Background 1983-2003

Summary Prepared by: Center for the Study of Genocide Studies at the Universidad Tres de Febrero, Argentina

English Language Translation: Rutgers Center for the Study of Genocide and Human Rights-UNESCO Chair for Genocide Prevention

Democratic Transition in Argentina:
Between Justice and an Attempt to Advance Impunity, 1983 – 2003

Unlike what occurred in neighboring Uruguay and Chile, Argentina's military dictatorship did not negotiate a gradual retreat from power. The military defeat in the Falklands-Malvinas War with the United Kingdom and its effect on public morale forced the military to quickly hand over power against a background of mounting criticism of human rights violations and rejection of military involvement in politics.

Indeed, even before the Malvinas conflict, public opinion had already turned against the dictatorship. A broad spectrum of human rights organizations had joined workers and students in continued protests over the kidnappings and illegal killings committed by the regime. By the beginning of the 1980s, these organizations were demanding a full investigation and punishment for those responsible. The common catchphrase "Return them alive and punish the guilty" was supported by an ever-growing increase of public opinion.
Finally, after nearly eight years of dictatorship, the military decided on a "democratic exit" and general elections were held in October 1983. In the run-up to the elections, presidential candidate Raúl Alfonsín of the Radical Civic Union strongly opposed the dictatorship’s amnesty for those guilty of human rights abuses. It is important to note however that, Alfonsín’s initial aims were quite limited. He tried to persuade the armed forces to court martial officers who had ordered the killings while guaranteeing impunity and continuity in the armed forces of those in the armed forces who had committed the killings while “acting on orders”.

Alfonsín’s decision to respond to the massive and systematic human rights violations committed during the dictatorship, did not imply a willingness to settle the question definitively, but to signal the dawn of a new political era.

The first measures of the new Alfonsín government were the following:

1) It equated perpetrators and victims by issuing two simultaneous warrants: one to arrest seven survivors of armed leftist organizations and the other to arrest members of the first three military juntas (Presidential Decrees No. 57 and 58, 1983);

2) It referred the proceedings for systematic human rights violations to the military courts, where perpetrators were to be tried by their peers.

3) It created a commission of journalists, religious leaders and academics to investigate the events that had occurred during the dictatorship. The aim was to construct a collective truth about the past.

Alfonsín’s initiatives were loosely based on the Nuremberg Trials and consequently suffered from similar limitations and challenges. The Nuremberg Military Tribunals had singled out a few notorious Nazi leaders and condemned them to exemplary punishments in an attempt to settle the question of German guilt but had sidestepped the issue of criminal, political and moral responsibility shared by large sectors of German society and societies in Nazi-occupied territories.

Alfonsín’s approach was called into question by both human rights organizations and by opposition parties. Moreover, human rights organizations sought a much more radical approach. Soon after Alfonsín took office, they presented him with a series of demands:

1) the expulsion from the armed forces of all those allegedly involved in human rights violations

2) the removal of all judges who had remained in their posts during the military dictatorship;

3) the removal of all diplomats who had defended the dictatorship abroad
4) the automatic suspension and investigation of all adoptions carried out during the dictatorship, following numerous reports of trafficking of children.

The government listened carefully to these proposals, but did not in the end implement any of them. This failure to act had important consequences for the challenges they had to face later. Alfonsín’s initiatives also affected the outcome of trials for human rights abuses in Argentina throughout the rest of the decade, as well as collective discussion on the memories of the horror.

**The institutional and social vagaries of the Trial of the Juntas**

The National Commission on the Disappearance of Persons (Comisión Nacional sobre la Desaparición de Personas-CONADEP was set up by the government in December 1983 and it delivered its well known report Nunca Más ("Never Again") to Alfonsín in September 1984, with the support of a large popular demonstration.

After much debate, Alfonsin’s proposal asking that charges, against the military should be heard by a military court was also accepted by Parliament in 1984, although Parliament forced the government to add a clause allowing the civil courts to initiate proceedings if the military court showed "unreasonable delay." However, events did not follow the pattern envisioned by Alfonsín. The military justice system refused to accept that the leadership had committed any crimes during the dictatorship. The Supreme Council of the Armed Forces informed the federal court that "the decrees, directives and operational orders to take military action against terrorist subversion were, in content and form, beyond reproach."

It added that former commanders could not be convicted as intellectual authors of crimes committed by their subordinates if the material authors of the crimes remained unknown, and that it saw nothing unlawful in detaining "persons who have broken criminal laws."

Despite the misgivings of the government, the civil courts decided to intervene and the “Trial of the Juntas” began in April 1985 and the Court delivered its verdict on 9 December 1985. It did not satisfy anyone. The government expected nine exemplary sentences (life imprisonment) for the members of the first three military Juntas which—together with a few other sentences for socially ostracized figures—were supposed to close the chapter of military responsibilities. However, only Videla and Massera received life imprisonment while Viola, Lambruschini and Agosti were sentenced to 17, 8 and 4 and a half years, respectively. Worse still, four of the nine perpetrators were acquitted. The human rights organizations saw these sentences as much too lenient.
The sentence placed the government in a tight political corner. The fact that four of the nine leaders had been acquitted was unacceptable but, at the same time, article 30 of the sentence ordered the Supreme Council of the Armed Forces "to prosecute officers who occupied area and sub-area defense commands during the fight against subversion and all those who had functional responsibility for actions." The idea of judging every commander in the country responsible for human rights violations was intolerable for the Armed Forces and contrary to the wishes of the government, who had hoped to settle the matter once and for all with this trial.

After several months of tense negotiation with various sectors of the armed forces, the government was eventually forced to pass two impunity laws. The Full Stop Law of December 1986 limited civil trials against some 300 officers to those indicted within 60 days of the law's coming into force—a ridiculously short period given the reluctance of many victims and witnesses to testify. This was followed in June 1987 by the Law of Due Obedience, which stated that it must be assumed, "without admitting proof to the contrary," that all officers and their subordinates including common personnel of the armed forces, the police and other security agencies cannot be legally punished for crimes committed during the dictatorship, because they were acting out of due obedience.

In fact, it was the Law of Due Obedience that ultimately discredited the government and deprived it of its legitimacy by effectively removing the possibility of securing any more prosecutions. The Radical Party lost the parliamentary elections in 1987 and the presidential election in 1989. Impunity was finally confirmed in 1989 and 1990 when the government of Carlos Menem pardoned and released the few perpetrators still detained or under prosecution.

**Multiple forms of resistance: International justice, truth trials and "name and shame" campaigns**

Argentine society, however, did not accept the sanctioning of impunity by the authorities without protest. Between 1986 and 2005, survivors, families of victims, human rights organizations and political and social activists all attempted to resist impunity in various ways - without ever trying to take the law into their own hands. This non-violent form of resistance is perhaps one of the most inspiring and encouraging feature of the entire process.

Resistance was organized simultaneously in four complementary ways:

1) by starting criminal proceedings in other countries—France, Italy, Germany, Sweden, among others—against the perpetrators under the principle of universal jurisdiction for cases of human
rights violations and/or because of the nationality of the victims

2) by convening "truth trials"—judicial inquiries to establish the facts of human rights violations but without the power to prosecute the perpetrators—as part of the victims’ "right to truth";

3) by exploiting weaknesses in the impunity laws, such as the fact that Full Stop Law and Law of Due Obedience did not provide impunity for the abduction of minors, and starting criminal proceedings in Argentina;

4) by organizing “name and shame” campaigns called "escraches." These took the form of demonstrations outside the perpetrators’ homes, with demonstrators hurling eggs or tomatoes, painting the perpetrators’ houses with slogans, or staging speeches and musical or theatrical performances in the street about the perpetrators’ crimes. Demonstrators also used verbal abuse whenever the perpetrators were seen in public, forcing them to leave restaurants, cinemas and dances, and even organized protests to drive the perpetrators out of the neighborhoods or towns where they lived.

These varied and unrelenting forms of resistance prevented the rest of society from accepting impunity. In the truth trials alone, hundreds of witnesses gave evidence and the judiciary created files on thousands of new cases of kidnapping and murder. Society was left with a nagging feeling that the past was still open and only the judiciary could bring about closure. This had a significant impact on both the practical and symbolic levels, cracking the foundations of impunity.

At the practical level, the few trials in Argentina that had not been prevented by the impunity laws actually ended, in some cases, in prison sentences for the perpetrators. The most emblematic was that of Jorge Rafael Videla, the de-facto president of the first military junta, who was jailed for his role in planning the systematic abduction of minors. At the same time, international arrest warrants issued abroad made it practically impossible for the perpetrators to travel outside Argentina. Gradually, pressure was brought to bear on successive Argentine governments as the impunity policies placed Argentina in a situation of growing violation of international human rights law.

At the symbolic level, the truth trials and "name and shame" campaigns intensified social condemnation of the perpetrators. Argentine society was repeatedly forced to reflect on its responsibility for and the consequences of its recent history. Some of the missing children, now adults, formed groups known as HIJOS (children) and began challenging the older generation on their role in the Argentine genocide.

In short, the Argentine genocide remained in the public eye as a result of daily acts of resistance, remembrance and reflection. These ranged from demonstrations by the Mothers of Plaza de Mayo
through many different types of activities organized by human rights organizations or political movements, trade unions, students and social or neighborhood networks.

**Challenges to the hegemonic descriptions and tendencies of international law**

The about-turn in Argentina’s human rights policy under President Néstor Kirchner was an unexpected twist given previous political background and can be explained in terms of mounting international pressure for the extradition coupled with the breakdown of Argentina’s individualistic, neo-liberal model. This model had prevailed throughout the 1990s until the country’s economic and political crisis at the end of 2001.

Starting with the period of impunity, the number of popular demonstrations and protests by human rights groups and different forms of resistance mentioned before, increased significantly.

On the legal front, on March 6, 2001 federal judge Gabriel Cavallo declared unconstitutional and void the laws of Due Obedience (*obediencia debida*) and Full Stop (*punto final*) in the case "Simón, Julio, Del Cerro, Juan Antonio, on/ Kidnapping of Minors 10 Years Old or Younger" (Case 8686/00, Federal Criminal and Corrections Judge No. 4). Judge Claudio Bonadio also established the nullity of said laws on October 1, 2001 on the case 7964/99 titled "Astiz, Alfredo and others, on/ Crime of Public Action" and, in September 2002, on the case 6.869/98 titles "Scagliusi, Claudio Gustavo and others on/ Illegal Privation of Freedom."

Shortly after taking office in 2003, Kirchner purged the Supreme Court and repealed the impunity laws, which were soon afterwards declared unconstitutional by the new Supreme Court. Cases were reopened and survivors, the families of victims and human rights organizations, filed new complaints. By this time, a much clearer and deeper understanding of Argentina’s genocide process was available. The comparison of victims and victimizers endorsed by Alfonsín’s Presidential Decrees No. 57 and 58 had been widely accepted in social, political and even academic circles until the end of the 1990s. This comparison gave rise to what would later be called the "theory of the two demons," which saw Argentine society as a simultaneous victim of "a terror that came from both the extreme right and extreme left." The "theory of the two demons" aimed to maintain an illusion of “balance" and impartiality by branding members of both groups as outlaws and enemies of society and judging both types of crimes in the same way and with the same procedures.

Since the “Trial of the Juntas” in 1985, however, it had become increasing difficult to sustain a
comparison between the armed actions of leftist protest groups with the systematic deployment of state terror in a campaign of persecution, forced disappearances, torture and the murder of between 20,000 and 30,000 people by the Armed Forces and the police. In particular, the evidence from the "truth trials" had shown that the equation of victims and perpetrators was inadequate for understanding the social objectives and beneficiaries of state terrorism.

Many human rights organizations were convinced that such widespread and systematic violations of human rights should be considered genocide and although this proposal was not new, it now received much more support than it had gotten before. The question of which label to apply—war crimes, crimes against humanity, genocide—had ceased to be a purely legal matter and attention turned to the importance of terminology for constructing the collective memory of horror. As Argentine human rights organizations recognized, the term genocide emphasizes the targeting of the population as a whole. Thus, it encourages society to overcome the alienation of the “other” by examining the effects of mass annihilation on the majority, rather than remaining fixated on the suffering of those killed or disappeared, their families or the survivors. In particular, the concept of genocide as a “partial destruction of the Argentine national group” has gradually prevailed in both legal circles and in collective discussions of the issue in Argentina.