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# COMING OUT OF THE DARK: ACHIEVING JUSTICE FOR VICTIMS OF HUMAN RIGHTS VIOLATIONS BY SOUTH AMERICAN MILITARY REGIMES

ROSEANN M. LATORE\*

**Abstract:** The military regimes of the countries of the Southern Cone of South America cooperated under Operation Condor to eradicate all political opposition throughout the 1960s and 1970s. The military leaders of these regimes are only now being brought to justice for their crimes, which include widespread killing and “disappearances” of political opponents and, in Argentina, the stealing of babies born to doomed political dissidents. It is only in the last decade that these crimes have been brought to light so that the perpetrators can be brought to justice and nations deeply wounded can begin to heal.

## INTRODUCTION

“He who saves the nation does not break any law.”<sup>1</sup> During their 1985 trial, the defense counsel for Argentinean military officers accused of human rights violations used this quote attributed to Napoleon to justify their actions.<sup>2</sup> This feeling of moral rectitude and belief in a higher good of national security served as the basis for human rights violations by military regimes throughout South America, and resulted in the torture, murder, kidnapping, and “disappearance” of tens of thousands of people in the last four decades.<sup>3</sup> While these types of abuses became less pervasive with the collapse of the military regimes, they continue today in South America and throughout the world.<sup>4</sup>

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<sup>1</sup> CARLOS SANTIAGO NINO, *RADICAL EVIL ON TRIAL* 86 (1996).

<sup>2</sup> *See id.*

<sup>3</sup> *See id.* at 33, 54.

<sup>4</sup> *See* AMNESTY INT’L, *GETTING AWAY WITH MURDER 2* (1993); *see also* Gabrielle Gamini, *Fujimori Accused of Over 4,000 Deaths in War Against Rebels*, *TIMES* (LONDON), Nov. 29, 2000, available at 2000 WL 28133479. Peru’s Congress plans to investigate the disappearance, killing, and torture of 4000 in a campaign against left-wing rebels in the 1990s. *Id.* Human rights groups allege thousands of abuses in President Fujimori’s war against the

The worst cases of killings and “disappearances” have occurred in countries where the conflict was claimed to be “all but invisible to the outside observer.”<sup>5</sup> In Guatemala, for example, tens of thousands of people have been murdered since 1960 in a war against guerrillas whose campaigns were barely operational at times.<sup>6</sup> In El Salvador, almost 2% of the population were wiped out as a result of political killings and disappearances during its 1980–1992 civil war.<sup>7</sup>

In the countries of South America, including Brazil, Uruguay, Chile, and Argentina, the military regimes took control of their respective countries under the guise of national security.<sup>8</sup> After pursuing the immediate threats to national security, often left-wing guerrilla movements, the regimes cast their nets wider, ensnaring all those they considered dangerous.<sup>9</sup> In Argentina, for example, pregnant prisoners gave birth in captivity, and the fate of their babies still is being uncovered.<sup>10</sup>

This Note focuses on the human rights abuses of countries in the “Southern Cone” of South America, specifically, Chile, Uruguay, Paraguay, Brazil, and Argentina. Part I discusses the history behind the military regimes and their use of terror and torture to control the citizenry. Part II discusses the movement to bring these human rights violators to justice, and highlights the unique cases of baby snatching in Argentina. Part III analyzes alternative methods of prosecution of former military officials for their parts in human rights abuses, which are just beginning to take hold, and explains how these methods hold the key to releasing those countries from their pasts in order to finally achieve healing justice.

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guerrillas and the drug trade, and claim that his campaign to ferret out rebels led to abuses against teachers, unionists, and students. *Id.* If these crimes actually were committed, Fujimori will be one of South America’s worst human rights abusers. *Id.*

<sup>5</sup> AMNESTY INT’L, *supra* note 4, at 6.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 2.

<sup>8</sup> See NINO, *supra* note 1, at 33, 34, 36, 53.

<sup>9</sup> See *id.* at 33, 35, 36, 54.

<sup>10</sup> See RITA ARDITTI, *SEARCHING FOR LIFE* 24, 50 (1999).

## I. THE MILITARY REGIMES

### A. South American Military Regimes and Operation Condor

In the 1970s, military regimes took control of several South American countries.<sup>11</sup> The military governments came into power under the guise of protecting national security and to replace weak and corrupt governments, often in the face of violent left-wing guerilla movements.<sup>12</sup> The regimes' common thread was the use of a pervasive sense of terror to fortify their rule, along with the elimination of basic human rights.<sup>13</sup>

In addition to this common technique of terror, the military regimes solidified their connections through a program called "Operation Condor."<sup>14</sup> Operation Condor (Condor) was the code name for a system of cooperation between the military regimes of the Southern Cone countries, including Chile, Argentina, Paraguay, Brazil, Bolivia, and Uruguay.<sup>15</sup> Under Condor, allegedly named for the national bird of Chile,<sup>16</sup> the regimes would collect and exchange information about leftists in their countries.<sup>17</sup> When a person from one Condor country tried to escape by fleeing across the border, the country to which he fled would abduct him and turn him over to his birth country's security force.<sup>18</sup>

Yet even before Condor, there was collaboration by the military forces of the countries of South America.<sup>19</sup> Brazil, for example, had provided military training throughout the Southern Cone to combat urban guerrilla movements.<sup>20</sup> Condor, however, was set up at the request of General Augusto Pinochet of Chile in 1975,<sup>21</sup> and most of its

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<sup>11</sup> NINO, *supra* note 1, at 33.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> See Cesar Chelala, *US Should Declassify Files on Repression in Argentina*, ST. LOUIS POST-DISPATCH, Sept. 7, 2000, at B7, available at 2000 WL 3546303.

<sup>15</sup> *Id.*

<sup>16</sup> Patrice M. Jones, *Brazil Probes Conspiracy by Dictators to Kill Foes*, CHI. TRIB., June 2, 2000, at 3, available at 2000 WL 3671072.

<sup>17</sup> Chelala, *supra* note 14.

<sup>18</sup> Marcia Valente, *Rights-South America: Chipping Away at Impunity*, INTER PRESS SERV., June 19, 2000, available at 2000 WL 4091773 [hereinafter Valente, *Chipping Away*].

<sup>19</sup> Maria Osava, *Rights-Latin America: Operation Condor Justice 20 Years Overdue*, INTER PRESS SERV., May 11, 2000, available at 2000 WL 4091156.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

prominent attacks occurred under his command.<sup>22</sup> In addition to controlling common alleged leftists, Condor may have been the driving force behind the mysterious deaths of several important political leaders.<sup>23</sup>

The Condor countries also had in common a technique for dealing with those they considered dangerous to their regimes.<sup>24</sup> In addition to torture and murder, many were simply "disappeared."<sup>25</sup> According to Amnesty International, one is considered disappeared when there are reasonable grounds to believe that a person was taken by state officials or with their agreement, and the authorities then deny any knowledge of that person's fate or whereabouts.<sup>26</sup> The term "disappearance," or *desaparecido*, was first used in 1966 in connection with the Guatemalan government's practice of disposing of political opponents in secret.<sup>27</sup> While people disappeared in all the military-run countries, the term became synonymous with Argentina because of its pervasive use.<sup>28</sup>

The efforts of the relatives of the disappeared have brought to light most of the information about Condor.<sup>29</sup> Information also has been revealed by accident, as was the case when documents were found in Paraguay in the early 1990s.<sup>30</sup> These documents were the secret files of the police force of dictator Alfredo Stroessner, and detailed their actions.<sup>31</sup> The records indicated that Argentine and Uruguayan opposition activists had been held in Paraguay and then transferred to the military in Argentina, after which they disappeared.<sup>32</sup> The Paraguay documents also indicated that the death of a former president of Brazil was connected to Condor,<sup>33</sup> prompting new investigations in that country.<sup>34</sup>

<sup>22</sup> Kevin G. Hall, *South America Struggles to Uncover Past Abuses*, ARIZ. REPUB., May 17, 2000, available at 2000 WL 8031739 [hereinafter Hall, *South America*].

<sup>23</sup> See *id.*

<sup>24</sup> See, e.g., NINO, *supra* note 1, at 33; Valente, *Chipping Away*, *supra* note 18.

<sup>25</sup> See *id.*

<sup>26</sup> See AMNESTY INT'L, *supra* note 4, at 9.

<sup>27</sup> See *id.* at 13.

<sup>28</sup> See IAIN GUEST, BEHIND THE DISAPPEARANCES ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS 31 (1990); see also Valente, *Chipping Away*, *supra* note 18.

<sup>29</sup> Osava, *supra* note 19.

<sup>30</sup> See *id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Hall, *South America*, *supra* note 22.

<sup>34</sup> See Valente, *Chipping Away*, *supra* note 18.

### B. *Military Rule and Human Rights Abuses in Chile*

In 1973, the military overthrew the socialist party government of Salvador Allende in Chile and instituted a harsh police state.<sup>35</sup> Strict press censorship, widespread detentions and executions, and purges of public administration and education ensued.<sup>36</sup> The work of the government's military and surveillance unit brought about the torture, disappearance, and exile of many people, as well as the deaths of some politically dangerous enemies in other countries.<sup>37</sup> In 1978, the government granted the military amnesty that covered almost all past abuses.<sup>38</sup>

In 1988, General Pinochet was voted out of the presidency by a plebiscite, but remained as Chief of the Army under the new constitution, written by Pinochet, which was approved by plebiscite in 1980.<sup>39</sup> The political parties' participation in the election implied acceptance of both the 1978 amnesty law and the 1980 Pinochet-engineered constitution, but because participation in the election was the only way to remove Pinochet from power, the parties elected to field candidates.<sup>40</sup> As the legislature and judiciary were still mostly loyal to Pinochet, there was little the new president could do about the amnesty law, thus limiting his ability to address the issue of human rights.<sup>41</sup>

In 1991, the Commission of Truth and Reconciliation was created to compile a report of human rights abuses during the military regime and assess their effects on the citizenry.<sup>42</sup> The report, released in March of that year, was important because it was an official acknowledgment of the truth, recognizing the harm done by the military.<sup>43</sup> While it served to raise social consciousness, however, it could not determine the fate of many of those still missing.<sup>44</sup>

### C. *Human Rights Violations During the Military Regime in Uruguay*

When Uruguay's economy began to falter and terrorists began to murder and kidnap in order to voice political opposition in the 1960s,

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<sup>35</sup> NINO, *supra* note 1, at 36.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at 37.

<sup>39</sup> *Id.*

<sup>40</sup> See NINO, *supra* note 1, at 37.

<sup>41</sup> See *id.*

<sup>42</sup> *Id.* at 37-38.

<sup>43</sup> *Id.* at 38.

<sup>44</sup> *Id.*

the civilian government invited the military to intervene.<sup>45</sup> After the military broke the guerrilla movement in 1973, the military used public protest against their violent and tortuous methods as an excuse to root out subversion in universities, public administration, the professions, and the political class.<sup>46</sup> That year, the military took full control, suspending Congress and reducing the president to a figurehead.<sup>47</sup>

The government classified the entire population of Uruguay into three categories according to their degree of risk to the regime.<sup>48</sup> Between 1970 and 1985, more than 10% of the population went into exile, one person in fifty was detained, and one in five hundred received a long prison term.<sup>49</sup> One hundred fifty Uruguayans disappeared, most of whom were abducted in Argentina<sup>50</sup> where the worst human rights violations against Uruguayans were committed.<sup>51</sup>

General elections were held in November, 1984, after the negotiation of the Naval Club Agreement between military and civilian politicians.<sup>52</sup> In 1986, the Uruguayan Congress approved the "Law Nullifying the State's Claim to Punish Certain Crimes," also known as the "impunity law."<sup>53</sup> This law effectively ended all trials against military and police officers for human rights abuses during the dictatorship.<sup>54</sup> While Argentina and Chile created truth commissions and held trials of junta leaders, in Uruguay no officer has ever been tried by a civilian court, and by mid-2000, there still never had been official recognition of or investigation into the terrorism and crimes of the dictatorship.<sup>55</sup>

#### D. *Brazil's Military Regime and Human Rights Abuses*

The military came to power in Brazil through a 1964 coup, and its power grew more oppressive as its rule continued.<sup>56</sup> The abuses in Brazil were not as widespread as in other countries in the region, but

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<sup>45</sup> NINO, *supra* note 1, at 34.

<sup>46</sup> *Id.* at 34, 35.

<sup>47</sup> *Id.* at 35.

<sup>48</sup> *Id.*

<sup>49</sup> *See id.*

<sup>50</sup> Valente, *Chipping Away*, *supra* note 18.

<sup>51</sup> NINO, *supra* note 1, at 35.

<sup>52</sup> *Id.*

<sup>53</sup> Maria Delgado, *Truth and Justice in Uruguay*, NACLA REP. ON THE AM., July 1, 2000, available at 2000 WL 12982323.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *See* NINO, *supra* note 1, at 33.

Brazil was an active participant in Operation Condor.<sup>57</sup> At least fifteen Brazilians disappeared in other countries, mostly in Chile and Argentina.<sup>58</sup> In 1978, a joint effort between the police and military of both Uruguay and Brazil resulted in the detainment and torture of two Uruguayans who were detained in Brazil, followed by their secret transfer to Uruguay.<sup>59</sup> Brazil also gave arms to the military in Paraguay to aid its bid to overthrow the civilian government.<sup>60</sup>

In 1979, a mutual amnesty was declared by the government, covering both those who had committed political crimes and state security agents who had violated human rights between 1964 and 1979.<sup>61</sup> By the time a civilian president was elected in 1985, the worst violations were products of the distant past.<sup>62</sup> Disappearances were less common and the violations were less widespread than in Argentina and Uruguay, so the civilian and military leaders were able to compromise, with the civilian politicians respecting the amnesty and the military allowing a return to democracy.<sup>63</sup> In 1995, the government declared the disappeared dead and closed the cases, indemnifying the families of the victims, and the military swore an oath of subordination to civilian authorities.<sup>64</sup> Nevertheless, there have been few attempts to obtain justice for those who were abused during the dictatorship.<sup>65</sup>

### E. Argentina's Dirty War

Amid growing economic crisis, violence, and corruption, a military junta overthrew Isabel Peron in March, 1976.<sup>66</sup> Under the Doctrine of National Security,<sup>67</sup> the president, General Jorge Videla, and the military curtailed liberties, dissolved Congress, replaced judges and supreme court justices, dismissed governors and legislators, purged universities, and controlled radio, television, and unions.<sup>68</sup>

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<sup>57</sup> *Id.* at 33, 34; Osava, *supra* note 19; Valente, *Chipping Away*, *supra* note 18.

<sup>58</sup> Osava, *supra* note 19.

<sup>59</sup> *Id.*

<sup>60</sup> Hall, *South America*, *supra* note 22.

<sup>61</sup> NINO, *supra* note 1, at 33–34.

<sup>62</sup> *Id.*

<sup>63</sup> *See id.*

<sup>64</sup> Valente, *Chipping Away*, *supra* note 18.

<sup>65</sup> *See* Jones, *supra* note 16.

<sup>66</sup> NINO, *supra* note 1, at 43.

<sup>67</sup> ARDITTI, *supra* note 10, at 11.

<sup>68</sup> NINO, *supra* note 1, at 53, 54.



The military extended its judicial jurisdiction to civilian subversive acts, now punishable by death.<sup>69</sup>

Unprecedented violence followed, carried out by organized task forces for abductions, tortures, and interrogations.<sup>70</sup> No one knows the exact number of people killed or why.<sup>71</sup> Official sources put the number between 9000 and 11,000,<sup>72</sup> but human rights groups estimate that 30,000 disappeared or died under military rule.<sup>73</sup> While some of those killed or disappeared were members of left-wing guerilla organizations, others were targeted for being their relatives, friends, lawyers, or for being journalists, "dangerous" writers, politicians, psychoanalysts, human rights group members, and trade unionists.<sup>74</sup>

Not even children were safe.<sup>75</sup> In an incident that came to be known as "The Night of the Pencils," the regime kidnapped a group of teenagers from their homes.<sup>76</sup> As student leaders in their high school, the children had started a movement to demand student discounts on public transportation.<sup>77</sup> After being raped and tortured, only three were eventually set free, while the others were murdered.<sup>78</sup>

While the government did not officially acknowledge the atrocities, it justified them by saying that, "[t]his was a 'dirty war' against an enemy without uniform or flag."<sup>79</sup> Its enemies did not follow the rules of war, so the government claimed that it was justified in using extreme measures in its fight against subversion and aggression.<sup>80</sup> Despite the people's opposition to the actions, protest against the regime was difficult to organize; if one disappeared, there was no physical

<sup>69</sup> *Id.* at 54.

<sup>70</sup> *Id.*

<sup>71</sup> Dave Perkins, *Mothers Remember Victims of 'Dirty War'*, TORONTO STAR, Dec. 8, 2000, at N02, available at 2000 WL 30322980.

<sup>72</sup> See, e.g., *Former Junta Member Jailed*, AP NEWSWIRE, Dec. 1, 2000, available at 12/1/00 APWIRE 19:54:00; Marcela Valente, *Right-Argentina: Senate Delays Military Promotions*, INTER PRESS SERV., Dec. 21, 2000, available at 2000 WL 28920255 [hereinafter Valente, *Senate Delays*].

<sup>73</sup> *Daughter of Military Regime Victim Sues Adoptive Mother*, AGENCE FR.-PRESSE, Dec. 1, 2000, available at 2000 WL 24771593; Valente, *Chipping Away*, *supra* note 18.

<sup>74</sup> NINO, *supra* note 1, at 57.

<sup>75</sup> See *id.*

<sup>76</sup> See ARDITTI, *supra* note 10, at 21.

<sup>77</sup> *Id.*; NINO, *supra* note 1, at 57.

<sup>78</sup> ARDITTI, *supra* note 10, at 21; GUEST, *supra* note 28, at 31.

<sup>79</sup> NINO, *supra* note 1, at 56.

<sup>80</sup> See *id.*

evidence of abuse to protest.<sup>81</sup> The fact that people simply vanished instilled terror and hopelessness in Argentineans.<sup>82</sup>

The junta needed the appearance of legality for its assaults on "subversion," therefore, it allowed the judiciary to survive.<sup>83</sup> First, however, the junta purged the court of all opponents.<sup>84</sup> The judiciary that remained could do little to stop the violations, rejecting, on government orders, most of the 80,000 habeas corpus petitions filed, and assessing judicial expenses to the petitioners.<sup>85</sup> While the Argentinean constitution guaranteed everyone a defense lawyer, it was difficult to get one, as between 1976 and 1983, 109 lawyers disappeared, 24 were killed, and 100 were detained without charge or trial.<sup>86</sup>

The decline of the military regime began in 1980 with the faltering of its economic plan and its later defeat in the Malvinas-Falkland Islands War.<sup>87</sup> As the political parties began to push for elections and a lifting of the state of siege, the junta re-established itself with the "Final Document of the Military Junta on the War Against Subversion and Terrorism" (Final Document).<sup>88</sup> In this document, the junta took responsibility for the war, but justified its actions based on then President Italo Luder's 1975 decree allowing the military to crack down on guerrillas.<sup>89</sup> All actions were approved by superior commands, a justification enshrined on the same day through an act stating that all operations against subversion and all terrorism by security forces, police, and prison guards were approved and supervised by the armed forces and the junta.<sup>90</sup> These statements and laws laid the foundation for using the defense of "obeying orders," on which the military members relied during their trials for human rights abuses.<sup>91</sup>

Five weeks before the 1983 election, President Reynaldo Bignone signed the "self-amnesty law,"<sup>92</sup> also known as the Law of National Pacification.<sup>93</sup> The law granted blanket amnesty to anyone who aided and abetted any subversive and counter-subversive acts, be they com-

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<sup>81</sup> See ARDITTI, *supra* note 10, at 14.

<sup>82</sup> See *id.* at 14, 15.

<sup>83</sup> GUEST, *supra* note 28, at 25.

<sup>84</sup> See NINO, *supra* note 1, at 54.

<sup>85</sup> *Id.*

<sup>86</sup> See GUEST, *supra* note 28, at 26.

<sup>87</sup> ARDITTI, *supra* note 10, at 40; NINO, *supra* note 1, at 60, 61.

<sup>88</sup> See NINO, *supra* note 1, at 61.

<sup>89</sup> *Id.* at 61-62.

<sup>90</sup> See *id.* at 62.

<sup>91</sup> See *id.* at 62, 81.

<sup>92</sup> *Id.* at 64.

<sup>93</sup> ARDITTI, *supra* note 10, at 43.

mon or military crimes.<sup>94</sup> This created a new legal obstacle to the trial of human rights abuses, as it prohibited civil court subpoenas or interrogations of anyone for whom a *prima facie* showing of amnesty could be made, and forbade civil compensation for any of the acts covered by the law.<sup>95</sup>

After President Raúl Alfonsín's election in 1983, he focused on prosecuting only a small group of officers, as he could not go too far in punishing without provoking another coup.<sup>96</sup> The government nullified the amnesty law, and reinterpreted sections of the Penal and Military Codes granting the defense of "due obedience," which covered almost all human rights violations, to allow prosecutions.<sup>97</sup> Individual commanders-in-chief were convicted in 1985, and the court found that while they had to have known about the procedures used by their subordinates, such as kidnapping, torture, seizure of property, and murder, they did not know about the dispossession of real property, abduction of minors, and bribery.<sup>98</sup>

After these convictions, trials were scheduled for many other military officers on charges of "following orders" during the regime, which angered the military.<sup>99</sup> In order to pacify the military, the government passed the Full Stop Law in 1986, which set a deadline for initiating new prosecutions of military officers.<sup>100</sup> This law, however, excluded those cases concerning rape, theft, and the abduction and concealment of minors.<sup>101</sup> The passage of the Law of Due Obedience followed in 1987, granting amnesty to most potential defendants for dirty war crimes, except for rape, theft, and falsification of civil status.<sup>102</sup> However, this law, like the Full Stop Law, did not cover the crimes of abduction and concealment of children.<sup>103</sup>

President Carlos Menem was elected in May, 1989, and by October, he had pardoned 400 people then on trial, in violation of Article 95 of the Argentinean Constitution.<sup>104</sup> In December, 1990, he par-

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<sup>94</sup> NINO, *supra* note 1, at 65.

<sup>95</sup> *See id.*

<sup>96</sup> *See id.* at 71; GUEST, *supra* note 28, at XV.

<sup>97</sup> NINO, *supra* note 1, at 70, 71.

<sup>98</sup> *Id.* at 88, 89.

<sup>99</sup> *See* ARDITTI, *supra* note 10, at 46-47.

<sup>100</sup> *Id.* at 47.

<sup>101</sup> *Id.*

<sup>102</sup> *Id.* at 48.

<sup>103</sup> *Id.* at 49.

<sup>104</sup> NINO, *supra* note 1, at 103.

doned all those already convicted for human rights violations.<sup>105</sup> After five years, the military leaders were free men.<sup>106</sup>

## II. RETROACTIVE PROSECUTION OF HUMAN RIGHTS

The history of South America shows that when governments returned to democracy they did not investigate the human rights abuses of the past regime.<sup>107</sup> Often, the recently deposed military continued their surveillance of and put pressure on the new governments.<sup>108</sup> Politicians, thankful that the military regime had ended, were reluctant to provoke a confrontation by investigating abuses.<sup>109</sup> Often, the politicians also had participated in the past abuses and now wanted to do nothing which might expose themselves.<sup>110</sup>

In the transitions to democracy from military rule in the 1980's, however, this changed.<sup>111</sup> The breadth of state-sponsored terrorism and the growing international intolerance of human rights violations resulted in a general feeling that the violations needed to be confronted.<sup>112</sup> This led to several approaches in obtaining justice, including attempts to prosecute those responsible through the reinterpretation of existing laws and the establishment of "truth commissions" to determine the fate of the missing.<sup>113</sup> The prosecution for baby-kidnapping in Argentina has presented its own challenges.<sup>114</sup>

The task of prosecuting past human rights abuses, however, has encountered numerous obstacles.<sup>115</sup> Officials have to balance justice for those affected by the abuses against the need to build stable democracies and instill national reconciliation.<sup>116</sup> The continued pres-

<sup>105</sup> *Id.* at 104.

<sup>106</sup> *See id.*

<sup>107</sup> *Id.* at 32.

<sup>108</sup> *See id.*

<sup>109</sup> NINO, *supra* note 1, at 32.

<sup>110</sup> *See id.*

<sup>111</sup> *Id.* at 32-33.

<sup>112</sup> *See id.* at 33.

<sup>113</sup> *See, e.g.,* Delgado, *supra* note 53; Valente, *Chipping Away*, *supra* note 18.

<sup>114</sup> *See e.g.,* Army Chief Balza Harshly Criticizes Predecessor Over Human Rights, BBC SUMMARY OF WORLD BROAD., Apr. 30, 1999, available at LEXIS, News Group File [hereinafter *Army Chief*]; Ken Warn, *Net Starts to Close on Aging Generals as Argentina Probes Baby Kidnappings*, FIN. TIMES (LONDON), Apr. 10, 1999, available at LEXIS, News Group File.

<sup>115</sup> *See* Yanina Olivera, *LatAm Governments Seek Pragmatic Middle Way Over Past Rights Abuses*, AGENCE FR.-PRESSE, May 8, 2000, available at 2000 WL 2788971 [hereinafter *Olivera*, *LatAm Governments*].

<sup>116</sup> *Id.*

ence and influence of the military through its retired officers now in the legislature also makes the job more difficult.<sup>117</sup>

#### A. "Truth Commissions"

Some Latin American countries have used truth commissions to address the problem of human rights abuses under the military dictatorships.<sup>118</sup> These commissions had as their goals the investigation into human rights abuses and the determination of the fate of the disappeared.<sup>119</sup> While they succeeded in uncovering much of the abuse as well as the identities of many of the disappeared, the commissions faced obstacles in their searches for truth, including resistance by the military, the sheer volume of allegations to investigate, and the limited time periods in which to accomplish their goals.<sup>120</sup>

In Argentina, the National Commission for the Disappearance of Persons (CONADEP), created in 1983, was composed of religious, political, and human rights leaders.<sup>121</sup> CONADEP had 180 days to complete its findings, and reviewed testimony on 7000 different cases, taking 50,000 pages of testimony.<sup>122</sup> CONADEP published its findings in 1984 in a report entitled *Nunca Más (Never Again)*, which became Argentina's greatest best seller.<sup>123</sup> The findings of CONADEP resulted in the institution of trials of ex-military commanders the following year.<sup>124</sup>

In Chile, the National Commission on Truth and Reconciliation was created in 1990.<sup>125</sup> The preamble to the law creating the Commission stated, "[t]he moral conscience of the nation demands the truth [because] only upon a foundation of truth [will] it be possible to meet the basic demands of justice and to create the necessary conditions for achieving true national reconciliation."<sup>126</sup> The Commission

<sup>117</sup> *Id.*

<sup>118</sup> See, e.g., Delgado, *supra* note 53; Marcia Valente, *Argentina: No Consensus on Chilean-Style Human Rights Panel*, INTER PRESSE SERV., July 12, 2000, available at 2000 WL 4092037 [hereinafter Valente, *No Consensus*]; Valente, *Chipping Away*, *supra* note 18.

<sup>119</sup> See NINO, *supra* note 1, at 72-73.

<sup>120</sup> See MARK ENSALACO, CHILE UNDER PINOCHET RECOVERING THE TRUTH 197-98, 199-201, 210-11 (2000); NINO, *supra* note 1, at 72, 79-80.

<sup>121</sup> See NINO, *supra* note 1, at 72, 73.

<sup>122</sup> *Id.* at 72, 79.

<sup>123</sup> *Id.* at 80; ARDITTI, *supra* note 10, at 43.

<sup>124</sup> See MARGUERITE FEITLOWITZ, A LEXICON OF TERROR 13 (1998).

<sup>125</sup> ENSALACO, *supra* note 120, at 183.

<sup>126</sup> *Id.* at 186.

had less than one year to report its findings.<sup>127</sup> Even though the Commission was prohibited from naming the culpable,<sup>128</sup> it still encountered resistance from the military, who refused to testify as to the most crucial information.<sup>129</sup> With an unclear definition as to what constituted a “serious human rights violation,” the government required the Commission to include soldiers killed by the resistance as victims.<sup>130</sup> When the Commission submitted its report, it had examined over 3400 cases of human rights violations.<sup>131</sup> Hundreds more came forward with allegations after the report was finished.<sup>132</sup> Despite the volume of research and investigation this report was unable to account for all the missing.<sup>133</sup>

Nonetheless, Chile and Argentina discussed, and, in the case of Chile, have established new panels to further uncover abuses from the military regimes.<sup>134</sup> These panels differ from those of the past in that they have the cooperation of the military,<sup>135</sup> which often resisted giving the full truth to previous commissions.<sup>136</sup>

In June, 2000, Chile established a pact between the military and civilian activists whereby the military promised to provide information on locating the remains of the victims of the dictatorship.<sup>137</sup> This pact provides that those who supplied information would have their identities held in strict confidence, protected by a “professional secrecy” law.<sup>138</sup> The panel received a six-month, renewable time frame in which to uncover and turn over information.<sup>139</sup> The panel emphasized that by agreeing to this the military has formally recognized its part in the repression<sup>140</sup> in an effort to help the country move “beyond its controversial past.”<sup>141</sup> Some human rights groups have rejected the panel

<sup>127</sup> *Id.* at 188.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.* at 188, 199.

<sup>130</sup> ENSALACO, *supra* note 120, at 186–187, 188.

<sup>131</sup> *Id.* at 197.

<sup>132</sup> *Id.* at 198.

<sup>133</sup> *See id.* at 210.

<sup>134</sup> *See* Valente, *Chipping Away*, *supra* note 18.

<sup>135</sup> *Id.*

<sup>136</sup> *See* ENSALACO, *supra* note 120, at 199–200, 201–202; GUEST, *supra* note 28, at 384–85.

<sup>137</sup> *See* Valente, *Chipping Away*, *supra* note 18.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> Kevin G. Hall, *White House to Bare CIA Data on Americans Missing in Chile*, HOUSTON CHRON., June 30, 2000, at 28, available at 2000 WL 4308232 [hereinafter Hall, *White House*].

and its report, though, seeing it as “sacrific[ing] justice on the altar of truth.”<sup>142</sup>

In Argentina, the military called for a similar commission after the establishment of the Chilean panel.<sup>143</sup> However, unlike in Chile, no human rights groups supported this panel, as the groups viewed the panel as an attempt to stop the legal summonses of those who committed human rights violations under the regime.<sup>144</sup> The Argentine government backed the proposed panel to uncover the complete truth of the fate of the disappeared, which contained a promise similar to that of the Chilean commission to keep secret the identity of anyone who gave information to the panel.<sup>145</sup> However, due to the human rights groups’ rejection of the proposal, the commission was not created.<sup>146</sup>

Uruguay also established a panel to investigate the truth of what happened to about 170 disappeareds.<sup>147</sup> President Jorge Batlle established a Commission for Peace in 2000, made up of delegates from the Catholic Church, the government, human rights groups, and political opposition, to hear testimony about the last days of victims’ lives in order to determine where the bodies are located.<sup>148</sup> Nevertheless, human rights groups fear that this report, together with a recognition by the Executive of the responsibility of the state for the regime’s crimes, could be directed at bringing the issue of human rights to a close where the impunity laws could not.<sup>149</sup>

### B. Prosecutions and Investigations Through Other Methods

Various obstacles have hindered prosecutions of and investigations into human rights abuses in South America; often, these include a country’s own laws.<sup>150</sup> In Chile and Argentina, for example, the courts tried limited numbers of human rights violators, who then re-

<sup>142</sup> See Valente, *No Consensus*, *supra* note 118; Marcela Valente, *Rights-South America: Puzzling Out the Truth of the Disappeared*, INTER PRESS SERV., Jan. 19, 2001, available at 2001 WL 4802430 [hereinafter Valente, *Puzzling*].

<sup>143</sup> Valente, *Chipping Away*, *supra* note 18.

<sup>144</sup> Valente, *No Consensus*, *supra* note 118.

<sup>145</sup> See *id.*

<sup>146</sup> See *Argentina: Human Rights Developments*, HUM. RTS. WATCH WORLD REP. 2001, available at <http://www.hrw.org/wr2k1/americas/argentina.html> (last visited Feb. 8, 2001) [hereinafter *Argentina: Human Rights*].

<sup>147</sup> Valente, *Puzzling*, *supra* note 142.

<sup>148</sup> *Id.*

<sup>149</sup> Delgado, *supra* note 53.

<sup>150</sup> See, e.g., Delgado, *supra* note 53; NINO, *supra* note 1, at 37, 103, 104.

ceived a grant of amnesty or pardon by new laws.<sup>151</sup> Similarly, in Uruguay, the impunity law, passed in 1986, stopped all trials for human rights violations.<sup>152</sup> In Brazil, a military amnesty remained undisturbed after the regime ended, and a government decree stopped all trials.<sup>153</sup>

Despite the legal restrictions on prosecution, some countries have been able to move forward based on other provisions in their laws.<sup>154</sup> In Uruguay, while the impunity law forbade the trying of military officers in civilian courts, Article 4 required the Executive to investigate the fate of the disappeared, particularly that of twelve children born in captivity to kidnapped mothers.<sup>155</sup> While three post-dictatorship governments refused to investigate, events in Argentina in the mid-1990's reinvigorated the human rights movements in Uruguay to renew their efforts to pursue the "right to truth," as embodied in Article 4.<sup>156</sup> With judges still vulnerable to military pressure, Article 4 was the only hope, but it took the election of a new president in 2000, Jorge Batlle, for the government to acknowledge and promise to address the issue of kidnapped children and the disappeared.<sup>157</sup> Days after he was sworn into office, Batlle located the granddaughter of Argentine poet Juan Gelman, who was born in captivity in Uruguay after Gelman's son and daughter-in-law were kidnapped by the Argentine regime.<sup>158</sup> Batlle also established the Commission for Peace to investigate the fate of the Uruguayan disappeared, but only within the confines of the impunity laws.<sup>159</sup> Moreover, Article 4 limits truth to what the Executive and military are willing to tell, and only allows for investigation into disappearances, which were not the main form of repression in Uruguay.<sup>160</sup>

In Brazil, where the government closed the cases of the disappeared in 1995, its congress has opened an unprecedented investigative commission to investigate crimes related to Operation Condor.<sup>161</sup>

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<sup>151</sup> See NINO, *supra* note 1, at 37, 103, 104.

<sup>152</sup> Delgado, *supra* note 53.

<sup>153</sup> Valente, *Chipping Away*, *supra* note 18.

<sup>154</sup> See *id.*; Delgado, *supra* note 53; Valente, *No Consensus*, *supra* note 118.

<sup>155</sup> Delgado, *supra* note 53.

<sup>156</sup> *Id.*

<sup>157</sup> See Delgado, *supra* note 53; Valente, *Chipping Away*, *supra* note 18; Valente, *No Consensus*, *supra* note 118.

<sup>158</sup> See Delgado, *supra* note 53; Valente, *No Consensus*, *supra* note 118.

<sup>159</sup> See Valente, *Puzzling*, *supra* note 142.

<sup>160</sup> See Delgado, *supra* note 53; Valente, *No Consensus*, *supra* note 118.

<sup>161</sup> Jones, *supra* note 16; Valente, *Chipping Away*, *supra* note 18.



New evidence about Brazil's involvement in Condor has stirred up human rights activists and caused the government to investigate the deaths of former presidents.<sup>162</sup> The commission's main focus is the death of former President Joao Goulart, who was the last elected president before the military junta began ruling in 1964.<sup>163</sup> The former President resided in exile in Argentina when he supposedly died of heart problems, but authorities permitted neither an autopsy nor a return of his body for burial in Brazil.<sup>164</sup> The commission also will investigate the deaths of former Presidents Juscelino Kubitschek, who died in a 1976 car crash, and Alencar Castello Branco, the first military dictator, who died in a mysterious plane crash in 1967 after calling for a return to democracy.<sup>165</sup>

### C. *Baby-snatching in Argentina*

When Argentinean military officers went on trial for human rights abuses in the 1980s, they faced no charges for kidnapping children.<sup>166</sup> In order to charge this crime, there had to be evidence that there was a systematic plan for such kidnapping.<sup>167</sup> Isolated incidents did not suffice.<sup>168</sup> Because the officers had no convictions for kidnapping children, however, their pardons and the amnesty laws did not cover this crime.<sup>169</sup> In 1996, the Grandmothers of the Plaza de Mayo, a human rights group founded by the grandmothers of the kidnapped children, brought suit against military officers, charging them with a systematic plan to abduct their opponents' children, change their identities, and illegally adopt them.<sup>170</sup>

Investigation into the allegations of baby-snatching uncovered a systematic plan to kidnap babies, falsify identities, and forge public documents, all of which were planned and supported by the dictatorship.<sup>171</sup> Records found after a raid on the Navy headquarters and other Navy offices included irregular birth certificates from that era,

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<sup>162</sup> See *id.*; Osava, *supra* note 19.

<sup>163</sup> Jones, *supra* note 16.

<sup>164</sup> Osava, *supra* note 19.

<sup>165</sup> Jones, *supra* note 16.

<sup>166</sup> Marcela Valente, *Court Orders Ex-Dictator's Return to Prison*, INTER PRESS SERV., Dec. 1, 2000, available at 2000 WL 28919964 [hereinafter Valente, *Court Orders*].

<sup>167</sup> See *id.*

<sup>168</sup> See *id.*

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> See Marcela Valente, *Rights-Argentina: Six Officers Arrested in Adoption Scandal*, INTER PRESS SERV., Jan. 10, 2000, available at 2000 WL 4089352 [hereinafter Valente, *Six Officers*].

as well as records of births to infertile parents and of women giving birth at home, which was highly unusual.<sup>172</sup>

The uncovered information is chilling. It is estimated that four to five hundred children were taken from young parents who were kidnapped and then disappeared.<sup>173</sup> Politically acceptable families, including military officers and police, then adopted the babies, although some families adopted the children in good faith.<sup>174</sup> Operation Condor may have facilitated sending the abducted children to other countries, which explains why some Argentinean children were found in Chile or Paraguay.<sup>175</sup> Under Condor, illegal adoptions for profit became a thriving business because the number of political prisoners was so high.<sup>176</sup>

Stealing babies for rearing by "acceptable" families was intended to create a new breed of "super patriot," supportive of the Army, who would lead Argentina into the twenty-first century.<sup>177</sup> The military junta set out to systematically eliminate an entire generation of left-wing political opponents.<sup>178</sup> As one general put it, "[s]ubversive parents teach their children subversion. This has to be stopped."<sup>179</sup>

According to the survivors of the torture and the investigation by the Grandmothers, as many as 500 pregnant women were kept alive in detention until they gave birth.<sup>180</sup> There were three secret centers, including the Navy Mechanics School in Buenos Aires, also known as ESMA, and the headquarters of Navy intelligence, which had "facilities" for pregnant women.<sup>181</sup> There, at the regime's most notorious torture center, their jailers gagged and abused these women,<sup>182</sup> forc-

<sup>172</sup> *Id.*

<sup>173</sup> Howard LaFranchi, *Argentina Seeks Justice for Kidnapped Children*, CHRISTIAN SCI. MONITOR, Nov. 3, 1999, at 1, available at 1999 WL 5383480.

<sup>174</sup> *Id.*; Valente, *Court Orders*, *supra* note 166.

<sup>175</sup> Chelala, *supra* note 14.

<sup>176</sup> Jan McGirk, *Argentine Officers Are Accused of Baby Thefts*, INDEP. (LONDON), Jan. 10, 2000, at 11, available at 2000 WL 6449618.

<sup>177</sup> Caroline Graham, *Was My Papa Really the Secret Policeman Who Killed My Mother?*, MAIL ON SUN., Sept. 10, 2000, at 49, available at 2000 WL 24064430.

<sup>178</sup> *Id.*

<sup>179</sup> ARDITTI, *supra* note 10, at 50.

<sup>180</sup> *Id.*; Christina Lamb, *Lost, Found, and Lost Again*, NAT'L POST, Sept. 25, 2000, available at 2000 WL 26899515. Other sources put the number of kidnapped babies at over 500. See Simone Lauenstein, *Argentina Probes Fate of Missing Babies*, DEUTSCHE PRESSE-AGENTUR (HAMBURG), Feb. 20, 2000, available at LEXIS, News Group File.

<sup>181</sup> ARDITTI, *supra* note 10, at 22, 24; *60 Minutes: Argentina's Dirty War* (CBS television broadcast, Apr. 23, 2000), available at 2000 WL 4212887.

<sup>182</sup> Graham, *supra* note 177.

ing them to give birth blindfolded and tied to tables.<sup>183</sup> Their babies were taken within minutes of delivery and adopted, often by the very people who had killed the mothers.<sup>184</sup> Although their jailers led some new mothers to believe that they would be freed,<sup>185</sup> after the births their captors shot some women and put others on aircraft and then threw them out over the Atlantic Ocean.<sup>186</sup>

Prosecutors filed charges against nine officers for the baby-snatching scheme, leading to the arrest of all nine by 1998.<sup>187</sup> More army officers involved have been arrested since then.<sup>188</sup> The government placed former General Jorge Videla under house arrest for his part in the plan, and in January, 1999, the other eight former leaders allegedly responsible for the kidnapping received house arrest, where they remain.<sup>189</sup> An investigation by federal Judge Adolfo Bagnasco determined that the baby-snatching plan had two stages: the kidnappings took place in the first three years of the dictatorship, then the kidnappings were covered up during the years after the Falklands War.<sup>190</sup>

Military resistance and interference has hindered the investigations and prosecutions.<sup>191</sup> While the armed forces accept the prosecution of retired officers responsible for the baby kidnappings, they are not as supportive of efforts to investigate those officers who are still in active service.<sup>192</sup> Early in 2000, the Supreme Council of the Armed Forces asked Judge Bagnasco to transfer the baby-snatching case to its jurisdiction.<sup>193</sup> When Bagnasco refused, the case was appealed to the Supreme Court, which accepted the case.<sup>194</sup> In August, 2000, the Su-

<sup>183</sup> *All Things Considered* (NPR radio broadcast, Oct. 18, 2000), available at 2000 WL 21472431.

<sup>184</sup> Graham, *supra* note 177.

<sup>185</sup> See ARDITTI, *supra* note 10, at 65.

<sup>186</sup> Graham, *supra* note 177.

<sup>187</sup> Valente, *Court Orders*, *supra* note 166.

<sup>188</sup> See Tim Cornwell, *Junta Bosses Under Arrest "Stole Babies,"* SCOTSMAN (EDINBURGH), Jan. 10, 2000, available at LEXIS, News Group File.

<sup>189</sup> LaFranchi, *supra* note 173; Valente, *Court Orders*, *supra* note 166. Convicted offenders over the age of seventy are entitled to house arrest instead of prison time in Argentina. See Valente, *Court Orders*, *supra* note 166.

<sup>190</sup> LaFranchi, *supra* note 173.

<sup>191</sup> See *Argentina: Human Rights*, *supra* note 146; *Army Chief*, *supra* note 114; *Rights Groups to Complain Against State In Regional Rights Body*, BBC SUMMARY OF WORLD BROADCASTS, July 22, 2000, available at LEXIS, News Group File [hereinafter *Rights Groups to Complain*].

<sup>192</sup> See *Argentina: Human Rights*, *supra* note 146.

<sup>193</sup> *Rights Groups to Complain*, *supra* note 191.

<sup>194</sup> *Id.*

preme Court rejected the army's petition.<sup>195</sup> The Army also has denied the existence of any secret files containing information about "dirty war" repression, files that would aid in the prosecution of the baby-snatchers, claiming that all such information was destroyed.<sup>196</sup> Another obstacle is the aging memories of the witnesses, many of whom are former army officials who are now in their seventies.<sup>197</sup> Now elderly, many claim to have no knowledge or memory of the kidnappings.<sup>198</sup> Investigations continue, however, as there remain many more officers who were involved but have yet to be arrested.<sup>199</sup>

#### D. *Other Countries' Investigations and Prosecutions of South American Atrocities*

##### 1. Europe and Israel

Prosecutions of South American military officials for human rights violations during the military regimes are not confined to South America.<sup>200</sup> Prosecutors in Europe have taken on the task of bringing former officials to justice for their violations against European citizens and against humanity at large.<sup>201</sup> In the process, they have served as a catalyst for charges against former dictators in Chile, Argentina, and Brazil.<sup>202</sup>

In Italy, it took sixteen years of investigation to bring two former members of Argentina's military to trial for the deaths of eight Italian-born Argentineans.<sup>203</sup> Trials began in October, 1999, after an investigation into 600 disappearances.<sup>204</sup> Testimony from, among others, Uruguayan Lilian Celiberti, who testified regarding Italians who may have been detained in Brazil and then transferred to Uruguay in 1978, aided these investigations.<sup>205</sup> Celiberti herself was detained and tortured in Brazil in 1978 and then transferred to Uruguay under

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<sup>195</sup> *Argentina: Human Rights*, *supra* note 146.

<sup>196</sup> *See Army Chief*, *supra* note 114.

<sup>197</sup> *See Warn*, *supra* note 114.

<sup>198</sup> *Id.*

<sup>199</sup> *See Lamb*, *supra* note 180.

<sup>200</sup> *See Hall*, *White House*, *supra* note 141.

<sup>201</sup> *See id.*

<sup>202</sup> *Id.*

<sup>203</sup> *Italy Sentences Two Argentinean Ex-Military Chiefs to Life*, AGENCE FR.-PRESSE, Dec. 6, 2000, available at 2000 WL 24775546 [hereinafter *Italy Sentences*].

<sup>204</sup> *Id.*

<sup>205</sup> *Osava*, *supra* note 19.

Condor.<sup>206</sup> Italian magistrates decided that they had enough evidence of about eight disappearances to go to trial and convicted a total of seven Argentinean military officials<sup>207</sup> while rejecting the defense's argument that the cases were barred because of Argentina's Full Stop and Due Obedience Laws.<sup>208</sup> All received sentences in absentia—five received sentences of twenty-four years each, and two received life sentences, one of whom, Carlos Suarez, already was under house arrest in Argentina for suspicion of participating in the kidnapping of babies.<sup>209</sup> Italy also is investigating the disappearance of Italians in Chile.<sup>210</sup>

In Spain, Judge Baltasar Garzon first charged former Chilean dictator Augusto Pinochet with numerous human rights crimes in 1998.<sup>211</sup> English officials, however, determined that Pinochet could not be extradited to Spain due to his ill health, and allowed Pinochet to return to Chile.<sup>212</sup> In Chile, however, officials stripped Pinochet of his immunity from prosecution, clearing the way for his prosecution at home.<sup>213</sup>

Garzon turned his attention to Argentina, investigating "dirty war" crimes under the notion of universality, crimes that are so horrific that they can be tried anywhere.<sup>214</sup> In March, 2000, Garzon indicted ninety-eight former military junta members on charges of genocide, terror, and torture.<sup>215</sup> Of those, Richard Cavallo, individually was charged with the torture, disappearance, and execution of 21 people, and linked to 227 disappearances, 110 cases of torture, and 16

<sup>206</sup> *Id.*

<sup>207</sup> *Italy Sentences, supra* note 203.

<sup>208</sup> *Argentina: The Role of the International Community*, HUM. RTS. WATCH WORLD REP. 2001, available at <http://www.hrw.org/wr2k1/americas/argentina3.html> (last visited Feb. 8, 2001) [hereinafter *Argentina: The Role*].

<sup>209</sup> *Italy Sentences, supra* note 203.

<sup>210</sup> See *Italian Judge Investigates Disappeared Cases*, SANTIAGO TIMES, June 14, 2001, available at 2001 WL 5995671.

<sup>211</sup> *E.g., Chile: Human Rights Developments*, HUM. RTS. WATCH WORLD REP. 2001, available at <http://www.hrw.org/wr2k1/americas/chile.html> (last visited Feb. 8, 2001) [hereinafter *Chile: Human Rights*]; Marcela Valente, *Rights-Argentina: Justice Nabs Another Dictatorship Official*, INTER PRESS SERV., Aug. 8, 2000, available at LEXIS, News Group File [hereinafter Valente, *Justice*].

<sup>212</sup> See Valente, *Justice, supra* note 211.

<sup>213</sup> *Chile: Human Rights, supra* note 211.

<sup>214</sup> See Jose de Cordoba, *Mexico Allows Extradition of Former Argentine Officer*, WALL ST. J., Jan. 15, 2001, at A19, available at 2001 WL-WSJ 2850966; *Mexico: The Search for 'Serpico'*, NEWSWEEK INT'L, Sept. 18, 2000, available at 2000 WL 9728428 [hereinafter *Serpico*].

<sup>215</sup> *Serpico, supra* note 214; *Ex-Argentine Officer Charged With Genocide*, L.A. TIMES, Sept. 2, 2000, at A4, available at 2000 WL 25892449 [hereinafter *Ex-Argentine Officer*].

instances of baby-snatching.<sup>216</sup> Garzon claims that some of the victims were Spanish, and is backed by fellow High Court Justices against other Spanish prosecutors who believe that he lacks jurisdiction over these crimes.<sup>217</sup> Also in Spain, the 1992 Nobel Peace Prizewinner, Rigoberta Menchu, brought a genocide complaint against the Guatemalan military, but the Spanish National Court determined that Spain lacked jurisdiction to hear this complaint.<sup>218</sup>

Other countries also are conducting investigations and indicting former Argentinean officials for human rights crimes.<sup>219</sup> France announced in August, 2000, that it too would seek the extradition of Ricardo Cavallo, which followed on the heels of its extradition request for former Major Jorge Olivera for kidnapping, torture, and disappearance of a French citizen.<sup>220</sup> In October, 2001, a French judge issued warrants for fifteen Chilean officials under the military regime for the disappearance of French citizens.<sup>221</sup> Furthermore, the Israeli Parliament announced a plan in August, 2000 to investigate the fate of Jewish-Argentinean disappeareds.<sup>222</sup>

## 2. The United States

The United States is in the unique position of having the ability to both hinder and help investigations into human rights abuses in South America.<sup>223</sup> Documents held by the State Department, Pentagon, and CIA may hold information that would shed light on investigations in Argentina and Chile.<sup>224</sup> The United States likely had close ties to Chile during Pinochet's regime, and while its relations with Argentina were not as strong, it is also likely that the CIA had a strong intelligence operation there during Argentina's military regime.<sup>225</sup> Chilean Judge Guzman in fact, seeks to question Henry Kissenger

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<sup>216</sup> *Ex-Argentine Officer*, *supra* note 215.

<sup>217</sup> *Id.*

<sup>218</sup> *Court Says Spain Can't Take Up Guatemalan Genocide Case*, DOW JONES INT'L, Dec. 13, 2000, available at 12/13/00 DJINS 18:24:00 [hereinafter *Court Says*].

<sup>219</sup> See *Argentina: The Role*, *supra* note 208.

<sup>220</sup> *Id.*

<sup>221</sup> Pierre-Antoine Souchard, *French Judge Issues Arrest Warrants*, AP ONLINE, Oct. 25, 2001, available at 2001 WL 29337362.

<sup>222</sup> See *Argentina: The Role*, *supra* note 208.

<sup>223</sup> See, e.g., Chelala, *supra* note 14; Hall, *White House*, *supra* note 141; Christopher Marquis, *CIA Document Release is Subject of Tussle*, N.Y. TIMES, Aug. 20, 2000, available at 2000 WL 3876796.

<sup>224</sup> See, e.g., Marquis, *supra* note 223.

<sup>225</sup> Clifford Krauss, *Albright Supports Declassifying Files on South American Regimes*, PORTLAND OREGONIAN, Aug. 17, 2000, at A7, available at 2000 WL 5424788.

about the U.S. role in the overthrow of Salvatore Allende.<sup>226</sup> Former President Clinton ordered the release of declassified documents by the national security agencies in order to help investigations into acts of political violence in Chile,<sup>227</sup> and by mid-2000, the agencies had released 7500 documents.<sup>228</sup> However, the CIA has refused to release all of its documentation on Chile, particularly information that might be crucial to the trial of Pinochet, claiming that to do so would disclose too much information about the CIA's practices.<sup>229</sup>

In August, 2000, then Secretary of State Madeline Albright met with activists in both Chile and Argentina and promised to help declassify the documents that would assist in determining the fate of the kidnapped babies and shed some light on Operation Condor.<sup>230</sup> In September, 2000, there was somewhat of a breakthrough in determining the U.S. role in Chile, as Congress received information that the CIA had maintained ties with the director of Chile's secret police during the period of the worst abuses.<sup>231</sup>

Resistance by the CIA not only affects South American prosecutions for human rights abuses, but also affects the U.S. Justice Department.<sup>232</sup> The Justice Department reopened its investigation into the 1976 car bombing in Washington D.C. which took the lives of Orlando Letelier, a Chilean diplomat, and his American assistant, Ronni Moffitt.<sup>233</sup> Considered an act of terrorism on U.S. soil, the Justice Department reopened the case after the arrest of Pinochet in Britain,<sup>234</sup> and investigators arrived in Chile in March, 2000 to begin questioning witnesses in order to determine Pinochet's role in the assassination.<sup>235</sup>

### III. ALTERNATIVE METHODS FOR OBTAINING JUSTICE

The indictment of Pinochet by Judge Garzon of Spain and the British agreement to Pinochet's arrest in England were instrumental

<sup>226</sup> See Linda Diebel, *Latin America's Dictators Face a Day of Reckoning Over Human-Rights Issues*, TORONTO STAR, Jul. 15, 2001, at B1, available at 2001 WL 23662276.

<sup>227</sup> Marquis, *supra* note 223.

<sup>228</sup> *Chile: The Role of the International Community*, HUM. RTS. WATCH REP. 2001, available at <http://www.hrw.org/wr2k1/americas/chile3.html> (last visited Feb. 8, 2001) [hereinafter *Chile: The Role*].

<sup>229</sup> Marquis, *supra* note 223.

<sup>230</sup> Chelala, *supra* note 14; Krauss, *supra* note 225.

<sup>231</sup> *Chile: The Role*, *supra* note 228.

<sup>232</sup> See Chelala, *supra* note 14; Hall, *White House*, *supra* note 141.

<sup>233</sup> *Id.*

<sup>234</sup> *Id.*

<sup>235</sup> *Chile: The Role*, *supra* note 228.

in provoking international cooperation and willingness to investigate and prosecute South American human rights violations.<sup>236</sup> These actions are indicative of a maturation of international law and institutions that focus on human rights which will be instrumental in present and future pursuits of justice for these past abuses.<sup>237</sup> In addition, the increasing globalization of Latin America through trade and investment has resulted in the development of a spirit of cooperation and an exchange of information that is enabling countries to begin to pursue justice through avenues not used in the past.<sup>238</sup> While there are still legal challenges and dissatisfaction, these innovative approaches to accountability and extradition will allow true justice to be achieved in South America and throughout the world.<sup>239</sup>

### A. Extradition Requests

The extradition request by Spain for General Pinochet and England's subsequent legal analysis of the request set precedent in international law.<sup>240</sup> England based its examination of the extradition request on the 1984 International Torture Convention.<sup>241</sup> This Convention held that torture is not a legitimate part of any official's job, and therefore is not protected by immunity, thus allowing Spain to request the extradition.<sup>242</sup> English courts ruled in 1999 that Pinochet could be extradited to Spain for charges of torture that occurred after 1988, when the Convention came into effect in the United Kingdom.<sup>243</sup>

While the Torture Convention would seem to be an obvious basis of support for extradition of other former heads of state, most of the countries that have ratified the Convention have been reluctant to

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<sup>236</sup> See Marc Champion, *Pinochet is Freed, But No Ex-Dictator Should Feel Safe*, WALL ST. J. EUR., Mar. 3, 2000, available at 2000 WL-WSJE 294859; Osava, *supra* note 19.

<sup>237</sup> See Alison Brysk, *Globalization: The Double Edged Sword*, NACLA REP. ON THE AM., July 1, 2000, at 29, available at 2000 WL 12982320.

<sup>238</sup> See *id.*

<sup>239</sup> See *id.*

<sup>240</sup> See Brysk, *supra* note 237; *Mexico Extradition of Argentina Official Breaks Legal Ground*, DOW JONES INT'L NEWS, Feb. 3, 2001, available at 2/3/01 DJINS 16:16:00 [hereinafter *Mexico*].

<sup>241</sup> Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, at 197, U.N. Doc. A/39/51 (1984) (entered into force June 26, 1987), reprinted in 23 I.L.M. 1027 (1984); Champion, *supra* note 236; see *Mexico*, *supra* note 240.

<sup>242</sup> Champion, *supra* note 236.

<sup>243</sup> *Mexico*, *supra* note 240.



adopt it in this way.<sup>244</sup> Even where national courts can use the Convention, there will be no trial unless the government allows it.<sup>245</sup> The United Kingdom showed that it considered itself and the European Union bound under the Convention's provision for the extradition of suspected torturers by allowing trial to determine whether Pinochet should be extradited.<sup>246</sup> Through the United Kingdom's actions, the hope is that other countries will become more open to using the Convention in the same way, thus allowing for suspected torturers to be brought to justice wherever they may be.<sup>247</sup>

Additionally, there is possibly a more effective option on which to base extradition requests for suspected human rights abusers from the Condor military regimes.<sup>248</sup> Extradition treaties between individual countries may serve as the best way to arrest and prosecute those former military officials who cannot be charged in their own countries due to immunity laws.<sup>249</sup> Based upon the principle of universal jurisdiction, whereby any country can prosecute someone who has committed one of the more heinous types of human rights abuses, some countries have begun to order the arrest and extradition of previously untouchable suspects.<sup>250</sup>

In February, 2001, Mexico decided to extradite Ricardo Cavallo, a former military officer in Argentina, to Spain, per the indictment and extradition request of Judge Garzon.<sup>251</sup> Mexico's decision was not based on the Torture Convention, however, but on the extradition treaty between Mexico and Spain.<sup>252</sup> Breaking legal ground and thus going even further than the Pinochet arrest and legal contest, this decision stated that, per the principle of universal jurisdiction, "torture is wrong with or without the [Torture] Convention," and therefore any country could extradite one suspected of torture.<sup>253</sup> Barring overturn on appeal, this would be the first time that a person accused of human rights violations was extradited to a country different from

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<sup>244</sup> See Champion, *supra* note 236.

<sup>245</sup> *Id.*

<sup>246</sup> See Brysk, *supra* note 237; Champion, *supra* note 236.

<sup>247</sup> See Brysk, *supra* note 237.

<sup>248</sup> See Mexico, *supra* note 240.

<sup>249</sup> See *id.*; Valente, *Justice*, *supra* note 211.

<sup>250</sup> See Cordoba, *supra* note 214.

<sup>251</sup> Mexico, *supra* note 240.

<sup>252</sup> *Id.*

<sup>253</sup> See *id.*; Cordoba, *supra* note 214.

the one in which the crimes occurred.<sup>254</sup> A similar case is that of former Argentine officer Jorge Olivera, arrested in Rome on a French warrant for his part in the kidnapping and death of French citizens in Argentina during the military regime.<sup>255</sup> If Italy decides to extradite him, this ruling and the Cavallo ruling could help other countries reluctant to apply the Torture Convention as England did to extradite suspected human rights abusers through their own extradition treaties with other countries.<sup>256</sup>

Extraditions of this sort, however, may encounter obstacles, as countries like Argentina have expressed support instead for the principle of territoriality, whereby crimes like those of Cavallo would only be tried in the country in which they occurred.<sup>257</sup> It is based upon this idea that Argentina has protected military officials indicted by Judge Garzon for their part in "dirty war" abuses from extradition.<sup>258</sup> Argentina also has refused to give full support to investigations of its nationals occurring in other countries.<sup>259</sup> The continued influence and pressure of the military, particularly in Argentina and Chile, also makes the prosecutions and extraditions more difficult.<sup>260</sup> In Argentina, the military is particularly unhappy with the current trend of arrests and indictments, especially that of Olivera, who served as counsel to other officers facing similar charges.<sup>261</sup> Rather than defend Olivera, though, Argentina has said that it will limit its assistance in his case to providing legal aid from the consul.<sup>262</sup>

### B. Accountability

Spain's request for the extradition of Pinochet was also important for its advancement of the idea of holding former military officers

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<sup>254</sup> Cordoba, *supra* note 214; Patrick Moser, *Mexican Authorities to Extradite Argentine Ex-Officer to Spain*, AGENCE FR.-PRESSE, Feb. 3, 2001, available at 2001 WL 2334111.

<sup>255</sup> Valente, *Justice*, *supra* note 211.

<sup>256</sup> *See id.*; Cordoba, *supra* note 214; Champion, *supra* note 236. This method is already seeming to take hold. In 2000, Argentina also made an extradition request for Pinochet and other Chileans in order to try them for the assassination of a former Argentinean general and his wife. *See Argentina: Human Rights*, *supra* note 146.

<sup>257</sup> *See Argentina: The Role*, *supra* note 208.

<sup>258</sup> Valente, *Justice*, *supra* note 211.

<sup>259</sup> *Argentina: The Role*, *supra* note 208. In the Italian case against former Argentinean officers for the deaths of Italian-born Argentineans, the judge "underscored the Argentine authorities lack of cooperation with his investigations of [the] cases." *Id.*

<sup>260</sup> *See Valente, Justice*, *supra* note 211; *see also Chile: Human Rights*, *supra* note 211.

<sup>261</sup> *See Valente, Justice*, *supra* note 211.

<sup>262</sup> *Id.*

accountable for their human rights abuses.<sup>263</sup> The request helped contribute to the doctrine of indirect chain of command responsibility for human rights violations that was established at Nuremberg after World War II, and the courts in the United Kingdom “clarified the potential culpability of former heads of state for human rights abuse.”<sup>264</sup> These decisions have resulted in a new wave of human rights accountability throughout the world.<sup>265</sup>

In August, 2000, the Chilean Supreme Court stripped Pinochet of his immunity from prosecution, which he held as a “lifetime senator.”<sup>266</sup> The penetration of Pinochet’s seemingly impervious shield of immunity was a victory for justice in Chile and throughout the world, putting other former dictators on alert that they too could face prosecution after years of being untouchable.<sup>267</sup> The action also raised the stature of the Chilean judiciary, which had come under fire for its failure to defend human rights under Pinochet’s rule.<sup>268</sup> Chile also partially withdrew the 1978 self-amnesty, allowing for the arrest of dozens of former military officers for disappearances and kidnappings, based on the evolving doctrine that “forced disappearance-kidnapping is an ongoing crime not subject to statutes of limitations.”<sup>269</sup> The Chilean courts held then, that in Pinochet’s case, the 1978 self-amnesty did not apply to the prosecutions of “disappearances” because of the ongoing nature of the crime.<sup>270</sup> In July, 2001, however, the Chilean courts determined that Pinochet was too ill to stand trial for his crimes.<sup>271</sup> That ruling was challenged in October, 2001.<sup>272</sup>

Some Condor countries are mirroring the act of stripping away a former dictator’s immunity, which may serve to encourage others to

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<sup>263</sup> See Brysk, *supra* note 237.

<sup>264</sup> *Id.*

<sup>265</sup> See *id.*

<sup>266</sup> *Chile: Human Rights, supra* note 211.

<sup>267</sup> See *id.*; Yanina Olivera, *Ruling Stripping Pinochet of Immunity Death Knell to Dictator Freedom*, AGENCE FR.-PRESSE, June 8, 2000, available at 2000 WL 2810270 [hereinafter Olivera, *Ruling*].

<sup>268</sup> *Chile: Human Rights, supra* note 211.

<sup>269</sup> Brysk, *supra* note 237.

<sup>270</sup> See Reed Brody, *Justice: the First Casualty of Truth? The Global Movement to End Impunity for Human Rights Abuses Faces a Daunting Question*, NATION, Apr. 30, 2001, at 25, available at 2001 WL 2132497.

<sup>271</sup> See Eduardo Gallardo, *Pinochet Hit With Criminal Complaint*, AP ONLINE, Nov. 6, 2001, available at 2001 WL 29791226.

<sup>272</sup> See *id.*

finally prosecute their own, previously immune, former leaders.<sup>273</sup> For Uruguay, the implementation of Article 4 in order to obtain justice may result in limited success, but activists instead may be encouraged by the arrests of Pinochet and the trials of military officials from Argentina and Chile to change their strategy.<sup>274</sup> Paraguayan dictator Alfredo Stroessner ruled from 1954–1989, and has been living in exile in Brazil ever since under the protection of political asylum.<sup>275</sup> However, the head of Brazil's human rights commission has vowed to revoke Stroessner's asylum status so that he can be prosecuted for disappearances under his rule.<sup>276</sup> In December, 2000, a Paraguayan judge issued an arrest and extradition order for the former dictator.<sup>277</sup>

In Argentina, in particular, there appears to be a new wave of thinking regarding immunity and amnesty for human rights abuses. In July, 2001, General Jorge Videla, already on house arrest for his role in the baby-snatching plan, was indicted for being part of an "illegal organization," Operation Condor, and his participation in the "forced disappearance of citizens of Argentine, Chilean, Uruguayan, Paraguayan, Bolivian, and Brazilian origin."<sup>278</sup> In November, 2001, an Argentine appeals court upheld the decision of a lower court that held that the amnesty laws of the 1980s were null and void for a human rights case involving victims of the dictatorship.<sup>279</sup> The original case involved the "illegal appropriation of a minor" under the military regime, but the complainant requested that the case be expanded to include those who kidnapped and "disappeared" the minor's parents.<sup>280</sup> The court annulled the Full Stop and Due Obedience laws in order to allow those responsible to face justice, despite their exoneration for those crimes under the amnesty laws.<sup>281</sup> In Argentina, a judge has the authority to nullify a law for a particular case only, so this annulment is specific to this one case.<sup>282</sup> However, because the appeals court upheld the ruling that the impunity laws are unconstitutional

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<sup>273</sup> See Olivera, *Ruling*, *supra* note 267.

<sup>274</sup> See Delgado, *supra* note 53.

<sup>275</sup> See Olivera, *Ruling*, *supra* note 267.

<sup>276</sup> *Id.*

<sup>277</sup> *Human Rights Group Welcomes Warrant for Stroessner's Arrest*, AGENCE FR.-PRESSE, Dec. 12, 2000, available at 2000 WL 24779269 [hereinafter *Stroessner*].

<sup>278</sup> Oscar Serrat, *Ex-Argentine Leader is Indicted*, AP ONLINE, Jul. 10, 2001, available at 2001 WL 24710765.

<sup>279</sup> See Marcela Valente, *Rights-Argentina: Court Deals Another Blow to Military Impunity*, INTER PRESS SERV., Nov. 9, 2001, available at 2001 WL 4805918.

<sup>280</sup> See *id.*

<sup>281</sup> See *id.*

<sup>282</sup> *Id.*

because they contravene international treaties signed by Argentina, there is hope that new trials against military personnel responsible for human rights abuses will be forthcoming where previously there was no possibility of trying them at all.<sup>283</sup>

This new accountability for human rights violations can be seen in other countries as well.<sup>284</sup> The indictments by Spain's Judge Garzon of ninety-eight military officers for their part in "dirty war" abuses, based on the principle of universal jurisdiction,<sup>285</sup> and a case brought by a Guatemalan in a Spanish court against former dictator Efraim Montt, are other examples.<sup>286</sup> In addition, the United States has used the Alien Torts Act to allow victims of Latin American torture to bring civil suits against their attackers when both are residents of the United States, resulting in judgments against generals from Argentina and Guatemala.<sup>287</sup>

Finally, the creation of the International Criminal Court (ICC) also may prove to be influential in the quest for justice for human rights victims of South America's military regimes.<sup>288</sup> Since the end of the Cold War, countries have become more open to the idea of international crime, as evidenced by the ad-hoc, international war-crimes tribunals for the former Yugoslavia and Rwanda.<sup>289</sup> Once it comes into effect, the permanent ICC will have jurisdiction to try those accused of the worst atrocities under the law, such as genocide and widespread crimes against humanity, but only in situations where the judiciaries in their home countries are too dysfunctional to try those perpetrators.<sup>290</sup> This jurisdiction would not seem to cover Condor countries because they do have functioning judicial systems.<sup>291</sup> Also, the ICC will not have jurisdiction over crimes perpetrated before it comes into

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<sup>283</sup> See *id.*; Diebel, *supra* note 226.

<sup>284</sup> See *Serpico*, *supra* note 214; *Stroessner*, *supra* note 277.

<sup>285</sup> See *Serpico*, *supra* note 214.

<sup>286</sup> See *Court Says*, *supra* note 218. Guatemalan Nobel Laureate Rigoberta Menchu brought a complaint of genocide, terrorism, and human rights abuses against former dictator Efraim Rios Mott and seven other officials for their actions during that country's military regime on the theory that the cases never would receive a full investigation by the Guatemalan courts. See *id.* However, the Spanish National Court ruled that the case could be handled adequately by Guatemalan courts and therefore Spain lacked jurisdiction to investigate. *Id.*

<sup>287</sup> Brysk, *supra* note 237.

<sup>288</sup> See *Champion*, *supra* note 236.

<sup>289</sup> See *id.*

<sup>290</sup> See *Waging War Against War Crimes*, NEWSWEEK INT'L, Jan. 8, 2001, available at 2001 WL 8108828.

<sup>291</sup> See *id.*

force.<sup>292</sup> However, the hope is that the very existence of the court would serve as a source of encouragement or pressure for national courts to effectively investigate their own cases.<sup>293</sup>

### CONCLUSION

The countries of Condor are coming to terms with their pasts while trying to shape their futures.<sup>294</sup> However, governments are challenged by the task of balancing the need to address the past with the equally important need to move forward.<sup>295</sup> This process is difficult because the scars of the past are still raw.<sup>296</sup> In Argentina, for example, any child born between 1975 and 1980 could be a child of a disappeared, and the Grandmothers of the Plaza de Mayo continue their search to find those children and reunite them with their biological families.<sup>297</sup> Not all of the children want to be found, however, and there are equally valid legal claims for those children who wish to leave the past alone and those biological families who want to find their stolen relatives.<sup>298</sup>

The effects of the practice of human rights abuse under South America's military regimes continue to touch not only by the immediate victims, but others as well.<sup>299</sup> Physical attacks on human rights activists in several Latin American countries reflect an atmosphere in which not everyone wants justice to be served.<sup>300</sup> Middle and low-ranking Argentinean military officers during the military regime now are seeing their chances at promotion disappear as their names remain on a list of those accused of crimes against humanity to which the Argentinean Senate refers when making promotions.<sup>301</sup>

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<sup>292</sup> See *id.*

<sup>293</sup> See *id.*

<sup>294</sup> See Olivera, *LatAm Governments*, *supra* note 115.

<sup>295</sup> See *id.*

<sup>296</sup> See Lamb, *supra* note 180.

<sup>297</sup> *Id.*; see Valente, *Court Orders*, *supra* note 166.

<sup>298</sup> LaFranchi, *supra* note 173; see Graham, *supra* note 177. Despite the desire of some kidnapped children not to find out who their biological parents were, the Argentinean Supreme Court has ruled that the need to solve a crime outweighs an individual's right not to give blood in order to make an identification. *All Things Considered*, *supra* note 183.

<sup>299</sup> See Branko Milinkovic, *Politics—The Netherlands: A Controversial Royal Love Story*, INTER PRESS SERV., May 15, 2000, available at 2000 WL 4091175.

<sup>300</sup> See generally Margot Olavarria, *Human Rights Activists Under Attack in Chile and Argentina*, NACLA REP. ON THE AM., Sept. 1, 2000, at 2, available at 2000 WL 12982334; *Guatemala: Defending Human Rights*, HUM. RTS. WATCH WORLD REP. 2001, available at <http://www.hrw.org/wr2k1/americas/guatemala2.html> (last visited Feb. 8, 2001).

<sup>301</sup> Valente, *Senate Delays*, *supra* note 72.

Prosecution of those responsible for past human rights abuses should go a long way towards healing the wounds caused by the military regimes of South America, thus allowing those countries to focus on their futures without the cloud of the past hanging over them. While amnesties, immunity laws, and pardons in the Condor countries were once seemingly impenetrable shields against justice for the victims of those abuses, international awareness and cooperation have resulted in a new atmosphere of accountability. It is encouraging that countries are beginning to espouse the ideas of universal jurisdiction, realizing that torture and other human rights violations are not just crimes against the immediate victims, but crimes against the entire world, and therefore can be addressed by any country. As many former military officials are protected still from prosecution in their home countries, this may be the only way for justice to finally be served.