Coming Out of the Dark: Achieving Justice for Victims of Human Rights Violations by South American Military Regimes

Roseann M. Latore

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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."¹ 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.² 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.³ 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.⁴

* Roseann M. Latore is the Symposium Chair & Solicitations Editor for the Boston College International & Comparative Law Review.

¹ CARLOS SANTIAGO NINO, RADICAL EVIL ON TRIAL 86 (1996).
² See id.
³ See id. at 33, 54.
⁴ 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.” 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. 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.

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. 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. In Argentina, for example, pregnant prisoners gave birth in captivity, and the fate of their babies still is being uncovered.

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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5 AMNESTY INT’L, supra note 4, at 6.
6 Id.
7 Id. at 2.
8 See NINO, supra note 1, at 33, 34, 36, 53.
9 See id. at 33, 35, 36, 54.
10 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.\(^\text{11}\) 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 guerrilla movements.\(^\text{12}\) 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.\(^\text{13}\)

In addition to this common technique of terror, the military regimes solidified their connections through a program called "Operation Condor."\(^\text{14}\) 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.\(^\text{15}\) Under Condor, allegedly named for the national bird of Chile,\(^\text{16}\) the regimes would collect and exchange information about leftists in their countries.\(^\text{17}\) 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.\(^\text{18}\)

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

\(^\text{11}\) NINO, supra note 1, at 33.
\(^\text{12}\) Id.
\(^\text{13}\) Id.
\(^\text{15}\) Id.
\(^\text{16}\) Patrice M. Jones, Brazil Probes Conspiracy by Dictators to Kill Foes, CHI. TRIB., June 2, 2000, at 3, available at 2000 WL 3671072.
\(^\text{17}\) Chelala, supra note 14.
\(^\text{20}\) Id.
\(^\text{21}\) Id.
prominent attacks occurred under his command.\textsuperscript{22} In addition to controlling common alleged leftists, Condor may have been the driving force behind the mysterious deaths of several important political leaders.\textsuperscript{23}

The Condor countries also had in common a technique for dealing with those they considered dangerous to their regimes.\textsuperscript{24} In addition to torture and murder, many were simply "disappeared."\textsuperscript{25} 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.\textsuperscript{26} 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.\textsuperscript{27} While people disappeared in all the military-run countries, the term became synonymous with Argentina because of its pervasive use.\textsuperscript{28}

The efforts of the relatives of the disappeared have brought to light most of the information about Condor.\textsuperscript{29} Information also has been revealed by accident, as was the case when documents were found in Paraguay in the early 1990s.\textsuperscript{30} These documents were the secret files of the police force of dictator Alfredo Stroessner, and detailed their actions.\textsuperscript{31} 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.\textsuperscript{32} The Paraguay documents also indicated that the death of a former president of Brazil was connected to Condor,\textsuperscript{33} prompting new investigations in that country.\textsuperscript{34}

\textsuperscript{22} Kevin G. Hall, South America Struggles to Uncover Past Abuses, ARIZ. REPUB., May 17, 2000, available at 2000 WL 8031739 [hereinafter Hall, South America].
\textsuperscript{23} See id.
\textsuperscript{24} See, e.g., Nino, supra note 1, at 33; Valente, Chipping Away, supra note 18.
\textsuperscript{25} See id.
\textsuperscript{26} See AMNESTY INT'L, supra note 4, at 9.
\textsuperscript{27} See id. at 13.
\textsuperscript{28} 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.
\textsuperscript{29} Osava, supra note 19.
\textsuperscript{30} See id.
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} Hall, South America, supra note 22.
\textsuperscript{34} 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.\textsuperscript{35} Strict press censorship, widespread detentions and executions, and purges of public administration and education ensued.\textsuperscript{36} 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.\textsuperscript{37} In 1978, the government granted the military amnesty that covered almost all past abuses.\textsuperscript{38}

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.\textsuperscript{39} 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.\textsuperscript{40} 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.\textsuperscript{41}

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.\textsuperscript{42} 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.\textsuperscript{43} While it served to raise social consciousness, however, it could not determine the fate of many of those still missing.\textsuperscript{44}

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,
the civilian government invited the military to intervene.45 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.46 That year, the military took full control, suspending Congress and reducing the president to a figurehead.47

The government classified the entire population of Uruguay into three categories according to their degree of risk to the regime.48 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.49 One hundred fifty Uruguayans disappeared, most of whom were abducted in Argentina50 where the worst human rights violations against Uruguayans were committed.51

General elections were held in November, 1984, after the negotiation of the Naval Club Agreement between military and civilian politicians.52 In 1986, the Uruguayan Congress approved the “Law Nullifying the State’s Claim to Punish Certain Crimes,” also known as the “impunity law.”53 This law effectively ended all trials against military and police officers for human rights abuses during the dictatorship.54 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.55

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.56 The abuses in Brazil were not as widespread as in other countries in the region, but

45 NINO, supra note 1, at 34.
46 Id. at 34, 35.
47 Id. at 35.
48 Id.
49 See id.
50 Valente, Chipping Away, supra note 18.
51 NINO, supra note 1, at 35.
52 Id.
54 Id.
55 Id.
56 See NINO, supra note 1, at 33.
Brazil was an active participant in Operation Condor. At least fifteen Brazilians disappeared in other countries, mostly in Chile and Argentina. 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. Brazil also gave arms to the military in Paraguay to aid its bid to overthrow the civilian government.

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. By the time a civilian president was elected in 1985, the worst violations were products of the distant past. 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. 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. Nevertheless, there have been few attempts to obtain justice for those who were abused during the dictatorship.

E. Argentina’s Dirty War

Amid growing economic crisis, violence, and corruption, a military junta overthrew Isabel Peron in March, 1976. Under the Doctrine of National Security, 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.

57 Id. at 33, 34; Osava, supra note 19; Valente, Chipping Away, supra note 18.
58 Osava, supra note 19.
59 Id.
60 Hall, South America, supra note 22.
61 NINO, supra note 1, at 33–34.
62 Id.
63 See id.
64 Valente, Chipping Away, supra note 18.
65 See Jones, supra note 16.
66 NINO, supra note 1, at 43.
67 ARDITTI, supra note 10, at 11.
68 NINO, supra note 1, at 53, 54.
The military extended its judicial jurisdiction to civilian subversive acts, now punishable by death.\textsuperscript{69}

Unprecedented violence followed, carried out by organized task forces for abductions, tortures, and interrogations.\textsuperscript{70} No one knows the exact number of people killed or why.\textsuperscript{71} Official sources put the number between 9000 and 11,000,\textsuperscript{72} but human rights groups estimate that 30,000 disappeared or died under military rule.\textsuperscript{73} 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.\textsuperscript{74}

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

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.”\textsuperscript{79} 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.\textsuperscript{80} Despite the people’s opposition to the actions, protest against the regime was difficult to organize; if one disappeared, there was no physical

\textsuperscript{69} Id. at 54.
\textsuperscript{70} Id.
\textsuperscript{71} Dave Perkins, Mothers Remember Victims of 'Dirty War,' Toronto Star, Dec. 8, 2000, at N02, available at 2000 WL 30322980.
\textsuperscript{74} Nino, supra note 1, at 57.
\textsuperscript{75} See id.
\textsuperscript{76} See Arditti, supra note 10, at 21.
\textsuperscript{77} Id.; Nino, supra note 1, at 57.
\textsuperscript{78} Arditti, supra note 10, at 21; Guest, supra note 28, at 31.
\textsuperscript{79} Nino, supra note 1, at 56.
\textsuperscript{80} See id.
evidence of abuse to protest. The fact that people simply vanished instilled terror and hopelessness in Argentineans.

The junta needed the appearance of legality for its assaults on "subversion," therefore, it allowed the judiciary to survive. First, however, the junta purged the court of all opponents. 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. 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.

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. 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). 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. 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. 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.

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

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81 See Arditti, supra note 10, at 14.
82 See id. at 14, 15.
83 Guest, supra note 28, at 25.
84 See Nino, supra note 1, at 54.
85 Id.
86 See Guest, supra note 28, at 26.
87 Arditti, supra note 10, at 40; Nino, supra note 1, at 60, 61.
88 See Nino, supra note 1, at 61.
89 Id. at 61-62.
90 See id. at 62.
91 See id. at 62, 81.
92 Id. at 64.
93 Arditti, supra note 10, at 43.
mon or military crimes.\textsuperscript{94} 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.\textsuperscript{95}

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.\textsuperscript{96} 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.\textsuperscript{97} 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.\textsuperscript{98}

After these convictions, trials were scheduled for many other military officers on charges of “following orders” during the regime, which angered the military.\textsuperscript{99} 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.\textsuperscript{100} This law, however, excluded those cases concerning rape, theft, and the abduction and concealment of minors.\textsuperscript{101} 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.\textsuperscript{102} However, this law, like the Full Stop Law, did not cover the crimes of abduction and concealment of children.\textsuperscript{103}

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.\textsuperscript{104} In December, 1990, he par-
doned all those already convicted for human rights violations. After five years, the military leaders were free men.

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. Often, the recently deposed military continued their surveillance of and put pressure on the new governments. Politicians, thankful that the military regime had ended, were reluctant to provoke a confrontation by investigating abuses. Often, the politicians also had participated in the past abuses and now wanted to do nothing which might expose themselves.

In the transitions to democracy from military rule in the 1980's, however, this changed. 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. 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. The prosecution for baby-kidnapping in Argentina has presented its own challenges.

The task of prosecuting past human rights abuses, however, has encountered numerous obstacles. Officials have to balance justice for those affected by the abuses against the need to build stable democracies and instill national reconciliation.

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105 Id. at 104.
106 See id.
107 Id. at 32.
108 See id.
109 NINO, supra note 1, at 32.
110 See id.
111 Id. at 32–33.
112 See id. at 33.
113 See, e.g., Delgado, supra note 53; Valente, Chipping Away, supra note 18.
116 Id.
ence and influence of the military through its retired officers now in the legislature also makes the job more difficult.117

A. "Truth Commissions"

Some Latin American countries have used truth commissions to address the problem of human rights abuses under the military dictatorships.118 These commissions had as their goals the investigation into human rights abuses and the determination of the fate of the disappeared.119 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.120

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

In Chile, the National Commission on Truth and Reconciliation was created in 1990.125 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."126 The Commission

117 Id.
119 See Nino, supra note 1, at 72–73.
121 See Nino, supra note 1, at 72, 73.
122 Id. at 72, 79.
123 Id. at 80; Arditti, supra note 10, at 43.
125 Ensalaco, supra note 120, at 183.
126 Id. at 186.
had less than one year to report its findings.\textsuperscript{127} Even though the Commission was prohibited from naming the culpable,\textsuperscript{128} it still encountered resistance from the military, who refused to testify as to the most crucial information.\textsuperscript{129} 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.\textsuperscript{130} When the Commission submitted its report, it had examined over 3400 cases of human rights violations.\textsuperscript{131} Hundreds more came forward with allegations after the report was finished.\textsuperscript{132} Despite the volume of research and investigation this report was unable to account for all the missing.\textsuperscript{133}

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

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.\textsuperscript{137} This pact provides that those who supplied information would have their identities held in strict confidence, protected by a “professional secrecy” law.\textsuperscript{138} The panel received a six-month, renewable time frame in which to uncover and turn over information.\textsuperscript{139} The panel emphasized that by agreeing to this the military has formally recognized its part in the repression\textsuperscript{140} in an effort to help the country move “beyond its controversial past.”\textsuperscript{141} Some human rights groups have rejected the panel

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{127} Id. at 188.
\item\textsuperscript{128} Id.
\item\textsuperscript{129} Id. at 188, 199.
\item\textsuperscript{130} ENSALACO, supra note 120, at 186–187, 188.
\item\textsuperscript{131} Id. at 197.
\item\textsuperscript{132} Id. at 198.
\item\textsuperscript{133} See id. at 210.
\item\textsuperscript{134} See Valente, Chipping Away, supra note 18.
\item\textsuperscript{135} Id.
\item\textsuperscript{136} See ENSALACO, supra note 120, at 199–200, 201–202; GUEST, supra note 28, at 384–85.
\item\textsuperscript{137} See Valente, Chipping Away, supra note 18.
\item\textsuperscript{138} Id.
\item\textsuperscript{139} Id.
\item\textsuperscript{140} Id.
\item\textsuperscript{141} 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].
\end{enumerate}
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and its report, though, seeing it as "sacrificing justice on the altar of truth."\textsuperscript{142}

In Argentina, the military called for a similar commission after the establishment of the Chilean panel.\textsuperscript{143} 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.\textsuperscript{144} 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.\textsuperscript{145} However, due to the human rights groups' rejection of the proposal, the commission was not created.\textsuperscript{146}

Uruguay also established a panel to investigate the truth of what happened to about 170 disappeareds.\textsuperscript{147} 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.\textsuperscript{148} 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.\textsuperscript{149}

\textbf{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.\textsuperscript{150} In Chile and Argentina, for example, the courts tried limited numbers of human rights violators, who then re-

\textsuperscript{143} Valente, Chipping Away, supra note 18.
\textsuperscript{144} Valente, No Consensus, supra note 118.
\textsuperscript{145} See id.
\textsuperscript{147} Valente, Puzzling, supra note 142.
\textsuperscript{148} Id.
\textsuperscript{149} Delgado, supra note 53.
\textsuperscript{150} 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.151 Similarly, in Uruguay, the impunity law, passed in 1986, stopped all trials for human rights violations.152 In Brazil, a military amnesty remained undisturbed after the regime ended, and a government decree stopped all trials.153

Despite the legal restrictions on prosecution, some countries have been able to move forward based on other provisions in their laws.154 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.155 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 4.156 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.157 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.158 Batlle also established the Commission for Peace to investigate the fate of the Uruguayan disappeared, but only within the confines of the impunity laws.159 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.160

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.161

151 See NINO, supra note 1, at 37, 103, 104.
152 Delgado, supra note 53.
153 Valente, Chipping Away, supra note 18.
154 See id.; Delgado, supra note 53; Valente, No Consensus, supra note 118.
155 Delgado, supra note 53.
156 Id.
157 See Delgado, supra note 53; Valente, Chipping Away, supra note 18; Valente, No Consensus, supra note 118.
158 See Delgado, supra note 53; Valente, No Consensus, supra note 118.
159 See Valente, Puzzling, supra note 142.
160 See Delgado, supra note 53; Valente, No Consensus, supra note 118.
161 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.\textsuperscript{162} 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.\textsuperscript{163} 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.\textsuperscript{164} 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.\textsuperscript{165}

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.\textsuperscript{166} In order to charge this crime, there had to be evidence that there was a systematic plan for such kidnapping.\textsuperscript{167} Isolated incidents did not suffice.\textsuperscript{168} Because the officers had no convictions for kidnapping children, however, their pardons and the amnesty laws did not cover this crime.\textsuperscript{169} 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.\textsuperscript{170}

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.\textsuperscript{171} Records found after a raid on the Navy headquarters and other Navy offices included irregular birth certificates from that era,

\textsuperscript{162} See id.; Osava, supra note 19.
\textsuperscript{163} Jones, supra note 16.
\textsuperscript{164} Osava, supra note 19.
\textsuperscript{165} Jones, supra note 16.
\textsuperscript{166} 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].
\textsuperscript{167} See id.
\textsuperscript{168} See id.
\textsuperscript{169} Id.
\textsuperscript{170} Id.
as well as records of births to infertile parents and of women giving birth at home, which was highly unusual.  

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.  

Politically acceptable families, including military officers and police, then adopted the babies, although some families adopted the children in good faith.  

Operation Condor may have facilitated sending the abducted children to other countries, which explains why some Argentinean children were found in Chile or Paraguay.  

Under Condor, illegal adoptions for profit became a thriving business because the number of political prisoners was so high.  

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.  

The military junta set out to systematically eliminate an entire generation of left-wing political opponents.  

As one general put it, “[s]ubversive parents teach their children subversion. This has to be stopped.”  

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.  

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.  

There, at the regime’s most notorious torture center, their jailers gagged and abused these women, forc-

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172 Id.
174 Id.; Valente, Court Orders, supra note 166.
175 Chelala, supra note 14.
178 Id.
179 ARDITTI, supra note 10, at 50.
182 Graham, supra note 177.
ing them to give birth blindfolded and tied to tables.\textsuperscript{183} Their babies were taken within minutes of delivery and adopted, often by the very people who had killed the mothers.\textsuperscript{184} Although their jailers led some new mothers to believe that they would be freed,\textsuperscript{185} after the births their captors shot some women and put others on aircraft and then threw them out over the Atlantic Ocean.\textsuperscript{186}

Prosecutors filed charges against nine officers for the babysnatching scheme, leading to the arrest of all nine by 1998.\textsuperscript{187} More army officers involved have been arrested since then.\textsuperscript{188} 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.\textsuperscript{189} 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.\textsuperscript{190}

Military resistance and interference has hindered the investigations and prosecutions.\textsuperscript{191} 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.\textsuperscript{192} Early in 2000, the Supreme Council of the Armed Forces asked Judge Bagnasco to transfer the baby-snatching case to its jurisdiction.\textsuperscript{193} When Bagnasco refused, the case was appealed to the Supreme Court, which accepted the case.\textsuperscript{194} In August, 2000, the Su-

\textsuperscript{183} All Things Considered (NPR radio broadcast, Oct. 18, 2000), available at 2000 WL 21472431.
\textsuperscript{184} Graham, supra note 177.
\textsuperscript{185} See Ardititi, supra note 10, at 65.
\textsuperscript{186} Graham, supra note 177.
\textsuperscript{187} Valente, Court Orders, supra note 166.
\textsuperscript{189} 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.
\textsuperscript{190} LaFranchi, supra note 173.
\textsuperscript{191} 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].
\textsuperscript{192} See Argentina: Human Rights, supra note 146.
\textsuperscript{193} Rights Groups to Complain, supra note 191.
\textsuperscript{194} Id.
The Supreme Court rejected the army's petition. 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. Another obstacle is the aging memories of the witnesses, many of whom are former army officials who are now in their seventies. Now elderly, many claim to have no knowledge or memory of the kidnappings. Investigations continue, however, as there remain many more officers who were involved but have yet to be arrested.

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. 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. In the process, they have served as a catalyst for charges against former dictators in Chile, Argentina, and Brazil.

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. Trials began in October, 1999, after an investigation into 600 disappearances. 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. Celiberti herself was detained and tortured in Brazil in 1978 and then transferred to Uruguay under

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195 Argentina: Human Rights, supra note 146.
196 See Army Chief, supra note 114.
197 See Warn, supra note 114.
198 Id.
199 See Lamb, supra note 180.
200 See Hall, White House, supra note 141.
201 See id.
202 Id.
203 Italy Sentences Two Argentinean Ex-Military Chiefs to Life, AGENCE FR.-PRESSE, Dec. 6, 2000, available at 2000 WL 24775546 [hereinafter Italy Sentences].
204 Id.
205 Osava, supra note 19.
Condor.206 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 while rejecting the defense’s argument that the cases were barred because of Argentina’s Full Stop and Due Obedience Laws.208 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.209 Italy also is investigating the disappearance of Italians in Chile.210

In Spain, Judge Baltasar Garzon first charged former Chilean dictator Augusto Pinochet with numerous human rights crimes in 1998.211 English officials, however, determined that Pinochet could not be extradited to Spain due to his ill health, and allowed Pinochet to return to Chile.212 In Chile, however, officials stripped Pinochet of his immunity from prosecution, clearing the way for his prosecution at home.213

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.214 In March, 2000, Garzon indicted ninety-eight former military junta members on charges of genocide, terror, and torture.215 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

206 Id.

207 Italy Sentences, supra note 203.


209 Italy Sentences, supra note 203.


212 See Valente, Justice, supra note 211.

213 Chile: Human Rights, supra note 211.


instances of baby-snatching.\textsuperscript{216} 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.\textsuperscript{217} 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.\textsuperscript{218}

Other countries also are conducting investigations and indicting former Argentinean officials for human rights crimes.\textsuperscript{219} 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.\textsuperscript{220} In October, 2001, a French judge issued warrants for fifteen Chilean officials under the military regime for the disappearance of French citizens.\textsuperscript{221} Furthermore, the Israeli Parliament announced a plan in August, 2000 to investigate the fate of Jewish-Argentinean disappeareds.\textsuperscript{222}

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.\textsuperscript{223} Documents held by the State Department, Pentagon, and CIA may hold information that would shed light on investigations in Argentina and Chile.\textsuperscript{224} 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.\textsuperscript{225} Chilean Judge Guzman in fact, seeks to question Henry Kissenger

\textsuperscript{216} Ex-Argentine Officer, supra note 215.
\textsuperscript{217} Id.
\textsuperscript{218} 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].
\textsuperscript{219} See Argentina: The Role, supra note 208.
\textsuperscript{220} Id.
\textsuperscript{222} See Argentina: The Role, supra note 208.
\textsuperscript{223} 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.
\textsuperscript{224} See, e.g., Marquis, supra note 223.
about the U.S. role in the overthrow of Salvatore Allende.226 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,227 and by mid-2000, the agencies had released 7500 documents.228 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.229

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.230 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.231

Resistance by the CIA not only affects South American prosecutions for human rights abuses, but also affects the U.S. Justice Department.232 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.233 Considered an act of terrorism on U.S. soil, the Justice Department reopened the case after the arrest of Pinochet in Britain,234 and investigators arrived in Chile in March, 2000 to begin questioning witnesses in order to determine Pinochet's role in the assassination.235

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

227 Marquis, supra note 223.
229 Marquis, supra note 223.
230 Chelala, supra note 14; Krauss, supra note 225.
231 Chile: The Role, supra note 228.
232 See Chelala, supra note 14; Hall, White House, supra note 141.
233 Id.
234 Id.
235 Chile: The Role, supra note 228.
in provoking international cooperation and willingness to investigate and prosecute South American human rights violations.236 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.237 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.238 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.239

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.240 England based its examination of the extradition request on the 1984 International Torture Convention.241 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.242 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.243

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

236 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.


238 See id.

239 See id.


242 Champion, supra note 236.

243 Mexico, supra note 240.
adopt it in this way.\textsuperscript{244} Even where national courts can use the Convention, there will be no trial unless the government allows it.\textsuperscript{245} 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.\textsuperscript{246} 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.\textsuperscript{247}

Additionally, there is possibly a more effective option on which to base extradition requests for suspected human rights abusers from the Condor military regimes.\textsuperscript{248} 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.\textsuperscript{249} 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.\textsuperscript{250}

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.\textsuperscript{251} Mexico’s decision was not based on the Torture Convention, however, but on the extradition treaty between Mexico and Spain.\textsuperscript{252} 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.\textsuperscript{253} 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

\begin{itemize}
\item \textsuperscript{244} See Champion, \textit{supra} note 236.
\item \textsuperscript{245} Id.
\item \textsuperscript{246} See Brysk, \textit{supra} note 237; Champion, \textit{supra} note 236.
\item \textsuperscript{247} See Brysk, \textit{supra} note 237.
\item \textsuperscript{248} See Mexico, \textit{supra} note 240.
\item \textsuperscript{249} See id.; Valente, \textit{Justice}, \textit{supra} note 211.
\item \textsuperscript{250} See Cordoba, \textit{supra} note 214.
\item \textsuperscript{251} Mexico, \textit{supra} note 240.
\item \textsuperscript{252} Id.
\item \textsuperscript{253} See id.; Cordoba, \textit{supra} note 214.
\end{itemize}
the one in which the crimes occurred.254 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.255 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.256

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.257 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.258 Argentina also has refused to give full support to investigations of its nationals occurring in other countries.259 The continued influence and pressure of the military, particularly in Argentina and Chile, also makes the prosecutions and extraditions more difficult.260 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.261 Rather than defend Olivera, though, Argentina has said that it will limit its assistance in his case to providing legal aid from the consul.262

B. Accountability

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

255 Valente, Justice, supra note 211.
256 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.
257 See Argentina: The Role, supra note 208.
258 Valente, Justice, supra note 211.
259 Argentina: The Role, supra note 208. In the Italian case against former Argentinean officers for the deaths of Italian-born Argentines, the judge “underscored the Argentine authorities lack of cooperation with his investigations of [the] cases.” Id.
260 See Valente, Justice, supra note 211; see also Chile: Human Rights, supra note 211.
261 See Valente, Justice, supra note 211.
262 Id.
accountable for their human rights abuses. 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.” These decisions have resulted in a new wave of human rights accountability throughout the world.

In August, 2000, the Chilean Supreme Court stripped Pinochet of his immunity from prosecution, which he held as a “lifetime senator.” 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. 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. 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.” 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. In July, 2001, however, the Chilean courts determined that Pinochet was too ill to stand trial for his crimes. That ruling was challenged in October, 2001.

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

263 See Brysk, supra note 237.
264 Id.
265 See id.
266 Chile: Human Rights, supra note 211.
268 Chile: Human Rights, supra note 211.
269 Brysk, supra note 237.
272 See id.
finally prosecute their own, previously immune, former leaders. 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. Paraguayan dictator Alfredo Stroessner ruled from 1954–1989, and has been living in exile in Brazil ever since under the protection of political asylum. 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. In December, 2000, a Paraguayan judge issued an arrest and extradition order for the former dictator.

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.” 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. 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. 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. 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. However, because the appeals court upheld the ruling that the impunity laws are unconstitutional

273 See Olivera, Ruling, supra note 267.
274 See Delgado, supra note 53.
275 See Olivera, Ruling, supra note 267.
276 Id.
280 See id.
281 See id.
282 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.283

This new accountability for human rights violations can be seen in other countries as well.284 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,285 and a case brought by a Guatemalan in a Spanish court against former dictator Efrain Montt, are other examples.286 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.287

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.288 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.289 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.290 This jurisdiction would not seem to cover Condor countries because they do have functioning judicial systems.291 Also, the ICC will not have jurisdiction over crimes perpetrated before it comes into

283 See id; Diebel, supra note 226.
284 See Serpico, supra note 214; Stroessner, supra note 277.
285 See Serpico, supra note 214.
286 See Court Says, supra note 218. Guatemalan Nobel Laureate Rigoberta Menchu brought a complaint of genocide, terrorism, and human rights abuses against former dictator Efrain 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.
287 Brysk, supra note 237.
288 See Champion, supra note 236.
289 See id.
291 See id.
force. 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.

CONCLUSION

The countries of Condor are coming to terms with their pasts while trying to shape their futures. However, governments are challenged by the task of balancing the need to address the past with the equally important need to move forward. This process is difficult because the scars of the past are still raw. 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. 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.

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. Physical attacks on human rights activists in several Latin American countries reflect an atmosphere in which not everyone wants justice to be served. 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.

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292 See id.
293 See id.
294 See Olivera, LatAm Governments, supra note 115.
295 See id.
296 See Lamb, supra note 180.
297 Id.; see Valente, Court Orders, supra note 166.
298 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.
301 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.