence to the rule of law and respect for human rights. He ordered the prosecution of former Junta members; proposed increased penalties for torture; signed international human rights treaties; proposed reforms of the military code of justice; and created an investigative commission on forced disappearances. By far the most publicized of those actions was his decision to order the prosecution of Generals Videla, Viola and Galtieri, Admirals Massera, Lambruschini and Anaya, and Air Force Brigadiers Agosti, Graffigna and Lami Dozo, all the members of the first three Juntas, for the crimes they had committed in the context of the "war against subversion." In the same decree, President Alfonsín ordered the prosecution of seven reputed leaders of the Montoneros and the ERP organizations. The strategy was to condemn equally state terror and anti-state political violence, an approach that has been frequently labelled in Argentina as "the theory of the two devils."

In addition, President Alfonsín submitted to Congress legislation raising the penalties for torture, and making it a crime to take over the government by force of arms. The crime of organizing a military *coup* would not be subject to a statute of limitations, and its prosecution would take place no matter what actions might be taken by the *de facto* regime to ensure its impunity. Congress acted swiftly and these proposals became law. In a similar manner, Argentina ratified several international human rights instruments, including the U.N. Covenants on Civil and Political Rights and on Economic and Social Rights, and the American Convention on Human Rights. Also, Argentina accepted to be bound, for future cases, by the decisions of the Inter-American Court of Human rights. Argentina also became a party to the recently drafted U.N. Convention Against Torture.

With respect to the crimes of the past, President Alfonsín submitted to Congress legislation to regulate the prosecutions, including those of Junta members. The legislation mandated that all cases of human rights violations should be tried initially before the Supreme Council of the armed forces, a permanent military court contemplated in the Code of Military Justice. The bill amended the Code to provide for appeals against rulings of the Supreme Council to the Federal Courts of Appeal, which are civilian courts.

The same bill also included a very controversial exculpatory clause, stating that defendants would be presumed to have acted "in error about the legitimacy of their actions" for having obeyed orders, unless they had exceeded them. This was an attempt at legislating Alfonsín's position on the matter, as expressed during the electoral campaign. He had repeatedly stated that there were three levels of responsibility: those who gave the orders; those who executed them; and those who exceeded the orders and thereby committed abuses. The "due obedience" clause was evidently designed to provide a legal means to exculpate those who followed orders and had not committed additional excesses.

President Alfonsín then created a "National Commission on Disappeared Persons" (CONADEP) and appointed ten prominent citizens as members. Six other positions were left open for the House of Deputies and Senate to appoint representatives, though in the end only the House named three members. At its first meeting on December 18, 1983, the Commission chose Ernesto Sabato, a leading Latin American novelist, to chair it. CONADEP was charged with investigating the fate and whereabouts of the disappeared, and with producing a report to the President. It was given means to hire personnel and access to all government facilities, and the security forces were ordered to cooperate with it. It was not given subpoena powers nor the ability to compel testimony, and if it uncovered evidence of the commission of crimes, it was supposed to provide the information to the relevant courts.

From the beginning, the Argentine human rights movement, which had gained great prestige and national and international credibility for its courageous stands against the dictatorship, objected publicly to some aspects of Alfonsín's plan. In the first place, the groups that make up the movement would have preferred a congressional commission of inquiry rather than the Sabato Commission, since with a strong majority backing it, a congressional body would have had extraordinary powers to compel testimony and to obtain access to documents. Nobel Peace Laureate Adolfo Pérez Esquivel declined his appointment to CONADEP for that reason. Nonetheless, with the exception only of the Mothers of Plaza de Mayo, the human rights organizations of Argentina, after making clear their disagreement, then contributed enthusiastically to CONADEP's work. Many prominent human rights leaders and activists joined CONADEP as staffers or advisors. CONADEP also encouraged the formation of provincial investigatory commissions, and invited the Senate and House of Deputies to engage in their

own investigations.

The human rights organizations, along with Argentines from many political sectors, also disagreed with President Alfonsín's proposals on how to prosecute human rights abuses. They felt that civilian courts should have been allowed to hear the charges at the outset, and if there was a jurisdictional challenge (military officers would certainly demand that they should be tried only by military courts), they felt confident that the Supreme Court would rule in favor of the civilian courts, since murder of prisoners, torture, clandestine detention and other offenses could not be deemed "acts of duty." They also argued most strenuously against the "due obedience" clause of Alfonsín's legislative proposal because they considered that all participants in the commission of these gross crimes should be punished according to their participation. They also pointed out that the Penal Code already contemplated a form of "due obedience" defense for those (like a conscripted soldier ordered to go on patrol) who had no control whatsoever over the outcome of the action in which they participated. This provided sufficient protection for unwilling participants in crimes, they argued. Critics of the legislation also called attention to an established principle of international and military law according to which obedience to orders is no excuse for the commission of such serious abuses as crimes of war or crimes against humanity.

The Argentine human rights movement also would have preferred that the elected government put its weight behind active investigations leading to prosecutions and punishment. The Alfonsín administration, however, preferred to protect the independence of the judiciary by insisting that the courts should conduct those inquiries with the means at their disposal. Accordingly, the human rights organizations themselves assembled all the information and documentation in their files, obtained new testimonies from witnesses, and filed thousands of criminal complaints in the civilian courts on behalf of victims of the disappearances and their families.

Given the enormous press coverage and public interest, the congressional debate on the proposed amendments to the Code of Military Justice was lively and rich. The House, where Alfonsín's *Unión Cívica Radical* has a comfortable majority, passed the bill as submitted by the President. In the Senate, however, negotiations were required to secure support from senators from small provincial parties in order to form a majority. In that way, some of the concerns of the human rights movement were addressed.

The Law to Amend the Code of Military Justice was finally enacted on

February 9, 1984, as Law No. 23049. It provided that all crimes committed by members of the security forces in the context of anti-subversive operations since 1973 should be tried originally by the Supreme Council of the Armed Forces, which is the permanent administrative law tribunal in charge of military disciplinary matters. The law also provided for an appeal to the civilian Federal Courts of Appeal established by the Constitution and by federal laws as part of the judicial branch; there are presently eight such tribunals operating regionally throughout the country. In the course of the parliamentary debate, the legislation was amended so that appeal was made mandatory. Accordingly, access to the civilian judiciary would not hinge on whether a military prosecutor decided to appeal an acquittal.

The Supreme Council of the Armed Forces was given a term of 180 days to complete each trial; at its end, the Courts of Appeal were specifically empowered to take over jurisdiction and continue hearing the cases as trial courts. As for the "due obedience" clause, an important limitation was placed on it: it was not to be considered in case of "atrocious and aberrant acts." Though this language was not otherwise defined, it seemed to exclude crimes against humanity from the exculpatory clause. Also in the parliamentary debate, amendments were inserted to ensure a more active participation in the process by the victims or their relatives, including the right to appeal an acquittal.

These changes proved enormously significant because they ensure that the process could not be used to cover up crimes. At the same time, however, they combined with the Supreme Council's inactivity to prolong the agonizing process of determining the guilt or innocence for hundreds of defendants, extending the process well into the second half of Alfonsín's six-year term. Also, the "due obedience" clause, as written in 1984, did not serve to prevent prosecutions because its significance as a defense could only be assessed by the courts at the end of a trial on the merits. In that sense, though it had been a significant political gesture from the government to the ranks, its legal effect in each case was very uncertain.

V. THE *NUNCA MÁS* REPORT

The CONADEP hired staff and consultants in the first few weeks of 1984, and almost immediately began receiving testimony from relatives of the disappeared and from survivors of the camps where the disappeared had been held. Human rights organizations based in Buenos Aires had gathered extensive documentation that was turned over to the Commission; the files of the *Centro de Estudios Legales y Sociales* (CELS) and of the *Asamblea Permanente por los Derechos Humanos* (APDH) proved particularly valuable. Relatives of the disappeared went to the offices of CONADEP to repeat their stories. A significant number of families who had never previously made public statements about their disappeared relatives went to CONADEP. In that fashion, the list of 6,500 disappearances gathered during the dictatorship by APDH, grew to 8,960. (CONADEP made it clear that it estimated that there were many more victims of disappearances but their families never came forward with the information.)

CONADEP established branches in several major provincial cities such as Mar del Plata and Córdoba, and staff and commissioners travelled to certain areas to receive testimony. In Tucumán, for example, in the few days of CONADEP presence, the list of the disappeared in that province grew by a factor of four. The estimate by CONADEP, therefore, that many more cases have still gone unreported, is based on the fact that little or no gathering of information has taken place in areas of the country where repression was hard, but the population is poor and isolated. In some cities, CONADEP established a relatively permanent presence in order to continue receiving information from the public. At the same time, Argentine consulates abroad were instructed to request exiles to come forward and to provide information. Some CONADEP commissioners and high officials of the government travelled to Europe and the United States and themselves encouraged exiles to provide testimony. Many Argentines living abroad participated in the process, mostly by returning briefly to Argentina to testify. Testimony was also taken in consulates and embassies in Mexico City, Caracas, Los Angeles, New York, Washington, Paris, Madrid, Barcelona, Geneva and other cities.

In pursuit of leads provided by some witnesses, CONADEP actually inspected certain police and military facilities where concentration camps were said to have operated. Commissioners and staff also visited clandestine cemeteries and areas of public graveyards where unidentified bodies had been

buried on orders of local military authorities. These public activities of CONADEP, which were highly publicized in the media, provoked complaints by military authorities, and elicited political pressures on CONADEP to exercise restraint.

On July 4, 1984, CONADEP conducted a two-hour program on television, consisting mostly of testimonies from survivors of concentration camps and of parents and relatives of some of the disappeared. The program was so powerful that the government seriously considered not showing it. In the end, however, President Alfonsín himself authorized it, after a private airing. In the public presentation, however, Minister of Interior Antonio Troccoli joined Ernesto Sabato in introductory and closing statements. Troccoli's words were designed to temper the impact of the program by reminding the viewers of the onslaught of revolutionary violence that had caused the repression. Before the end of the program, nonetheless, President Alfonsín confronted his first insubordination from military quarters, which included rumors of tanks rolling into Buenos Aires. As a result, the President dismissed the Chief of Staff of the Army, General Jorge Arguindeguy.

In September 1984, CONADEP delivered its report to the President. It consisted of 50,000 pages of documentation, and a summary that was later published as a book, by EUDEBA, the publishing arm of the University of Buenos Aires. The book was entitled *Nunca Más* and included a foreword by Ernesto Sabato. It was sold with an annex listing the names of 8,961 *desaparecidos*; the names of those who were seen alive in concentration camps; and a list of 365 clandestine detention centers. The book and the annex became enduring best-sellers in Argentina. Foreign language versions have been published abroad. (In the United States, Farrar, Straus, Giroux published an English-language edition under the title *Nunca Más* in 1986.)

The book describes in detail the methodology of disappearances, using a profusion of examples to illustrate the way the kidnappings took place, the torture to which the unacknowledged prisoners were subjected, the use of clandestine detention centers under the jurisdiction of all three armed forces and of various police and security forces, and the methods of extermination. It also describes in some detail the "commitment to impunity" that was an essential part of the method, and discusses the cases of several prominent members of Argentine society who were victims of disappearances. The first chapter ends with a discussion of cases of disappearances of Argentines in which the Argentine armed forces kidnapped their victims across South

American borders; and with cases in which the armed forces engaged in theft of property in the course of kidnappings and disappearances.

The second chapter describes the targets, and discusses cases of several categories of victims, including children, pregnant women, teen-agers, whole families, the handicapped, priests, nuns and ministers, conscripted soldiers, journalists, trade union leaders and political activists. We learn, for example, that there were 84 journalists reported as disappeared who were never found (not including some like Jacobo Timerman -- publisher of the daily *La Opinion* -- who were held as disappeared for some time but who were eventually released). 30.2 percent of all the cases reported to CONADEP were blue collar workers, and 17.9 percent were white-collar workers. 21 percent were students, but of these, one third also worked. The report quotes from Junta statements of 1977 detailing the plan to operate against workers in factories and workplaces as a way to counter what General Tómas Liendo, then Minister of Labor, called "industrial subversion."

In conclusion, the report discusses the inability of the judiciary to deal with the phenomenon of disappearances, including the ineffectiveness of *habeas corpus*, the targeting of lawyers for disappearances, as well as the harassment of human rights leaders. The Commission registered 107 cases of lawyers who disappeared after their arrest by security forces who remain unaccounted for. In addition, the report lists 196 persons who were seen alive in concentration camps at a time when *habeas corpus* writs on their behalf were being rejected on the grounds that the person "had not been arrested."

The CONADEP Report is a powerful indictment of the repressive policies of the military dictatorship. It establishes that a complex and extensive machinery of state terror was put in place involving abductions, unlimited torture, clandestine imprisonment and murder of defenseless persons. It also demonstrates that the policy could only be carried out with extensive complicity from different sectors and institutions, in exchange for promises of impunity. The CONADEP Report is also significant in that it shows how a democratic government, with the assistance of human rights organizations, can take important steps toward establishing the painful truth about repression which took place just a few years earlier, provided that the political will is available to investigate and report that truth.

VI. THE TRIALS

As was to be expected, the Argentine people, and particularly the victims of repression and their families and friends, were not satisfied with disclosure alone. The revelations of what had taken place in the years of the "dirty war" (as the military called it) only resulted in greater demands for justice. Starting in 1983, Argentine human rights organizations had begun providing legal representation to relatives of the disappeared who wanted their cases to be taken to court, on the basis of evidence that the families and human rights groups had been able to gather on their own. As new testimonies were brought to public attention, many more victims and families sought the intervention of the judiciary. These cases mainly took the form of criminal complaints alleging illegal arrest, torture and murder. Under Argentine criminal procedure, any person can initiate a criminal action by filing a complaint ("*denuncia*") and the courts are obligated to investigate it and gather evidence for a prosecution. Those establishing an interest, as victims or as relatives of the aggrieved party, can participate in the trial as an independent party, though in a secondary role to that of the prosecutor, as *particular damnificado* or *querellante*. In that capacity, they can offer evidence and suggest procedural actions; they can also appeal decisions against their interest, including decisions to drop charges or to acquit. If they obtain a conviction, they can also pursue civil damages, either as part of the criminal sentence, or in a separate proceeding before civil courts. It is not necessary for a *denunciante* or a *particular damnificado* to name defendants, though if they have the information, it obviously advances the case.

By mid-1984, an estimated 2,000 criminal complaints had been brought by private parties. More than 400 were filed by CELS alone. In all cases the charges were filed in federal courts, rather than before the Supreme Council of the Armed Forces, even after the promulgation of Law 23049. In part, this reflected a rejection of the political decision to give the military courts a chance to review these cases. For the most part, however, the *denuncias* had been filed before the enactment of the law. In some cases filed afterwards, with no named defendant, the *denunciantes* wanted the court to conduct investigations until *prima facie* evidence of individual responsibility was found, because Law 23049 was triggered only when a named defendant was found to belong to the armed or security forces. The aggrieved parties had much more confidence in civilian courts than in the Supreme Council to

conduct a serious investigation.

Suits in federal courts were also used as a test of the new law's constitutionality. Both before and after passage, the military defendants asserted that the civilian courts lacked jurisdiction, and sought remand to the Supreme Council of the Armed Forces. They argued that their membership in the military gave them the privilege of being tried in military courts no matter the nature of the alleged offense. While these jurisdictional issues were being debated, however, several civilian courts took preliminary steps to investigate their charges against military men, including requiring prominent generals to be deposed as prospective defendants or witnesses. These proceedings were widely covered in the Argentine press. In one of the most significant cases, a judge confronted General Reynaldo Bignone, Alfonsín's predecessor in the presidency, with two former draftees who accused him of the disappearances of two other 18-year-old conscripts when Bignone was the head of the Military College. According to the witnesses, they too had been taken into clandestine custody and tortured; upon their release, Bignone had apologized to them for the "mistake" but justified the abduction of the other soldiers who remain accounted for. The judge eventually ordered Bignone's arrest.

In another case, General Carlos Guillermo Suárez Mason, who had been chief of the First Army Corps with jurisdiction over the city of Buenos Aires and outlying areas, was ordered arrested for refusing to appear in a case in which he was the principal defendant. Suárez Mason fled the country, the only general to do so. A few weeks later, the high command of the Army obtained from the Supreme council an order declaring him a deserter and stripping him of his rank. In 1985, Argentina issued an Interpol order requesting his arrest. In January 1987, Suárez Mason was apprehended in Foster City, California, after having spent almost three years in clandestine exile in the United States. At this writing, he is in the San Francisco County Jail, awaiting extradition to Argentina on 43 counts of murder and 24 false imprisonments.

The constitutionality of Law 23049 was finally settled by the Argentine Supreme Court in a challenge brought by General Jorge Rafael Videla, the first President of the dictatorship, who argued that appellate review by the Federal Courts of Appeal constituted a violation of his right to his "natural judge," i.e., his right to be tried only by military courts. The Supreme Court decided that Law 23049 was constitutional. An interesting legal issue, that has of necessity been left unresolved, is whether civilian or military courts would have had jurisdiction to hear these cases if Law 23049 had not been enacted. Proponents

of Law 23049 in the Alfonsín administration have argued that without that statute, the cases would have been heard only by military courts, with no civilian judicial review. Some legal scholars, however, contend that eventually the civil courts would have been granted jurisdiction because these crimes cannot be considered "acts of duty."

By mid-1984, the Supreme Council had established control of all complaints. Some human rights organizations tried to participate in the process by filing offers of evidence before that military court. For the most part, however, the Supreme Council was deliberately slow and inactive, except in demanding that civilian courts stop proceedings against military officers. In this fashion, the Supreme Council succeeded in quashing an order of arrest against Captain Alfredo Astiz, a Navy officer accused of a variety of charges and who had risen to prominence as the officer who surrendered the South Georgia islands to the British at the beginning of the Falklands/Malvinas war. Astiz is accused of infiltrating the early group of what later became the Mothers of Plaza de Mayo, causing the disappearance of twelve members and two French nuns who helped them; he is also named in the disappearance of a 17-year-old Swedish girl, Dagmar Hagelin, who was shot as she was abducted, but was subsequently seen alive in ESMA, the notorious concentration camp run by the Navy in the city of Buenos Aires.

After a ruling from the Supreme Court, the Supreme Council also obtained jurisdiction over General Bignone's case; on the same day, Bignone was released, after spending a few months in custody in military headquarters. Though he remained under prosecution, the Supreme Council did nothing to advance the investigation thereafter.

In July 1984, CELS and other human rights activists petitioned the Federal Court of Appeals for the city of Buenos Aires to apply Law 23049 and assume jurisdiction over the case against Videla and the other eight Junta members, since more than 180 days had passed since the case was initiated. The Court requested information from the Supreme Council, and upon review of the record, granted it an extension to complete the process. In September of the same year, the Federal Court again requested information, and the Supreme Council submitted an extraordinary memorandum, requesting more time but saying also that it could find no illegality in the orders given by the Juntas. The memorandum was publicized and it caused a great stir as it came within hours of the publication of the Sabato report; most observers saw it as a defiance of the findings of the Commission established by Alfonsín to look into

disappearances.

Confronted with such a prejudicial expression of opinion, and with the fact that the Supreme Council had done little or nothing to advance the proceedings, the Federal Court of Appeals decided to take over the case of *Videla et al* and to proceed as a trial court. This unusual procedure, known as *avocamiento*, was to be used later in other cases and by other Federal Courts of Appeals. The Supreme Council's inactivity and, indeed, its deliberate stalling, had shown that the scheme devised by Alfonsín to give the military a chance to cleanse itself was an utter failure.

In subsequent cases, the Federal Court of Appeals for Buenos Aires decided to monitor the Supreme Council more closely, not only limiting its grants of extensions of time to short periods, but also dictating specific prosecutorial measures to be taken during those periods. Other courts were much more lenient with the Supreme Council. The Federal Court of Appeals for Córdoba, for example, granted the Supreme Council inordinate extensions beyond the 180-day period in such cases of overriding significance as the one dealing with the concentration camp at "La Perla" that held hundreds of clandestine prisoners taken by the Third Army Corps, led by General Luciano Benjamín Menéndez.

VII. THE PROSECUTION AGAINST THE JUNTAS

After the December 1984 decision to take over *Videla et al*, the six-member panel of the Federal Court of Appeals for Buenos Aires (constituting the criminal division of that tribunal), proceeded to turn over the conduct of the trial to the federal appellate prosecutor, Julio Strassera, and to counsel for the defense. The case went to trial starting in April 1985. Of the nine defendants, only Videla refused to appoint counsel, as a form of protest against the proceedings, so the Court appointed a public defender for him. The other eight defendants were each represented by three or four lawyers, some of them judges or prosecutors under the military government. The trial lasted five months, and consisted of a succession of open hearings. News coverage was allowed, though television reporting was by soundless images. The public was allowed to attend by obtaining passes and permits, and the court succeeded in maintaining a high degree of order in the courtroom, even at the most dramatic and tense moments. (Americas Watch attended five different hearings in June 1985, and subsequently obtained records for the whole trial and its most important documents.)

Mr. Strassera and his assistant prosecutor, Mr. Luis Moreno Ocampo, offered evidence on 711 different cases of illegal abduction, torture and murder. They produced dramatic evidence, in the form of witnesses to each episode. Many of the witnesses were themselves survivors of the experience: Alfredo Forti, for example, testified to the day when he was 17, and was taken from an airplane about to leave for Caracas with his mother Nelida Sosa de Forti and four younger brothers; the children were separated from their mother, held for five days in a clandestine center and then abandoned in a street in Buenos Aires; the mother has never reappeared, though she was seen alive in a camp in Tucumán. A young woman, Adriana Calvo de Laborde, testified to giving birth to her baby on the floor of a police car while being transferred from one clandestine camp to another in the suburbs of Buenos Aires. Pablo Alejandro Díaz said that as a high-school student in La Plata, at age 17, he and several boys and girls of his age, who had organized petitions to seek a reduction in bus fares for students, were abducted and savagely tortured; he was the lone survivor. Their captors called the incident "The Night of the Pencils," referring to the fact that the victims were students, and alluding the "The Night of the Long Knives" of Nazi history.

A psychologist from Mar del Plata, taken at her house in the south of

Argentina together with her husband, attorney Jorge Candeloro, described how she was transferred to the Air Force base in Mar del Plata, where she witnessed the death under torture of Norberto Oscar Centeno, one of Argentina's foremost labor lawyers. The operation in which Centeno and five other attorneys from Mar del Plata were arrested, was called "The Night of the Neckties," presumably because lawyers wear ties. Centeno's body was found a few days later; one other lawyer was found alive in the trunk of Centeno's car; and the others were never found.

Other witnesses were relatives of disappeared persons who told of the way in which their loved ones were arrested, and of their years of inquiries before courts and at administrative offices, as well as their private requests for information from influential people. Some witnesses were former members of the security forces, generally of low rank, who testified to their participation in illegal arrests or their work in clandestine detention centers. A few foreign witnesses were produced to illustrate the Junta's policy of not responding to diplomatic inquiries about specific cases. Dr. Clyde Snow, an American expert in forensic pathology invited by CONADEP showed how the body of a young woman, buried by order of miliary authorities as "unidentified" (N.N.) and listing the cause of death as "in a shootout," was positively identified as that of Liliana Pereyra, a 21-year-old student from Mar del Plata, who had been arrested at her home. Dr. Snow also demonstrated that she had died of one shot to the head, fired point blank, and that she had given birth to a baby just before being killed.[3]

Defense counsel presented witnesses, mostly prominent Argentines who spoke generally about the serious violence that prevailed at the time of the 1976 *coup d'etat*. Primarily at the request of the defense, many high-ranking officers of the three armed forces were heard. The lawyers for the defendants actively cross-examined most of the prosecution witnesses, trying to impugn their credibility. In some cases, they tried to do so by inferring association with guerrilla organizations or with individual guerrillas. They frequently sparred with the prosecution about the admissibility of evidence and the relevance of questions posed to the witnesses. They also presented numerous defenses, both formal and substantive in nature, all of which were carefully considered by the court; and they were given ample opportunity to offer arguments and evidence.

After five months of hearings, the prosecutors dropped a number of witnesses and specific charges, and the court scheduled closing arguments, which took place in September 1985. The prosecutor differentiated between

each of the successive Juntas, arguing that crimes committed in each period were the joint responsibility of the three commanders who constituted the Junta at the time on the ground that their policies were planned jointly and supervised by the Junta. In its decision, however, the Court ruled that although legally the Junta was empowered to conduct such supervision of policies, in practice, as demonstrated by the evidence, each commander-in-chief was solely responsible for the actions committed by his forces during his tenure.

On December 9, 1985, the Court issued a lengthy sentence. An extensive translation into English has been published in 26 *International Legal Materials* 317-372 (1987), with a note by the translators, Professors Enrique Dahl, of Louisiana State University, and Alejandro Garro, of Columbia University. The passages quoted in this report are from that translation.

The Court agreed with the prosecution that there had been a deliberate, concerted plan to execute a policy of covert repression, and that this policy became the dictatorship's principal weapon in its campaign to defeat subversion. The Court said:

> It has been demonstrated that in a date close to March 24, 1976 -- the day when the Armed Forces overthrew the constitutional authorities and took over the government -- some of the defendants, acting as Commanders of their respective units, ordered a way to combat terrorist subversion which basically consisted of: a) Capturing those who might be suspected of having some link to subversion according to intelligence reports; b) sending them to places located in military units or under military control; c) once there, interrogating them, under torture, in order to extract from them as much information as possible about other people; d) subjecting them to subhuman treatment to break their will; e) carrying out all which was described above in the most absolute secrecy. The kidnappers did not reveal their names and performed their tasks usually at night while the victims remained absolutely incommunicado, blindfolded, and their existence was to be denied to any authority, relative or friend of the prisoner, as well as the places of detention. And f) the commanders gave ample freedom to subordinates to determine the victim's fate, such as who could later be freed, handed in to the Executive Power, subjected to a military or a civilian trial, or killed.

The Court also found that the policy was executed in a decentralized fashion, but that the high command had maintained a high level of involvement through supervision and through specific orders. The Court discussed extensively the legal theory under which each commander was considered a perpetrator of each crime, punishable in the same way as the material author. With a profusion of legal and doctrinal citations, the Court explained that the defendants had been "in control" of the action itself, and then spent several paragraphs explaining the way this control was manifested as shown by the evidence.

The decision addressed each of the arguments offered by the defense, even those of such a political and ideological nature that they were almost unmanageable in legal terms. For example, some arguments had proposed that the events under consideration constituted a war and that war has no laws; the acts of war, therefore, were not justiciable, and the acts of the victors were especially non-justiciable. Other justifications offered by the defense were: "a state of necessity" (the need to commit a lesser evil to avoid a greater harm); "compliance with a legal duty" (claiming that they acted under an order previously decreed by the constitutional government); and "self defense" (understood as the defense of society from attack). The Court meticulously disposed of each of these arguments.

General Videla was found guilty of 16 counts of homicide aggravated by *alevosia* (committed after rendering the victim defenseless); 50 counts of homicide aggravated by the assistance of three or more persons; 306 counts of false arrest aggravated by threats and violence; 93 counts of torture; 4 counts of torture followed by death; and 26 counts of robbery. He was sentenced to life imprisonment, absolute and perpetual disqualification from holding public office and loss of military rank. He was, however, acquitted on hundreds of other counts involving similar crimes.

Admiral Massera was also sentenced to life imprisonment and other accessory sanctions for 3 aggravated homicides; 69 unlawful deprivations of freedom aggravated by violence and threats; 12 counts of torture; and 7 counts of robbery. Brigadier Agosti, however, was sentenced to just four and a half years in prison, because he was found guilty of only 8 counts of torture and 3 of robbery. General Viola received a sentence of 17 years because he was found responsible for 86 counts of aggravated unlawful deprivation of freedom (false arrest); 11 counts of torture; and 3 of robbery. Admiral Lambruschini, who succeeded Massera in the high command of the Navy, was sentenced to

eight years in prison for 35 deprivations of freedom and 10 cases of torture. The Air Force commander of the second Junta, Brig. Omar Graffigna, was acquitted, as were all three members of the third Junta: General Leopoldo Galtieri, Admiral Jorge Anaya and Brigadier Basilio Lami Dozo. In *dicta*, however, the Court made it clear that those acquittals were without prejudice to the prosecution of the defendants "for criminal acts committed while performing military tasks in a function other than as commanders-in-chief of the respective armed force." Galtieri, for example, still faces prosecution for his role as Commander of the Second and First Army Corps, in successive periods.

The Court apparently considered that the Air Force had been a relatively reluctant participant in the repression, mostly engaged in repression in the western suburbs of Buenos Aires, where it ran a small clandestine detention center known as the Sere Mansion. No deaths were known to have taken place there, and the Court also found that Air Force activities in the early years of the military regime were mostly at the direction of and under the supervision of the First Army Corps.

In *dicta*, the Court referred tangentially to the issue of "due obedience." High government officials had expressed hopes, both in public and in private, that the sentences in these cases would provide a "Solution" for the question of trials against subordinates and the application of the "due obedience" clause. Having found that the defendants issued orders that included the commission of atrocious crimes, the Court also said that in the course of the trial it had obtained evidence linking several members of the armed forces to specific crimes. In a paragraph that would later be cited repeatedly as "Item 30" of the sentence, the Court decided, "pursuant to our legal duties to report criminal offenses," to transmit that evidence to the Supreme Council of the Armed Forces so that prosecutions could be instituted against "superior officers who were in command of the areas and sub-areas of defense during the campaign against subversion and against all those who had operational responsibility in the actions." This suggested that, if a defendant had some degree of decision-making power, either at the local or regional level, the "due obedience" clause could not benefit him.

The sentence was received in Argentina and world-wide with as much interest as the long hearings that preceded it. Despite the surprise acquittals of four of the defendants, and the relative leniency with the Air Force officers, the public recognized that a significant landmark had been reached. The

democratic institutions of a country had been able to deal with egregious abuses of the recent past with the dignity and majesty of a court of law; had subjected men who only a few years earlier had been all-powerful, to the treatment that suspected criminals receive in a civilized society; and had conducted these difficult proceedings with scrupulous respect for Argentine law and for international standards of due process. In the process, the judiciary had not only asserted its independent role -- in and of itself a long step toward establishing the rule of law -- but had made a major contribution to the understanding of the unspeakable tragedy of the "dirty war." The CONADEP report and the earlier statements by human rights organizations were now validated by the authority of a court of law that made its findings through an adversarial proceeding.

The defendants exercised their right to appeal to the Supreme Court on factual, statutory and constitutional grounds. The prosecutors also appealed, insisting on their theory that the members of the Juntas should bear joint responsibility, and seeking a conviction for those acquitted because of insufficient evidence. In mid-1986 the prosecutor before the Supreme Court (*Procurador General de la Nación*), Juan Octavio Gauna, submitted his brief in support of the prosecutor's appeal. His line of argument was completely consistent with that of Strassera, and he urged conviction of all nine defendants. This was particularly significant because of all the participants in this drama, Gauna was the only one who was not a career magistrate, but an Alfonsín political appointee; and because he was expected to favor a more lenient attitude, in accordance with the government's interest in avoiding clashes with the military.

In December 1986, the Supreme Court issued its ruling. It again disposed of all questions of unconstitutionality and confirmed the Court of Appeals' decision in all significant respects, including the controversial "Item 30."

VIII. THE OTHER TRIALS

The completion of the trial against the commanders-in-chief had the immediate effect of turning the public's attention to the 2,000 or more additional criminal complaints filed by private parties for human rights violations during the "dirty war." The Supreme Council of the Armed Forces had succeeded in asserting jurisdiction over all of them, and at the same time had put a lid on the investigations. Military investigative judges (*jueces de instrucción militar*) had been commissioned in 1984 to undertake certain investigatory steps, such as deposing witnesses, but even so each case was moving at a snail's pace, if at all. The Supreme Council had acted diligently only to nullify arrest warrants issued by civilian judges in some notorious cases.

Two years after President Alfonsín's inauguration, only a handful of officers were in prison, though literally hundreds were facing prosecution. Generals Ramón Camps and Luciano B. Menéndez, and Admiral Rubén J. Chamorro were in prison on orders of Alfonsín himself, acting in his role as commander-in-chief. Other notorious defendants such as Navy Captains Alfredo Astiz and Jorge Acosta, Colonel Roberto Roauldes and a host of others, had succeeded in remaining free pending charges, without bond, and in most cases still on active duty.

The complaints were consolidated in major cases that included dozens of individual counts of kidnapping, torture, murder, theft and other crimes. Each case also included multiple defendants. The Supreme Council, with the acquiescence of the appellate courts, had joined together all complaints related to a certain security zone or territorial jurisdiction, or a major repressive agency. Some of the most important cases are described in the following paragraphs.

A. Astiz

Navy Captain Alfredo Astiz was the sole named defendant in the case of the kidnapping and murder of a 17-year-old Swedish woman, Dagmar Hagelin. This case was not joined with the rest of the cases attributed to the Navy in the area of Buenos Aires, probably because the Supreme Council had conducted secret proceedings about it in 1981. Dagmar Hagelin was captured as she approached a house in the suburbs of Buenos Aires, in 1976, that had been taken over by Navy operatives who were awaiting other visitors. Dagmar

was going to visit a friend of her mother's, Norma Susana Burgos, who had recently had a baby, and whose husband, well-known Montonero leader Carlos Caride, had recently died in a shoot-out with police. When Dagmar was ordered to stop, she attempted to run away from the house. According to witnesses, Astiz knelt on the sidewalk and fired his pistol, wounding Dagmar in the head. His group then commandeered a taxi, placed Dagmar in the trunk, and took her away. Over the next several days, she was seen alive and conscious in the concentration camp at the officer's club of the Navy Mechanical School (ESMA) in Buenos Aires. Norma Susana Burgos saw her there, and witnessed Astiz telling her that he had shot at her thinking she was someone else. A few days later, Dagmar was taken away, never to be seen again.

From the first day, Dagmar's father, a Swedish national and long-time resident of South America, pursued steps to find her whereabouts. From the beginning, he had obtained full cooperation from the Swedish Embassy in Buenos Aires. Argentine authorities consistently refused to acknowledge Dagmar's arrest. When Astiz was captured by the British after his surrender in the South Georgia islands (at the beginning of the Falklands/Malvinas conflict), Sweden and France requested his extradition (Astiz was also responsible for the kidnapping of two French nuns, whose case is described later in this report). His British captors refused this request and returned Astiz to Argentina. At the outset of the Alfonsín administration, Mr. Hagelin initiated a criminal complaint in the federal courts, with the open support of the Swedish government. As stated above, when the civilian judge ordered Astiz's arrest, the Supreme Council frantically demanded jurisdiction over the case. In the meantime, the high command of the Navy met for several hours and informed the government of its interest in preventing Astiz's arrest, arguing that his fellow officers were threatening a revolt. The case was assigned to the Supreme Council, and the arrest warrant was quashed.

A few months later, the Supreme Council acquitted Astiz in the case of Dagmar Hagelin, one of only two in which the Supreme Council ever reached a final decision. To the astonishment of Mr. Hagelin, the Supreme Council applied the principle of *res judicata*, stating that Astiz had been investigated and cleared back in 1981. That proceeding, if it ever took place, had been secret and with no participation by the family. The case went on appeal to the Federal Court of Appeals for the city of Buenos Aires (the same court that was trying the commanders-in-chief). Astiz created complications in the procedures

by refusing to subject himself to identification in a line-up of prisoners, and when ordered to, by appearing in Navy uniform. The Federal Court nevertheless proceeded, voiding the verdict of the Supreme Council and retrying the case. In the end, however, Astiz was acquitted on December 5, 1986, on statute of limitations grounds. Dagmar Hagelin's body had never been found, and the Court refused to infer a murder. Even if Astiz had been involved in her capture, there was no evidence linking him to her removal from ESMA, presumably to be killed. The Court therefore tried Astiz for illegal deprivation of freedom (false arrest), aggravated by violence and threats, but found that a term equivalent to the maximum expected sentence had passed, and the case was affected by the statute of limitations. The Court refused to consider the term tolled during the years of the dictatorship when no good faith prosecutions of military officers for human rights abuses were possible.

Astiz was also accused of infiltrating in late 1977 a group of relatives of the disappeared, later known as the Mothers of Plaza de Mayo, posing as the brother of a disappeared person. After gaining the trust of the relatives, including that of Sister Alice Domon, a French missionary nun who was assisting the group, he proposed to publish a paid advertisement demanding information on the whereabouts of the missing. The ad was eventually published and his assumed name, Gustavo Niño, figured among the signers. In order to discuss the text, a meeting was convened at the Church of the Holy Cross, in Buenos Aires, in early December. Navy operatives raided the church and arrested twelve persons, including Sister Alice Domon. In related operations, the leader of the group, Azucena Villaflor de De Vincenti, was arrested near her house in a Buenos Aires suburb a few days earlier, and another French nun, 54-year-old Leonie Duquet, was arrested at her home where she lived with Sister Alice. All of them were seen alive at ESMA by survivors of that camp who said that Alice Domon expressed fear that the "young blond man" (Astiz) who had endeared himself to the group might have been captured as well. Relatives of the disappeared, and their friends, thought at the time that it was far more dangerous for young persons to be involved in their activities than for themselves. A few days later, a United States diplomat heard a Navy officer, at a reception, refer to the French sisters as "the flying nuns," in grim allusion to the fact that they were thrown from airplanes to the sea, the method favored at ESMA for disposing of the disappeared.

The case of the disappeared French nuns was consolidated with the ESMA case. When charges were dropped against Astiz, in June 1987, by application

of the Due Obedience Law, the lawyer who represented the French government in the case published a short paid advertisement simply stating that fact. Argentina's major daily, *Clarín*, refused to run the ad.

B. ESMA

Multiple accusations of kidnapping, murder, torture and theft centered around the ESMA camp, Admiral Massera's contribution to the "dirty war." It is estimated that approximately 5,000 *desaparecidos* were held in that clandestine detention center between 1976 and 1979. Though there was some coordination with the First Army Corps, the camp was run by a "task force" put together by Massera, that included Admiral Chamorro as the head of the school, and some twenty or thirty Navy officers, headed at different times by Captains Jorge Raúl Vildoza, Jorge Acosta and Luis D'Imperio. The group also included non-commissioned officers and members of the police and other security forces on special assignment. At the beginning, prisoners were held for relatively short terms, under terrible conditions, and eliminated after they had yielded information under torture. Towards late 1976, however, Acosta began implementing a plan to keep alive a selected group of prisoners, to be used not only in providing intelligence to their captors, but also as political operatives to assist Massera in the ambitions he was developing to take over the military government as a populist leader. In that context, the task force also conducted a series of covert operations abroad including a *Proyecto Piloto París*, in which Navy officers, under diplomatic cover, infiltrated the exile community and spread disinformation aimed at the European public. This project eventually led the task force to kidnap and murder an Argentine diplomat, Elena Holmberg, who had returned to Buenos Aires to complain to her superiors about it. In the end, approximately 70 survivors were released. Some of them continue even today to work for the Navy or for their captors; but a number of others, after living in exile for some years, have contributed important information about ESMA and have even testified as witnesses before the Sabato commission and Argentine courts.

The ESMA case was also taken over by the Supreme Council of the Armed Forces, and paralyzed by that body until late 1986 when the Federal Court of Appeals, after a series of extensions granted to the military court, assumed jurisdiction. On February 19, 1987, the Court asked the Ministry of Defense to order the appearance of nineteen Naval and Coast Guard officers, six of whom were still on active duty. The prosecutor had asked for the arraignment of

thirty-two officers. The nineteen were ordered to be present at hearings scheduled for February 25 through 27. In the next few days, the Navy high command attempted to prevent their appearance by threatening the government with possible revolts by naval units. The Court and the executive branch held firm, and when the first hearings failed because the Naval officers did not appear, the Court ordered their dismissal from the force and their arrest by police. The high command then brought the first six officers, all of them admirals, to the Palace of Justice, after working hours. They spent the night in the detention facility of the courthouse, and in the morning they attended their hearings.

Public hearings were about to start in the ESMA case in mid-1987, but the Due Obedience Law has forced the Court to dismiss charges against Acosta, Astiz, Vildoza, D'Imperio and the majority of the defendants. The officers in the task force that ran the day-to-day operations of the ESMA were neither chiefs of security areas or sub-areas, nor chiefs of police, and therefore they were all amnestied by the June 5 law.

C. General Camps

A separate case was developed with respect to the actions conducted by the Police of the Province of Buenos Aires, Argentina's largest security force. This force has long had intelligence and political affairs units, and participated in the "dirty war" mostly under the direction of the First Army Corps. Nonetheless, because of its importance, it retained considerable autonomy. High-ranking Army officers were appointed chiefs and sub-chiefs of police, and they made the force play a decisive role in the conduct of the "dirty war." The first chief was General Ramón J. Camps, succeeded later by General Pablo Ovidio Ricchieri. Under their direction, the Police ran a number of clandestine detention centers, principally in La Plata and its environs, and in the suburbs of Buenos Aires. Most of those places were identified and visited by the Sabato Commission, with the assistance of survivors.

Among the notorious cases handled by General Camps was the clandestine arrest and torture of newspaper publisher Jacobo Timerman. In response to Timerman's international best-seller (*Prisoner Without a Name, Cell Without a Number*, Alfred A. Knopf, New York, 1981), Camps wrote his own book defending his actions (*Caso Timerman: Punto Final Tribuna Abierta*, Buenos Aires, 1982). Other well-known cases attributed to Camps were the disappearance of the Miralles family, whose head had been a minister in the

provincial cabinet during the Peronist government; and the clandestine arrest and torture of Rubén Papaleo, a well-known television personality. Camps was also responsible for the abduction of children arrested with their parents, and their secret delivery to other families, a practice he defended on the ground that the children had to be raised without hatred toward the Army.

General Camps made a series of public statements before and after President Alfonsín's inauguration, defending the methods of the "dirty war" and accusing the democratic government of being a part of "Marxist conspiracy." This led Alfonsín to order his arrest. Camps has been in detention at a military facility since early 1984, but that has not prevented him from submitting frequent statements to the press. When the *Camps* case came to trial, he publicly refused to recognize the authority of the civilian courts, citing the example of Xavier Vallat, "cuirassier of France." Mr. Vallat had been the commissar for Jewish affairs during the occupation of France, and had refused to recognize the court that tried him in 1945. As in Argentina in the 1970s, the force that he led had combined political repression with graft and corruption.

Camps was the subject of a jurisdictional dispute between the Courts of Appeal for La Plata and Buenos Aires, each stating that the other should take it over from the Supreme Council. The Supreme Court ruled that the Buenos Aires court should hear it; though the headquarters of the Provincial Police were in La Plata, the Court found that the anti-subversive operations were conducted under the supervision of the First Army Corps, or Security Area I, headquartered in Buenos Aires. Still, for practical reasons, *Camps* was tried separately from the mammoth *First Army Corps* case, also known as *Causa 450*.

Camps came to trial in the second half of 1986. On December 2, 1986, Camps was sentenced to 25 years in prison, and Ricchieri to 14. The other co-defendants were police officers: *comisario* Miguel Etchecolatz was sentenced to 23 years in prison; police doctor Jorge Berges to 6 years; and corporal Norberto Cozzani to 4 years. *Comisarios* Luis Vides and Alberto Rousse were acquitted. The Court specifically refused to apply the "due obedience" clause of Law 23049, citing the Code of Military Justice, the international laws of war and Catholic Church teachings in stating that military discipline does not create the duty to obey illegal orders. The Court did, however, temper the sanctions to be imposed on the grounds that the special circumstances reduced the sphere for self-determination. Those circumstances were the terrorist aggression, the usurpation of power by illegal governments, the intertwining of

a sense of duty with the defendants' own beliefs, and the general perception of the situation as an element in a revolutionary war in the context of the East-West conflict. These mitigating factors determined the relatively light sentences for some defendants, as Ricchieri was found guilty of twenty counts of torture; Dr. Berges of two; and Cozzani of four.

By application of the Due Obedience Law, in June 1987, the sentences against Etchecolatz, Berges and Cozzani were vacated and they were immediately released. Presumably they will recover their rank in the police and go back to active duty. Camps and Ricchieri are not protected by that law because they were chiefs of a security force.

D. Suárez Mason

Carlos Guillermos Suárez Mason was the Commander of the First Army Corps in the few months preceding the March 1976 military takeover, and as such participated in its preparation, as well as in the "order of battle" that was secretly drawn by Videla, Viola, Massera and others as the blueprint for their campaign against subversion. Suárez Mason remained at the command post of the First Army Corps after the *coup* and until January 1980. After his retirement, he was chairman of the state oil company, *Yacimientos Petrolíferos Fiscales* (YPF), Argentina's largest enterprise, where he is said to have made millions for himself in illegal dealings with foreign and domestic companies.

The First Army Corps has jurisdiction over the capital city, over most of the Province of Buenos Aires and over the Province of La Pampa. During the "dirty war," this same region was designated as Security Zone (or Area) I, and Suárez Mason was its chief. He had responsibility over many concentration camps in the city of Buenos Aires and its suburbs, in La Plata, Mar del Plata and in smaller cities throughout the heavily populated area. He oversaw the actions of many task forces formed by Army intelligence officers, civilian operatives and personnel from the Federal Police, the Provincial Police, the Penitentiary System, the Border Patrol (*Gendarmería*) and the Coast Guard (*Prefectura Naval*). In addition, he was responsible for coordinating the activities of the other forces in the territory, most notably the Navy's clandestine detention center at ESMA and the Air Force's covert operations in the western suburbs of Buenos Aires, centered around the Air Force base in Morón. Several prominent leaders of the military dictatorship served under him as seconds-in-command of the First Army Corps.

Among the leaders of the military dictatorship, Suárez Mason was perhaps

the most outspoken in espousing a radically anti-democratic ideology. He is linked to *Cabildo*, a right-wing Catholic magazine that is outspokenly anti-semitic, and in 1980 he presided over a world-wide assembly of the World Anti-Communist League, which was held in Buenos Aires. (WACL is currently headed by General John Singlaub and has served as a principal vehicle for his efforts to support the Nicaraguan *contras*.)

In early 1984, while Alfonsín's bill to regulate the trials was still under discussion, a federal judge obtained Suárez Mason's deposition in the case of a young scientist taken away from his workplace in a federal research agency in late 1978. On the basis of that and other testimony, the judge issued a warrant for his arrest. Suárez Mason immediately left the country, saying at the airport that he would not be a scapegoat. He is the only officer known to have left the country who refused to return. The case was then taken over by the Supreme Council of the Armed Forces, which ordered Suárez Mason's appearance before it. In the course of a few weeks, he was stripped of rank and expelled from the force for failing to show up, apparently a decision by his comrades-in-arms to punish him for breaking an unwritten code of conduct with respect to the prosecutions.

In 1985, the government of President Alfonsín briefly declared a state of siege to deal with bomb attacks and threats designed to stir trouble in connection with the November 1985 mid-term elections. The government issued a warrant for the administrative arrest of twelve individuals alleged to be involved in a conspiracy; one of them was Suárez Mason. Though the government admitted not to possess evidence that would stand up in court regarding this conspiracy, a request was made to Interpol to arrest Suárez Mason on the charges pending before the Supreme Council. Suárez Mason remained at large and lived in secrecy for almost three years, during which he was said to be in Miami. Reputedly, he was involved in: support for the *contras*; drug traffic; major oil dealings in Venezuela; and conspiring to overthrow the democratic government of Bolivia.

He was finally captured in Foster City, California, in January 1987 and, at this writing, is detained in the San Francisco County Jail awaiting extradition to Argentina on numerous counts of murder, torture and illegal detention. It appears that he spent all of the three years since he left Argentina in the United States, living at different times in Miami, New York and San Francisco. Allegations that he might have been helped to avoid detection by high officials in the Reagan Administration have not yet been thoroughly explored. In the

meantime, six Argentine victims of the dirty war who are presently in the United States have filed civil suits for damages against him in federal courts of California.

The criminal case for which Suárez Mason is sought is one of the largest and most complicated of the prosecutions still under way in Argentina. Many defendants are named in it, including Generals José Montes and Jorge Olivera Rovere, who held several important posts in the high command of the Army during those years. One of the most notorious defendants is Colonel Roberto Roualdes, who as an officer on the staff of the First Army Corps had executive responsibility for coordinating clandestine and overt repressive activities in the capital and the surrounding areas. Testimonies of survivors of concentration camps run by the First Army Corps mention that Suárez Mason was seen in them on several occasions. The charges also include the murder of prisoners taken away from a penitentiary in La Plata, at a time when the prisoners were legally acknowledged as being in detention. The prison authorities released the prisoners to their murderers on written orders from the First Army Corps.

After years of delays by the Supreme Council, the Federal Court of Appeals for Buenos Aires took over the case, known as *Causa 450*, in late 1986. On December 5, the Court ordered the appearance as defendants of Generals Montes, Olivera Rovere, Andrés Ferrero, Juan B. Sasiaiñ and Adolfo Sigwald, and Colonels Roque Presti and Guillermo Minicucci. Minicucci, who had been in charge of two infamous clandestine detention centers in Buenos Aires, was still on active duty. These appearances never took place because the Supreme Court requested the record to hear a last-minute interlocutory appeal (*recurso de queja*) filed by a subordinate co-defendant in the case, police agent Juan Antonio Del Cerro, aka "Colores." In the next several days, President Alfonsín applied intense pressure to obtain passage of the law known as *punto final*.

On December 31, 1986, Judge Luis Fernando Niño, acting within the time constraints of that new law, ordered the prosecution of Suárez Mason, Montes and Roualdes for the murder of student Mario Lerner in March 1977, a case for which Videla had been found guilty in the prosecution against the commanders-in-chief. In compliance with Item 30 of that sentence, Judge Niño was ordering the prosecution of the chief of the security area, of the chief of sub-area 1 and of the chief of sub-area "Capital."

As a result of the law on "due obedience," most of the lower-ranking co-defendants in this case have been released from prison or charges against them

have been dropped. They include Colonels Minicucci and Presti. Still facing prosecution, because they occupied positions of command, are Suárez Mason, Montes, Olivera Rovere, Saisaiñ (who was later chief of the Federal Police), Sigwald and Roualdes.

E. Menéndez

Luciano Benjamín Menéndez was the Commander of the Third Army Corps during the repression. This division of the Argentine Army is based in Córdoba, but has the largest territorial jurisdiction, as it includes all of the north and northwest, and the important western province of Mendoza. Menéndez retired in September 1979 after General Viola suppressed an attempt at a revolt that he staged to protest compliance with a Supreme Court order to allow Jacobo Timerman to leave prison to go into exile. In the weeks preceding this episode, Menéndez had publicly complained about the activities in Argentina of the Inter-American Commission of Human Rights of the Organization of American States, an international body that a year later published a devastating report on human rights in Argentina.

Under the leadership of Menéndez, disappearances, torture and murders of prisoners took place in important population centers such as Tucumán, Córdoba and Mendoza. Falling under the jurisdiction of Menéndez were the murders of Catholic priests in El Chamical, La Rioja, and of Bishop Enrique Angelelli, as he was returning from their funeral. Clandestine detention centers were operated throughout the region, the best known being "La Perla" and "La Rivera" near the city of Córdoba; "Famaillá" in Tucumán; and several others. Murders of prisoners held in penitentiaries, where their detention was known to their families and the public, was more widespread under Menéndez than in any other region. In only three months in 1976, 39 inmates from the penitentiary in Córdoba were taken away and murdered; at least two of them were killed in the prison yard, in front of their fellow inmates, following unspeakable torture. A similar mass murder of prison inmates took place in 1976 in the northern province of Salta where some of the victims were members of the family of the previous democratically-elected governor. The Third Army Corps was responsible for thousands of disappearances, including those of prominent Argentines such as Mauricio López, an educator and leader of the World Council of Churches; and Hugo Vaca Narvaja, former governor of Córdoba and Minister of Interior under President Arturo Frondizi. A son of Vaca's by the same name was later one of the inmates killed at the Córdoba

penitentiary. The attacks on the Vaca Narvaja family stem from the fact that another son, Fernando, was one of the leaders of the Montonero organization. Reprisals against families of well-known guerrillas in the jurisdiction of the Third Army Corps included the murders of all members of the Pujadas family except one child (Mariano Pujadas, a Montonero leader, had been murdered in 1972 in the Naval base at Trelew, Chubut) and the murder of the father of Montonero founder Carlos Capuano Martínez, who had died in a shootout with police in 1973.

In the first few weeks of the Alfonsín administration, Menéndez repeatedly defied his accusers by making public statements, appearing before the press and cultivating friendships with politicians, including some in the Córdoba branch of the governing party. At the same time, courts in Córdoba were receiving criminal complaints against him and his subordinates. In August 1984, as he was leaving a television station in Buenos Aires after participating in a conservative talk show, a crowd of Mothers of Plaza de Mayo and other shouted epithets against him. He reacted by pulling a large knife from his clothes and pursuing the demonstrators. A photograph in which his bodyguards are trying to restrain him was published in most major newspapers of the world; in Paris, *Liberation* captioned it: "I will kill the first one who calls me a murderer." In response to this display, Alfonsín ordered his arrest to face the multitude of charges emanating from his role in the Third Army Corps.

By then, the Supreme Council of the Armed Forces had taken over the cases, and accumulated them in several files. The court with appellate jurisdiction over this trial was the Federal Court of Appeals for Córdoba, whose members had been magistrates in Córdoba during Menéndez's reign. Unlike its counterpart in Buenos Aires, the Córdoba court showed no interest in the *avocamiento*, and for two and a half years gave the Supreme Council successive and prolonged extensions of the 180-day term prescribed by Congress for the completion of each prosecution and trial. It was not until January 1987, right after the Punto Final Law was enacted, that the Court finally took over the case. In the meantime, the Supreme Council had acquitted Menéndez of one of the many charges against him, the second of only two final decisions (both acquittals) that the Supreme Council rendered in its entire exercise of the tasks assigned to it by Law 23049. Menéndez is still in prison at this writing, and as chief of Security Area No. 3, he is not entitled to the benefit of the Due Obedience Law. The Federal Court of Appeals is expected

to start public hearings in the trial before the end of 1987.

F. Special Cases

In the three-and-a-half years since the advent of democratic government, several court proceedings -- and the reactions of those affected by them -- shook public opinion in Argentina and seemed to threaten the stability of the democratic order. Except for those related to Lt. Astiz, the rest involved officers who had served under Menéndez. A warrant of arrest against Captains Gustavo Adolfo Alsina and Enrique Mones Ruiz for the murder of prisoners in 1976 at the Córdoba Penitentiary caused the first stirrings of military unrest on July 4, 1984, the same night that television viewers were glued to their sets watching CONADEP'S program "Nunca Más." The Supreme Council obtained jurisdiction over the case and quashed the warrant. Thereafter, Alsina and Mones Ruiz were never arrested, nor summoned to appear before a court. The Due Obedience Law has resulted in the dropping of the charges against them.

In 1986, the Federal Court of Appeals for Mendoza assumed jurisdiction from the Supreme Council over a case dealing with the death, in September 1976, of Graciela Fiocchetti, a 21-year-old student shot at point blank in a desolate place in San Luis, after
being forced to kneel down with her face against the floor. Almost ten years to the date after the murder, the Federal Court ordered the arrest of Lt. Cnl. Carlos Esteban Pla, who was suspected of being the actual perpetrator, and who had been assistant chief of police for the Province of San Luis as a captain in 1976.

The Court's order was based on the testimony of a police agent, Jorge Hugo Velázquez, who had driven a car to arrest Ms. Fiocchetti, had seen her while she was horribly tortured and raped with blunt objects, and had driven the car to the countryside. He described the scene in which Pla shot her and other prisoners who were also kneeling down. A team of forensic anthropologists exhumed the body and verified that her skull had been penetrated by a pistol bullet, shot at close range and following a path consistent with the position described by the driver.

Pla, who in 1986 was serving at the offices of the Chief of Staff of the Army in Buenos Aires, locked himself in his office and vowed to resist arrest with his weapon. Vice President Martínez, Minister of Defense Jaunarena, and Under Secretary of Justice Ideler Tonelli succeeded in their behind-the-scenes

requests for delays. In the meantime, the Army produced two officers who testified that, contrary to Velázquez's assertions linking them to the events, they were serving elsewhere at the time. Without verifying their accounts, the Court reversed itself on the arrest warrant. Pla remained a suspect in the case until the Due Obedience Law resulted in his exoneration.

The principal interrogator at the clandestine detention center of "La Perla" was Captain Ernesto Guillermo Barreiro. In 1987, now as a major, Barreiro was serving at the Fourteenth Airborne Infantry Regiment in Córdoba. Since 1984 he had faced charges for his role in torturing prisoners. When the Federal Court of Córdoba finally ordered his arrest on April 15, 1987, he sought refuge in his army unit, whose chief announced that he would not deliver Barreiro. General Antonino Fichera, Commander of the Third Army Corps, ordered his arrest, however, but no one obeyed the order. In solidarity with Barreiro, a number of officers trained as "commandos" (special forces) took over the School of Infantry at Campo de Mayo, the Army's largest garrison, in the suburbs of Buenos Aires. Thus the Easter crisis began. A few days after its end, Barreiro, who had sneaked away from his regiment and was declared at large, turned himself in to the Court. In June he was released by application of the Due Obedience Law.

G. Missing Children

One of the most tragic forms that repression adopted in Argentina was the abduction of children with their disappeared parents; or their abduction after they were born in captivity of mothers held clandestinely, and their irregular adoption by families with close ties to the military.

This is also an area where the record of President Alfonsín's government in seeking redress is considerably better than in dealing with some other aspects of repression. The Grandmothers of Plaza de Mayo, a human rights organization dedicated to searching for nearly 180 missing children and their return to their lawful families, has enjoyed a large measure of support from the government and its agencies. With that assistance, and employing advanced scientific techniques provided by U.S. volunteer professionals recruited by the American Association for the Advancement of Science, the Grandmothers have accomplished the near-incredible feat of identifying 41 minors as children of disappeared parents, and have obtained court orders in the majority of the cases returning them to their grandparents. In some cases, these children have been found living with the families of security agents who participated in the

disappearance and murder of their parents. In two cases, the Grandmothers' search established that the children had been murdered with their parents, and buried under assumed names. CONADEP testimony showed that some children were taken from their mothers by Caesarean section, and adopted or sold by the murderers while their mothers were left to bleed to death.

The particular crime involved in the abduction of these children (falsifying the identity and family relationship of a person) is specifically exempt from the benefits of the Due Obedience Law, as are rape and theft, presumably because these three crimes, though repeated on countless occasions, were not deemed to have been included in the orders of the high command, as were torture, murder and illegal arrest. Accordingly, the court cases leading to the return of children to their families, and the corresponding criminal charges, are continuing.

IX. DEVELOPMENTS IN THE LAW

A. The "Instructions"

Even before the trial of the commanders-in-chief began, high government officials were expressing their concern over the fact that more than 2,000 complaints were pending against other members of the armed and security forces. In spite of the inactivity of the military court, it was known that by early 1985 up to 650 members of those forces were named defendants. The number could obviously grow if, in the context of the judicial investigations, more names came to light. On the other hand, the number of those against whom there was enough evidence to prosecute or to convict was recognized to be much lower. There were no official figures, but it was estimated that about one third of the named defendants were still on active duty.

The high command was especially concerned about those on active duty, and -- as stated earlier -- flexed its muscles every time an officer on active duty came close to being indicted. The military leaders represented to the government that these younger officers had become a symbol for their comrades-in-arms, and that the latter threatened disobedience or revolt if the accused were "handed over" to the courts.

President Alfonsín's first Minister of Defense, Raúl Borras, was one of the first to voice concern over the remaining trials, and he coined the phrase *punto final* (Spanish for "full stop," or "period" in punctuation) for legislation which he advocated that would place a time limit on the prosecutions. The argument was that the longer the trials dragged on, the more isolated and aggrieved the armed forces would feel, thus making coexistence between them and the democratic government more difficult and strained. "The country cannot afford to remain *in aeternum* with an open wound. We have to put a full-stop to it," Borras said on April 2, 1985. By then, other close advisers to Alfonsín were suggesting an amnesty law, which the President refused to consider.

Reactions to Borra's suggestion were harsh, not only among human rights organizations and most of the opposition, but even within the government party and the press. In the next five months, however, the country's attention was focused on the public hearings in the trial against the commanders-in-chief. After their conviction in December 1985, new voices were heard calling for a *punto final*. In spite of rumors and proposals, however, in early 1986 the government seemed to be firmly rejecting any notion to alter the original scheme devised to deal with the crimes of the "dirty war."

In April of that year, however, the country was surprised to hear that the Ministry of Defense had sent "instructions" to the military prosecutor regarding the application of the "due obedience" clause and other matters. The instructions were disguised as an administrative mechanism to bring together disparate cases and to speed up the process, but the main message was that the prosecutors should drop charges in those cases where "due obedience" was an exculpating factor. The instructions quoted Item 30 of the sentence against the commanders, though the authors of that sentence felt they were being misquoted. One of them, Justice Jorge Torlasco, resigned. Two other justices tendered their resignation but agreed to stay on after President Alfonsín assured them that there had been no intention to undermine the sentence of the Court.

In the meantime, public opposition to the *instrucciones* continued to rise. The human rights groups organized a highly successful demonstration, which was joined by large numbers of activists of the *Radical* party, and even by some of its most prominent leaders. Germán López, who had become Minister of Defense only a few weeks earlier (after the deaths of his two predecessors, Raúl Borras and Roque Carranza), resigned in conflict with his party, and defended the *instrucciones* as an expression of the political will of the government. He was replaced by Horacio Jaunarena, who had been the Assistant Secretary of Defense since Alfonsín took office, and was widely perceived as more sympathetic to the demands of the military.

On June 11, President Alfonsín made good on his promise to the justices of the Court of Appeals, and in a press conference he interpreted the instructions point by point, stating that they were not in contradiction with Item 30; that *res judicata* was not to be applied to those not yet subjected to justice; and that charges would not be dropped in the cases of atrocious and aberrant acts.[4] Still, the text of the instructions was not amended, and the instructions themselves were not withdrawn. As a result, the Supreme Council continued to interpret them in the original sense, and a few weeks later produced its only two final decisions, the acquittal of Alfredo Astiz in *Dagmar Hagelin* and the acquittal of Luciano B. Menéndez for the murder of María Amelia Inzaurralde, a teacher and member of the Communist Party.

This was a striking episode, but by no means the first time that the government resorted to what its critics have come to call the "double message." With the 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."

B. The Punto Final Law

The *instrucciones* were not much more than a political signal to the military, since the Supreme Council's decisions were going to be appealed to the civilian courts in any event. This meant that officers who were named in criminal complaints could expect to continue to have charges pending against them, and to have to answer them before a court of law in the following months. For that reason, the pressures on the government to find a solution continued to mount.

As discussed earlier in this report, in late 1986, the Federal Court of Appeals for Buenos Aires convicted General Camps and others, including low-ranking police agents, for crimes committed by the Police of the Province of Buenos Aires. Within weeks, it acquitted Astiz in the *Hagelin* case while making it clear that previous exonerations by military authorities did not have the effect of *res judicata*. The Court found Astiz responsible for the kidnapping of the 17-year-old girl, but refused to find that the statute of limitations tolled until 1983 because a *coup d'etat* was not a reason for tolling contemplated in the Penal Code. A few days earlier, the same Court had required the appearance of several well-known generals to be heard as named defendants in the case involving the First Army Corps.

Hours after these judicial actions, President Alfonsín submitted to Congress a bill for a Punto Final Law, though that name was not used. He then proceeded to force the issue so that the law could be voted on, and made certain that no significant dissidence was allowed within his party. Many prominent leaders of the party expressed disagreement, and Alfonsín held a series of meetings with them during December. In the middle of that month, the *Radical* party held a National Convention where the main topic was the proposed law. Party leaders known for their opposition to it were talked into defending it. Though President Alfonsín continued to insist that there were no military pressures, the final argument presented in favor of passage was *raison d'etat*, the need to preserve democracy. Several legislators voted yes, to uphold party discipline, though expressing disagreement. The President's lobbying was successful: in the Senate only one *Radical* abstained; in the House, three voted no and one was deliberately absent. The *Radical* majority was enough for approval in the House; in the Senate, the bill passed with the help of some

right-wing Peronists and conservative provincial parties.

Though the congressional leadership of the ruling party attempted to show that the armed forces were cooperating by "cleansing themselves," the Supreme Council continued to defy not only the judicial authorities but also the government itself. The law was promulgated by President Alfonsín on December 24, but the previous day, the Supreme Council dropped the charges against 15 admirals in the ESMA case, and in *dicta* stated its disagreement with the Court of Appeals conviction of Massera and Lambruschini. The Council said that there had been no kidnappings, no murders, no torture and no sexual abuse in secret detention centers, and that the commanders-in-chief had only issued legitimate orders.

The Punto Final Law attempted to curb the trials by creating extraordinary procedural standards. It stated that no new criminal complaints could be brought against anyone for crimes committed during the war against subversion after the expiration of a 60-day term following enactment. During that term, all complaints previously filed would be considered moot unless the courts had heard the defendants or attempted to hear them (a preliminary and necessary step in the criminal proceedings, short of indictment). Offenses related to the theft and irregular adoption of the children of the disappeared were exempt from the law.

By all accounts, the government expected that by February 22, 1987, when the 60 days were to expire, only some 30 to 40 members of the armed forces, mostly in retirement, would continue to face charges. But by shifting the burden to the courts to permit accused murderers and torturers to escape prosecution, the law backfired on the government. The human rights organizations worked frantically over the two summer months to file new charges where they had new information, or to submit further evidence in support of complaints previously filed. For their part, the courts made certain that they had compiled complete records before letting charges of serious crimes be dropped; and in many cases, judges canceled vacations in order to complete the necessary steps. At the same time, the most important cases were taken over from the Supreme Council of the Armed Forces by the various federal courts of appeal. In some of those cases, terms were extended to allow for the time that had elapsed in interlocutory appeals and through other delays.

By the end of the 60-day term, high government officials were privately expressing concern that perhaps more than 100 officers would continue to face charges after the *punto final*. In fact, the number was three or four times

higher, though a comprehensive figure has never been published. More than 40 generals, 8 admirals and 8 brigadiers or commodores continued to face charges. They included two former presidents and two former commanders-in-chief of the Army.[5]

Though the law did not significantly improve relations between the government and the armed forces, it cost Alfonsín a considerable loss of credibility, not only for proposing it but for the adamant way in which he forced its acceptance and prevented dissent within his own party. The human rights groups had demonstrated against it in December 1986, and their march was joined by 55,000 to 80,000 persons, including many young *radicales*. Though the courts had kept open the most important cases, many Argentines were offended by the fact that a large number of officers responsible for egregious crimes, whose identities had not been known previously, were now beyond the reach of justice. Under Secretary of Justice Ideler Tonelli proclaimed that, after February 22, 1987, those not charged were "innocents forever." Only a few days later, General Olivera Rovere, in a statement to a court, attributed responsibility for many crimes to intelligence officers of the Army who were already beyond prosecution.

C. The Due Obedience Law

As noted above, the attempt to arrest Major Barreiro in Córdoba set in motion the events of Easter, in which many younger officers of the Army took over a military compound and demanded an amnesty law as well as the dismissal of all the generals on active duty at the time. The government reacted by calling the people to the streets and by obtaining a pledge from all significant sectors of civil society to defend democratic institutions. Hundreds of thousands of demonstrators assembled in Buenos Aires and in other cities during several days, and nearly 50,000 of them surrounded the military unit where the rebellious officers had lodged themselves, defying the soldiers to use their weapons against unarmed civilians.

On Easter Sunday, April 19, 1987, President Alfonsín announced that the rebellion had been put down, after he had paid a dramatic personal visit to the unit by helicopter and held a short conversation with Colonel Aldo Rico, who had abandoned his post in a northern unit to take over command of the rebellion. These events were widely reported worldwide. In keeping with the Argentine government's own triumphant view, news coverage tended to present the episode as a major victory of Alfonsín over the military.[6] In fact, it

soon became clear that Colonel Rico's stand had been at least partially successful. General Héctor Ríos Ereñú was dismissed as commander-in-chief of the armed forces, and the majority of the Army's generals went into retirement: some for supporting the rebellion, others for not being able to control it, and others because they retired automatically when a junior officer was promoted over them. As for the primary demand of the military rebels, President Alfonsín continues today to oppose an amnesty law for the crimes of the "dirty war," but in May he submitted to Congress a proposal that has the effect of an amnesty for a large number of potential defendants. It covers almost all of the crimes typically committed during the dirty war.

The Due Obedience Law was finally enacted on June 5, 1987, after a relatively short debate and cursory consideration by the relevant committees of Congress. As with the *punto final*, there were expressions of dissent and outrage, but resistance to the measure, particularly among *Radical* party legislators was weaker this time. The "Renovation" Peronists (that party's most important faction) led a vigorous yet constructive opposition to the bill (they had boycotted the sessions during debate of *punto final* and had been harshly criticized for it). As before, however, the smaller rightist factions of Peronism supported the majority, as did the scattered conservative representation in Congress, and the bill passed both houses by a comfortable margin. Although there were numerous expressions of dissent, public opinion in general also seemed to accept the result with the sort of fatalism with which the governing party proposed it. In his message announcing the bill, Alfonsín had stated that he did not like it.

The new law amends the "due obedience" clause already incorporated in Law 23049 of 1984. In the original version, courts were instructed to treat "due obedience" as a presumption of innocence indicating that defendants were acting in error about the legitimacy of the orders they had been given. That presumption was, in Argentine legal language, *juris tantum*, meaning that courts were allowed to receive evidence to overcome it. In the new law, the presumption becomes *juris et de jure*, i.e., irrebuttable. No exception is made in the new law for "atrocious and aberrant acts," as was the case in the previous law after the parliamentary revisions of the original bill.

The law exempts only three offenses: rape, theft and falsification of civil status, the crime by which the children of the disappeared were given false identities and given to other families. Torture, murder, arbitrary arrest and misrepresentations to judges are covered by the law. The measure submitted by

President Alfonsín was meant to benefit every one under the rank of colonel or its equivalent in the other forces. The House of Deputies approved that language, but the Joint Chiefs of Staff asked the government to extend the protection higher up the ranks, to cover many who are now generals. Congressman César Jaroslavsky, majority leader, vowed that "not even a comma" would be changed. Nonetheless, the senate version did satisfy the wishes of the high command, and the House eventually followed suit. As finally enacted, the law covers every one except those who were chiefs of security areas, or chiefs of security sub-areas, or chiefs of security forces, such as the police of a province or the Federal Police. This language benefits more defendants, but the government justified it by saying that function rather than rank was a more accurate representation of decision-making ability. At the same time, the language partially tracks Item 30 of the sentence against the commanders-in-chief.

Some courts initially refused to apply the law, declaring it unconstitutional. The Supreme Court, however, ruled on the issue rather quickly, on June 23, 1987, in the *Camps* case, which had been before it on appeal prior to passage of the law. Three of the justices ruled it constitutional, as within the powers of the legislative branch. Justice Jorge Bacque found it unconstitutional in his dissent, arguing that a declaration of innocence for specific individuals is a judicial, not a legislative, function. The fifth justice, Enrique Petracchi, issued no opinion on constitutionality, but voted for acquittal of Camps's co-defendants on the grounds that what Congress had enacted was, for all practical purposes, an amnesty law for specific individuals.

Simultaneously with passage of the law, prosecutors were instructed, under penalty of sanctions, to urge its application and to ask the courts to drop charges (*desprocesamiento*). After the Supreme Court ruling, the lower courts applied the law, though in some cases they expressed their disagreement. As a result, the defendants in the *Camps* case, other than Generals Camps and Ricchieri, were released. Astiz, Acosta and most of the defendants in the ESMA case had their prosecutions terminated. Barreiro, Pla, Mones Ruiz and Alsina, among hundreds of others, are free men and, presumably, they will continue their careers in the armed forces.

Prosecutions will continue against Suárez Mason, Sasiaiñ, Galtieri, Montes, Roualdes and others who exercised high responsibilities during the repression. It is estimated that 30 to 50 officers do not benefit from the Due Obedience Law, though it is hard to imagine that there will be sufficient

evidence to prosecute and convict all of them. At the same time, the armed forces, through their most authoritative spokesmen, have made it clear that their demands are not yet fully met. They expect to gain, at some future time, full vindication for their "war against subversion." Even Ríos Ereñú, who was forced out of office by his subordinates for not representing their interests aggressively enough, had made clear that this was his goal, though he advocated reaching it through compliance with civil authority. On May 5, 1986, in a speech to 300 army officers to explain the *instrucciones*, Ríos Ereñú ended on this note: "It will be left for the future, when time and space allow it, to see if we can vindicate our commanders [in-chief]."[7]

X. THE MILITARY AND DEMOCRATIC AUTHORITY

A. The Military

The Supreme Council consistently displayed contempt for the idea of prosecuting human rights abuses. In addition to delaying inordinately on all cases, it prejudged the outcome of the trial against the commanders-in-chief well before the investigation was completed, and insisted on its view that the orders were perfectly legitimate even after the civilian courts had convicted them. When the Supreme Council was stripped of jurisdiction to hear that case, in accordance with the applicable law, its members created an embarrassing problem for President Alfonsín by tendering their resignations *en masse*. They were replaced by nine other retired high-ranking officers of the three forces whose attitude towards this process turned out to be substantially the same. One of the senior legal advisors to the Supreme Council was an officer who in 1981, acting as military prosecutor, had ruled that there was no case for trial in the murder of student Mario Lerner, who had been shot at his house when he was unarmed. In his written opinion of that time, *Teniente de Navio* Juan Carlos Bonzon stated that "no murder has been committed, but instead a subversive victim [has died]...."[8]

At the time when the government was pushing the Punto Final Law, the Supreme Council also embarrassed it by dropping all charges against 15 admirals named in the ESMA case and refusing even to call in the notorious Astiz and Acosta for questioning. This provocation resulted in an instruction by President Alfonsín to the civilian prosecutors to formulate charges against all those who had command responsibilities.[9]

Other members of the armed forces, both in retirement and on active duty, obstructed the process in a variety of ways. Only a handful of respected officers, all of them in retirement, have decidedly sided with democracy, and openly supported the trials. These dissidents have been repeatedly sanctioned by the military authorities for their statements, however, and the government has not defended their right to express their opinions. On the other hand, officers on active duty have publicly criticized the government for pursuing these prosecutions. Some of them have been lightly punished, but most have gotten away with statements that constitute, at the least, breaches of military discipline.

In some instances, the armed forces have deliberately obstructed justice by protecting officers who refused to appear for court dates. Sometimes, judges

and government officials have had to confront potentially serious situations in insisting that court orders should be obeyed. The armed services also provided officers with legal advice and offers of legal assistance, but for the most part relied on political pressure to avoid trials. A favored tactic seems to have been to try to discredit and intimidate witnesses, particularly those who were survivors of concentration camps and had provided horrifying details about them. Trumped-up charges were filed against several of these witnesses, with the complicity of a few judges who remain sympathetic to the military. Though by and large these charges have not resulted in serious miscarriages of justice, they have almost certainly had a chilling effect on other potential witnesses.

The military can still enlist some elements in civilian society to do part of this dirty work for them. Taking advantage of the broad freedom of expression prevalent today in Argentina, an assortment of right-wing politicians and news media have contributed to this campaign against the trials, against the witnesses, against the human rights organizations and against the government itself. As this has been only partially balanced by the emergence of newspapers, magazines and radio programs that support democracy and the rule of law, a climate of fear and unease has been created. Most notably, the positions of the armed forces have been reinforced by the statements of some leaders of the Catholic Church who have repeatedly used code words, such as the need for "reconciliation," to oppose the trials. The conservative leadership of the Church (contrasting sharply with the role of the Church in neighboring Chile, where the institution has led the fight to protect human rights) has linked the investigations of the disappearances and the trials to their opposition to a divorce law (finally passed in June 1987) and to the spread of pornography as a result of the free expression permitted under democratic rule.

The consequences of this campaign against the trials were seen most dramatically at the time of the Easter rebellion. That revolt exposed a serious breakdown in the chain of command as it became clear that President Alfonsín could not marshall any troops to suppress the mutiny. That state of indiscipline seems to have continued, although the new commander-in-chief, General José Dante Caridi, is apparently attempting to restore his authority by taking up the demands of the younger officers. Similar expressions of contempt for civilian authority have continued after Easter, though without reaching critical stages. For example, on May 25, all officers were to swear to defend the Constitution (previously, the annual vows were made only to the flag and the fatherland). In the days leading up to the taking of the oath, junior officers in many different

units complained of this, some saying that they needed an explanation. When the day of the ceremony arrived, officers in some units had to be threatened with sanctions if they refused to swear to uphold the Constitution; three or four officers were actually expelled from the force for persisting in their defiance.

These episodes, like many others that could be discussed, illustrate the anti-democratic tendencies that persist in the officer corps. If anything, those tendencies appear to have become even more totalitarian and extreme than ten years ago, at least for the core of officers who staged the Easter rebellion. These are mostly members of the elite special forces, who as intelligence operatives played a large role in the "dirty war." Some of them have retained a certain prestige within the forces because their role in the Malvinas/Falklands conflict was less dishonorable than that of most of their colleagues. President Alfonsín himself said on Easter Sunday that some of the rebels were "heroes of the Malvinas." In the wake of the Easter crisis, their apparent success in pressing their demands has almost certainly earned them added prestige and influence among their comrades-in-arms.

B. Attitude of the Government

In the face of these pressures, the government of Raúl Alfonsín did stand up several times and assert democratic authority, at least more than civilian governments have done in Argentina since the 1950s. It is no small accomplishment to have forced the retirement of some 60 generals in the three-and-a-half years since President Alfonsín's inauguration. Although this was obviously facilitated by the fact that the armed forces are more discredited before the Argentine public than ever previously, as well as by the internal conflict within the armed forces, it has still been difficult to exercise such authority, taking into account that Argentina's traditional sources of economic and religious power remain sympathetic to the military and hostile to democracy.

The government's insistence on its scheme, that is, to punish those who gave orders but to exculpate those who carried them out, early on became a source of inconsistencies. For all the professed respect for the independence of the judiciary, there were numerous situations in which government officials attempted to exert pressure on judges and courts to obtain "political solutions" through the legal process. The authority of the magistrates was also undermined by efforts to limit their action through administrative or legislative channels.

The most striking example of this interference with the judicial system took place in early December 1986 when the Federal Court of Appeals for Buenos Aires issued an order for the appearance, as defendants, of five generals and two colonels, all of them prominent leaders of the military dictatorship, for their role in the abuses committed by the First Army Corps. The commander-in-chief immediately met with Minister of Defense Jaunarena and later with President Alfonsín, and threatened them with a request for retirement by all the generals on active duty, arguing that it would be impossible to control the upheaval in the ranks.

President Alfonsín's closest advisers visited a justice of the Supreme Court to seek a solution. Only three days earlier, on December 2, 1986, the Court of Appeals had rejected an interlocutory appeal to the Supreme Court by a subordinate co-defendant in the same case. The public defender was told by the Supreme Court, on Friday, December 5, that he had to take responsibility for the subordinate's defense because his private attorney had resigned, and that he had to submit a *recurso de queja* (a petition to the Supreme Court after a denial of the interlocutory appeal). Though he had at least five working days to file his motion, the public defender was instructed to do it the same day. Upon receipt of the motion, one Supreme Court justice ordered the whole record sent to the Supreme Court to review the *recurso de queja*. With that, the hearings scheduled for the generals and colonels were continued indefinitely. That same day, President Alfonsín announced he was submitting the *punto final* bill. The president of the Federal Court of Appeals, Guillermo Ledesma, one of the six magistrates who had tried the commanders-in-chief, resigned on the next working day.

In contrast, military officers on active duty made various and repeated statements against the trials and the investigations which were squarely at odds with the policies of their commander-in-chief, but were not reprimanded. In fact, dissenters in the armed forces, who have advocated acknowledgment of the crimes of the "dirty war" and subordination to democratic authority, have been harshly punished by their superiors -- in one case with expulsion from the force -- while the government has not intervened.

At its weakest point, during the Easter rebellion, the government seemed exceedingly tolerant with officers who engaged in gross abuses of discipline. As soon as the officers started their uprising, a federal judge initiated criminal proceedings against them for "rebellion." At his meeting with government officials, Colonel Rico insisted on immunity for every officer except himself.

Government advisors proposed that the case be considered a "mutiny," a lesser offense for which military courts should have exclusive jurisdiction. The rationale was that Rico and his men were saying publicly that they had no intention to overthrow the government, but were only protesting against the high command. As stated above, however, they were demanding the ouster of the generals and an amnesty. The penal code defines "rebellion" as an offense in which armed groups attempt to overthrow the government or to influence its decisions. Nonetheless, after the rebellion ended, the government brought the transfer of the case to the Supreme Council of the Armed Forces, the military court for peacetime. Rico was the only one arrested. He was confined to the officers' club of an army unit, where on May 25 (Argentina's national holiday) he received a visit by dozens of officers who sang the national anthem at his window.

Critics of the way the government has handled relations with the military -- both in the opposition and in the ruling party -- insist that the main problem has been the lack of a clear program for structural reform of the armed forces. At the beginning of President Alfonsín's term he took steps to reduce the military budget, to define clearly the role of each force (with more importance given to the Air Force as a result of the experience in the Falklands/Malvinas conflict) and to transfer large units further away from population centers. A national defense bill has been bogged down in Congress, however, and there is a widespread sense that the role of the military in a democracy has yet to be clearly defined. This is partly the responsibility of the right-wing opposition in Congress (and in public opinion) that has effectively blocked the definition of a new "war hypothesis" by insisting on the theory of the "enemy within" as the primary target of defense efforts.

Whether or not structural reform is implemented before, during or after prosecution of the crimes of the "dirty war," it is clear that the main obstacle in President Alfonsín's path continues to be the military's resistance to the rule of law. Resistance to the judiciary is the only unifying factor today within the ranks, but it has been powerful enough to prevent any significant step toward an acceptance of democratic values. From what is known of their thinking, the officers who are gaining influence in the armed forces today are, if anything, more totalitarian and fanatic than the generation that took over the country in 1976. President Alfonsín himself has called them "Nazis and fundamentalists," while stating that they are a minority in the officer corps. This is probably true, but the fact that no significant democratic alternative to them is growing in

those ranks is perhaps the greatest failure in the three-and-a-half years of democratic rule in Argentina.

XI. COMMENTS BY AMERICAS WATCH

Americas Watch maintains that all governments have a duty to establish a system of justice, and to punish criminal behavior according to their laws and institutions. In that context, it is certainly permissible for a national community to exempt certain offenders from punishment for reasons of national reconciliation, as long as that decision is made democratically and with due regard for the rights of individuals and minorities.

We believe, however, that when certain offenses reach the level of crimes against humanity, governments have an affirmative duty to restore justice by prosecuting and punishing those acts. International law establishes such an obligation on the part of states, and defines crimes against humanity as atrocious attacks on human dignity which are conducted massively and under the protection of a state-planned and implemented policy. In this regard, systematic and brutal torture, murder of unarmed prisoners, and the more recent phenomenon of forced disappearances of persons constitute crimes against humanity.[10]

In the view of Americas Watch, an absolute bar on prosecutions and investigations constitutes a failure to abide by Argentina's international obligations, whether or not this is legal under domestic law.

In the case of systematic torture the case is especially clear. Argentina has signed and ratified the U.N. Convention Against Torture, which entered into effect on June 27, 1987, thirty days after the twentieth country ratified it. That Convention specifically states that obedience to orders is not an excuse for the commission of torture. Insofar as the Due Obedience Law exculpates torture on the grounds of obedience, it is clearly inconsistent with the Convention. It could be argued that the Convention entered into effect after that law was enacted (by a few days). Even so, the law violates Argentina's international obligations, because the Vienna Convention on the Law of Interpretation of Bilateral and Multilateral Agreements states that after signature and before entry into force, states are obliged to refrain from actions that would defeat the purpose of the treaty (Article 18).[11]

Article 31 of the Argentine Constitution states that: "This Constitution, the laws of the Nation enacted by Congress in pursuance thereof, and treaties with foreign powers constitute the supreme law of the Nation." It can be argued, therefore, that at least in respect to torture, the Due Obedience Law is unconstitutional. That question was not reached by the Supreme Court in its

June decision upholding the law, and to our knowledge it is not presently before the Argentine judicial system.

In making these observations, Americas Watch is not oblivious to the extremely difficult political context in which these decisions were made, a context which we have tried to describe as accurately as possible in the preceding pages. We also recognize that statesmen have to make difficult judgments and that it lies beyond the capacity of an outside organization with a special agenda -- the promotion of human rights -- to evaluate all the factors that enter into that process.

We do believe, however, that it lies within the province of the international community to point out that the manner in which the decision not to pursue most of the trials was reached is as disturbing as the result. We do not find in the process leading to the enactment of the law a country dealing with a delicate situation in open and democratic debate. Instead, we see a government and a Congress legislating under duress; under the ominous threat, by a powerfully armed elite, to eliminate the country's democratic process and to return to the brutal practices of the past.

We are also concerned at the government's erosion of the authority and independence of the judicial branch by allowing its orders to be disobeyed without punishment, and by legislating a reduction of the scope of the judiciary's action. The prime example of this, but unfortunately not the only one, is the creation of an irrebuttable presumption by law for matters which are properly the role of the judges to sort out, such as the establishment of facts and the application of the law to them.

The recent setbacks notwithstanding, Americas Watch believes that the balance of the recent Argentine experience is highly positive. There has been an increased awareness in large sections of society about the benefits of democracy and of tolerance for ideas. Never in Argentine history has there been such a demonstration of overwhelming support for the democratic process and such outspoken opposition to authoritarian rule as during the events of Easter. There are, to be sure, powerful elements within the society that remain anti-democratic, but their number is greatly diminished from earlier periods and they are incapable of commanding the sympathies of the population.

Most importantly, Argentina has made impressive strides towards truth and justice (especially the former), the elements necessary to restore the social fabric after a tragedy such as the "dirty war." In the CONADEP report and in

the trials so far completed, the Argentine people have been informed of what happened, how it happened and who is responsible for the atrocities. The "truth" phase of this difficult process is essential to an understanding of the past and so that repetition can be avoided in the future. In addition, an accounting of what took place is an essential part of what is due to the victims, their families, their friends and their neighbors. Finally, an essential part of the process of securing redress against those who committed massive abuses lies in exposing their shameful conduct to public view. *Nunca Más* is the message powerfully brought home by Ernesto Sabato and the intelligent and courageous people who worked with him in CONADEP.

The trial of the commanders-in-chief also contributed to the "truth" phase, by adding the dignity and fairness of judicial proceedings to revelations about crimes that shook the conscience of the world. The trial was also the occasion for magistrates and prosecutors to rise to the finest traditions of their profession and to demonstrate their willingness to exercise the duties allocated to them in a democratic society. More importantly, the trials were conducted with such zealous regard for both procedural and substantive due process, that they are an inspiring example that it is indeed possible to punish crimes while carefully respecting the rights of the accused.

The "justice" phase has been only partially achieved, but the achievement is still impressive. Men who were all-powerful less than a decade ago have been convicted in a court of law of egregious crimes, and are serving sentences. Others who were key actors in the chain of command will be tried soon. Even if not all the culprits will be held accountable, the principle that atrocious crimes will not go unpunished has been established. It is remarkable that Argentina has been able to go through this process without a single attempt at individual revenge, a sign that the Argentine people have had reasons to renew their confidence in legal institutions.

President Raúl Alfonsín deserves credit for making this possible, and particularly for exercising leadership in the restoration of ethical governance. His political will in this regard is shared by many in his party and in the opposition, as well as in the judiciary, in the press and in all walks of life. In this regard, the men and women who constitute Argentina's human rights community deserve a special place in the picture. Their unfailing commitment to peaceful demands, and their creative and untiring efforts to contribute to the judicial process, have made these significant achievements possible. Without their courageous stands in the dark years of the "dirty war," without their

patient and painful documentation of each fact, and without their generous attitude of service to the victims of repression, these achievements simply would not have been possible. In addition, they deserve tribute for stating their policy disagreements in generally constructive and articulate ways, and for cooperating enthusiastically with investigators and prosecutors even when reasonable objections were not heeded. In the course of contributing to the enrichment of the debate and increasing the public's awareness of human rights issues, some of Argentina's human rights leaders have become important symbols to the Argentine people.

For good and for ill, the Argentine experience is an example to the world. The exposure of past abuses in Argentina, and the trials that have taken place, have played a major part in bringing to and end the era that began some two decades ago in which systematic torture and disappearances characterized military rule in many countries of Latin America. The setbacks to the effort to subordinate the armed forces to the rule of law in Argentina have also been felt throughout the region, and elsewhere in the world where Argentina was a beacon of hope following the restoration of democratic government in 1983. Despite these setbacks, we consider that Argentina's example will have a positive impact if its government is able to stay on course, go forward with the prosecutions that are still scheduled, and gradually strengthen its democratic institutions so that they can no longer be defied by the armed forces that purport to serve the government.

ENDNOTES

1. An important book on this subject was published in Argentina recently: Verbitsky, Horacio, *Civiles y Militares. Memoria Secreta de la Transición*, Contrapunto, Buenos Aires, 1987. Also recommended is *Nunca Más*, Report of the National Commission on Disappeared Persons, Eudeba, Buenos Aires, 1984, published also in English as *Nunca Más*, Farrar Straus, Giroux, New York, 1986. Other significant publications are: *El Libro del Diario del Juicio*, Marcelo Pichel, ed., Perfil, Buenos Aires, 1985; Camarasa, Jorge Rubén Felice and Daniel Gonzalez, *El Juicio, Proceso Al Horror*, Sudamericana-Planeta, Buenos Aires, 1985; *Testimonios. El Libro del Juicio* (no author), Testigo, Buenos Aires, 1985; Ciancaglini, Sergio and Martin Granovsky, *Crónicas del Apocalipsis*, Contrapunto, Buenos Aires, 1986; Seoane, María and Héctor Ruiz Núñez, *La Noche de los Lápices*, Contrapunto, Buenos Aires, 1985; Frontalini, Daniel and María Cristina Caiatti, *El Mito de la Guerra Sucia*, CELS, Buenos Aires, 1984; and *Desde el Silencio* (Writings of young disappeared persons during the dictatorship, with a preface by Ernesto Sabato), Sudamericana-Planeta, Buenos Aires, 1985.

2. *Clarín*, December 18, 1977.

3. There is an outstanding documentary on Dr. Snow's work, as well as on the contribution of American geneticist Mary King, to the establishment of blood ties between kidnapped children and their grandmothers. It was produced by David Dugan for WGBH and shown in the *NOVA* series of the PBS network in the United States. The major commercial networks of the United States, including CBS's *Sixty Minutes*, covered the trial of the commanders and the CONADEP inquiry on several occasions.

4. An excellent legal critique of the *instrucciones* can be found in Garro, Alejandro M., "Las Instrucciones del Ministro de Defensa al Fiscal General de las Fuerzas Armadas, ¿'Punto Final' o Aceleración de Procesos?," *Revista El Derecho*, No. 6553, Buenos Aires, August 21, 1986.

5. Verbitsky, Horacio, *Civiles y Militares, Memoria Secreta de la Transición*, Contrapunto, Buenos Aires, 1987, p. 327.

6. Two notable exceptions are: Alma Guillermoprieto, "Argentina's Mixed Blessing," *Newsweek*, May 4, 1987; and Carla Ann Robbins, "Out of Victory, Defeat; Or How to Satisfy the Generals," *U.S. News and World Report*, June 15, 1987.

7. Transcribed in Annex 9, Verbitsky, *op. cit.*, p. 420.

8. Secret opinion to Special Court Martial No. 1/1, August 7, 1981, transcribed in Verbitsky, *op. cit.*, p. 409.

9. Decree No. 92/87, January 22, 1987.

10. Resolutions of the Organization of American States numbers 443 (IX-0/79), 510 (X-0/80), 543 (XI-0/81), 618 (XII-0/82), 666 (XIII-0/83) and 742 (XIV-0/84); and Resolutions of the General Assembly of the United Nations No. A/Res-33/173, 40/147 of December 13, 1985 and 41/145 of December 4, 1986.

11. *Basic Documents in International Law*, Ian Brownlie, ed., Oxford, 1972, (second edition).

PROLOGUE

Truth and Partial Justice in Argentina was published in August 1987 to describe the process by which Argentine society under democratic rule tried to come to grips with the legacy of human rights violations under the preceding military dictatorship (1976-1983). The report covered governmental decisions, judicial actions and initiatives from civil society that took place between the end of the Falklands-Malvinas war (June 1982) and promulgation of the Due Obedience Law (June 1987). Those five years provide a very rich experience of transition from dictatorship to democracy. More specifically to the mandate of Americas Watch as a human rights organization, those years illustrate a process by which a society attempts to provide redress to the victims of abuses committed on a massive scale, a process complicated by the presence of a military establishment that is in retreat but far from being completely powerless.

The report describes the democratic debate that preceded and accompanied some very worthy governmental decisions seeking to provide accountability for past crimes; it also reports on the slow and seemingly inexorable retrenchment of men of arms and their civilian allies to resist the process of truth and justice and to demand political vindication for what they consider a victory over subversion. In response to perceived shifts in the balance of power between civilians and the military, the initial impetus towards truth and justice suffered several reversals, culminating in the Due Obedience Law, which brought most prosecutions for past abuses to an end.

Americas Watch has decided to reprint *Truth and Partial Justice* because of the attention it has attracted over the years from a variety of circles beyond those normally interested in Argentina. The recent Argentine experience contains valuable lessons for other societies in transition, and many observers have found our report to be a useful analytical tool. The situation in Argentina, however, has not remained unchanged in the three and a half years since the publication of our report. In fact, two successive presidential pardons by President Carlos Saúl Menem have resulted in the termination of all possible prosecutions for past abuses, and in the release of the few convicted officers who were serving sentences. The second pardon, issued on December 29, 1990, has completed the cycle of accountability in Argentina, and the occasion has arrived to take stock of the experience.

The last chapter of this report updates the information contained in our

1987 report and covers the developments in Argentina with regards to accountability between the Due Obedience law and the second and final pardon. We have also added an appendix that states the policy position of Human Rights Watch on accountability and the responsibility of successor governments to account for past abuses. The statement derives in a significant part from our experience monitoring developments in Argentina, complemented with what we have wintessed on this matter in other parts of the world.[1] Accountability has become a central issue in relations between the military and civilians in many Latin American countries. Its other face is impunity, which in our view both explains and fosters the persistence of egregious violations of human rights even as the hemisphere moves steadily toward elected governments and away from authoritarianism.

Chile is presently experimenting with its own policy to redress the abuses of the Pinochet era; in Uruguay, popular mobilization against impunity gave a different texture to the struggle for accountability, and resulted in a hotly disputed plebiscite that attracted world-wide attention.[2] The matter of accountability has become the central issue in Haiti as a result of the overwhelming December 1990 electoral victory of Jean-Bertrand Aristide, who campaigned on the promise of bringing to justice the many crimes committed during the Duvalier and successive governments.

But the matter is not circumscribed to the Western Hemisphere. It arises in Eastern Europe and particularly in the Soviet Union, as organizations of civil society work to preserve the memory and prevent the future repetition of the crimes of the Stalinist times. In South Africa, it stands as a potential obstacle to negotiations for the dismantling of *apartheid*, and for that reason anti-

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[1] Adopted by the decision-making bodies of Human Rights Watch in 1989, the statement first appeared in Human Rights Watch (newsletter), Vol. 4, December 1989, pp 1-2.

[2] See Americas Watch, *Challenging Impunity: The* Ley de Caducidad *and the Referendum Campaign in Uruguay*, March 1989; *Chile in Transition: Human Rights and the Plebiscite 1988-1989*, November 1989. Americas Watch will also publish a report on the process followed by Chile's National Commission on Truth and Reconciliation, as well as on that Commission's findings, which were made public in March 1991.

apartheid forces have remained at least ambivalent towards recent self-amnesty laws passed by the white-controlled regime.[3]

Consistent with our position reflected in the appendix to this report, we deplore that the Argentine experience has ended with only a handful of officers convicted and even those now free from prison. We believe that the laws of *Punto Final* and *Obediencia Debida* (due obedience), together with the two Menem pardons, constitute capitulation from the ideals of truth and justice, and an affront both to the courageous efforts of Argentina's human rights movement, and to those of Argentine judges and prosecutors to make the rule of law a reality. All of those measures have been demonstrably against the wishes of the majority of Argentine public opinion, including sizable majorities within most political parties. These steps in the wrong direction have objectively weakened democracy by making it seemingly unable to settle disputes over criminal actions without regard to the power and influence of the perpetrators. Democracy in Argentina is not in immediate danger, but the hopes and aspirations of common men and women on its potential have been dealt a severe blow.

In spite of this generally negative assessment, we believe that the Argentine experience offers a very positive balance. The world has come to know that blue-ribbon commissions, if formed with persons of integrity and honor, can get to the bottom of painful truths, and that duly constituted courts can provide scrupulously fair trials on massive human rights abuses and render exemplary decisions. Once mighty generals and admirals and self-proclaimed "lords of life and death" have served time in jail, even if those terms ended up being disproportionately short for the magnitude of their crimes. Perhaps the greatest victory of the human rights movement is the fact that, no matter what interpretation the old killers and their allies may want to give to events, the majority of the Argentine people are now under no mistake about what went on in the years of the "dirty war." Knowledge of the recent past, and more appropriately, official acknowledgement of it, go a long way in ensuring that those tragic abuses will not be repeated.

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[3] Lawyers' Committee For Civil Rights Under Law, "Update on Transition Process: Paper III: The Pretoria Minute and Working Group Report of August 6, 1990," August 14, 1990.

Juan E. Méndez, Executive Director of Americas Watch, wrote the update and prologue to this report, on the basis of research conducted in Argentina by himself and by the Americas Watch Representative in Buenos Aires, Patricia Pittman. Patricia Sinay of Americas Watch's Washington office provided research assistance. This edition was edited by Clifford C. Rohde, also of the Washington office, and Méndez. Americas Watch wishes to thank many human rights monitors in Argentina for their valuable contributions, and the governments of Raúl Alfonsín and Carlos Menem for their disposition to meet with us and to discuss our views and opinions.

The text of *Truth and Partial Justice in Argentina* appearing in this report (pages 7 to 70) is essentially the same as that of the original version published in August 1987. Some accents have been added where appropriate, and in addition, minor stylistic changes have been incorporated to provide consistency throughout the text. Any significant differences between the original text and that appearing in this edition are unintended.

UPDATE: THE STATUS OF HUMAN RIGHTS IN ARGENTINA IN 1991

A. The Pardons

President Carlos Saúl Menem has ended the process of accountability for past human rights abuses by issuing presidential pardons for all those whose prosecutions or convictions had been left standing after passage of the Due Obedience and Punto Final laws. When President Raúl Alfonsín proposed those laws, in 1986 and 1987, Menem severely criticized them and stood up, as a prominent opposition leader, for full accountability for the crimes of the past.[4] During the presidential campaign he was conspicuously silent about these issues. The campaign was dominated, in fact, by the debate about the economy, which took a catastrophic turn in the first half of 1989, eventually causing Alfonsín to relinquish the presidency to his elected successor in July 1989, five months ahead of schedule.

In the negotiations for the transfer of power, the Menem camp insisted that Alfonsín first "solve the military question," by issuing a pardon for human rights violators. Alfonsín refused, and Menem began issuing a series of public statements describing his intention to pardon the generals. This in turn generated a groundswell of protest from many sectors of Argentine society, led by the country's human rights movement and shared by many political and social organizations, including important parts of Menem's own Peronist movement. There were also expressions of opposition to this idea abroad, and Menem had to confront questions about it in the course of state visits to Europe and the United States.

In October 1989, he issued the first set of presidential pardons. Bowing to domestic and international pressure, he excluded the high-ranking officers who had already been convicted, and Carlos Guillermo Suárez Mason, whose case was still pending after his extradition from the United States. Otherwise, the pardon effectively preempted any further investigation or prosecution of thirty or more high-ranking officers who had not been covered by the previous laws. These included well-known generals like Leopoldo Galtieri and Luciano Benjamín Menéndez, who were still facing charges for their roles in

[4] Carlos Saúl Menem, "*El Punto Final para los asesinos es la cárcel*," *La Razón*, December 9, 1986.

conducting repression from the cities of Rosario and Córdoba in the late 1970s. Their garrisons at the time covered vast territory and there were numerous violations committed under their command in all of northern Argentina. The 1989 pardon effectively meant that those violations would go unpunished and, indeed, that they would not even be investigated.

At the same time, President Menem issued pardons for the officers who, with Galtieri, had been convicted by a court martial of military crimes in the course of the Falklands-Malvinas war with Great Britain in 1982. Hundreds of other officers and non-commissioned officers (NCOs) were pardoned for the three *carapintada* uprisings against Alfonsín described later in this update. As a result, not a single proceeding remained in effect against anyone who participated in those threats against democracy, even though the third one resulted in the deaths of one policeman and two civilians.

In keeping with the stated purpose of fostering "reconciliation," Menem also pardoned a number of citizens who had cases pending against them for offenses of a political nature committed by the Montoneros, the ERP or other rebel groups in the 1970s. Yielding to pressure, he also excluded the leader of the Montoneros, Mario Eduardo Firmenich, from the 1989 pardon. Firmenich had been extradited by Brazil and eventually sentenced to thirty years in prison (the maximum allowed under the extradition agreement) for his role in several Montonero operations. Those covered by the pardon included some other prominent Montonero leaders who were then able to return to Argentina. Also included were many whose responsibility for crimes had never been established. The had been accused of having political alliances with rebel organizations, but those links, if they existed at all, had long been severed. Only one or two of them were in prison pending trial, and a few more were in exile. Among the many others were persons still listed as "wanted" in some court files, but who were known to have disappeared after their detention by security forces in the course of the "dirty war." Not a single one of the pardoned "subversives" had been convicted in a court of law. The selection of those to be pardoned strongly suggests that these pardons were no more than an attempt to pad the lists of those forgiven for alleged crimes against the state as a way of making the pardons for state crimes themselves more palatable.

One of those pardoned in the category described in the preceding paragraph is Graciela Daleo, a survivor of the notorious ESMA concentration camp run by the Navy in the 1970s. After living in exile, Ms. Daleo had returned to Argentina and provided valuable testimony on many aspects of the

repressive policies of her captors. Each time she offered new testimony, new charges would be brought against her for crimes allegedly committed during the 1970s, or the legal description of those offenses would be amended so as to make her ineligible for release pending trial. Daleo fought a number of legal battles and was free on bond at the time she was included in the Menem pardon. She protested it as a matter of principle, and insisted on a declaration of innocence. In a most unusual decision issued in November 1990, the Supreme Court, with a majority of Menem appointees, ordered new charges to be filed against Graciela Daleo, without reference to the pardon decree. Because of this turn of events, those who masterminded the massive disappearances and killings of recent Argentine history are free, and a human rights monitor who has insisted in denouncing them is the only person now facing prosecution.

At the time of the October 1989 pardons, Menem made it known that he intended to pardon the remaining military leaders, as well as Firmenich, in the near future. For more than a year, domestic and international protest mounted against this initiative. Americas Watch added its voice on several occasions, in meetings with the Argentine Ambassador to the United States, in several letters to President Menem, and during an interview with him on October 3, 1990, in the course of his state visit to Washington.

On December 29, 1990, however, President Menem finally made good on his promise and issued a pardon for Generals Jorge Rafael Videla, Roberto Viola (both former presidents), Carlos Suárez Mason, Ramón Camps, Pablo Ricchieri (both former chiefs of police of the Province of Buenos Aires), Admirals Emilio Massera and Armando Lambruschini, and Air Force Brigadier General Orlando R. Agosti, as well as Firmenich. All except Suárez Mason had been convicted before a court of law after proceedings with exemplary due process guarantees. Lambruschini and Agosti had been released previously after serving their sentences.

Until the last minute it was uncertain whether Suárez Mason would be included. He was the only general to break ranks and escape from Argentina when the prosecutions began in 1983, and it is generally known that his former comrades-in-arms despise him for that. In effect, the defense of many of them had been to put the blame on Suárez Mason, as the self-styled "lord of life and death" of Security Zone 1, which was centered in the Buenos Aires garrison and covered most of the provinces of Buenos Aires and La Pampa. After living clandestinely in exile, he was arrested by U.S. Marshals in Foster City,

California, where he was living under an assumed name with fake documents. Argentina requested his extradition, which a Federal Court in San Francisco granted after an 18-month process. In the meantime, Americas Watch and other U.S. organizations represented six of his victims in complaints for damages brought under the Alien Tort Claims Act of the United States (Section 1350 of the U.S. Code); the cases ended in multi-million dollar judgments for the plaintiffs.

The Argentine government was evidently concerned that releasing Suárez Mason would be a source of diplomatic tension with the United States, since the Americans had spent considerable energy, time and resources to extradite him, only to see his trial frustrated by a political decision. The Army was not particularly interested in his release, either, and Suárez Mason did not have any supporters in Argentine society. He was included in the pardon, however, because he made it known that his defense in open court would consist of having one hundred officers, most in active duty, parade as witnesses. This interesting twist on the "gray-mail" defense was enough to send the Army running for cover. Any threat of further exposure of the crimes of the "dirty war" was seen as infinitely more damaging than alienating the United States or letting a well-known criminal loose.

Menem issued the pardons at the end of the year, during the Christmas holidays, when he was riding a wave of popular support due to the initial success of the currency stabilization program and to the perception that he had firmly handled the *carapintada* uprising of early December. Nonetheless, the public debate about the measure resulted in a renewed wave of protest. Political and trade union leaders and a vast array of personalities opposed the pardon; only a few right-wing politicians expressed some support. Opinion polls came out with roughly the same percentage of opposition to the pardons as had been the case at the time of the October 1989 decrees: a solid 63 percent of the population opposed them, while twelve percent "approved [them] partially" An even higher percentage opposed giving the benefit to Firmenich. Within Menem's own party, more than sixty percent were against the pardons.[5]

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[5] "*Rechazo a los próximos indultos*," La Nación, November 21, 1990; "*El indulto no tiene hinchada*," Página 12, November 21, 1990; both articles cite a survey conducted by IPSA Argentina in September and October in the greater Buenos Aires region.

The government did not announce the date of the pardon; in late December, when the matter became pressing, human rights organizations called for peaceful demonstrations in every public square of the country, to be held on the same date in which the pardons became effective. Newspapers published the news about the pardon on Sunday, December 30, and simultaneous demonstrations did take place that day throughout the country, despite the both lack of time to organize and also the difficulty of planning such activities at that time of the week and of the year. An estimated 80,000 persons attended the rally in Buenos Aires. When Massera, Videla and Firmenich made separate, furtive public appearances to obtain passports in the following days, they were met with spontaneous shows of contempt.

Menem repeatedly justified the pardons as a gesture toward reconciliation, and insisted that his own past as a prisoner of the military dictatorship conferred him legitimacy to grant them. His long detention without charges certainly gives Mr. Menem moral authority to forgive the wrongs committed against him; in Americas Watch's view however, as a public official President Menem cannot claim to represent countless other victims of the dictatorship who may or may not have forgiven their abuses. Reconciliation is, of course, a worthy goal, but it cannot be imposed by decree on a society. Like many Argentine citizens and institutions, Americas Watch believes that reconciliation is a process that can only take place after truth and justice have been achieved, and not as a substitute for them.[6]

It would be easier to understand the reconciliation rationale if there were any sign that the military is genuinely contrite about its role during the "dirty war," and is ready to seek reconciliation with their victims. In fact, the opposite is true: the armed forces view the pardons as a step in the direction of full

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[6] In contrast, when Patricio Aylwin, president of Chile, released the report of the National Commission on Truth and Reconciliation on March 4, 1991, he stated he had no intention of preventing the course of justice. Aylwin said: "...we must start by determining who are the offended parties who must forgive and who are the offenders who must be forgiven. I cannot forgive for someone else. Pardon cannot be imposed by decree. Pardon requires repentance on one side and generosity on the other." In fact, President Aylwin asked the Supreme Court of Chile to press for a complete accounting of the fate and whereabouts of all the disappeared, regardless of the effect of the self-amnesty law passed by Pinochet in 1978.

vindication for their victory in "defeating subversion." On the date of his release, Videla wrote a public letter to the high command stating that the Army had been wrongly accused and that it deserved an apology and vindication from society. This was presumably a protest against the fact that the pardon affected only his prison term, but let stand his conviction and the secondary sanctions imposed with his sentence: Videla *et al* (but not Suárez Mason) continue to be deprived of political rights and of the use of rank and uniform. Videla's letter caused another wave of outraged protest in public opinion. It was publicized that, in response to demands for a fuller pardon, government officials had told the high command of the Army that public opposition to the pardons made it impossible to go beyond what was given and to restore full honors and political rights to the generals.

B. Governmental Attitudes towards other Human Rights Problems

It would also be easier to understand the reconciliation rationale if the Menem administration had taken steps to show concern for the plight of the victims of the "dirty war." Instead, widows and children of the "disappeared" under the age of 21 receive the most meager social security benefits, and only after going through humiliating red tape. In 1990, Congress approved a law to exempt the sons and brothers of the disappeared from Argentina's mandatory military service, performed for one year at age 18. The executive branch vetoed the law, and Menem later justified this action with the astounding remark that such an exemption would create a "privilege" among Argentine citizens. Americas Watch believes that the presidential pardons have created a far more offensive privilege: one granted to criminal defendants to escape trial, and convicts to escape punishment, only because at some time they wore a uniform. In January 1991, this time at the Executive's initiative, Congress again enacted an exemption from military service for the sons and brothers of the disappeared.

In January 1991, Menem did act to provide compensation to some former prisoners who were held without charges under the state of siege during the dictatorship. A presidential decree, apparently subject to legislative review, will allow the payment of monetary damages to those who filed lawsuits before December 1985, and whose cases are still pending or were dismissed by the courts on statute of limitation grounds. The decree made specific reference to the fact that cases of this sort were before the Inter-American Commission of Human Rights (IACHR) of the Organization of American States. President

Menem himself had won a judicial decision and collected damages for his incarceration on similar grounds. As drafted, the decree applies narrowly to those who filed in the first two years after the change of government. Many more lawsuits were filed at the time, but courts generally applied a narrow rule regarding statute of limitations: that the two-year term ran from the date of each individual's release, without any consideration as to whether it was safe or reasonable to sue the State during the dictatorship.[7] As a result, many complaints were abandoned and the courts issued default judgments against the plaintiffs. These cases are not included in the decree. Also excluded are complaints filed after December 1985, as well as those of thousands of other citizens held by the dictatorship without charges under the state of siege, but who never sued for damages.

In 1990, the government had submitted a bill to Congress to settle the claims that had been submitted to the IACHR. Opposition legislators tried to expand the coverage to the other categories, and even to relatives of the disappeared, and the bill ultimately failed. The January 1991 decree is a step in the right direction, inasmuch as it benefits a category of plaintiffs who deserve justice, but it leaves out those in other deserving situations. With respect to the latter group, the government announced through the press that other solutions would be contemplated. At present, however, there are no plans to act on their behalf.[8]

There is no governmental support of any sort for the efforts to exhume and identify the hundreds of remains of those believed to be victims of disappearances, that have been found in clandestine gravesites in different parts of the country. The *Equipo Argentino de Antropología Forense* (Argentine Forensic Anthropology Team), a human rights organization, continues to perform painstakingly patient and rigorous investigations in several sites, under the sometimes reluctant authorization of judges, but without any support from the Menem government. In fact, their attempts to

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[7] The cases pending before the IACHR, filed by the Córdoba-based *Servicio Argentino de Derechos Humanos*, allege that this judicial doctrine is incompatible with Argentina's obligations under the American Convention on Human Rights.

[8] Interview with Juan J. Pazos, Director for Human Rights, Ministry of Interior, February 19, 1991.

perform necessary cross-references of files kept in government offices face frequent bureaucratic obstacles.

The government seems to have lost interest on the matter of missing children. Their cases were specifically excluded from the Due Obedience Law. Some courts, however, have proceeded with investigations to establish the true identity of children taken with their disappeared parents or born in captivity, so as to decide on their custody. In a landmark decision of October 29, 1987, in the case of Laura Ernestina Scaccheri, the Supreme Court ruled favorably on the legality of advanced scientific methods used by the Grandmothers of Plaza de Mayo, with the help of American and Argentine scientists, to establish degrees of familial relationship and identity.[9] The government, however, has not provided adequate funding for the Genetic Data Bank established during Alfonsín's government. As a result, the information stored there for future use runs the risk of being lost. Likewise, the Menem government has shown very little interest in pursuing the extradition from Paraguay of Argentine military and police families who are wanted by Argentine courts for having left the country with their irregularly adopted children to avoid their identification and return to their natural families.[10]

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[9] In his concurring opinion, Justice Enrique Petracchi wrote: "...the reconstruction of identity and position in society (which society owes to Laura) does not seem compatible with postponement of her blood family relationships, of the memory of her parents, of her cultural integration with legitimate relatives. At the same time, we must consider the right of parents and siblings of the disappeared to see the continuation of their family in the only child of those truncated young lives." (quoted in "A Study about the Situation of Minor Children of Disappeared Persons who were Separated from their Parents and who are Claimed by Members of their Legitimate Families," Inter-American Commission on Human Rights, Annual Report 1987-1988, p. 343).

[10] According to the President of the Supreme Court of Paraguay, José Alberto Correa, no action has been taken by lawyers representing the Argentine State in the request to extradite Major and medical doctor Norbetto Atilio Bianco and his wife, accused by Argentine courts of kidnapping and illegally adopting two children of "disappeared" persons during the dirty war. The Biancos are supposedly under house arrest since April 1987 awaiting the ruling of the extradition trial. *ABC Color*, February 6, 1991.

C. Military Uprisings

The Due Obedience Law, enacted by Congress in June 1987, was proposed a few days before its promulgation by President Alfonsín as a direct result of a significant uprising that had taken place the previous Easter.[11] In the Easter 1987 uprising, army infantry officers had taken over several barracks in Campo de Mayo, Argentina's main garrison in the northern suburbs of Buenos Aires, demanding a stop to all prosecutions and trials, as well as other changes in the internal policies of the Army. The rebels were officers with training in special operations, known as *comandos*, and they painted their faces black as if in war; for that reason the public soon came to call them *carapintadas*. After they ended their rebellion, officials in the Alfonsín government presented the Due Obedience Law as necessary to prevent future *carapintada* insubordination, by taking away their main complaint. In effect, the law did nothing of the sort: there were two further uprisings during Alfonsín's term as well as one against his successor Carlos Saúl Menem. Each of them was a bloodier and more serious challenge than the previous uprising to democratic authority.

The leader of the Easter 1987 uprising, Lieutenant Colonel Aldo Rico, took personal responsibility for the movement, and was prosecuted under the Army's disciplinary process for "mutiny." Although he was subjected to limited restriction of movement, in effect, he was able to move about freely, as he was allowed not only to meet with active duty officers, but also to talk to the press. In January 1988, only a few months after the first uprising, he absconded from his place of detention and surfaced at a military unit in Monte Caseros, in the northeastern province of Corrientes. Many *carapintada* officers and non-commissioned officers joined him there, proclaiming another uprising against the leadership of the Army. Loyalist forces quickly converged on Monte Caseros, in contrast to their action during Easter 1987 when it was clear that the Army would not suppress the rebels. In Monte Caseros, the rebels again surrendered without a shot, although the occupants of a loyalist jeep were wounded by a land mine placed by the *carapintadas*. Once again, the rebels were accused of mutiny, a disciplinary offense under military

[11] To this date, Raúl Alfonsín denies the link. Interview by Jorge Lanata, *Página 30*, February 1991.

jurisdiction, instead of the criminal offense of rebellion, which would have entailed their being prosecuted before civilian courts.

In December 1988, Alfonsín's rule was again challenged by the *carapintadas*. This time, their leaders were Rico and a more senior officer, Colonel Mohamed Ali Seineldin, who had just been passed up for promotion to general. Seineldin, an Arab-Argentine who is a fervent Catholic traditionalist, is considered the leader and mentor of the *carapintada* movement. During the "dirty war" he occupied several posts, including the task of forming a crack team to rescue potential hostages during soccer's World Cup, which was played in Argentina in 1978. The special training he devised for these officers and NCO's became the distinguishing feature of the Army's infantry and intelligence units whose members were called *comandos*, or more popularly *carapintadas*. Seineldin and Rico led these units during the Falklands-Malvinas war, where their stated mission was to infiltrate enemy lines and attack their adversary's rear guard. It is said that they volunteered for this dangerous mission, which has undoubtedly added to their prestige within the ranks. Such is the apparent source of Alfonsín's reference, during the Easter rebellion, to the mutinous officers as "heroes of the Malvinas." In effect, however, the ground war in the islands was so one-sided and short-lived that there was little opportunity for them to act.

At the end of the military dictatorship, Seineldin was given a diplomatic post as military attache in Panama, where he served during the Alfonsín years. He was later appointed military trainer and advisor to the Panamanian Defense Forces under the regime of General Manuel Antonio Noriega. Hours before the December 1988 uprising, Seineldin returned to Argentina surreptitiously in an aircraft provided by his friend Noriega. Under his leadership, the *carapintadas* (by then calling themselves the *Ejército Nacional* or National Army) took over another military installation in the northern suburbs of Buenos Aires, and then moved to the barracks in Villa Martelli, at the edge of the city. Like in Easter 1987, civilians opposed to the movement demonstrated before the barracks, though not in the tens of thousands as had been the case during the first uprising. Police also surrounded the area at first, before loyalist forces came to put down the rebellion. Under those circumstances, shots fired from within the compound killed one policeman and two civilian demonstrators.

Alfonsín proclaimed that the movement had been put down without any concessions to the rebels. Once again, however, Seineldin and dozens of other

officers were charged with mutiny instead of rebellion, and no one was found responsible for the murder of three Argentine citizens. In fact, those deaths remain in the dark today, and no serious investigation has been launched into them. The disciplinary actions against Seineldin, Rico and hundreds of other servicemen for their roles in the three uprisings languished before military courts for another several months, until they were all covered by a pardon issued by President Menem in October 1989, on the same date in which he pardoned most of the high-ranking officers facing charges for human rights crimes during the "dirty war."

This leniency in which both Alfonsín and Menem incurred did not prevent yet a fourth *carapintada* uprising, this time on December 3, 1990. Seineldin and Rico had been forced into retirement, and after attempting to forge a political movement, had parted ways. Seineldin had continued to confront the army leadership and Menem in public statements, and at the time of the uprising he was serving a 60-day arrest order at a military unit in San Martín de los Andes, in Patagonia. Rico publicly disassociated himself from the latest movement. This time, the *carapintadas* took over the Army's headquarters, a high-rise building in downtown Buenos Aires, only yards away from the government house. They also took over the headquarters of Infantry Regiment 1, or "Patricios," the nation's oldest as well as most symbolic and prestigious army unit, located in the Buenos Aires neighborhood of Palermo, along with some other units in the suburbs and in the interior. Loyalist forces immediately responded. This time the death toll was much larger: loyalist officers were murdered when they attempted to regain control in Palermo, and innocent civilians died when a *carapintada* tank crashed into a bus. There were also several hours of sniper fire in city streets, including against civilian paramedics and ambulances called in to assist the wounded inside the Army headquarters building. Journalists trying to cover the events were wounded by cross-fire. Though no serious attempt has been made at establishing who fired against these impermissible (civilian) targets, it appears that the paramedics were attacked by loyalist troops intent on forcing an immediate surrender by the *carapintadas*. The total number of civilian and military dead in the December 1989 uprising has been estimated at close to twenty.

Once again, the government decided not to grant jurisdiction to the civilian courts, but rather chose to allow the military to prosecute the rebels under its own internal disciplinary process. In January 1991, Seineldin and several other leaders of the revolt were found guilty of insubordination and sentenced to

prison for an indefinite term. An appeal is presently pending, however, before the Federal Court of Appeals for Buenos Aires, and further military court proceedings are still pending against other participants.[12]

Among the participants in the revolt were several officers who had benefitted from the Punto Final or Due Obedience laws. One of the leaders of the uprising, Colonel Luis Baraldini, had been prosecuted for several cases of torture during his tenure as chief of police of the province of La Pampa; Héctor Mones Ruiz, who had been a captain in Córdoba during the "dirty war," had escaped prosecution for his direct role in the murder of prisoners in the Córdoba penitentiary in 1986. Among the civilians who lent support to the latest *carapintada* incident was former senior police officer Miguel Etchecolatz, who had been convicted and sentenced to 23 years in prison (and then released almost immediately under the Due Obedience Law) for his actions as the right-hand man to General Ramón Camps at the police of the province of Buenos Aires.

D. La Tablada

On January 23, 1989, a group of armed men and women attempted to take over La Tablada, an army installation in the western suburb of Buenos Aires, and home to the Third Infantry Regiment and a tank unit. They did not succeed in achieving total control of the premises, and were trapped inside when police surrounded the barracks. A 30-hour battle ensued, by the end of which 28 of the attackers had died. The police and Army counted eleven dead between them, and many combatants on both sides were wounded. Thirteen attackers were arrested at the site, five others in the immediate vicinity, and two members of the group surrendered to the judge in the following days. Another member of the group was arrested months later in Brazil, but Brazilian courts considered the charges against him political in nature and denied Argentina's request for extradition.

The attackers were members of a small leftist party called *Movimiento Todos Por la Patria* (MTP). The movement, dedicated to grass-roots organizing, had been formed after the return to democracy and had fielded

[12] The amendments passed in 1984 to the Code of Military Justice have instituted an appeal to civilian courts against decisions of the Supreme Council. See discussion of Law 23049 in the body of our 1987 report.

candidates in elections in some districts. It consisted of returned exiles, persons with varied previous political experience, many high school and college students, and some young people from the shantytowns of the industrial outskirts of Buenos Aires. Months before the attack, the MTP had suffered a severe split, when most of its better known leaders left the party, protesting the direction in which the movement was heading. In the weeks and months preceding the attack, the MTP had made a number of highly-publicized charges against political and military leaders, denouncing an imminent *coup d'etat* by the *carapintadas*, with politicians as accomplices. In explanations after the fact, the attackers have claimed that they went into La Tablada to prevent a *coup* that was then in progress, that their intent was to "arrest" the *carapintadas* with the help of spontaneous demonstrations in favor of democracy from the neighboring shantytowns, and to hand them over to military officers loyal to democracy.

The two-day battle was virtually fought before live television cameras. Under the procedures set forth in the *Ley de Defensa de la Democracia* (Defense of Democracy Act) passed in the Alfonsín years, the case was investigated by the Federal District Court of Morón, a western suburb of Buenos Aires. At the end of the investigatory period, the twenty defendants were tried in oral proceedings before the three-member Federal Court of Appeals for San Martín, also in the western suburbs. In October 1989, the Court found them all guilty as charged. Those who bore arms and participated directly in the attack were given life sentences, while those found guilty of planning, aiding and abetting were sentenced to terms between ten and twenty years. At least five of the latter group had not used arms, and their role had consisted of distributing pamphlets in the neighborhood of La Tablada calling for a popular uprising.

Lawyers for the defense have claimed that there were numerous due process violations, the most important of which having to do with evidence gathered both by the Army, in violation of laws that prohibit any law enforcement role by military personnel, and also by shadowy private groups linked to the Army. One such group, led by a right-wing priest called Father Jardín, had access to weapons and documentation found in houses used by the attackers, and those documents and weapons were later used as incriminating evidence. There is no material dispute about the attack itself, nor about its toll in lives and property, nor about the role played by each defendant. The evidence gathered in such a dubious way, however, was used to show the

additional offense of an intent to overthrow the government, which the defendants deny. An appeal of the sentence is pending before the Argentine Supreme Court.

The main leader of the La Tablada episode, Enrique Gorriarán Merlo, is still at large and believed to be abroad. Gorriarán is the only surviving founder of the *Ejército Revolucionario del Pueblo* (ERP), one of the two largest Argentine guerrilla movements that acted in the late 1960s and early 1970s and were decimated in the course of the "dirty war" campaign. Gorriarán spent many years in exile in Nicaragua. He is also the leader of the group that killed former Nicaraguan dictator Anastasio Somoza in Asunción, Paraguay, in September 1980. At the outset of democracy in late 1983, he had been ordered prosecuted by President Alfonsín, together with several other well-known former guerrilla leaders. Despite orders of arrest against him, he had returned to Argentina in the mid-1980s, where he was living clandestinely at the time of the La Tablada disaster. At first it was thought that Gorriarán had died in La Tablada, but in late 1989 he circulated a clandestine letter explaining the goals of the attempted takeover of the army unit.

Americas Watch conducted an investigation of the La Tablada episode, and then wrote repeatedly to the Argentine government urging a thorough investigation, especially into aspects that suggest serious army misconduct. Six bodies found in the rubble remain unidentified after more than two years. The authorities claim that the bodies, all belonging to the attackers, were burned beyond recognition. Also, serious questions remain about the way in which at least five of the attackers died. Survivors have credibly testified that both Francisco Provenzano and Carlos Samojedny surrendered were unharmed when they surrendered, and remained so until they were identified by army interrogators and separated from the rest before the group was handed over to a judge's custody. The Army claims that Provenzano died in battle and that Samojedny is missing in action or "at large." Provenzano's seriously burned remains were identified by his brother, a medical doctor who had previously operated on him. The six corpses were buried, however, without any serious effort at establishing the cause of death. At least two of the defendants made statements to the judge about Provenzano's surrender when they were still being held in *incommunicado* detention and thus prevented from contacting their co-defendants, therefore lending credibility to their stories. At the Caseros prison in Buenos Aires in April 1989, Americas Watch interviewed different witnesses to Provenzano's surrender and found their testimony highly credible.

One of them, who was wounded in the attack, had been carried by Provenzano down some stairs at the time they surrendered on January 24.

Two other attackers "disappeared" the day before, while the battle was still going on. Iván Ruiz and José Felix Díaz had participated in the attack on the command post at the entrance (*guardia*), which they controlled for a few hours, and where they kept several soldiers hostage. In the afternoon of the first day, the soldiers were rescued by army troops. Ruiz and Díaz tried to pass themselves as hostages, but the soldiers reported them to army NCOs who immediately apprehended them. Live television cameras focused on them as they were being led away in the custody of an Army officer. The scene was later confirmed in testimony to judge Gerardo Larrambebere, head of the Federal Court of Morón, both by the soldiers who had been held as hostages and by the NCOs who captured Ruiz and Díaz. The NCOs identified the officers who received them. In turn, when these officers were questioned by the court, they claimed that they had given the prisoners over to another NCO to take them to an infirmary. The NCO who supposedly was last to have custody of Ruiz and Díaz is one of the eleven casualties suffered by government forces in La Tablada. At the time of this writing, the investigation into these deaths is effectively stalled.

Pablo Ramos, a 21-year-old student, was listed by official sources among the combat casualties. A photograph published by a small newspaper, however, showed a young man bearing a strong resemblance to Ramos as he surrendered to the military inside the La Tablada compound. At the request of Ramos' brother, who is a defendant in the case, the Court of Appeals ordered a separate investigation. It appears that the Morón district court has been able to obtain the negative of the photograph, which was taken at a long distance. An enhancement of the negative is necessary, however, before it can be compared to an authentic likeness of Pablo Ramos. To date the technology for this procedure is reportedly unavailable in Argentina. In February 1991 Americas Watch offered assistance to Judge Larrambebere in securing that expert help in the U.S. The judge has arranged for a copy of the negative to be sent to Americas Watch for that purpose. The person in the photograph has not been identified as anyone other than Ramos so far.

Sympathizers of the MTP originally claimed that other attackers, including former human rights attorney Jorge Baños, were also killed after their surrender. Americas Watch has not been able to obtain any evidence to support this claim. A young woman named Berta Calvo did surrender alive and later

died, but the MTP defendants readily admit that she was badly wounded, and the Army states that she died before she could receive medical attention.

In their transfer to police and penitentiary facilities a few hours after their surrender, some of the surviving attackers were subjected to mistreatment. In those cases, there has been some investigation and sanctions have been imposed on lower-ranking penitentiary officials. Other complaints by MTP defendants about mistreatment have been investigated and found without merit. The apparent murder of attackers after their surrender, however, has not been seriously investigated. In more than two years, the deaths of Provenzano and Ramos and the disappearances and suspected deaths of Samojedny, Ruiz and Díaz, have received only cursory attention. Federal judge Gustavo Larrambebere explains, with some justification, that his court is overburdened with cases and cannot apply itself to these investigations. In Americas Watch view, however, neither the Alfonsín nor the Menem administrations has shown any interest in ensuring full cooperation with the judicial inquiry. As a result, a lingering impression is left that these abuses, and the cavalier explanations offered by the Army, are condoned because they happened in the course of an unjustifiable act of violence initiated by the MTP.

E. Attacks on the Independence of the Judiciary

Aníbal Ibarra and Mariano Ciafardini, two federal prosecutors who had taken an active role in the cases of missing children, were subjected to disciplinary proceedings by order of the Secretariat of Justice as a result of a dispute they had with a public defender. The proceedings ended in a reprimand. In addition, Ibarra and an appellate prosecutor, Hugo Cañón, were subjected to disciplinary proceedings for refusing to apply the 1989 pardons, and urging the courts to declare them unconstitutional. The proceedings have languished without results and still weigh over the careers of two distinguished prosecutors. Ibarra, who has since gone into private practice, still has a disciplinary case pending against him, and it is believed that Justice Secretariat officials will seek his disbarment. In a letter to and an interview with César Arias, then Secretary of Justice, Americas Watch protested the decisions by the Executive to discipline these prosecutors as an attack on their independence. Mr. Arias promised to respond and provide the government's reasons for these actions, but has yet to answer our concerns.

Over time, new and more serious attacks on the judiciary have taken place. In September 1990, judge Raúl Alberto Borrino indicted senior police officer

Luis Patti in Pilar (located in the province of Buenos Aires), on the strength of both testimony by two common criminals who said Patti had tortured them, and also of corroborating medical evidence.[13] Citizens of Pilar, concerned with a rise in crime, demonstrated in favor of Patti. The mayor of Pilar, the governor of the Province of Buenos Aires and President Menem all expressed their high regard for this "efficient" policeman. Some sensationalistic media pounded for days on the citizenry's fears about crime, and presented Patti as the victim of a judge more concerned about the rights of criminals than about crime prevention. In the meantime, judge Borrino was subjected to serious threats against his life and against that of his family.

Eventually, an appellate court accepted Patti's motion that Borrino had prejudiced himself, and remanded the case to another judge, who promptly dropped all charges and released Patti. There were no expressions of support for judge Borrino while he was under threat and criticism, except for a belated message (*acordada*) by the Supreme Court of the Province of Buenos Aires, which strongly defended the judge's role. The assault on the independence of a judge who dared prosecute a torture case when so many similar cases go unpunished has received no further attention. We fear that other policemen thus could be encouraged to abuse prisoners, and that other judges will think twice before investigating complaints of this sort. Menem later appointed Patti as a special investigator to solve the rape and murder of a teen-age girl, María Soledad Morales, in the Northern city of Catamarca, a case that has become a public scandal because the prime suspect is a young man with links to the provincial political establishment.

The case of María Soledad has galvanized national attention for months. It has already been investigated by six different judges, the first of whom has publicly accused Governor Ramón Saadi of pressuring him to indict one suspect and relieve pressure from Guillermo Luque, the son of a congressman and political ally of Saadi's. Patti has abused his role as crack investigator by making numerous public statements of his opinion that young Luque is innocent.

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[13] Using advanced scientific techniques, pathologists for the judicial branch of the province of Buenos Aires found evidence of the so called "Jellinek syndrome" in tissue from the skin of both victims. The Jellinek syndrome is an alteration of normal skin cell structure that conclusively proves the passage of electricity through the cells.

After Patti's misguided appointment, the federal government did make a significant contribution to justice in this case, by sending José Luis Ventimiglia, a lawyer who had conducted outstanding human rights work in the 1970s, to take over as judge. Ventimiglia was eventually confirmed by the Catamarca legislature, and soon collided with Patti. Ventimiglia issued an arrest warrant against Guillermo Luque on the basis of testimony attesting that blood stains had been washed from his car, and that his initial alibis were false. Patti then delayed Luque's arrest in Buenos Aires for several days. Luque was finally arrested in Buenos Aires in late February, and then flown to Catamarca. As of this writing, Luque is in custody, as is the chief of police of the province, Comisario Miguel Angel Ferreyra, who stands accused of covering up the crime.

Patti's commission ended on February 28, 1991. He returned to Buenos Aires without having solved the case but having succeeded in muddling it, probably beyond rescue. His appointment to this case, immediately following a disgraceful escape from prosecution as a torturer, is evidence of the Menem administration's lack of sensitivity to human rights, and of its obsessive concern for image. One bright spot in the sad case of María Soledad Morales (in addition to Judge Ventimiglia's honorable role) is the fact that an impressive number of people from Catamarca heeded calls by Sister Martha Pelloni, principal of María Soledad's high school, to demonstrate in weekly "marches of silence" until a serious investigation took place. The community of the little Andean city of Catamarca relentlessly and peacefully demanded justice. Their efforts appealed to the national conscience, and have so far succeeded in piercing the veil created by corruption and political deal-making.[14]

Luis Moreno Ocampo, who prosecuted the cases for human rights violations before the Federal Court of Appeals for Buenos Aires, has been repeatedly attacked by Menem and other senior government officials for his publicly stated views against the pardons. In December 1990, Menem stated that he would seek Moreno Ocampo's dismissal, and, in an angered response to his opinions on the pardons, said that Moreno Ocampo must have been drunk to utter them. Secretary of Justice Arias said in a television talk show that

[14] Eugene Robinson, "The Little Town that Got Mad as Hell," *Washington Post*, February 24, 1991.

Moreno Ocampo would be disciplined. In an ironic choice of words, Arias prefaced this announcement by saying that "impunity is over." Presumably he was referring to impunity for statements by public officials. No action, however, has been taken against Moreno Ocampo, who is still on his job as federal appellate prosecutor for Buenos Aires.

In February 1991, the President dismissed Ricardo Molinas, the *Fiscal Nacional de Investigaciones Administrativas*, whose office, an independent watchdog agency created in the 1950s, investigates wrongdoings by public officials. The *Fiscal Nacional* is appointed for life with advice and consent of the Senate, and is removable only through impeachment. It was reported that Menem proceeded illegally to dismiss Molinas at the urging of Raúl Granillo Ocampo, a close presidential advisor under investigation by Molinas for charges of corruption. Molinas, named in a 1984 non-partisan appointment, has had a distinguished career in pursuing investigations related to human rights violations. Lately he had been conducting vigorous inquiries into allegations of official corruption against not only Granillo Ocampo, but also Ricardo Dromi, a former Minister of Public Works. The pretext for Molina's dismissal was a feud between him and four assistant *fiscales* who wanted to investigate allegations of wrongdoing by Molina's son and private secretary. The Menem administration dismissed Molina and his four assistant *fiscales*, all of whom had tenure and could be removed only by impeachment. In the aftermath of these dismissals, the sole remaining assistant *fiscal* filed corruption charges against Granillo Ocampo.[15]

Another slap to the judiciary has been the Menem administration's success in enlarging the Supreme Court and appointing a majority to it. The debate that preceded the necessary legislation to expand the Court included many references, by Granillo Ocampo and other senior officials, to the effect that the Argentine government could not function without a Supreme Court that shared the government's own views and accepted its policies. Some of the fears

[15] At the end of a hectic few days, Granillo Ocampo was finally dismissed by Menem in February 1991, this time as a result of a dispute with Secretary of Justice Arias, who was also dismissed. Arias was replaced by former judge León Arslanian, who distinguished himself as chief justice of the Federal Court of Appeals for Buenos Aires when that court tried the cases against high-ranking military officers for past human rights violations.

arising from this "packing" of the Court have been well-founded: in one of its first actions as a 9-member panel (it formerly was comprised of five justices), the Court protected presidential decisions on the privatization of government enterprises from lower court injunctions by applying a heretofore unknown theory it called *per saltum*, which authorizes the Court to take over and decide any case being heard by a lower court, at the Supreme Court's own initiative and without regard to the status of the litigation.[16]

F. U.S. Policy

Throughout the period of accountability that has now come to an end in Argentina, the Reagan and Bush administrations have been silent. The State Department has refused to comment on the laws that restricted prosecutions and later on the pardons, consistently explaining that this position is based on a desire not to interfere with the internal affairs of Argentina. Whatever the reasoning behind this policy, the fact is that in Argentina this policy of silence is interpreted as acquiescence in measures that prevent full disclosure of the truth and flaunt the redress of serious grievances. Argentines remember that U.S. leaders who later joined the Reagan and Bush administrations were in the forefront of defending the reputation of the Argentine generals when they were accused of human rights abuses. The same leaders promoted a definite *rapprochement* to the dictatorship of the generals and recruited them for dirty work in Central America in the early years of the Reagan administration, before the Falklands-Malvinas war turned those generals into international pariahs.

Through the years of democracy in Argentina, the U.S. government has been supportive of both Alfonsín and Menem, and has taken strong and useful positions against attempted *coups* at every *carapintada* uprising. Ronald Reagan made very clear statements to that effect in Easter 1987, and George Bush did the same in early December 1990, notably refusing to suspend his trip to Argentina -- scheduled for only 48 hours later -- even while the movement was in progress. Undoubtedly those were welcome expressions of support for democracy. On the other hand, they tended to minimize the threat

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[16] See also the Supreme Court decision in the Daleo case, supra, and "Argentina: Controversy Surrounding the Judiciary," in The Review, International Commission of Jurists (Geneva, Switzerland), No. 45, December 1990, pp. 1-6.

that these uprisings represented, and never addressed the unacceptable content of the mutineers' demands. President Bush, for example, referred to the latest movement as an "internal squabble" within the Army. In 1988, Theodore Gildred, then Ambassador to Argentina, made a press statement purporting to "understand" the plight of the *carapintadas*, thereby lending some legitimacy to their outrageous demands on Argentine society.[17]

Americas Watch believes that the U.S. government should have publicly expressed its disagreement with the laws and decrees that restricted prosecutions and pardoned the crimes of the "dirty war." More important -- and arguably more useful -- would have been for the Reagan administration to express affirmative support early on for the policy of bringing those crimes to justice. The United States' studious non-interference with what it considered an internal matter deprived the administration of an opportunity to state clearly that, as a matter of principle, the American people and its government believe that crimes against humanity should not go unpunished, and that societies have a right and a duty to explore the truth, to bring it to light and to restore justice to the victims.

In other Latin American countries where the issue of accountability has come up, the State Department has maintained a similar posture. Americas Watch believes that a change is needed. With regards to crimes against humanity, the United States should consistently support societal efforts to produce truth and justice through democratic means, and should stand against initiatives that thwart the efforts of courts, prosecutors and other democratic institutions to perform their duty.

G. Balance

The December 29, 1990 pardon has put an end to a remarkable experience. Relations between civilians and the military, not only in Argentina but elsewhere, will in the future be analyzed in the light of the Argentine effort to bring truth and justice to past abuses. The relative strength of fledgling elected governments, and their good faith, will be judged according to whether they at least try to provide accountability. That in itself is no mean accomplishment. It is also to be considered that a few of the main culprits did spend some time in

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[17] Lawyers Committee for Human Rights and Human Rights Watch, The Reagan Administration's Record on Human Rights in 1988, January 1989, p. 11.

prison: Massera spent seven and a half years in jail; Videla and Viola, six and a half each; Camps, six; and Suárez Mason, three and a half. These terms are certainly short in relation to the enormity of their crimes, but they acquire significance when compared to the impunity enjoyed by many other dictators and state criminals throughout the world.

Political leadership in Argentina showed itself incapable of facing the enormous challenge presented by the dilemma of bringing the truth out fully and realizing complete justice. Undoubtedly, the daunting economic and social collapse and the attendant malaise and unrest have made the task even more difficult. Crucial political decisions made both by Alfonsín and Menem have ultimately reverted the process back to partial truth and partial impunity, and it is important therefore, to challenge the political, legal and moral arguments advanced to justify those retreats, just as it is legitimate to contrast their attitudes to those of other political leaders. In Greece, for example, George Papadopoulos, the leader of the "dictatorship of the colonels," has remained in prison for 16 years as a result of crimes committed during his regime. Popular opposition to a pardon for Papadopoulos forced the government to drop its effort to grant him one last December, at about the same time Menem released Argentina's generals.

The Argentine experience with truth and justice will be re-enacted in new ways soon in Chile and in Haiti, and lessons learned from it will be proposed in favor of one solution or another. For Americas Watch, the lesson is that when a society decides to provide accountability for past crimes, that effort must be forcefully and decidedly supported. Victims must be allowed to seek redress through courts, and the efforts of courts and prosecutors conducted in good faith should not be hampered through political decisions. Some limitations on the scope of prosecutions may be inevitable under certain circumstances, but there should be no limit whatsoever in the search for the truth. Moreover, that search should not be left up to private efforts; governments have a duty to provide an official acknowledgement of the tragedy of past violations.

As for the limits on prosecution, reasonable constraints will undoubtedly be accepted by the citizenry if they are debated openly and become the result of democratic decision-making, as long as they do not result in unacceptable privileges or discriminatory treatment, and provided the will of an unaffected majority is not imposed on the legitimate rights of the victim to seek and obtain justice. Most importantly, those limits should never be accepted if they come

under the threat of destabilization of democracy. People who have gone through a period of dictatorship have a right not to be faced with a choice between justice and democracy; they should be entitled to both.

The most important lesson has to do with the nature of the democracy that being forged. In Argentina, the process of truth and justice has had a formidable stabilizing effect, owing principally to the cumulative preservation of collective memory that it has produced. The huge majority of Argentines now know, without any uncertainty, what happened in the "dirty war" and why. There is no longer societal support for the military, in a country where, since 1930, authoritarian tendencies in segments of civil society used to provide the basis for *coups* against the democratic order. There is also a renewed awareness of the value of human rights, and the several organizations that constitute Argentina's human rights movement have gained an important measure of respect, both in Argentina and abroad.

The heightened consciousness in Argentine society, expressed in the unequivocal results of opinion polls about the pardons, is the best hope for democracy in Argentina, and the best result of the process of accountability. Americas Watch agrees with the majority of the Argentine people that crimes against humanity should not go unpunished. Governments are obliged by international law to investigate, prosecute and punish such crimes.[18] Politically, punishment is necessary to establish a democracy where there are no privileges, and particularly no privileged criminal defendants; that is to say, a democracy where no one is above the law. These crimes must be punished as an expression of respect by society for the victim. Moreover, through effective punishment society expresses the special regard in which some norms or standards are held: disappearances, extrajudicial executions and torture are so abhorrent that violations of the laws that prohibit them will not be tolerated.[19]

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[18] I/A court H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988. Series C No. 4; Diane Orentlicher, "Settling Accounts: the Obligation Under International Law to Prosecute a Prior Regime's Human Rights Violations," 100 Yale Law Journal, 1991 (forthcoming).

[19] Marcelo A. Sancinetti, *Derechos Humanos en la Argentina Post-Dictatorial*, Lerner, Buenos Aires, 1988, p. 9.

APPENDIX

Human Rights Watch Policy on Accountability for Past Abuses

Human Rights Watch holds that those who commit gross abuses of human rights should be held accountable for their crimes. It is a responsibility of governments to seek accountability regardless of whether the perpetrators of such abuses are officials of the government itself and its armed forces, or officials of a predecessor government, or members of anti-government forces, or others. We oppose laws and practices that purport to immunize those who have committed gross abuses from the exposure of their crimes, from civil suits for damages for those crimes, or from criminal investigation, prosecution and punishment.

Human Rights Watch recognizes the difficulty that some governments may face in holding members of their own armed forces accountable for their gross abuses of human rights. Also, we recognize that military regimes may insist, explicitly or implicitly, on immunity from accountability as a condition for relinquishing their offices and permitting the establishment of elected civilian governments. We do not believe that these difficulties justify disregard for the principle of accountability. We consider that accountability for gross abuses should remain a goal of a government that seeks to promote respect for human rights.

In pursuing that goal, Human Rights Watch holds:

1) that the most important means of establishing accountability is for the government itself to make known all that can be reliably established about gross abuses of human rights; their nature and extent; the identities of the victims; the identities of those responsible for devising the policies and practices that resulted in gross abuses; the identities of those who carried out gross abuses; and the identities of those who knowingly aided and abetted those who carried out gross abuses;

2) that laws and decrees purporting to immunize the perpetrators of gross abuses from accountability are null and void: a) when promulgated by the perpetrators themselves; b) when applied to crimes against humanity; or c) when otherwise in conflict with international law;

3) that the duty to investigate, prosecute and punish those responsible for gross abuses is proportionate to the extent and severity of the abuses and the degree of responsibility for such abuses. Accordingly, though we advocate

criminal prosecution and punishment for those who have the highest degree of responsibility for the most severe abuses of human rights, we recognize that accountability may be achieved by public disclosure and condemnation in cases of lesser responsibility and/or less severe abuses. The determination of who should be prosecuted will have to be made according to the circumstances of each situation. In making such determinations, we believe it is essential that there should be no granting of impunity either because of the identity of those responsible for gross abuses of human rights or because of the identity of the victims;

4) that popular disinclination to hold accountable those responsible for gross abuses does not negate the responsibility of a government to pursue accountability, particularly in circumstances where the victims of abuses may have been concentrated among members of a racial, ethnic, religious or political minority. A government's duty to demonstrate respect for human rights extends to all persons, and it is not the prerogative of the many to forgive the commission of crimes against the few;

5) that laws, decrees and practices that immunize members of the armed forces from accountability do not enjoy any greater validity because of a purported symmetry with amnesties for anti-government forces. Though amnesties for crimes of opposition to the state and the established political order, including by means of armed combat, may be justified as a means of persuading members of anti-government forces to lay down their arms, we oppose their extension to those within such forces who have committed gross abuses of human rights;

6) that obedience to orders (in circumstances other than duress) is not a valid defense to charges of responsibility for gross abuses of human rights. To the extent that obedience to orders is relevant to prosecuting, it should be only as a mitigating circumstance that may be considered by judges according to the facts of each case in determining the appropriate punishment;

7) that the means employed by a government in making known what can be reliably established about gross abuses, and in investigating, prosecuting and punishing those responsible, should at all times conform to internationally recognized principles of due process of law.

Human Rights Watch believes that nongovernmental human rights groups can themselves make a valuable contribution in securing accountability for gross abuses by insisting that a government's policies on these matters should be publicly debated; by gathering evidence on gross abuses for submission to the government; and, in circumstances when a government has not fulfilled (or not yet fulfilled) its duty to hold accountable those responsible for gross abuses, by gathering and publishing their own carefully documented accounts.

Human Rights Watch will pursue such opportunities as may be available to strengthen the commitment to accountability in international law; will attempt to use the machinery of international law in appropriate cases to secure accountability; and will aid domestic human rights groups in other countries in securing accountability in accordance with the policies stated above.

As used here, the term gross abuses of human rights applies to:

- genocide
- arbitrary, summary or extrajudicial executions
- forced or involuntary disappearances
- torture or other gross physical abuses
- prolonged arbitrary deprivation of liberty