

# MEMORY OF NATIONS

## Democratic Transition Guide

[ The Argentine Experience ]



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# CONTENTS

<b>TRANSFORMATION OF THE POLITICAL SYSTEM . . . .</b>	<b>3</b>
<b>DISMANTLING THE STATE SECURITY APPARATUS . . . . .</b>	<b>8</b>
<b>REGIME ARCHIVES . . . . .</b>	<b>25</b>
<b>PURGING . . . . .</b>	<b>33</b>
<b>INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME . . . . .</b>	<b>39</b>
<b>REHABILITATION OF VICTIMS . . . . .</b>	<b>42</b>
<b>EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE . . . . .</b>	<b>48</b>
<b>TIMELINE OF THE MAJOR EVENTS . . . . .</b>	<b>53</b>
<b>SOURCES USED AND FURTHER READING . . . . .</b>	<b>55</b>

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# TRANSFORMATION OF THE POLITICAL SYSTEM

FERNANDO PEDROSA

## INTRODUCTION

During the 20th century, Argentina experienced continuous *instability* in its political regime.<sup>1</sup> This marked a notable difference from other countries in the region that had few institutional interruptions (including Uruguay, Chile, Colombia and Venezuela) and others that maintained undemocratic regimes, but with a high level of stability (Brazil and Paraguay).

Argentina moved smoothly between democratic, undemocratic and semi-democratic regimes<sup>2</sup> although all of them were unable to generate any institutional stability. It was only with the presidential elections held between 1983, 1989 and 1999 that a democratic functioning was consolidated. However, this happened after the authoritarian experience of 1976, which produced a cut in the country's recent history, not only because of the disastrous economic and social consequences it brought about, but also because of the issues linked to State terrorism and defeat in the Malvinas-Falkland war.

The military repression targeted some of the sectors of the elites (in political, trade union, cultural and economic terms), which after the return to democracy occupied high-level positions, both state, governmental and non-governmental. For this reason, the issues related to the 1970s were of great importance from 1983 onwards, as well as being a sustained presence in the public debates of the following decade.

## PREVIOUS SITUATION

There were several conditions that explain the military uprising in 1976. **Firstly**, the international and global geopolitical context can be mentioned. The Cold War in Latin America implied a reactivation of the presence of the Armed Forces in the internal life of countries in the name of fighting communism and within the context of the so-called *National Security Doctrine*.<sup>3</sup>

**Secondly**, the regional context which, related to the above, influenced the coups d'état in Chile and Uruguay in 1973. In 1975, Peru also joined the list that included Bolivia, Brazil and Paraguay well before that.<sup>4</sup>

**Thirdly**, the explosive internal situation led the country to a degree of uncontrol and violence unprecedented in its history. The death of the then-President Juan D. Perón led to a confrontation between the left and the right of his party. This resulted in increased guerrilla and vigilante activity, resulting in a significant increase in the number of political assassinations, kidnappings, exiles, bombs, command robberies, etc. The social weariness, the power vacuum and the absence of leaderships, contributed to create a growing expectation for a military intervention, waiting to recover some kind of order.<sup>5</sup>

**Fourthly**, the economic meltdown of the country in the context of the so-called global *oil crisis* must be mentioned. In 1975 there was a great inflationary crisis and a subsequent adjustment and devaluation of the national currency that marked

the beginning of the end of middle-class Argentina, as well as the growing increase in poverty and inequality, later accentuated in the years of the dictatorship.

## THE DICTATORSHIP

The self-styled "National Reorganization Process" took power on March 24, 1976. The new government was supported by a military junta considered to be the "supreme organ of the State" and composed of the three commanders. The *Junta*, formally, took precedence over the President of the Nation himself. From the very first minute, an equal distribution of power, territory and institutions between the three branches of the Armed Forces (Air Force, Army and Navy) and their respective civilian allies was agreed. However, this was quickly strained by the different ambitions and personal projects of the military.

The "Process..." did not formally change the National Constitution, but all application of its dogmatic part (rights and guarantees) was suspended. Above all, the military imposed above the current legal framework (including the constitution) a series of acts and statutes drawn up by themselves, in which they formalized the distribution of power, objectives and mechanisms of operation of the new regime. In addition, the national legal framework, apart from the political aspects and the restriction of freedoms, maintained its traditional structure.

During the first few years, the military government did not encounter any major obstacles to consolidating and developing its plans, especially in the repressive and economic fields. But by 1982, after six years in power, the military government was not responding to the social demands that had generated that initial consensus. Quite the contrary.

To the violence that the country had in 1976, the military government brought worse, illegal and clandestine violence, which was coming to light, especially, due to international pressure. The economic situation was far from improving. Unemployment, poverty, inequality, corruption and uncontrolled external indebtedness produced a great social discontent that was being exploited by the trade unions and the renewed presence of political parties.<sup>6</sup>

1 Luis Alberto Romero, *Breve historia contemporánea de la Argentina. 1916-2010*, Buenos Aires: Fondo de Cultura Económica, 2017.

2 Scott Mainwaring, Daniel Brinks, Aníbal Pérez-Liñán, "Classifying Political Regimes in Latin America, 1945-1999", in *Studies in Comparative, International Development*, 2001, (1), 37-65.

3 Genaro Arriagada, Manuel Garretón, "Doctrina de Seguridad Nacional y régimen militar", in *Estudios Sociales Centroamericanos*, 1979, (20), 129-153.

4 Manuel Alcántara, Ludolfo Paramio, Flavia Freidenberg, José Déniz, *Reformas económicas y consolidación democrática*, Madrid: Síntesis, 2006.

5 Luis Alberto Romero, *Breve historia contemporánea de la Argentina. 1916-2010*, Buenos Aires: Fondo de Cultura Económica, 2017.

6 In addition, the international context was very unfavorable: since the combination of Mexico's debt crisis, falling commodity prices and rising interest rates. Beginning in the 1980s, the period of economic contraction for Latin America began.

In that context, the military saw in the occupation of the Falkland Islands – in British hands – the possibility of exploiting a widespread nationalist sentiment that would renew their legitimacy to remain in power. Therefore, the defeat in the war left the government without any support and with the repudiation of the citizens. In this context, the government had to call for elections to return to a democratic regime and there the transition and a new opportunity for democracy was opened.<sup>7</sup>

## DESCRIPTION OF THE TRANSITION

For a better description, the transition years will be grouped into three different times. First, in the so-called *liberalization of the regime*<sup>8</sup> between the years 1982–1983, then the first transitional government and its challenges (1983–1989), to end with the government initiated in 1989 that ended with the threats of an authoritarian setback beginning the period of consolidation.

### 1982–1983 THE LIBERALIZATION OF THE REGIME

The Argentine dictatorship collapsed in 1982 with no other plan than to leave the government as soon as possible and return to the barracks.<sup>9</sup> Argentine politicians were faced with the possibility of regaining power in the short term and without conditions. At the same time, they faced an extremely serious economic and political situation.

Despite the military's planned speedy exit, before leaving the government, they tried to resolve the problem that most concerned them: the possibility of being tried, above all, for human rights violations. To that end, shortly before the elections, they acquitted themselves of all crimes under Law No. 22.924, popularly known as "self-amnesty".<sup>10</sup>

Despite the problems with the immediate future, the political parties did not seek to confront them in a common and agreed manner and hardly agreed to press for the immediate holding of elections. The end of the dictatorship did not produce a considerable change in the ruling elites which, in turn, did not generate any space for foundational agreements, as happened in post-Franco Spain. This elusive behavior of the political elite influenced scenarios of recurrent political instability from 1983 to the present day.

On the other hand, the military managed to reach an agreement with some Peronist leaders, thinking that they would be the winners of the elections. The election was called under the current constitution, although some rules were added and removed to privileged political parties related to the dictatorship and Peronism.<sup>11</sup> On the other hand, the Peronist candidate stated that he would accept the *self-amnesty* proposed by the military in the withdrawal.

Things were different than expected. In 1983, the candidate of the Radical Civic Union, Raúl Alfonsín, who had been critical of the Malvinas-Falkland war and rejected *self-amnesty*, triumphed, proposing something unprecedented in the country's history: to try the military juntas for the crimes of state terrorism.

### 1983–1989 THE FIRST TRANSITIONAL GOVERNMENT

Although democracy was once again reigning in Argentina, the above-mentioned *collapse* referred only to the political regime, as military power and its support remained in place.<sup>12</sup>

The Armed Forces, the Catholic Church, the Peronist unions and the big businessmen sought to permanently condition the government with the support of important opposition sectors and the press. At the same time, the radical government was a minority in the Senate and had only a few pro-government governors. The situation that Alfonsín was dealing with resembled the perfect storm.<sup>13</sup>

Even so, Alfonsín repealed the *self-amnesty* and reformed the Military Code of Justice with the vain expectation that the military would initiate a process of purging and punishment while respecting legal procedures and providing for constitutional challenges. Far from that, they remained firm in what they did during the dictatorship, arguing for the annihilation of the subversive activities in decrees signed by the last Peronist government and for the social demand against violence.<sup>14</sup>

Alfonsín embarked on one of the most complex and paradigmatic processes in recent Argentine history: the trial of the military juntas.<sup>15</sup> To this end, he formed the National Commission on the Disappearance of Persons (CONADEP), whose function would be to gather information so that the judiciary could then act.<sup>16</sup> In April 1985, the trial began and after months of (harsh and convincing) allegations, the existence of a systematic criminal plan became clear and the members of the first three military juntas were condemned. At the same time, the leaders of the guerrilla organizations were also condemned.

The nostalgic sectors of the military regime redoubled their opposition, above all because the possibility of the prosecution of other ranks of the forces beyond the members of the juntas was opened. In fact, new trials began in 1986 that generated a climate

7 Guillermo O'Donnell, Phillipe Schmitter, Lawrence Whitehead, *Transiciones desde un gobierno autoritario*, Barcelona: Paidós, 1988.

8 Ibid.

9 Manuel Alcántara, Ludolfo Paramio, Flavia Freidenberg, José Déniz, *Reformas económicas y consolidación democrática*, Madrid: Síntesis, 2006.

10 Marcos Novaro, Vicente Palermo, *La Dictadura Militar 1976/1983: Del golpe de Estado a la restauración democrática*, Buenos Aires: Paidós, 2003.

11 Law 22.847 (July 1983) increased the minimum number of deputies per district to five, favoring small provinces where conservative parties and Peronism were stronger and added a 3 % threshold that complicated the left. In the Senate, the third seat per province that would have strengthened the radical party was eliminated. The military agreed with the Peronist unions on benefits and wage increases that conditioned the new government.

12 As the classic work of O'Donnell et al (1988) shows, *uncertainty* is one of the characteristics of transitions. The possibility of regression is always latent and it was so during Alfonsín's term in office, even more so considering that the region was still plagued by military governments.

13 In addition to the inherited problems, there was the upsurge of the Cold War with the arrival of Ronald Reagan to the US presidency, the explosion of the debt crisis with the Mexican *default* of 1982 and a dramatic fall in the international prices of the products exported by Argentina. See Luis Alberto Romero, *Breve historia contemporánea de la Argentina. 1916-2010*, Buenos Aires: Fondo de Cultura Económica, 2017.

14 Marcos Novaro, Vicente Palermo, *La Dictadura Militar 1976/1983: Del golpe de Estado a la restauración democrática*, Buenos Aires: Paidós, 2003.

15 It cannot be ignored that more than 40 % of the electorate voted for the Peronist candidate who had opposed judging the military. Interestingly, the greatest opposition came from human rights organizations, with technical arguments or, simply, prejudices against Alfonsín for not coming from the left.

16 CONADEP was composed of a plural group of personalities from the fields of culture, law and legislation, as well as members of some human rights organizations. The final report describes the cases of 8,961 missing persons and 380 clandestine detention centers. The CONADEP's report, called *Never Again*, is, to this day, an icon of democratic reconstruction.

of discontent and permanent conspiracy between the military and its civilian supporters.

The Armed Forces were divided between the top (the high ranks) and the non-commissioned officers with troop command. The latter were the most conflictive and produced three rebellions (between 1987 and 1988) that Alfonsín managed to contain with great difficulty. The military leadership, although confronted with the rebel group, did not support the transitional government either, which was required to *resolve* the issue of the trials definitively and therefore did not repress the uprisings.

The so-called *Final Point and Due Obedience laws*, which limited the universe of military personnel who could be tried, were the result of this conflict between the military and a government that already had scant political capital at that time. At the same time, the unions were constantly confronting the government, taking advantage of its multiple open fronts and producing a wear and tear that Peronism would later take advantage of in electoral terms. In 1989, the violent reappearance of a leftist guerrilla group further complicated the government's situation, especially on the military front.<sup>17</sup>

In addition to the military issue, Alfonsín tried to implement policies of modernization and democratization in various areas of society and the State. He was more successful in education, culture, the renewal of the Supreme Court and in some social laws, such as divorce and shared parental responsibility. At the same time, he failed to reform the trade unions and, above all, to manage the economy, which, at the end of its mandate, was in the midst of a hyperinflationary meltdown. This was key to the ruling party's defeat and the Peronist victory in the 1989 presidential elections.

Peronism defined his leadership in the leader from *La Rioja*, Carlos Menem. Since then, and until its decline, Menemism acted without any other type of interest than its own political benefit and the construction of a leadership that later O'Donnell<sup>18</sup> would include within the so-called delegative democracies. This forced Alfonsín to move forward with the handing over of his command due to the extortion he suffered from the president-elect and in the midst of a crisis that seemed to have no end in sight.

## 1989–(1990)1999 PERONISM RETURN. THE END OF THE TRANSITION

The end of the transition may be in the late 1990s, with the fourth military uprising.<sup>19</sup> That time, the Peronist Carlos Menem managed to repress it with the strength that the previous government did not have from a series of strategies to defuse the military resistance. Menem had skillfully negotiated with the rebel groups to wear down Alfonsín, but then in power he agreed with the leadership, granting the pardons they demanded for the military chiefs convicted during the previous government. Satisfied with the presidential measure, the Armed Forces bloodily repressed the rebels in what would be, until today, the last military uprising.

In the context of the end of communism, Menem opened a new economic agenda, where the issues linked to the last dictatorship began to lose some of their validity. Through constant budget constraint, the firepower of the military was significantly reduced and, with the end of compulsory military service for 18-year-olds, the Armed Forces were deprived of a large number of troops and, at the same time, of access to a large section of the population.

In 1998 the Armed Forces carried out an important self-criticism for what happened during the dictatorship, which closed the circle of official policy on the recent past. Before the end of

Menem's first term, democracy, in electoral terms, was consolidated and the military was no longer a threat. At the same time, new challenges, not minor ones, opened up, even for the stability of the system itself.

## CURRENT STATUS

Argentina's current political problems are far from those it faced during the transition. However, the way in which that process was approached somehow influenced and shaped the course of politics to this day.

While there is no longer any danger of authoritarian regression or interruption of elections, political instability is a constant that Argentine governments have yet to face. This is especially true for those rulers who do not belong to Peronism, which continues to dominate the Senate, provincial politics and the trade union world, using the latter as a battering ram to regain power when it is defeated electorally.

Political parties rarely acted in a coordinated manner, even in times of great crisis. It was not until 1994 that the first major formal agreement between the parties for constitutional reform was reached. That was possibly the kind of pact they should have made 10 years earlier, in the face of the fall of the military government.

However, this late pact did not survive much more than the reformist process that, on the other hand, was opened up by Menem's need to achieve a re-election until now forbidden. In fact, the radical president who succeeded Menem in 1999 (Fernando De la Rúa) suffered a strong boycott from Peronism, which – in addition to its own mistakes – ended in 2001 with his early resignation and the return of Peronism to the presidency, less than two years after losing the elections.

Menem's years had two important institutional impacts that reversed some of the policies of the Alfonsinist period and that are still being observed today. **Firstly**, a drastic deterioration in the course of justice.<sup>20</sup> This was symbolized by a reform of the Supreme Court that was placed under the political orbit of Peronism. The same thing happened with the main judicial positions in the country (the federal justice).<sup>21</sup>

**Secondly**, the prevalence of corruption and drug trafficking should be noted as a subject that would become nodal in the country's institutional life (which would extend even further into the Kirchner years). There was also a growing *informalization* of social and political life – in the context of increasing poverty

17 Claudia Hilb, *Usos del pasado. Qué hacemos hoy con los setenta*, 2nd edition, Buenos Aires: Editorial Siglo XXI, 2014.

18 Guillermo O'Donnell, "Delegative Democracy", in *Journal of Democracy*, 1994 (1), 5, 55–69.

19 On the basis of what was pointed out by O'Donnell (1988) in 1983, the first stage of the transition was completed, but at the same time another stage was initiated that had to go on until democratic consolidation, that is, until the moment when the new regime no longer ran the risk of regression. In 1990, Argentina reached that point.

20 At the same time, the horizontal *accountability* bodies were distorted (O'Donnell, 2004) while the elements provided for in the new Constitution to contain the marked presidentialism of the Argentine political system were blocked.

21 The Peronist takeover of federal justice in the provinces began during the transition when radicalism gave up these spaces in exchange for co-existence in the national congress. These positions are approved by the Senate, which had a Peronist majority from 1983 until today.

and unemployment – which had repercussions for the emergence of new actors (social movements) and the growing discredit of traditional political parties.

After the frustrated mandate of President De la Rúa (1999–2001), Peronism completed the remaining period with Eduardo Duhalde (2002–2003) in the context of an unprecedented deterioration of the economic and social situation. So came the turn of a leftist variant of Peronism, led by Néstor Kirchner (2003–2007) and his wife Cristina Fernández (2007–2011 and 2011–2015) who, with populist rhetoric and in the context of a society that was unbelieving and desperate, but also in the midst of an accelerated economic recovery due to the reconfiguration of international prices of raw materials, remained in power for 12 years.

During that time, many of the debates that had characterized the transition returned to the political agenda, especially after the review of the human rights issue. The strongly *vindicating* rhetoric of the Peronist government's policy of the 1970s was supported in part by the renewed participation of numerous political actors in the 1970s and the transition. But at the same time, it was also a *discursive strategy* to legitimize its intention to hegemonically control the state apparatus that supported politically and economically the reappearance of this discursive axis.

This was also possible because the consequences of the dictatorial process had been resolved more by military pressure and the political groups that supported them than by a free and consensual social debate. In this context, the National Congress annulled Final Point and Due Obedience laws of the radical stage and this allowed the Kirchnerist government to promote the trials that had been truncated at the end of the 1980s, although the pardons issued by the also Peronist Carlos Menem were never annulled.

However, these issues were restricting their impact on very informed and involved sectors of public opinion. Among the population, interest in economic and social issues continued to prevail. In addition, the partisanship of the Peronist government produced a noticeable break in the social consensus on human rights issues, going back to the few agreements reached during the transition.<sup>22</sup>

This was seen, above all, in the manipulation of previously prestigious characters and institutions such as the Mothers and Grandmothers of Plaza de Mayo. The participation of important members of these groups in well-known corruption scandals or receiving government benefits generated a strong deterioration in public consideration, within the context of a growing social weariness with the primacy of these issues.

The accession of Mauricio Macri to the presidency in 2015 could mark the definitive end of the problems linked to the transition and the opening of new and more current political and social debates. At the same time, it can be observed that the State abandoned its pretensions to build and disseminate unique and closed visions of the past, as in previous years.

On the other hand, more than four decades later and with a renewed population generationally, the questions linked to this past are already part of the history and concern of some numerically reduced (although politically important) social groups.

## LESSONS LEARNT

Argentine society does not learn easily. However, the events during the years of dictatorship and transition left some very strong and consolidated marks. This was because a large part of

the generations that lived through those events are *still* actors in the public life of the country. However, this is already changing and will deepen as they produce the generational replacements that link these elites to that past.

A symptom of this situation was observed after the death of former president Alfonsín. While he was alive, he never recovered the large shares of social consensus of the 1980s, his figure had a strong vindication beyond his party's borders. Like any transitional government, it was subjected to a high degree of wear and tear due to the demands and challenges of the moment, especially in a very complicated global situation. The passing of the years allowed for a calmer and more objective look at this situation and the expertise required to carry it forward.

In terms of the lessons learnt, **firstly**, there is a sustained rejection of everything related to the military in public life. This is manifested in the impossibility of reiterating, even superficially, the strategies that this institution had proposed since 1930, with a constant pretension to get involved in the political decisions of the State. A certain anti-militarism (especially of the elites) led to the point that Argentina was the country in the region with the lowest military budget and zero rearmament.<sup>23</sup>

**Secondly**, it should be mentioned that the validity of the democratic system has not been questioned again, neither among the population nor, above all, among the political elites. The 2001 crisis that put an end to the De la Rúa government – whose triumph had created great expectations – could have led to the emergence of anti-political, outsider or Venezuelan-style military movements. However, it was resolved through institutional channels with the predominant participation of Congress and political parties.

This had not always been the case, in fact one of the central causes of the constant constitutional interruptions in Argentina was the lack of confidence in democratic rules to regulate social and political life and the absence of specific political clout of Congress.

The Latinobarómetro survey shows the Argentinean case to be always closer to those who value democracy than to those who disbelieve in it. On the democratic development scale (average per country between 2006–2017), Argentina ranks third after Uruguay and Costa Rica.<sup>24</sup> However, this is significantly reversed by consulting on trust in public institutions (Congress and the judiciary) and leading political parties.

**Thirdly**, Argentina is a country where various aspects that characterize a modern democracy are very present, such as a high level of organization in civil society, an abundant press and a more than acceptable level of freedom of expression in both traditional and digital media in the context of a dense cultural and intellectual life.

## RECOMMENDATIONS

Argentina remains a country that finds it difficult to process political conflicts and definitions of state policies in a consensual

22 Hugo Vezzetti, *Sobre la violencia revolucionaria. Memorias y olvidos*, Buenos Aires: Editorial Siglo XXI, 2009.

23 Although this is a volatile issue, the Latinobarómetro survey showed that by 2017 only 50 % of the population had a good image of the Armed Forces. Retrieved from [www.latinobarometro.org](http://www.latinobarometro.org). Report 2017.

24 The question asked is "On a scale of 1 to 10, where 1 is 'undemocratic' and 10 is 'completely democratic'". Where is your country located? Latinobarómetro Report 2017. Retrieved from [www.latinobarometro.org](http://www.latinobarometro.org)

and institutional manner. The Kirchnerist years were remembered for these issues, to which must be added the emergence of a process of social polarization which in the 1980s and 1990s appeared to be attenuated.

A *first* recommendation is that those issues related to the transition and the immediately preceding stages should be dealt again with equable, professional criteria and with the exact importance they have, within the context of a history that is already quite violent and polarized.

*Secondly*, and within the context of formal education, it is essential that the teaching and dissemination of these facts be done in the search for greater civic learning and a growing democratic

commitment. That is why it is necessary not to continue to promote and point out culprits and to reiterate sterile discussions which, moreover, are anachronistic today.

*Thirdly*, the nationalist/territorialist approach to the Malvinas-Falklands issue should be reviewed, especially in the public sphere, as it remains an element that can potentially be used for possible authoritarian appeals.

*Fourthly* and finally, the pending issue remains the social question, especially in view of the high levels of poverty, insecurity (also linked to drug trafficking) and precarious employment conditions which, if not resolved, could become a danger to political stability and democratic life.

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## WEBSITES

[www.latinobarometro.org](http://www.latinobarometro.org)

# DISMANTLING THE STATE SECURITY APPARATUS

SERGIO GABRIEL EISSA

## INTRODUCTION

In Argentina, there were six (6) coups d'état between 1930 and 1976. However, the use of violence to resolve political conflicts in the country can be traced back to the years after the War of Independence (1810–1824). Indeed, the constitutive process of a “violent normality”<sup>1</sup> has its roots in a way of doing politics legitimized by the social and political actors, military and civil, during the process of building the National State.

The use of violence to modify a correlation of political forces continued beyond the approval of the National Constitution in 1853. In the following years, Bartolomé Mitre carried out “the first coup d'état” against the government of President Santiago Derqui (1860–1861) in 1861, the same politician took up arms in 1874 when he considered that he had lost the presidential elections fraudulently. The governor of the Buenos Aires Province, Carlos Tejedor, rebelled against the national government in 1880 for the same reasons. This situation also continued during the radical “failed coups” of 1890, 1893 and 1905 that demanded compulsory, universal and secret voting in order to put an end to electoral fraud. All the political “families” in Argentina used violence as a method of doing politics.

In this context, the formation of the Argentine Armed Forces was not without contradictions and setbacks in line with the process of building the National State.<sup>2</sup> The first steps towards the professionalization of the Armed Forces were taken by President Domingo Faustino Sarmiento (1868–1874), motivated by the Paraguayan War (1865–1870) and the experience gained by him during his diplomatic activity in Europe and the United States (USA). In this sense, the creation of the National Military College (1869) and the Military Naval School (1872) are noteworthy. Finally, when the rebellion led by the governor of the Buenos Aires Province, Carlos Tejedor, was defeated in 1880, Law No. 1.072 was passed, prohibiting the provinces from forming military bodies under any name, guaranteeing the legitimate monopoly of violence to the National State.

Towards the end of the second decade of the 20th century, on the one hand, these professional Armed Forces considered themselves to have the legitimate right to intervene in the political contest and, on the other, political actors continued to validate the use of violence, resorting to the military to change the political results that were adverse to them.<sup>3</sup> This self-assigned, society-validated “function” gradually mutated to its peak with the last dictatorship between 1976 and 1983. While the first coups were made to make “corrections” (tutelary functions) in the political system (1930, 1943, 1955 and 1962), those of 1966 and 1976 were made without a plan to call for elections. That is to say, they intended to remain in power *sine die*: the Armed Forces were constituted as a “military party”<sup>4</sup>; seeking to produce fundamental transformations in the social, political and economic life of Argentina.

In this context, the design of the Armed Forces was based on the hypotheses of conflict with Brazil and Chile and on

the tradition of using the military in tasks of “internal security.” For example, during the imposition of the political and economic model of Buenos Aires on the rest of the provinces (1820–1862); the struggle against the native peoples (1878–1919); in the repression of social protests such as the Tragic Week (1919) and the Rebel Patagonia (1920–1921); and the protests of radicals, anarchists, socialists and trade unionists between 1890–1955.

The practices listed in the preceding paragraph were fuelled by the incorporation of the French and American counterinsurgency doctrines in the context of Argentina's accession to the Western bloc during the Cold War (1947–1991).<sup>5</sup> In fact, in that country this doctrine was first reflected in the “Plan Continentes” (1959), which consisted of using the Armed Forces<sup>6</sup> and the security forces to repress the “internal ideological enemy”: mainly Peronist and leftist militants, but also any opponent of the political project of the Armed Forces.<sup>7</sup> Argentina ascribed to the National Security Doctrine that was “founded on a hypothesis of permanent internal war on different fronts” in which the Armed Forces should not only defend territorial integrity but, fundamentally, “the ideological frontiers that separated, within each community, the supporters of the Western and Christian bloc from the adherents to the communist world.”<sup>8</sup> This doctrine was in force until well into the 1980s in Latin America.<sup>9</sup>

In this context, the future dictator Juan Carlos Onganía (1966–1970) implemented the last relevant military reform in the Army between 1963 and 1966.<sup>10</sup> The deployment, the organizational structure and the doctrine were designed for the Armed

1 Luis Alberto Romero, “La violencia en la historia argentina reciente: un estado de la cuestión”, paper presented at the Workshop Historicizing a troubled and living past in memory: Argentina, Chile, Perú, London: Institute of Latin American Studies, London University, 2003.

2 For more details, see Oscar Oszlak, *La formación del Estado argentino*, Buenos Aires: Planeta, 1997.

3 Alain Rouquié, *Poder militar y sociedad política en la Argentina. Tomo I*, Buenos Aires: Hyspamérica, 1986.

4 Mario Rapoport, Claudio Spiguel, *Política exterior argentina. Poder y conflictos internos (1880–2001)*, Buenos Aires: Capital Intelectual, 2005, 43.

5 Ernesto López, La introducción de la Doctrina de la Seguridad Nacional en el Ejército Argentino, in Oscar Moreno (Coord.), *La construcción de la Nación Argentina. El rol de las fuerzas armadas. Debates históricos en el marco del Bicentenario 1810/2010*, Buenos Aires: Ministerio de Defensa, 2010.

6 Formulated during the government of Juan Domingo Perón in 1954 and applied by Arturo Frondizi (Decreets No. 9880/58 and 2628/60). Sergio Eissa, *¿La irrelevancia de los Estados Unidos? La política de defensa argentina (1983–2010)*, Buenos Aires: Arte y Parte: 2015.

7 Mario Rapoport, Claudio Spiguel, op. cit., 2005, 52.

8 Mario Rapoport, *Historia económica, política y social de la Argentina (1880–2000)*, Buenos Aires: Ediciones Macchi, 2000, 631.

9 Sergio Eissa, op. cit., 2015.

10 Subsequently, partial adjustments were made due to budget reductions, such as the dissolution of the Army Corps. See Guillermo Lafferriere & Germán Soprano, *El Ejército y la política de defensa en la Argentina del Siglo XXI*, Buenos Aires: Protohistoria Ediciones, 2015, 39.

Forces to face inter-state conflicts (Chile and Brazil) and internal political groups, of an insurgent nature or simply opposed to government policies.<sup>11</sup>

## **SITUATION DURING THE COUP AND FALL OF THE DICTATORSHIP**

Unlike the previous coups, the Armed Forces decided to avoid the personalities of the past. To this end, as of March 24, 1976, they established that the supreme organ of the state should be a Military Junta (JM) composed of the heads of each force and that it should be responsible for appointing the president.<sup>12</sup> They also decided to divide the positions in the state structure into thirds (33 % for each). This rule produced parallel policies and distortions in state action, while “the military officials appointed in the different areas of the state placed their first loyalties, according to the most elementary military logic, in their respective forces and not in the military authorities [who were their immediate superiors] or of those in charge of the government.”<sup>13</sup> Although this agreement was followed in the formation of the Legislative Council (CAL) and in the Ministries, the Army always held the presidency and retained the main ministries; as well as “the so-called institutional presidency, comprised of the Presidential Secretariats, whose main activity is the management of the political coordination of the presidency”, among them the General Secretariat and the Secretariat of State Intelligence (SIDE).

This force also dominated the distribution of provincial governorships: twelve (12) for the Army, five (5) for the Navy and two (2) for the Argentine Air Force.<sup>14</sup>

As for the structure through which the illegal repression was exercised, the Argentine Army had control over the entire territory through the Army Corps<sup>15</sup> divided into zones, subzones and areas:<sup>16</sup>

### **a/ Army Corps I**

Zone 1: Autonomous City of Buenos Aires (Federal Capital) and the municipalities of the southeast, center and northwest of the province of Buenos Aires. Until the end of 1979 it also covered the entire province of La Pampa.

In the Federal Capital Subzone, Area IIIA was in charge of the Argentine Navy and where the Naval School of Mechanical Engineering (ESMA) operated as a Clandestine Detention Center (CCD) or Meeting Place for Detainees (LRD).

Subzone 16, which included the municipalities of Merlo, Morón and Moreno, was placed under the Directorate of the Argentine Air Force.

### **b/ Army Corps II**

Zone 2: provinces of Santa Fe, Entre Ríos, Corrientes, Misiones, Chaco and Formosa.

### **c/ Army Corps III**

Zone 3: provinces of Córdoba, San Luis, Mendoza, San Juan, Catamarca, Santiago del Estero, Tucumán, Salta and Jujuy.

### **d/ Commander of the Military Institutes (Campo de Mayo)**

Zone 4: covered the northern municipalities of the Buenos Aires Province.

### **e/ V Army Corps**

Zone 5: south and southwest of the province of Buenos Aires, and the provinces of Neuquén, Río Negro, Chubut, Santa Cruz and the National Territory of Tierra del Fuego.

This organization was intended to conduct defensive and offensive military operations. The former concerned population control and the prevention of “subversive” activities. These were carried out by the areas, which also provided support to the Task Forces (TF); who were responsible for carrying out the offensive actions, i.e. kidnapping the victims. These TF depended on the services of the intelligence headquarters in each area and were composed of officers and non-commissioned officers from the relevant areas. Once the person was abducted, he or she was transferred to a CCD until it was decided whether he or she would be killed, passed to the National Executive or the Judiciary (launched) or released.

Sixty-one (61) CCDs depended on zone commanders;<sup>17</sup> although some unofficial sources claim that there were 610 CCDs (LRDs and Transitional Sites (LTs)) in 1976, stabilizing at around 364 in 1977.<sup>18</sup>

Likewise, Directive No. 1/75 of the National Defense Council “Fight against Subversion”, issued pursuant to Decrees Nos. 261, 2770, 2771 and 2772 of 1975 [presidency of María Estela Martínez de Perón (1974–1976)], established that the Army should have operational control of the provincial prison police and services; the Federal Police; and the National Penitentiary Service.

In addition, it had functional control over SIDE. The Navy was in charge of the operational control of the police of the National Territory of Tierra del Fuego. While the Argentine Air Force would have control of the provincial police and prison services, it would have to agree with the Argentine Army.<sup>19</sup>

Little information is available on the members of the Task Forces that participated in state terrorism, which immediately resulted in the disappearance of 30,000 Argentines and the theft of half a thousand babies. For this reason, in order to have an estimated size of the repressive apparatus, we will mention, firstly, that spending on the Armed Forces increased by 450 % (see Graph 1); taking 1951 as a base year.

Secondly, the Task Forces were composed of staff (officers and non-commissioned officers only) of the Armed Forces (Army, Navy and Air Force), the Security Forces (Gendarmerie

11 Germán Montenegro, “El marco normativo y doctrinario de la defensa nacional”, in *Revista de la Defensa Nacional*, 2007, (1), Buenos Aires: Ministerio de Defensa, 17.

12 Roberto Russell, El proceso de toma de decisiones en la política exterior argentina (1976–1983), in Roberto Russell, *Política exterior y toma de decisiones en América Latina*, Buenos Aires: Grupo Editor Latinoamericano, 1990, 14. The figure of the fourth man exacerbated inter-force and inter-force bids in the government, as did the 33 % quote. Paula Canelo, *La política secreta de la última dictadura argentina (1976–1983)*, Buenos Aires: Edhasa, 2016.

13 Roberto Russell, *op. cit.*, 1990, 15.

14 Paula Canelo, *op. cit.*, 2016, 57.

15 *Ibid.*, 58–59.

16 See <http://www.desaparecidos.org/nuncamas/web/zonas/zonas.htm> and Case No. 1261–1268 “Olivera Róvere, Jorge Carlos y otros s/homicidio, privación ilegítima de la libertad, tormentos y otros delitos del Código Penal”, Buenos Aires: Tribunal Oral en lo Criminal Federal No. 5, December 2009.

17 *Ibid.* and National Commission on the Disappearance of Persons (2017 [1984]), *Nunca Más. Report of the National Commission on the Disappearance of Persons*, Buenos Aires: Eudeba.

18 María Seoane, *El dictador*, Buenos Aires: Sudamericana, 2001, 227–228.

19 See <http://www.desaparecidos.org/nuncamas/web/document/document.htm> and Causa No. 1261–1268 “Olivera Róvere, Jorge Carlos y otros s/homicidio, privación ilegítima de la libertad, tormentos y otros delitos del Código Penal”, Buenos Aires: Tribunal Oral en lo Criminal Federal No. 5, December 10, 2009.

**TABLE NO. 1: TROOPS OF THE ARMED FORCES, SECURITY AND INTELLIGENCE IN 1977**

	Army	Navy	Air Force	Gendarmerie	Naval Prefecture	Federal Police	SIDE
Troops	80,000	32,900	17,000	11,000	9,000	22,000	
Reserve	250,000						
Intelligence <sup>20</sup>	4,867	712	1,200				2,200

Fuente: International Institute for Strategic Studies, "Balance Militar" in Ejército. Revista de las Armas y los Servicios, XXXIX (461), Madrid: Ejército de Tierra, 1978 y Revista Veintitrés, Buenos Aires, no data.

and Prefecture, which were part of the Army and Navy, respectively, until 1984), the Federal Police, the 23 provincial police and the Secretariat of State Intelligence (SIDE).

The approximate number of troops was: *See Table No. 1*

Currently, provincial police represent 62 %<sup>21</sup> of the federal police system. If that proportion had been the same in 1977, the provincial police forces would have totalled approximately 25,000.

It should be noted that "during 1975 the subversive gangs were defeated in all the major large-scale actions undertaken, and although their actions had not been annihilated, the military and security operations initiated had begun to achieve the objectives set."<sup>22</sup>

With regard to legal regulations (see table 2), it should be emphasized that the democratic government of María Estela Martínez de Perón (1974–1976)

had given the Armed Forces and the Security Forces the necessary legislation and normative instruments to deal with the subversive problem, but there was no reason to justify the illegal and clandestine actions carried out by the military government, and in this sense it should be stressed that "the coup d'état of March 24, 1976 did not mean a substantial change in the legal provisions in force at that date regarding the fight against subversion. (...) the prevailing system only authorized the suspect to be detained, to be housed occasionally and temporarily in a prison or military unit, and to be immediately released or brought before the civil or military courts or the executive branch (...) However, it is clear from the analysis carried out (...) that what happened was radically different.

Although the operational structure continued to function in the same way, the personnel subordinated to the accused detained a large number of people, illegally housed them in military units or in places under the control of the Armed Forces, interrogated them under the torture method, held them in captivity under inhuman conditions of life and accommodation and, finally, either legalized them by placing them at the disposal of the courts or the National Executive Power, released them or physically eliminated them."<sup>23</sup>

In conclusion, despite the fact that "the legislative policy applied to the subversive phenomenon by the constitutional government did not undergo substantial changes after its overthrow, [instead of] making full use of such legal powers, the military government preferred to implement a clandestine mode of repression."<sup>24</sup> The coup d'état did not aim to annihilate and/or eliminate subversion,<sup>25</sup> but rather to bring about a political and economic change in Argentine society that required the elimination of all forms of opposition to the authoritarian regime.<sup>26</sup>

The defeat in the Malvinas/Falkland war (1982) will highlight the lack of professionalization of the Argentine Armed Forces to face a traditional conflict – the first since the Paraguay War (1865–1870) – in which, beyond the heroism demonstrated by the officers, non-commissioned officers and soldiers of the three Forces, the lack of preparation, the lack of means, the individual actions of each Force in the face of the need for joint action and the political factionalism in which the military instrument had been submerged was exposed.

The Armed Forces were an autonomous actor of political power for much of the 20th century and, despite defeat in the Malvinas/Falkland war and the "transition due to collapse", the military – together with their civil allies – retained an important veto power during the government of Raúl Alfonsín (1983–1989) and bureaucratic autonomy to try to define their mission and roles from the 1990s onwards.<sup>27</sup>

## ACTIONS TO STRENGTHEN DEMOCRACY DURING THE CONSOLIDATION PROCESS

In order to transform the security and military apparatus inherited from the dictatorship, the democratic government faced, with varying success, four courses of action during the democratic consolidation:

20 It is not clear from the sources whether such personnel are also included in the totals for each force.

21 Facundo Salles Kobilanski, "La política de las reformas policiales a nivel subnacional en Argentina: algunas contribuciones y lecciones desde la ciencia política", in *Cuadernos de Seguridad*, Buenos Aires: Ministerio de Seguridad, no data, 2, [http://www.minseg.gob.ar/sites/default/files/cuadernos/14\\_Kobilanski.pdf](http://www.minseg.gob.ar/sites/default/files/cuadernos/14_Kobilanski.pdf)

22 Causa No. 1261–1268 "Olivera Róvere, Jorge Carlos y otros s/homicidio, privación ilegítima de la libertad, tormentos y otros delitos del Código Penal", Buenos Aires: Tribunal Oral en lo Criminal Federal No. 5, December 10, 2009, 610.

23 Ibid., 610–611.

24 Ibid., 610.

25 The Secret Order of December 17, 1976 eliminated the order to "neutralize and/or annihilate subversive actions" (as instructed by the so-called annihilation decrees of 1975, including No. 261/1975). The Armed Forces themselves, therefore, believed that "subversion" no longer existed militarily. However, the Secret Order states that from then on "subversive criminals must be annihilated". In fact, the 1976 directive states: "Operations against subversive elements (R-C-9-1) (...) 4003 i): Apply fighting power with maximum violence to annihilate subversive criminals wherever they are. Military action is always violent and bloody (...) The subversive criminal who wields arms must be annihilated, since when the Armed Forces enter into operations they must not interrupt the combat or accept surrender (...) 4008: the attack will be executed: a) By locating and annihilating subversive activists."

26 Mario Rapoport, Claudio Spiguel, *op. cit.*, 2005, 52.

27 Sergio Eissa, *op. cit.*, 2015.

TABLE NO. 2: LEGAL FRAMEWORK FOR REPRESSION	
Type and number of standard	Content
Decree-Law No. 16.970/1966	National Defense – National Security Doctrine
Decree-Law No. 16.896/1966	It authorizes searches and detentions of persons for up to ten days before they are brought to justice.
Law No. 20.642 (1974)	Increases penalties under the Penal Code.
Law No. 20.840 (1974)	“Anti-subversive”.
Decree No. 1368/1974	State of siege.
Decree No. 261/1975	It orders the Argentine Army to execute operations to neutralize and/or annihilate the subversion.
Directive of Commander-in-Chief of the armed forces No. 333 and 334	Operations against subversion in Tucumán.
Decree No. 2770, 2771 y 2772 de 1975	They created, respectively, the Defense Council (CD); signed agreements with the provinces to place the police and provincial prison services under the operational control of the CD; and ordered the annihilation of the actions of the subversive elements.
Defense Council Directive No. 1/75	“Fight against subversion”.
Directive No. 404/75 “Fight against subversion” (Commander-in-Chief of the Argentine Army)	It established the priority fight zones, divided the strategic maneuver into phases and maintained the pre-existing territorial organization – composed of defense zones, sub-zones, areas and sub-areas – in accordance with the 1972 Capabilities Plan.
Anti-subversive Directive No. 1/75 Secret of the Argentine Navy that approved “Capabilities Plan –PLACINTARA 75-.”	
“Orientation-Updating of the 1975 Internal Framework Capability Plan” of the Argentine Air Force.	
Statute for the National Reorganization Process.	
Partial Order No. 405/76	Restructuring of jurisdictions to intensify operations.
Directive of the Commander in Chief of the Army No. 504/77.	
“Final Document” of the Military Junta of 28 April, 1983.	

Source: own creation from public documents.<sup>28</sup>

## 1. THE ROLE OF FOREIGN POLICY

While Raúl Alfonsín’s foreign policy (1983–1989) clearly had “the protection and consolidation of democracy”<sup>29</sup>; as its ordering axis; that of Carlos Menem (1989–1999) cannot be explained solely from the change in economic policy, but also on the basis of the government’s diagnosis of the post-Cold War international scene, which had its roots in the theoretical development of Carlos Escudé, known as Peripheral Realism.<sup>30</sup> However, both governments bet, one in political terms and the other in economic terms, on regional integration.

In effect, the deactivation of the conflict hypothesis with Chile and Brazil<sup>31</sup> contributed to the military subordination, while the Armed Forces could not justify their budget in terms of either the same or the internal ideological enemy. To this end, Raúl Alfonsín (UCR) began the process of regional integration through the signing of the Program for Economic Integration and Cooperation (PICE) with Brazil, to which Uruguay later joined, as well as the referendum and the subsequent approval of the Treaty of Peace and Friendship with the Republic of Chile in 1984.

Moreover, the position taken in the face of the Central American crisis sought not only to place Argentina as a protagonist on the regional stage, defending the principle of non-intervention and legal equality of states, but also to “prevent the conflict from evolving in a way that would put the [new] democratic governments at a disadvantage”<sup>32</sup>.

28 See <http://www.desaparecidos.org/nuncamas/web/document/document.htm> y Causa No. 1261-1268 “Olivera Róvere, Jorge Carlos y otros s/homicidio, privación ilegítima de la libertad, tormentos y otros delitos del Código Penal”, Buenos Aires: Tribunal Oral en lo Criminal Federal No. 5, December 10, 2009.

29 Roberto Russell, *Políticas exteriores: hacia una política común*, in Mario Rapoport (Comp.), *Argentina y Brasil en el MERCOSUR. Políticas comunes y alianzas regionales*, Buenos Aires: Grupo Editor Latinoamericano, 1995, 35.

30 Carlos Escudé, *Realismo periférico. Fundamentos para la nueva política exterior argentina*, Buenos Aires: Planeta, 1992.

31 The distention with Brazil began with the signing of the Multilateral Agreement on Corpus-Itaipu in 1979.

32 José Paradiso, *Debates y trayectorias de la política exterior argentina*, Buenos Aires: Grupo Editor Latinoamericano, 1993, 187.

The Justicialist president<sup>33</sup> Carlos Menem (PJ) deepened this strategy of regional integration. MERCOSUR, comprising Argentina, Brazil, Paraguay and Uruguay, was launched on 26 March 1991 and continued the work of PICE. Finally, and almost simultaneously, Brazil and Argentina formally ended their respective conflict scenarios in 1996.<sup>34</sup> As for Chile, after a long process that began in 1992, on December 29, 1998, the Argentine Congress approved the treaty that put an end to the demarcation of some twenty points that had not yet been demarcated on the border with that country. Among them, the most important were Laguna del Desierto, resolved through Latin American arbitration, and Hielos Continentales.<sup>35</sup>

## 2. THE ROLE OF ECONOMIC POLICY

Raúl Alfonsín reduced the defense budget to its historical level of 2 % of the GDP, not only because of economic austerity, but also to contribute to the subordination of the Armed Forces to civil power<sup>36</sup> (see Graph 3). Carlos Menem, for his part, disinterested himself in national defense after consolidating civilian control of the Armed Forces in 1990. As a result, the budget sank to 0.9 % of GDP<sup>37</sup> until the first decade of the 21st century.

## 3. TRIAL OF THOSE RESPONSIBLE FOR STATE TERRORISM

From 1983 to the present day, the Argentine government, with advances and setbacks, faced the trial of those responsible for the state terrorism that caused the disappearance of thirty thousand (30,000) people and of half a thousand newborns.

The first phase of this trial was addressed by the radical government (UCR) between 1983 and 1989. While Raúl Alfonsín “philosopher” thought that

*Coups d'état have always been civil-military. The undoubtedly military responsibility for its operational aspect must not make us forget the heavy civil responsibility of its ideological programming and feeding. The coup has always reflected a loss of the legal sense of society and not just a loss of the legal sense of the military. Therefore, it would be absurd, to expect that overcoming the coup would come from military self-criticism or from civil society action on the military. Overcoming the coup can only come from a global reflection of Argentine society on itself.*<sup>38</sup>

Raúl Alfonsín, a statesman and politician, considered that the military had carried out a “strategic withdrawal”, leaving the country in a deep economic crisis; in an international scenario where the Cold War (1947–1991) in which the arrival of Ronald Reagan (1981–1989) had faced what would be the final offensive against the Soviet Union; where he had also begun the involvement of his armed forces in the so-called War on Drugs in Latin America (first with Richard Nixon in 1971 and Ronald Reagan in 1986); and in a country where the last military dictatorship (1976–1983) “enjoyed the tacit consent of a significant part of Argentine society”.<sup>39</sup> For this reason, years later, he argued

*it was absolutely unthinkable to prosecute thousands of members of the armed and security forces (most of them active) who participated in one way or another in the illegal repression [...]. Our aim could not be to try and convict all those who had violated human rights in one way or another, because this was*

*unattainable, but to achieve an exemplary punishment that would prevent the repetition of similar events in the future [...] it would have been absolutely irresponsible to claim such a far-reaching universe of judgment when the consequences of that action, far from preventing future crimes, could promote them again or cause greater harm to the still incipient democracy [...]. Did anyone seriously believe and still believe that, at that time, with a democracy that was just emerging from years of military dictatorship, it was possible to arrest and try 1,500 or 2,000 active officers of the armed forces? Not only was it tactically impossible, but the Argentinians had not voted in that direction [...] it would have been absolutely irresponsible to claim such a far-reaching universe of judgment when the consequences of that action, far from preventing future crimes, could promote them again or cause greater harm to the still incipient democracy.*<sup>40</sup>

Indeed, despite the fact that society and human rights organizations thought otherwise, Raúl Alfonsín had argued during the election campaign that he would declare self-amnesty null and void and that

*we're not going to go backwards looking with a sense of revenge either. We will not build the country of the future in this way [...]. Here, there are different responsibilities: there is a responsibility of those who took the decision to act as it was done, there is a different responsibility of those who committed excesses in the repression, and there is a different responsibility of those who did nothing other than, in a framework of extreme confusion, to comply with orders.*<sup>41</sup>

Thus, the president, tense between his convictions and that of fulfilling his maximum objective, which was to hand over the government to another democratically elected ruler, promoted the trial of the Military Juntas – the only one in the world if Nuremberg is not taken into account – but he had to retreat because of errors in the implementation of the reforms of the Code of Military Justice and because the military issue was exacerbated by the irresolution of the government.

Already in two different socio-political contexts, President Carlos Menem opted to put an end to the military issue by pardoning those responsible for state terrorism, while Presidents Néstor Kirchner (2003–2007) and Cristina Fernández de Kirchner (2007–2015), with the support of human rights organizations, opted to promote the reopening of the trial.

33 The expressions Justicialist Party or Peronism shall be used interchangeably in the text.

34 Rosendo Fraga, El concepto de las hipótesis de conflicto, in Andrés Cisneros (Comp.), *Política exterior argentina 1989–1999. Historia de un éxito*, Buenos Aires: Nuevo Hacer. Grupo Editor Latinoamericano, 1998.

35 Sergio Eissa, *Hielos Continentales. Las variables domésticas en la política exterior argentina*, Buenos Aires: Fundación Síntesis, 2005.

36 David Pion-Berlin (Ed.), Civil-Military Circumvention. How Argentine State institutions compensate for a weakened chain of command, in David Pion-Berlin (Ed.), *Civil-military relations in Latin America. New Analytical Perspectives*, Carolina del Norte: The University of North Carolina Press, 2001.

37 Sergio Eissa, *op. cit.*, 2015.

38 Raúl Alfonsín, *Memoria política*, Buenos Aires: Fondo de Cultura Económica, 2009, 255.

39 *Ibid.*, 33.

40 *Ibid.*, 45 and 47–48.

41 Horacio Jaunarena, *La casa está en orden. Memoria de la transición*, Buenos Aires: TAEDA, 2011, 32.

#### 4. REFORMS IN THE NATIONAL DEFENSE, SECURITY AND INTELLIGENCE SYSTEM

The process of reform of the national defense system lasted from 1983 to 2006, while in police agencies it can be argued that the reforms only began in 1997 with advances and setbacks, without significant progress having been made to date. On the other hand, although the Intelligence System was reached by two laws, both the former SIDE and the current Federal Intelligence Agency (AFI) continue to be questioned by political and social actors for their lack of transparency and for the lack of control by the Legislative Power.

Although this analytical separation is carried out, the three systems (defense, internal security and intelligence) are considered to constitute a “systemic construct” that contributes to Argentina’s strategic security.

Synthetically, the construction of the “basic consensus”<sup>42</sup> took place in three (3) stages: a) the executive between 1983 and 1985, b) the legislative between 1987 and 2001 and c) the executive between 2005 and 2010.

During the first stage, reforms were implemented at the doctrinal and organic functional level, aimed at strengthening the subordination of the Armed Forces to the new constitutional government. It had already been agreed with the last de facto president, Reynaldo Bignone, to abolish the three posts of commander-in-chief of the Armed Forces, thus concentrating “the functions that until then had been held by those in the President of the Republic” and it was established that the headquarters of the General Staff of each Force would constitute the highest echelon of the military hierarchy through Decree-Law No. 23,023/83.<sup>43</sup>

Subsequently, other measures were defined to modernize the National Defense System and strengthen the role of the Ministry of Defense<sup>44</sup> and the Joint Chiefs of Staff, it should be noted:<sup>45</sup>

- the strengthening of the role of the Joint Chiefs of Staff of the Armed Forces, insofar as it was conceived by the government as “the greatest link in establishing routines and institutional traditions in accordance with a democratic government”. To this end, the head of the Joint Chiefs of Staff became the highest ranking active officer and provided him with a structure that should be supplemented by the best personnel each force could offer. This was no longer regarded as a career punishment;<sup>46</sup>
- the transfer of the “share package, public limited companies with majority state participation, state limited companies, public limited companies and mixed companies whose ownership, possession or holding is the responsibility of the armed forces” to the Ministry of Defense (Decree No. 280/83);<sup>47</sup>
- the delegation to the Ministry of Defense of the power to appoint and reassign senior officers of the three Forces, “as well as decisions on the dismissal and withdrawal of officers from that hierarchy” (Decree No. 436/84).<sup>48</sup> One of the first steps taken was to reduce the number of senior officers by almost 50 %;<sup>49</sup>
- the transfer of the National Gendarmerie and the Argentine Naval Prefecture from the Argentine Army and Navy respectively,<sup>50</sup> to the Ministry of Defense;
- strengthening the Ministry in budgeting; and
- the reduction of the budget from 4.7 % of GDP to 2.3 %, “which represented approximately the historic level of defense expenditure”.<sup>51</sup>

Although a Defense Bill was sent to Congress in 1985, which departed from the platform of the ruling party and was drafted by advisers to the Ministry and the Joint Chiefs of Staff,<sup>52</sup> the reformist impetus ended with the death of Defense Minister Raúl Borrás in May 1985.<sup>53</sup>

After the first military uprising and the electoral defeat of radicalism in 1987, it agreed with the Justicialist Party (PJ) on a legislative agenda that included the submission of a National Defense Bill.

The radical and renovating Peronist deputies<sup>54</sup> agreed not to discuss the project coming from the government and sought to “solve the urgent need for a defense law, through a shared effort of conceptual compatibility and proposals of the different aspects of national political thought”.<sup>55</sup>

First, the adoption of a new Defense Law was considered urgent for at least two (2) reasons. On the one hand, it was necessary to promote a strong institutionalization in this area, which would mean closing any door to a new military intervention. On the other hand, it was considered necessary to promote a doctrinal change that would extirpate from the military sector the National Security Doctrine, on the basis of which military intervention in internal security matters and the execution of a brutal repression that led to massive violations of human rights had been justified. Such a bill would then have to agree on a definition of national defense among the different political and social actors. This convergence was achieved in 1988 and is what has been called the “basic consensus”<sup>56</sup> (see graph 2).

On the one hand, some Peronist advisers promoted a total rejection of the National Security Doctrine and a return to

42 The concept belongs to Marcelo Saín. Other works by this author include Marcelo Saín, *Los votos y las botas. Estudios sobre la defensa nacional and las relaciones civil-militares en la democracia argentina*, Buenos Aires: Prometeo, 2010.

43 Ernesto López, *Ni la ceniza ni la gloria. Actores, sistema político y cuestión militar en los años de Alfonsín*, Quilmes: Universidad Nacional de Quilmes, 1994, 73.

44 Horacio Jaunarena, *op. cit.*, 2011, 48 and 50.

45 Ernesto López, *op. cit.*, 1994, 74.

46 Herbert Huser, *Argentine Civil-Military Relations. From Alfonsín to Menem*, Washington DC: National Defense University Press, 2002, 58–59.

47 See also Sergio Eissa, *op. cit.*, 2015 and Horacio Jaunarena, *op. cit.*, 2011, 48.

48 The use of this decree was recovered by the Minister of Defense Nilda Garré in December 2005 and repealed by President Mauricio Macri (2015 to present) in 2016.

49 Horacio Jaunarena, *op. cit.*, 2011, 52 and 62.

50 *Ibid.*, 53. Gendarmerie was transferred in July 1984 and Prefecture in October 1984. Both came under the Ministry of the Interior in 1996 and the newly created Ministry of Security in 2010. The National Aeronautical Police was removed from the Argentine Air Force in 2005 and became the Airport Security Police under the Ministry of the Interior in 2006 and since 2010 under the Ministry of Security.

51 Horacio Jaunarena, *op. cit.*, 2011, 53.

52 Sergio Eissa, *op. cit.*, 2015.

53 Gustavo Druetta, “Herencia militar y lucha parlamentaria”, *Nuevo Proyecto*, (5–6), Buenos Aires: Centro de Estudios Para el Proyecto Nacional, 1989 and Varas, Augusto, “Democratización y reforma militar en Argentina”, paper presented at the International Seminar “Autonomización castrense y democracia: dinámica del armamentismo y del militarismo en América Latina”, CLACSO-FLACSO-SERC, Santiago de Chile, 1985.

54 It was an internal line within Peronism in the 1980s that displaced in 1985 the so-called “orthodox” who sought to maintain alignment with former President María Estela Martínez de Perón.

55 Gustavo Druetta, *op. cit.*, 1989, 194 and 199.

56 A good description of how the agreement was reached is provided by Gustavo Druetta, *op. cit.*, 1989.

the National Defense Doctrine, in force during the first and second of Perón's governments. Some of these ideas had been worked out in the final stage of the magazine *Estrategia*, by General Guglielmelli and some of the colonels of the 33 Orientals.<sup>57</sup> Within the Army, this thought was accompanied by the most nationalist sector and professionals "not intoxicated by pro-Yankee liberalism", being "the workhorse" of the generation of lieutenants Licastro and Fernández Valoni, among others, during the 1970s. This group was accompanied by a sector of classical Peronism and the renovators, and was certain that "military participation in internal affairs was harmful both to the military and to democracy, since it implied a confusion of roles with the police for which the military mentality was not prepared."<sup>58</sup> The latter facilitated the agreement with sectors of radicalism, whether they were balbinists (José Manuel Ugarte, Andrés Fontana and Yuyo Gauna) or alfonsinists (Dante Giadone, Jesús Rodríguez, Federico Storani and Eduardo Estévez). The certainty that the military had to be removed from internal affairs because it was harmful to both defense and democracy, and the intention not to return to the past, also implied "the construction of a system of political leadership of internal security."<sup>59</sup>

However, it was not only a question of preventing the recent history of Argentines from repeating itself. The advisers of both parties were well aware of the experience of the *Posse Comitatus Act*, in force in the United States since 1878, which prohibited the military from enforcing internal security (*law enforcement*), and of other countries, such as Spain and Germany – in particular, the concept of *Innere Führung*.<sup>60</sup> The case studies had convinced them that it was not only a question of subordinating the Armed Forces to civilian power, but also of making progress in the design of a defense policy and a military instrument in accordance with the democratic regime and the new regional reality.<sup>61</sup> Finally, the national defense law was adopted on April 13, 1988.

In the face of the attempted guerrilla takeover of the army barracks in the town of La Tablada in the summer of 1989, the legal vacuum left by the National Defense Law became evident: who should act in the event of an attack on a military unit?

Although work had been done on this bill during Raúl Alfonsín's presidency in 1989, the events of La Tablada put an end to any attempt to move forward with it. Once Carlos Menem took over the presidency, a draft was sent to the Minister for consideration and then sent to the Chamber of Deputies. Despite the pressure from the Armed Forces and the legislators of the UCeDe, so that they could act in matters of internal security (*law enforcement*), the actors of the "basic consensus" insisted that the wording be expressly limited to situations in which the Armed Forces could intervene in internal security, regulating a power that the president had by himself, in accordance with the National Constitution. Law No. 24.059 on internal security was finally adopted on 18 December, 1991.<sup>62</sup>

Also, during the administration of President Carlos Menem, one of the most important structural and symbolic changes in the Armed Forces took place. In September 1994, Law No. 24.429 on Voluntary Military Service was passed, as a consequence of the assassination of the conscript Omar Carasco in March of that year in the Army's Artillery Group 161, in the city of Zapala, province of Neuquén. Although the government had no plans to end the compulsory conscription, and the opposition did not request it either, the criminal act accelerated some analyses that were already being studied

in the Ministry of Defense, due to the increase in desertion, the lessons of the Malvinas/Falkland war and the strategic defensive stance adopted by the country.<sup>63</sup>

The third key rule was Law 24.948, which established the fundamental political, organic and functional bases for the restructuring of the Armed Forces. This was the result, firstly, of a project drawn up by the Restructuring Commission of the Armed Forces with representatives of the forces. Secondly, the former Minister of Defense, and then deputy for the Radical Civic Union Horacio Jaunarena, presented a project to restructure the Armed Forces, which was advised by some military personnel.<sup>64</sup> Thirdly, a series of public hearings were held to discuss national defense issues between 1995 and 1999. National government officials, especially from the Ministry of Defense and Economy, national deputies and senators, foreign guests, renowned national and foreign academics, and active and retired military personnel were present. These hearings had at least two effects: a) the National Senate approved a project of communication to the Executive Power to issue a National Defense Directive establishing the guidelines on defense matters, which materialized in Decree No. 1116/1996<sup>65</sup> which approved the first Defense Directive of Argentina; b) the consensus reached for the approval of the Defense and Internal Security laws on "a common body of ideas, built up over 15 years of democracy", facilitated the debate on a common project for the restructuring of the Armed Forces.<sup>66</sup> This was approved in 1998, but due to the recession that began that year, which did not allow the defense budget to be increased, and some definitions of the deployment and organizational structure, to which the military was opposed, the law was not regulated and, therefore, is not operational.<sup>67</sup>

While Argentina became the leading country in the region in terms of the implementation of rules establishing civilian control of the Armed Forces, in terms of intelligence, our country was in arrears, mainly due to the opposition of the SIDE. Since the arrival of the radical Fernando de la Rúa in the government (1999–2001), the radical, Peronist and FREPASO advisers have agreed on a bill with this body. The idea was to replicate, in the first instance, the basic agreement reflected in the National Defense and Internal Security laws: to separate external

57 Peronist-inspired militants who opposed the 1976 coup d'état and played an important role in building the "basic consensus". See Clarín, "Los '33 orientales', hombres clave para las leyes de defensa", in *Clarín*, December 31, 2007, [https://www.clarin.com/ediciones-antiores/33-orientales-hombres-clave-leyes-defensa\\_0\\_HkNeJtC0aYl.html](https://www.clarin.com/ediciones-antiores/33-orientales-hombres-clave-leyes-defensa_0_HkNeJtC0aYl.html)

58 Sergio Eissa, *op. cit.*, 2015.

59 Ibid.

60 It is a concept developed in Germany after the Second World War to apply principles of democratic law to the armed forces. One of the main ideas is that the military are citizens who exercise the profession of arms.

61 Sergio Eissa, *op. cit.*, 2015.

62 Ibid.

63 Oscar Camilión, *Memorias políticas. De Frondizi a Menem (1956–1996)*, Buenos Aires: Planeta, 2000, 341–342.

64 A few months later the deputy of the FREPASO (center-left), Juan Pablo Cafiero, also presented his own project. Gloria Cecilia Manzotti, "Reestructuración de las FF.AA.: hacia la consolidación de una política de defensa y una cuestión presupuestaria", paper presented at the IV National Congress of Political Science, Sociedad Argentina de Análisis Político (SAAP), Rosario, 2003, 4, 8, 10.

65 This rule was repealed by Decree No. 1691/2006.

66 Pablo Martínez, *La reestructuración de las FF.AA. y el rol del Congreso. La experiencia argentina*, La Paz: Centro de Estudios Hemisféricos de Defensa, 2002, 122.

67 Sergio Eissa, *op. cit.*, 2015.

intelligence from internal intelligence. Despite the resistance of SIDE, the Ministry of Defense and the Armed Forces, Law No. 25.520 on National Intelligence was unanimously approved at the end of 2001.<sup>68</sup> In 2014, SIDE was dissolved and the Federal Intelligence Agency (AFI) was created by Law No. 27.126. Immediately after, a purge of the organization was initiated and, months later, Decree No. 1311/2015 was approved, which sought to modify the Argentine intelligence doctrine, professionalize the AFI as the governing body of the National Intelligence System and make it an institution capable of meeting the challenges of the 21st century in terms of the collection and analysis of strategic information for security and defense. This reform was interrupted when President Mauricio Macri (2015 to present) reincorporated the expelled spies and re-established the old model of functioning through the enactment of Decree No. 656/2016. To date, this intelligence agency remains a source of mistrust for society and human rights organizations, both because of its lack of transparency and its ineffectiveness. For example, SIDE was unable to alert the Israeli Embassy and the Argentine Israelite Mutual Association (AMIA) to the terrorist attacks that took place in 1992 and 1994, respectively.<sup>69</sup>

From 2005 onwards, not only were the regulations approved in previous years,<sup>70</sup> made operational, but the institutional framework of the defense system was also completed, not to strengthen the civilian control of the Armed Forces, but rather to make the exercise of civilian defense government more effective.<sup>71</sup> To this end, the Defense Law was regulated by Decree No. 727/2006; the Directive on the Organization and Functioning of the Armed Forces was approved by Decree No. 1691/2006, which made operational some of the provisions of Law No. 24.948; Decree No. 1729/2007, which established the “Defense Planning Cycle”; which launched the cycle and concluded with the adoption of the 2009 National Defense Policy Directive (Decree No. 1714/2009); and the Military Capacities Plan (PLANCAMIL 2011). Civilian functions, such as the National Meteorological Service, the Naval Hydrographic Service and air traffic control, were also demilitarized.

## POLICE REFORMS

Regarding the police agencies, the authoritarian legacy is not limited to the last dictatorship either, but also to the formation of the Nation State.<sup>72</sup> The design of the police in Argentina followed the so-called “French or continental model”, where the police emerged as part of the Armed Forces or militias, which depend hierarchically on the government and are not accountable to their respective communities. The main task of this police force is to “watch” over the enemies of the state. For example, the Argentine Federal Police (PFA) emerged as a necessity of the federal government to subordinate the provincial governments.<sup>73</sup> The rest of the current federal security forces (National Gendarmerie, Argentine Naval Prefecture and Airport Security Police) originated in the Armed Forces (Army, Navy and Air Force respectively), and were designed with a centralized and militarized structure; a feature that is still up to date in the National Gendarmerie. On the other hand, it can be argued that the provincial police were designed to monitor the population and the political opposition. The militarization and control tasks of the population and the political opposition were accentuated during the first half of the 20th century, especially during the first two governments of

Juan Domingo Perón (1946–1955).<sup>74</sup> Consequently, the legacy of the dictatorship was not to be reversed, but to become a long authoritarian tradition.

During the democratic consolidation between 1983 and 1990, the leadership of the provincial police was returned to the democratically elected governors. However,

the provincial governments had no incentive to make themselves devote political resources to the development of security as a public policy domain, especially since the attention of public opinion was clearly focused on the strengthening of civilian control over the military (...) For this reason, during the first democratic administrations, the provincial police forces maintained the organizational principles that had characterized them structurally since their emergence: corporatism and collusion with the political power in turn.<sup>75</sup>

This is what Marcelo Saín has called “police self-government”<sup>76</sup> for the federal security forces; a concept that we consider applicable to provincial police forces.

Police reforms entered the public and governmental agenda based on two facts: the resolution of the military issue and the significant increase in the crime rate since 1991 in the Autonomous City of Buenos Aires and in the municipalities surrounding the city that make up the Buenos Aires Metropolitan Area. The trigger was the murder of the photographer and journalist José Luis Cabezas in 1997, who kicked off a series of reforms aimed mainly at the police of the Buenos Aires Province.<sup>77</sup> This police agency was reformed between 1997 and 1999 and between 2004 and 2007, but these reforms were reversed or paralyzed between 1999 and 2004 and from 2007 to the present date. The police in the province of Mendoza were reformed in 1998, the police in the province of Córdoba from 1995 onwards, while the police in the provinces of Santa Fe and Río Negro carried out partial

68 Pablo Martínez, Norberto Pascale, El parlamento y la defensa en la Argentina, in Gilda Follietti, Luis Tibiletti (Eds.), *Parlamento y defensa en América Latina. El papel de las comisiones. Volumen 1: Argentina, Brasil, Chile y Uruguay*, Buenos Aires: Red de Seguridad y Defensa de América Latina (RESDAL), 2004.

69 See Gerardo Young, *Side. La Argentina secreta*, Buenos Aires: Planeta, 2006; Gerardo Young, *Código Stiuso*, Buenos Aires: Planeta, 2015; and Marcelo Saín, *La Casa que no cesa. Infortunios y desafíos en el proceso de reforma de la ex SIDE*, Buenos Aires: Editorial October, 2016.

70 The National Defense Law passed in 1988 was only regulated in 2006. In Argentine law, such an administrative act means making a law operational. Except for Law No. 24,948 on the restructuring of the Armed Forces, which remains unregulated to date (2018).

71 Germán Montenegro, *op. cit.*, 2007. The concept of civilian leadership or civilian government of defense belongs to Marcelo Saín and implies the effective exercise of the political and strategic leadership of the Armed Forces. It is not limited to control and involves the implementation of third generation reforms. See Marcelo Saín, *op. cit.*, 2010 y Sergio Eissa, *op. cit.*, 2015.

72 Facundo Salles Kobilanski, *op. cit.*, no data, 8.

73 Laura Kalmanowiecki, Policing the people, building the state. The police-military Nexus in Argentina 1880–1945, in Diane Davis, Anthony Pereira (Ed.), *Irregular armed forces and their role in politics and state formation*, Cambridge: Cambridge University Press, 2008, 211 and 2013.

74 Laura Kalmanowiecki, *op. cit.*, 2008, 224.

75 Facundo Salles Kobilanski, *op. cit.*, no data, 2.

76 Marcelo Saín, *Seguridad, democracia y reforma del sistema policial en la Argentina*, Buenos Aires: Fondo de Cultura Económica, 2002.

77 This is the largest provincial police force in the country. While in 2004 it had 45,000 personnel, in 2015 it totalled 90,000. In 2014, the police force rate in Argentina was 749.9 per 100,000 inhabitants.

reforms.<sup>78</sup> The reforms had a common matrix: incorporating precepts related to the Community Policing Model. In opposition, the counter-reforms redirected the police towards a militarized, hierarchical model with the emphasis on saturation and repression, rather than on criminal intelligence and prevention.

Regarding the Federal Security Forces, both the National Gendarmerie and the Naval Prefecture have not undergone any reform processes and, in fact, their organic laws date back to the 1950s. As for the Airport Security Police, it was created as a fully civilian agency in 2006 by Law No. 26.102, based on the structure of the National Aeronautical Police, which depended on the Argentine Air Force. Finally, the responsibilities, structures and personnel of the Argentine Federal Police (PFA) in the Autonomous City of Buenos Aires were transferred to that jurisdiction in 2016; the City Police Force was set up on 1 January 2017. The remainder of the PFA would be transformed into an investigative police force in the manner of the *Federal Bureau of Investigation* (FBI); but no progress has been made by 2018.<sup>79</sup>

## CITIZENS' CONTRIBUTIONS TO THE TRANSFORMATION

Citizens contributed through specialized Foundations and NGOs that made their voices heard in Congress, which played a key role between 1987 and 2001. In a second phase, specialists from these civil society institutions, who had also set up research groups at universities, joined the Ministry of Defense between 2005 and 2010.

In the field of civil society, the debate about the mission of the Armed Forces and the need for military reform that would distance them from the National Security Doctrine was, as we said, rather limited. Some books were published in 1985 that sought to leave aside the National Security Doctrine and achieve the full insertion of the Armed Forces in a democratic society. Likewise, the Arturo Illia Foundation for Democracy and Peace initiated a series of publications in the mid-1980s, in which different issues related to defense policy and the armed forces were discussed.

On November 15, 1984, a group of ex-military personnel created the (Military Center for Argentine Democracy (CEMIDA) and in April 1987, they argued that “international conflicts – potential or real – that affect the Argentine Nation, constitute the exclusive and exclusionary subject of national defense. Other types of conflicts are alien to its essence, and their prevention and overcoming are matters that have nothing to do with it.”<sup>80</sup>

For its part, the Argentine Association for Research on Armed Forces and Society, the Center for the Study of the National Project, the Arturo Illia Foundation for Democracy and Peace and the Latin American Faculty of Social Sciences held a Conference on the Armed Forces, the State, Defense and Society from October 26 to 28, 1988. At the Conference, civilians and the military discussed various aspects of defense policy. The debates were reflected in a book edited by Gustavo Druetta, Eduardo Estévez, Ernesto López and José Miguens in 1990.

The motivation of the conference was “the importance for our country of having professionally trained Armed Forces for their specific function, which is foreign defense.”<sup>81</sup>

The Center for Legal and Social Studies (CELS), founded in 1979 to promote and defend human rights, also played an important role in the debates that took place in the National Congress

and in the control of military promotions in the National Congress, especially since 2003, a task that continues to this day.

There were also positions against the “Basic Consensus” from civil society. For example, the political analyst Rosendo Fraga argued, through the Center for Studies for the New Majority, that “the defense bill limits the constitutional powers of the president of the Nation, which expressly empower him to use the Armed Forces for cases of internal commotion.”<sup>82</sup>

For the above reasons, and as mentioned above, the Argentine Congress played an important role in defining key defense policy issues, not only because of the proactive attitude of some legislators and advisers, but also thanks to the contribution of the aforementioned civil society organizations. This process blocked, during the 1990s, proposals to re-engage the Armed Forces in issues of internal security and “new threats.” These actors, whether radical or Peronist, defended the basic consensus. To this end, they coalesced in the debates on the subsequent norms during that decade and/or through media interventions to amplify these attempts to militarize internal security on the public agenda.

When Dr. Nilda Garré became Minister of Defense in December 2005, she immediately formed a team comprised of defense specialists, most of whom came from the University of Quilmes, where the Research Programme on the Armed Forces and Society (PIFAS), directed by Ernesto López and co-directed by Marcelo Saín, had been working for several years, with Germán Montenegro and Sabina Frederic, among others, as researchers.

## RESISTANCE TO REFORMS AND POLITICAL CHANGES

These were produced in two stages (1983–1987 and 1987–1990) and two different levels: public and clandestine.

Between 1983 and 1987, numerous opinions were heard from civilians and military personnel, both active and retired, who claimed that state terrorism was a crime and requested that those responsible for it be brought to justice. For example, the head of the Navy, Ramón Arosa, stated that “the war against subversion, which was neither sought nor provoked by the Armed Forces,

78 Eduardo Estévez, “Reforma de sistemas de seguridad pública e investigaciones judiciales: tres experiencias en la Argentina”, paper presented at the International Conference Crimen y Violencia: causas y políticas de prevención, Bogotá: Banco Mundial y Universidad de los Andes, 2000.

79 The Argentine Federal Police was created in December 1943 (from the structure of the Police of the Capital that operated between 1880 and 1944 in the city of Buenos Aires) and its organic norm is Decree-Law No. 333/58. Its personnel regime was established during the last dictatorship through Decree-Law No. 21.965 of 1979 and regulated in 1983. The Argentine National Gendarmerie was created by Law No. 12.367 of 28 July, 1938 and its current organizational norm is Decree-Law No. 19.349/1971. The Argentine Naval Prefecture was re-established in 1862 as Port Authority. It was renamed Maritime Prefecture in 1882 and finally under its present name from Decree-Law No. 18.398/1969. In 1970, the dictatorship of the time (1966–1973) sanctioned Decree-Law No. 18,711 which determined the missions, functions and jurisdictions of the National Gendarmerie, the Argentine Naval Prefecture and the Federal Police.

80 José García, Horacio Ballester, Augusto Rattenbach, Carlos Gascón, *Fuerzas Armadas Argentinas. El cambio necesario: bases políticas y técnicas para una reforma militar*, Buenos Aires: Galerna, 1987, 119–120.

81 Gustavo Druetta, Eduardo Estévez, Ernesto López, José Miguens, *Defensa y Democracia. Un debate entre civiles y militares*, Buenos Aires: Puntosur, 1990, 9.

82 Rosendo Fraga, *La cuestión militar 1987–1989*, Buenos Aires: Editorial del Centro de Estudios para la Nueva Mayoría, 1989, 99.

had made it possible to continue living in a free country and not in one subjugated by ideologies alien to our nationality.”<sup>83</sup> Days later, in January 1984, retired General Luciano Benjamin Menendez stated that “we are being bombarded by the voices of the rearguard of the subversion, the mothers and relatives of those who were defeated by the Armed Forces and rejected by the Argentine people.”<sup>84</sup> Deputy Álvaro Alsogaray, of the Union of the Democratic Center (UCeDé), demanded an amnesty and denounced that the Mothers of Plaza de Mayo were supported by international Marxism. On the other hand, the Archbishop of La Plata, Antonio Plaza, called the trials “subversive revenge”, practically inciting a coup.<sup>85</sup>

In the background, it should be noted that the so-called “unemployed labour force,”<sup>86</sup> which was part of the Task Forces during the last dictatorship, was responsible for bomb threats, kidnappings and threats to political and social leaders between 1983 and 1987.<sup>87</sup>

During the second phase there were four (4) military uprisings against the governments of Alfonsín and Menem. The first took place in April 1987 in reaction to the ongoing trials, but also as a result of a confrontation between the senior officers and army chiefs and between the nationalist and liberal faction of that force. This uprising was led by Lieutenant Colonel Aldo Rico and they called themselves “carapintadas.”<sup>88</sup>

This first military uprising crystallized a deep division within the Army, between the nationalists, who mostly responded to the “carapintadas”, and the “liberals” who were senior officers who occupied the leadership of the Force; and the “professionals” who sought greater efficiency in the Army through restructuring.<sup>89</sup>

As a result, the Ministry of Defense and the new Army Chief<sup>90</sup> began to purge the strength of the members and/or supporters of the “carapintadas”, although they agreed that the army should claim state terrorism, while continuing to hear pressure to end the trials.

On 17 May 1987, Admiral Arosa insisted that a definitive solution be sought “that will dispel forever the ghosts of bloody confrontations.”<sup>91</sup> Months later, retired General Ramón Camps maintained that “the national being is today under attack from a powerful enemy. That enemy is called Raul Alfonsín and the Coordinator.”<sup>92</sup> On the other hand, middle-level army officials transmitted that “the Alfonsinist leadership is the continuation of the anarchist-student movement, of the reformist and destructive cubism lacking in projects, illuminated by the French, ideological sons of the Marxist pairing and of European socialism”. In October 1987, Priest Manuel Beltrán declared that “the military saved us from Marxism” and that the anti-military campaign had been “carried out in all parts of the country”, very well organized by “Marxism and Zionist Masonry”. In December 1987, retired General Diaz Bessone wrote that “the revolutionary, inspired by Marxist ideology, continues in Argentina, waiting for the opportunity to seize power [...]. For Christians, and for non-Communists in general, there are only two options: turn the other cheek and accept martyrdom and slavery, or fight or still combat.” In the first quarter of 1988, the retired general, Luciano Benjamin Menendez, argued that “subversion has not disappeared in our homeland [...] especially in the areas of education (to enter the minds of young people) and culture and the press (to influence the thinking of all) [...] to destroy our religious convictions [...] to distance ourselves from the West and to unite ourselves to the communist countries.”<sup>93</sup>

The second uprising began as a result of the purges that had been carried out by the army chief, by order of President Alfonsín. On December 28, Caridi summoned Rico and asked him to apply for his retirement pass, which Rico refused to accept. Faced with this refusal, the Minister of Defense decided to “play the rest” and asked General Caridi to speed up the situation, so he “ordered the military judge Beltramino to turn Rico’s preventive pressure from attenuated to rigorous.”<sup>94</sup> As a result of the events reported, on Saturday, January 16, 1988, Aldo Rico led a new uprising carapintada. Unlike Easter Week, the mobilization of loyal troops made Rico’s situation unsustainable.<sup>95</sup> Finally, the troops gathered in Monte Caseros by Caridi, provoked the surrender of Rico. This fact ended up crystallizing that relationship of forces, unfavourable to the carapintadas and favourable to the liberal sector. At the end of 1988, about a hundred officers and non-commissioned officers were excluded from the army for “administrative reasons, not counting those who were under trial for the successive uprisings.”<sup>96</sup>

83 Ramón Arosa, *De Constitución a Retiro. Reseña y reflexiones del Jefe de la Armada 1984-1989*, Buenos Aires: Instituto de Publicaciones Navales, 2008, 31 and 40.

84 Patrice McSherry, *op. cit.*, 2008, 126.

85 Guido Braslavsky, *Enemigos íntimos. Los militares y Kirchner. De la purga a los juicios. Crónica de una confrontación (2003-2008)*, Buenos Aires: Sudamericana, 2009, 259.

86 Some emblematic cases were those of Raúl Guglielminetti, Aníbal Gordon and Arquímides Puccio.

87 Sergio Eissa, *op. cit.*, 2015.

88 It is a mistake to think that the law of Due Obedience was the consequence of this uprising. Brigadier Panzardi recalls the events of that day, practically, as described by Alfonsín. He maintains that Aldo Rico treated Alfonsín as president of the Nation at all times. The first one related the reasons for the uprising and Alfonsín told him what had been done and what was going on, including the withdrawal of Ríos Ereñú and the submission of the Due Obedience Law bill. Alfonsín also informed them that they would be punished. In those days, Alfonsín sought at all times to avoid bloodshed and that the chain of command would not be further deteriorated. On the other hand, Gustavo Breide Obeid argues that there was no negotiation and that the attitude towards the commander in chief of the Armed Forces who had listened to his demands was simply put aside, because the generals had been lying to them, and because of the thousands of people who were on the street supporting democracy. This statement was reiterated in 2010, in a television program on America TV with journalist Mónica Gutiérrez. Sergio Eissa, *op. cit.*, 2015, 244 y Horacio Jaunarena, *op. cit.*, 2011, 166.

89 Ernesto López, *op. cit.*, 1994, 62-67.

90 General Ríos Ereñú was replaced by General Caridi, an opponent of the “carapintadas”, which also shows that there was no negotiation between President Alfonsín and the carapintada leader Aldo Rico.

91 Ramón Arosa, *op. cit.*, 2008, p. 236 y Raúl Alfonsín, *op. cit.*, 2009, 77.

92 The National Coordinating Board (JCN) was a center-left radical youth organization created in 1968 that approached the Movement for Renewal and Change of Raúl Alfonsín between 1971 and 1972. The Franja Morada (FM), created in 1967, is the university expression of the UCR. It is suggested to read the interview with one of the founders of JC and FM in Marcelo Larraquy, “La UCR y la década del ’70: Cuando decíamos “elecciones libres, sin proscripciones ni condicionamientos”, se nos cagaban de risa”, in *Infobae*, April 16, 2018, <https://www.infobae.com/politica/2018/04/16/la-ucr-y-la-decada-del-70-cuando-deciamos-elecciones-libres-sin-proscripciones-ni-condicionamientos-se-nos-cagaban-de-risa/>

93 Sergio Eissa, *op. cit.*, 2015, 247 and 248.

94 Horacio Jaunarena, *op. cit.*, 2011, 229-231.

95 *Ibid.*, 223.

96 Ernesto López does not agree with this statement, since he understands that, unlike the previous uprising, the surrender modified the power relations within the army, which the government was unable to take advantage of. He insisted with his alliance with the liberal sector, which ended up provoking a new reaction in December 1988. Ernesto López, *op. cit.*, 1994 y Raúl Alfonsín, *op. cit.*, 2009, 91.

Another wave of bomb threats occurred in 1988, this time in public places such as theaters, embassies, supermarkets, churches and hospitals, among others.<sup>97</sup>

In early December 1988, while Alfonsín was on tour in the United States, the Minister of Defense received confirmation that a prefectural command group, “Albatros”, had abandoned their unit with weapons and combat clothing. On the night of 2 December, the President was informed that Mohamed Ali Seineldin had risen in Villa Martelli. Alfonsín ordered Jaunarena not to negotiate and to repress the government.<sup>98</sup> The trigger seems to have been that the Army leadership would not have proposed Seineldin for promotion to general,<sup>99</sup> thus losing the last carapintada hope of placing one of their own in the generalate. The uprising persisted for almost a week both because of the attrition of the carapintadas, who already felt they had nothing to lose, and because of the inability of the Army’s leadership to re-establish discipline. To this must be added the profound attrition of the government, due to the electoral defeat and the growing deterioration of the economic situation. General Cáceres, in charge of the repression, contacted Seineldín – with the knowledge of the army chief – to try to reach an agreement.<sup>100</sup> The Pact of Villa Martelli, agreed between the leadership of the force and the “carapintada” leader, demanded “the anti-subversive struggle”, called for the resignation of Caridi and the restoration of the discipline and unity of the Force. Before resigning, the Army chief said that “it was absolutely reprehensible and unfair to accuse the members of the Armed Forces of being genocidal, since it was thanks to them that today there was democracy”.<sup>101</sup> The government appointed General Gassino as head of the force, confirming that it would not accept the appointment of a similar officer to the Carapintadas.

In March 1990, President Carlos Menem and his Defense Minister Humberto Romero had appointed Generals Martín Bonnet and Martín Balza, respectively, to chief and deputy chief of the Army, with a view to a future uprising (both of whom had a harsh discourse against the “carapintadas”), despite the pre-electoral presidential promise to appoint Seineldín as army chief. On 28 November, the head of SIDE informed President Menem that a new military uprising would take place. On Monday, December 3, the “carapintadas” entered the 1st Patrician Regiment in Palermo, but the plan began to fail that same morning. On the one hand, Seineldin could not escape from San Martín de los Andes and, on the other hand, two loyal officers were killed in the 1st Patrician Regiment. Menem declared a state of siege and ordered the head of the General Staff of the Army to “completely extinguish” the uprising.<sup>102</sup> The rebellion was defeated in less than 24 hours, resulting in 14 deaths (including four loyalists and three rebels) and numerous injuries.<sup>103</sup>

## LEGAL AND POLITICAL FRAMEWORK FOR CHANGES IN THE SECURITY APPARATUS TODAY<sup>104</sup>

The convergence of interests and belief systems among the actors that make up the “basic consensus” allowed it to crystallize into three essential laws over three governments and thirteen years. We refer to Law No. 23.554 on National Defense, adopted in 1988; Law No. 24.059 on Internal Security, of 1992; and Law No. 25.520 on National Intelligence, adopted in 2001 and amended in 2014.

These rules are articulated around three basic principles that we consider to be introductory. These principles are:

- a/ The suppression of the hypotheses of conflict with neighboring countries that require the use of the Armed Forces;
- b/ The organic and functional separation between national defense and internal security; and
- c/ The civilian government of defense policy.

These principles are translated into a set of guidelines that guide national defense in Argentina.

Firstly, article 2 of Law No. 23.554 defines national defense as “the integration and coordinated action of all the forces of the nation to resolve conflicts that require the use of the Armed Forces, in a dissuasive or effective manner, to confront aggressions of external origin”. In this regard, regulatory decree No. 727/2006 of this Defense Law specifies in its first article that “the Armed Forces, a military instrument of national defense, shall be used against aggressions of external origin perpetrated by Armed Forces belonging to another state or states (...) against the sovereignty, territorial integrity or political independence of our country, or in any other way that is incompatible with the Charter of the United Nations.”

Secondly, article 4 of Law 23.554 on National Defense states that “the fundamental difference between National Defense and Internal Security must be taken into account at all times.”<sup>105</sup>

Thirdly, the Directive on the Organization and Functioning of the Armed Forces (Decree No. 1691/2006) states that “the main mission of the Armed Forces, the National Defense Military Instrument, is to prevent and repel any external state military aggression, in order to guarantee and permanently safeguard the vital interests of the Nation”. Later, he adds that the following should be considered subsidiary missions of the military instrument:

- “Participation of the Armed Forces in the framework of the multilateral operations of the United Nations;
- participation of the Armed Forces in internal security operations provided for by the Internal Security Law No. 24.059;
- participation of the Armed Forces in operations to support the national community or friendly countries;
- participation of the Armed Forces in the construction of a Sub-regional Defense System”;

97 Sergio Eissa, *op. cit.*, 2015.

98 Sergio Eissa, *op. cit.*, 2015 and Raúl Alfonsín, *op. cit.*, 2009, 95.

99 “This man, who we promoted to colonel, knew that at that time in December ‘88 we were not going to promote him to general; that is, he knew that his military career was reaching its culmination”. Horacio Jaunarena, *op. cit.*, 2011, 241.

100 Raúl Alfonsín, *op. cit.*, 2009, 100.

101 Eduardo Estévez, “Las Fuerzas Armadas en la transición argentina”, *Perfiles Liberales*, Bogotá: Fundación Friedrich Naumann, (17), 1990, 17.

102 Sergio Eissa, *op. cit.*, 2015.

103 Ibid.

104 July 1, 2018. Please, note that Decree No. 683 of July 23, 2018 altered the “Basic Consensus”. This change will allow the Armed Forces to participate in homeland security operations, such as the war against drug trafficking.

105 For this reason, regulatory decree No. 727/2006 states in its recitals that: “the defense system must be structurally and organizationally oriented towards the prevention of situations of external aggression perpetrated by Armed Forces of another state, in accordance with the provisions of Resolution 3314 (1974) of the United Nations (...) For this reason, all those conceptions that seek to extend the use of the military instrument towards functions totally unrelated to defense, usually known under the name of new threats, the responsibility of other state agencies organized and prepared for this purpose, must be emphatically rejected; since regular intervention in such activities would involve a severe and inexorable crisis in the doctrine, organization and functioning of a tool functionally prepared to assume responsibilities other than those typically associated with the police.”

- “participation of the Armed Forces in the planning, direction and execution of Antarctic logistic activity, in accordance with the National Antarctic Policy defined by the Ministry of Foreign Affairs and Worship; contributing to the sovereign presence of our country in that continent; and;
- participation of the Armed Forces in community assistance tasks and in coordination with other agencies of the National, Provincial, and Municipal State and/or of the Autonomous City of Buenos Aires”.<sup>106</sup>

Titles V and VI of the Internal Security Law No. 24.059 are relevant. Article 27 establishes that the Ministry of Defense shall, at the request of the Crisis Committee, provide that “the Armed Forces shall support internal security operations by means of the affectation (...) of their stockpile, intendancy, health, veterinary, construction and transport services, as well as engineering and communications elements, for which purpose a representative of the Joint Chiefs of Staff shall be permanently posted in the Planning and Control Center of the Undersecretariat for Internal Security”. Let’s observe how the legislator has wanted to expressly write that “Armed Forces services” can be used in internal security operations, excluding the combat units of the three forces.

Articles 28, 29 and 30 refer to potential attacks on military units in peacetime. They establish that an attack on a military jurisdiction is a matter of internal security, clarifying that it is the primary obligation of the Armed Forces to preserve said jurisdiction and “the restoration of order within the aforementioned jurisdiction”, in accordance with the legislation in force.

Title VI specifically refers to “the subsidiary use of combat elements of the Armed Forces in internal security operations”. Article 31 establishes that, without prejudice to the provisions of article 27, “the Armed Forces shall be employed in the restoration of internal security within the national territory in those exceptional cases in which the system of internal security described in this law is insufficient in the opinion of the President of the Nation for the fulfilment of the objectives established in article 2”. In order for the President to make use of the powers granted to him by the National Constitution in article 86, paragraph 17, he must first declare a state of siege.

The legislator also wanted to establish, in article 32, that the use of the Armed Forces will be in accordance with the following guidelines:

- a/ The leadership of the Armed Forces, national and provincial security and police forces is the responsibility of the President of the Nation, advised by the crisis committees of the Law 23.554
- b/ An operational commander of the Armed Forces shall be appointed and all other security and police forces shall be subordinate to him/her exclusively within the territorial scope defined for that command;
- c/ Since the one referred to in this article is an exceptional form of employment that will only be developed in extremely serious situations, it will not affect the doctrine, organization, equipment and training of the Armed Forces, which will maintain the characteristics derived from the application of Law 23.554.

This implies that those primarily responsible for safety (*law enforcement*) lies with the governors, their provincial police and the provincial justice system. If the crimes are federal in nature (drug trafficking, human trafficking, terrorism, among others), the responsibility lies with the Federal Security Forces (the National Gendarmerie, the Argentine Naval Prefecture and the Airport Security Police), the Argentine Federal Police – which are conducted by the Ministry of Security – and the federal justice

system. But the Federal Security Forces, referred to in the theory as “intermediate forces,” collaborate in national defense in times of war and come to the aid of provincial governments to re-establish internal security. The Armed Forces act within the Internal Security System only in the three cases described above.

Fourthly, Law No. 24.948 states that a strategy of deterrence and self-defense is adopted, in accordance with article 51 of the Charter of the United Nations. The 2009 National Defense Policy Directive (NDDP) also rejects “unilateral procedures, interventionist practices and any international conduct that does not comply with the criteria of peace and security established by the United Nations Charter”. Within this context, a defensive strategic position and attitude is adopted as “an essential and authoritative criterion on which the entire defense system of the Argentine state is structured”. Furthermore, our country conceives its defense policy in a double dimension: autonomous and cooperative.

Fifthly, the Organization Directive (Decree No. 1691/2006) states that the Argentine Military Instrument must be structured doctrinaire, organically and functionally according to its main mission, “which is to conjure up and repel all external aggression perpetrated by the Armed Forces of another state.” Therefore, “the main mission of the Armed Forces must be (...) the main orientation of their entire force design, whereas any subsidiary mission of the military instrument must not affect the capabilities required for the fulfilment of that primary and essential mission”. Only multilateral operations within the framework of the United Nations and a Sub-regional Defense System will be considered in the design of both the minimum standards required for multilateral operations. This Directive also establishes that the design of forces will be carried out on the basis of the capability planning method, replacing the model based on conflict hypotheses.

Finally, the same standard considers that the Military Instrument will be suitable only if it is conceived as an integrated instrument “that is, as a joint action, even in those cases in which, due to the scope in which it is developed and/or to the characteristics of the operation in question, it must be executed by a specific force on an exclusive basis.” This standard defines joint action as “the coherent, coordinated and systematic use of all the means and resources at the disposal of each armed force in a specific manner”. It also provides that “the Operational Command shall be the body responsible for the execution of joint training, for the control of joint exercises, for the preparation of strategic operational planning and its corresponding execution and for military operations” and that the Army, the Navy and the Air Force shall only enlist, train and support the means made available to them. In this sense, regulatory decree No. 727/2006 also establishes that the Joint Chiefs of Staff of the Armed Forces “shall have functional control over the Armed Forces, with authority to issue orders, and may have such means at their disposal”.

## LESSONS LEARNT AND RECOMMENDATIONS

The type of transition to democracy and its socio-political context influence the limits and scope of transformations.

Although the transition collapsed, the lack of agreement among the main political parties did not allow for a rapid resolution of the trial of those responsible for state terrorism in the military and

<sup>106</sup> The last two complementary missions were incorporated by the National Defense Directive 2014 (Decree No. 2645/2014).

for progress and setbacks in this area. Furthermore, this prevented the civilians involved in the dictatorship from being brought to justice and retaining a significant amount of power, allowing them to undermine the political power of the presidents, mainly Raúl Alfonsín and Cristina Fernández de Kirchner.

The economic course was also not agreed by the big parties in order to resolve the crisis inherited from the dictatorship. This provoked the economic and political crises from 1987 to 1989, and also allowed the policies of deindustrialization, financial valorization and indebtedness to be adopted again during democratic governments, producing the second most important economic depression since 1930, at the end of 2001.

The military rebellions were the result of the errors in the implementation of the trial of those responsible for state terrorism, but they were also the result of the factionalism introduced during the Dictatorship between the forces and, especially, in the army, and the defeat in the Falkland Islands. The military ceased to be a factor of power in 1990 due to the purging of the “carapintadas” during the Alfonsín government and the pardons and repression of the last military rebellion carried out by Carlos Menem.

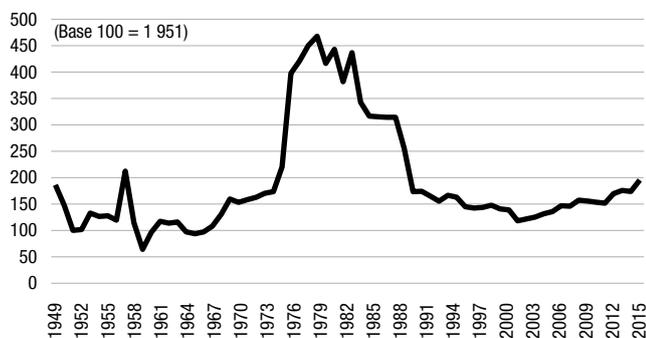
The only agreement reached between the majority parties is the so-called “Basic Consensus”. This was facilitated by three factors: a) the defeat of radicalism in 1987, b) the renewal within the Justicialist party and c) the “carapintada” rebellion of 1987. In this context, and based on the lessons of Argentine history and the historical experiences of the United States, Germany and Spain, it was decided to separate the military from the tasks of internal security. This agreement was made through a set of

laws through four (4) different governments and over a period of twenty (20) years. However, the political leadership and society as a whole are highly disinterested in defense and armed forces issues. This leads to undefined doctrines, deployment and design adaptation to the mission of preventing and repelling external state military aggressions, in addition to the absence of a correct budgetary allocation. This disinterest allows the Armed Forces to assign themselves missions, supported by the United States Southern Command, which violates current regulations; that is, the adoption of the so-called “New Threats” as a hypothesis for the use of the Armed Forces. All this despite the fact that international experience and the characteristics of problems such as drug trafficking and terrorism clearly demonstrate the futility of the use of military power. There were only serious attempts to adapt the Armed Forces to this mission between 1983 and 1985 and 2005 and 2013, although in such cases, for different reasons, the redesign was not accompanied by budgetary resources.

Finally, three debts to be taken into account in other processes of democratic transition persist in Argentina. Despite the enactment of two (2) intelligence laws, intelligence agencies remain without parliamentary control. Secondly, the Judiciary continues to function not only as it did during the Dictatorship – and with some officials of that time – but also as it did in 1862, although the 1853 Constitution ordered the implementation of an accusatory model with jury trials. Finally, the police continue to organize themselves under the logic of population control, repression and saturation, not criminal intelligence, crime prevention and citizen security.

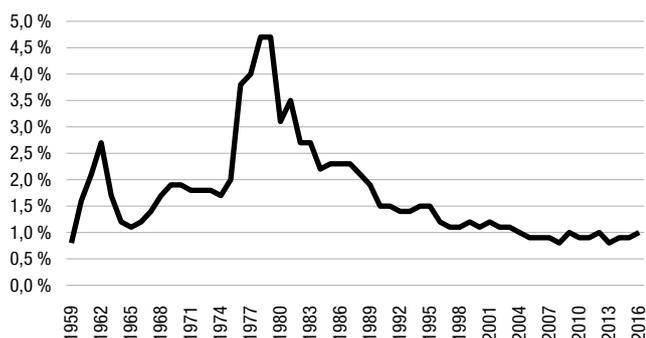
## ANNEX 1: GRAPHS

**GRAPH NO. 1: EVOLUTION OF DEFENSE SPENDING**



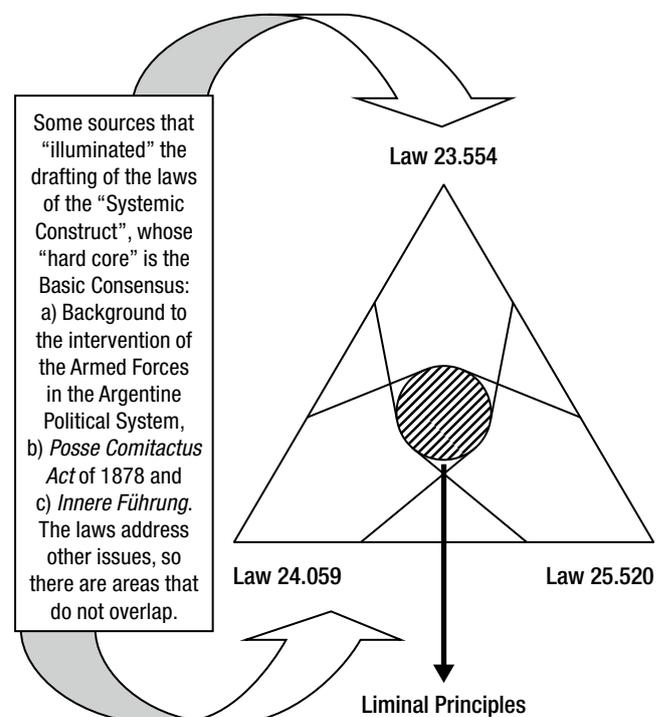
Source: (SIPRI: 2017). Year 1951: U\$S 3.153 million.

**GRAPH NO. 3: DEFENSE EXPENDITURE AS % OF GDP**



Source: Prepared by the authors on the basis of SIPRI data (2017).

**GRAPH NO. 2: BASIC CONSENSUS**



Fuente: own creation.

## ANNEX 2: PRE- AND POST-DICTATORSHIP PRESIDENTS

Years	Presidents	Parties/Fronts
1973	Héctor Cámpora	Justicialist Liberation Front (PJ, People's Conservative, MID and a faction of Christian democracy)
1973	Raúl Lastiri (interim for resignation of the former – president of the Chamber of Deputies)	PJ
1973–1974	Juan Domingo Perón (3rd presidency)	Justicialist Liberation Front (PJ, People's Conservative, MID and a faction of Christian democracy)
1974–1976	María Estela Martínez de Perón (Vice-president in charge of the Executive due to the death of the president)	Justicialist Liberation Front (PJ, People's Conservative, MID and a faction of Christian democracy)
<b>1976</b>	<b>Junta Militar</b>	<b>Dictatorship</b>
<b>1976–1981</b>	<b>Jorge Videla</b>	
<b>1981</b>	<b>Roberto Viola</b>	
<b>1981</b>	<b>Carlos Alberto Lacoste</b>	
<b>1981–1982</b>	<b>Leopoldo Galtieri</b>	
<b>1982</b>	<b>Alfredo Oscar Saint-Jean</b>	
<b>1982–1983</b>	<b>Reynaldo Bignone</b>	
1983–1989	Raúl Ricardo Alfonsín	
1989	Carlos Saúl Menem (completes term of office due to early resignation of the former)	Justicialist Liberation Front (PJ, PI, PDC and others)
1989–1995	Carlos Saúl Menem	Justicialist Liberation Front (PJ, PI, PDC and others)
1995–1999	Carlos Saúl Menem	Justicialist Liberation Front (PJ, PI, PDC and others)
1999–2001	Fernando de la Rúa	Alliance (UCR, FREPASO and PS)
2001	Francisco Ramón Puerta (interim for early resignation of the former and in the absence of a vice-president – president of the Chamber of Senators)	PJ
2001	Adolfo Rodríguez Saá (appointed by the Congress of the Nation to complete the previous term of office)	PJ
2001	Eduardo Camaño (interim for resignation of the former – president of the Chamber of Deputies)	PJ
2002–2003	Eduardo Alberto Duhalde (appointed by the National Congress to complete the term of office until 10/12/2003)	PJ
2003	Néstor Carlos Kirchner (completes term of office due to early resignation of the former)	Front for Victory (PJ, People's Conservative, Broad Front, PCCE, PI, PH, PDC and others)
2003–2007	Néstor Carlos Kirchner	Front for Victory (PJ, People's Conservative, Broad Front, PCCE, PI, PH, PDC and others)
2007–2011	Cristina Elizabeth Fernández de Kirchner	Concertation (Front for Victory, joined by former socialists and former radicals)
2011–2015	Cristina Elizabeth Fernández de Kirchner	Front for Victory joined by the Communist Party, former radicals and former socialists)
2015	Federico Pinedo (interim)	Cambiamos (PRO – UCR – CC – UceDé – People's Conservative)
2015 to date	Mauricio Macri	Cambiamos (PRO – UCR – CC – UCeDé – People's Conservative)

## ANNEX 3: REFERENCES FOR READING

- Although the War of Independence ended in Argentina in 1820, the fall of Spanish power in South America occurred at the Battle of Ayacucho on December 9, 1824 in the current territory of Peru. Argentine troops participated in it.
- The term “security apparatus” should be understood as being made up of the National Defense System and the Homeland Security System, which both contribute to Argentina’s National or Strategic Security. The Internal Security System is made up of the Federal Security Forces or Intermediate Forces (Gendarmerie, Prefecture, Airport Security Police), the Argentine Federal Police and the provincial police. The National Defense System is made up of the Argentine Air Force, Army and Navy.
- Decrees/laws: these are rules dictated by the dictatorships in Argentina that have the status of law. Firstly, the legitimacy of the Argentine dictatorships was validated by the Supreme Court of Justice through the Agreed Statement of September 10, 1930, after the first coup d’état. Secondly, on 22 August, 1947, the Supreme Court of Justice established in the “Enrique Arlandini” case that “to the extent that it is necessary to legislate to govern a government it has legislative powers (...) The decree-laws issued by the de facto government are valid by reason of their origin and since they have the value of laws, they subsist even if they have not been ratified by Congress, as long as they are not repealed in the only way that they can be ratified, that is, by other laws.”
- CC: The Civic Coalition is heir to the Affirmation for an Equal Republic (ARI) party and was founded by Elisa Carrió in 2002 (changed its name in 2009), as a detachment from the UCR. It is a center party of social and liberal ideology.
- Popular Conservative: it is a center party that was founded in 1958 as a detachment of the National Democratic Party (1931–1955), which in turn was heir to the Conservative Party (1916–1930) and the historic National Autonomist Party (1874–1916). The latter were located in the center right of the Argentine political spectrum and is of a conservative tendency.
- FREPASO: It was an alliance between the PAIS (1994) and the Broad Front (1993) parties, both of which detached from the PJ in the face of the neoliberal orientation it had adopted between 1989 and 1999, and the PDC, the Democratic Socialist Party (PSD) and the Popular Socialist Party (PSP). It was located in the center-left of the political spectrum and is of a social-democratic and social-liberal ideology.
- MID: The Integration and Development Movement was founded by former President Arturo Frondizi, a former radical, in 1963. It is a center party with a social-liberal tendency.
- PCCE: The Communist Party of Extraordinary Congress was founded in 1996 as a detachment of the Communist Party (PC) which was founded in Argentina in 1918.
- PDC: The Christian Democratic Party was founded by Horacio Sueldo and Guido Di Tella, among others, in 1954. It is a center party with a social-Christian tendency.
- PH: The Humanist Party was founded in 1984 by Mario Luis Rodríguez Cobos and declares itself to be non-Marxist on the left.
- PI: The Intransigent Party was founded by former radical leader Oscar Alende in 1972, as a detachment from the MID. It is a center-left party of social democratic ideology.
- PJ: The Justicialist Party was founded on January 15, 1947 by Juan Domingo Peron. It is considered a “movement” and not a party. At least three ideological currents can be distinguished in its midst until 2015: popular conservatism, social Christianity and national left (non-Marxist).
- PRO: The Republican Proposal party is heir to the Commitment to Change party and was founded by Mauricio Macri on 5 August 2005 (name change on 3 June 2010). It is a center-right party with a conservative tendency. This is a traditional ideology in Argentina, which ruled that country between 1874 and 1916 (National Autonomy Party) and 1932–1943 (National Democratic Party), mainly. Between 1955 and 1983, some of the politicians who adhered to this ideology were officials of the dictatorships.
- PS: The Socialist Party was founded by Juan B. Justo and Alfredo Palacios, among others, on June 28, 1896. It is affiliated to the Second Socialist International. It suffered several divisions, the main ones between the PSD and the PSP until the unification produced in 2002.
- UCeDé: The Union of the Democratic Center was founded in 1982 by Alvaro Alzogaray, former U.S. ambassador to the 1963–1966 dictatorship. Center-right conservative-liberal party.
- UCR: The Radical Civic Union was founded by Leandro Alem and Hipólito Yrigoyen, among others, on June 26, 1891. It is a liberal party with a social democratic faction. Throughout its history it has been divided several times, the main ones being in 1928, 1957, 2001 and 2007.

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# REGIME ARCHIVES

PAULA CANELO AND GABRIELA IPPOLITO-O'DONNELL

## CONTENT OF THE SECRET SERVICE ARCHIVES

The main characteristic of the *archives of repression*<sup>1</sup> related to the last military dictatorship that ruled Argentina between 1976 and 1983 is fragmentation. Thirty-five years after the transition to democracy, the archives remain a disperse collection of heterogeneous and incomplete documents. Several reasons account for this fragmentation. Among these reasons, the nature of the repression carried out by the dictatorship (the so-called Process of National Reorganization, hereafter PRN), stands out. In contrast to the experience of other military dictatorships of Latin America, contemporaneous or previous to the PRN, in Argentina repression was extremely harsh, criminal, and clandestine.

The PRN privileged “illegal” over legal repression. Under legal repression the responsibility is entirely assumed by the corresponding repressive bodies of the state within a framework of previously established norms. Illegal repression by the PRN was based on clandestine actions by state agencies and on the organization and predominance of special “Tasks Groups” belonging to each of the three branches of the Armed Forces as well as to other security forces. State agencies and Tasks Groups worked in coordination, but without a centralized command. Illegal repression was complemented with the creation of a network of about 700 Centers of Clandestine Detention (hereafter CCD) distributed throughout the country and located, often, in military and police quarters. In the CCD, the victims of state terror were tortured and sexually abused, and in most cases killed and disappeared. It is estimated that between 15,000 to 20,000 persons were sent to these CCD, and about 90 percent of them were assassinated.<sup>2</sup>

The Armed Forces adopted an illegal and clandestine repression methodology for various reasons, but primarily because of the influence, in their training, of the USA Doctrine of National Security and of the French Doctrine of Revolutionary War. With the construction of the “subversive” internal enemy subject as the main hypothesis of military conflict, clandestine and criminal repression was considered an efficient method to defeat the enemy. This clandestine and criminal methodology also allowed the Armed Forces to avoid probable international sanctions, as well as to resolve intra-military conflicts.

The clandestine and criminal nature of repression had a deep impact on the types of records the perpetrators of repression elaborated, the urge to destroy them, as much as possible, once the transition to democracy began in 1982, and on the current availability of such records. In 1995, the former Interior Minister of the PRN dictatorship, General Albano Harguindeguy, cynically stated that “If people (the military) were acting illegally, they were not going to be stupid enough as to leave behind proof of that.”<sup>3</sup>

Another reason that explains the fragmentation of the archives of repression is linked to the collaboration that existed between the Armed and Security Forces: a “pact of silence” was

established among them, and is still very much in effect, about the crimes committed, the organization of repression, and the final destiny of the victims.

Repression was carried out by dividing the national territory in zones, subzones and areas. The Army had the operational responsibility while the Navy and the Air Force provided supporting resources; they all forged an alliance with a common goal. The security forces Gendarmerie (Border Force), Prefecture (Water Force), the Federal Police, and the Provincial Police, were under the operational command of the former.<sup>4</sup>

This organization with the participation of all forces in clandestine and criminal repression led inevitably to a pact of silence on the actions perpetrated and the absolute incompatibility to initiate any revision of them.<sup>5</sup>

The organizational profile of repression explains not only the convenience, but also the crucial need to destroy all available records on the acts of repression before handing power to the democratically elected government in 1983. The Armed Forces had the capability to order the destruction of most documents, since they had concentrated power in the Junta of Commanders (integrated by one member of each of the three forces) since the coup in 1976.

*As a consequence, the primary source of information on the crimes committed by the Armed and Security forces during the dictatorship is not the archives of records produced by them.*

The archives of repression are fragmented and of diverse origin. The information they contained has been gathered, produced and systematically organized throughout years of hard work by civil society and human rights organizations as well as by the implementation of various public policies after the inauguration of democracy in 1983.

1 Ludmila Da Silva Catela, El mundo de los archivos, in Ludmila Da Silva Catela and Elizabeth Jelin, eds., *Los archivos de la represión: Documentos, memoria y verdad*, España: Siglo XXI Editores, 2002.

2 Carlos Acuña, Catalina Smulovitz, Militares en la transición argentina: del gobierno a la subordinación constitucional, in VVAA: *Juicio, castigos y memorias. Derechos humanos y justicia en la política argentina*, Buenos Aires: Nueva Visión, 1995. Paula Canelo, “La politique sous la dictature argentine. Le Processus de réorganisation nationale ou la tentative inachevée de fonte de la société (1976–1983)”, in *Vingtième Siècle. Revue d’ Histoire*, No. 105, janvier–mars 2010. Hugo Quiroga, *El tiempo del Proceso. Conflictos y coincidencias entre políticos y militares. 1976–1983*, Rosario: Homo Sapiens Ediciones, 2004. CELS, *Derechos Humanos en la Argentina. Informe 2017*, Buenos Aires: Siglo XXI, 2017.

3 Revista Gente, March 30, 1995.

4 Federico Mittelbach, Jorge Mittelbach, *Sobre Áreas y Tumbas. Informe sobre desaparecidos*, Buenos Aires, Sudamericana, 2000, 17; Paula Canelo, “Construyendo elites dirigentes. Los gobernadores provinciales durante la última dictadura militar (Argentina, 1976–1983)”, in *Anuario del Centro de Estudios Históricos “Prof. Carlos S. A. Segreti”*, Year 11, No. 11.

5 Paula Canelo, *El Proceso en su laberinto. La interna militar de Videla a Bignone*, Buenos Aires: Prometeo, 2008; Paula Canelo, *La política secreta de la última dictadura argentina (1976–1983): A 40 años del golpe de Estado*, Buenos Aires: Edhasa, 2016.

## ATTEMPTS TO DESTROY THE OPERATION DOCUMENTS OF THE POLITICAL POLICE

The need to destroy all evidence on aberrant crimes and the capabilities to do so due to the concentration of power in the PRN Junta of Commanders fed the assumption that the Armed Forces had destroyed all, or mostly all, available records on the repression carried out between 1976 and 1983. The need to destroy all records became evident to the Armed Forces when an agreement with democratic opposition parties to avoid sanctions for the crimes committed failed. The transition to democracy in Argentina happened due to the collapse after the defeat in the Malvinas-Falkland war, which deepened the already mounting legitimacy crisis of the military government.<sup>6</sup> About a month after the defeat in the War, in July 1982, General Bignone of the Army became President with the goal to negotiate an exit from power with opposition forces which would include, first and foremost, an agreement to stop any revisions to the actions carried out in the “fight against subversive groups.”<sup>7</sup>

The following year, the military Junta issued three important norms that reflect the end of negotiations with opposition forces on the matter. In April of 1983, the military Junta issued the report “Documento final sobre la Guerra contra la subversión y el terrorismo.”<sup>8</sup> The report stated that the disappearances were due to the way “terrorists acted” and denied the existence of clandestine places of detention. Furthermore, the report affirmed that the information and explanations included in the text were the only ones available through the Armed Forces. In September, a few months before democratically elected President Raúl Alfonsín took office, the military Junta sanctioned Law 22.924 known as the Self-amnesty law that considered extinguished all penal actions related to crimes committed in the fight against terrorism from May 25, 1973 till June 17, 1983.<sup>9</sup>

In October of 1983, the military government sanctioned Decree 2726/83 that ordered the destruction of all documents referred to as “those documents about the fight against subversion.”<sup>10</sup> The decree referred to the dispositions of Law 22.924 stating that “nobody could be interrogated, searched or call upon in any way in relation to crimes in the fight against subversion.” Furthermore, the decree stated that the spirit of pacification that should be primordial in the next phase of institutionalization in the country requires that the persons that come back to the community should not feel a negative conditioning about themselves. In sum, the decree stipulated the elimination of all information related to persons detained, or be readily available to the executive power by the exclusive authority granted in Article 23 of the National Constitution when the state of siege is in effect.<sup>11</sup>

The Armed Forces have systematically denied the existence of archives on the “war against guerrilla groups”. Even though Decree 2726/83 denies the existence of any kind of clandestine record, later statements by the Armed Forces High Commanders confirm that during the last months of the dictatorship, most records on crimes committed were destroyed. For example, in 1991, former PRN Minister of Interior Albano Harguindeguy, stated that in his ministry “there was an archive with files of all (the disappeared) that were burnt during the times of General Bignone (the last President of the Junta).”<sup>12</sup> Later on, General Bignone confirmed that information.<sup>13</sup>

In 1995, while the democratically elected government of President Carlos Menem made available to the public the content of

PRN Decree 2726/83 on destruction of information,<sup>14</sup> all military commanders unanimously expressed the inexistence of any records.<sup>15</sup> By 1999, the Commander in chief of the Army Martín Balza denounced General Cristino Nicolaidis, a member of the last military Junta, for having ordered in 1983 the destruction, integrally, of the archives of repression, an order Balza considered illegal and immoral.<sup>16</sup>

The official position expressed by the Armed Forces regarding the total destruction of any information related to the crimes committed, the repression, and the identity of the victims is in sharp contrast with the fact, that since 1983, there have been unexpected and very important discoveries of collections of documents in military and government agencies. The most important discovery is the *Actas Secretas de la Dictadura* (Secret Proceedings of the Dictatorship) found in the main building of the Air Force, the Cónдор Building, in 2013.

This finding questions the official version of the Armed Forces about the inexistence of records. Even though most records have not yet been found, the uncertainty of how many of them still exist, and if they can indeed be recovered continue to feed the expectations and hopes of great part of Argentina's society.

The controversy on the existence, or not, of more official documents related to repression continues to be a central theme in the never-ending agenda in search of Memory, Truth and Justice.<sup>17</sup>

## PUBLIC CONTROL OVER ARCHIVES

As already mentioned, the archives of repression in Argentina come from several sources, and the Armed and Security Forces are not the main one. To the contrary, active civil society organizations are in charge of fighting against secrecy and silence over the repression.

Among these civil society organizations, human rights organizations stand out. These organizations can be differentiated between those linked to persons directly affected by the repression (such as Mothers of May Square, Family Members of Detained and Disappeared Persons for Political Reasons,

6 Guillermo O'Donnell, Philippe Schmitter, *Transitions from Authoritarian Rule. Tentative Conclusions about Uncertain Democracies*, Baltimore: Johns Hopkins Press, 1986.

7 Canelo, 2016.

8 La Nación Newspaper, April 29, 1983.

9 La Nación Newspaper, September 24, 1983.

10 Memoria Abierta, *Guía de archivos útiles para la investigación judicial de delitos de lesa humanidad*, Buenos Aires: Memoria Abierta and Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas durante el Terrorismo de Estado, 2011.

11 Annex 1 Decree No. 377/95, Boletín Oficial de la República Argentina, March 28, 1995.

12 Revista Noticias, December 8, 1991.

13 La Prensa Newspaper, February 24, 1992.

14 Decree No. 377/95, Boletín Oficial de la República Argentina, March 21, 1995.

15 Revista Microsemanario, Year 5, No. 189, March 25 to April 2, 1995.

16 La Nación Newspaper, April 24, 1999.

17 Paula Canelo, “La H es muda, pero habla. La palabra pública del represor Albano Harguindeguy entre 1976 y 2012”, paper presented at II Seminario de Discusión “Investigaciones y debates sobre la palabra pública de los represores”, Instituto de Desarrollo Económico y Social (IDES), September 7, 2018.

and Grandmothers of May Square), those confessional and pro-victim assistance (such as Service Peace and Justice and the Ecumenical Movement for Human Rights), or those providing legal support or systematization of information (such as The Permanent Assembly for Human Rights, the Center for Legal and Social Studies, or the Argentina League for the Rights of Men). More recently, these organizations have experienced a generational renewal, giving birth to new organizations linked to the descendants of the disappeared such as the organization Sons and Daughters for Identity and Justice against Forgetting and Silence (H.I.J.O.S).<sup>18</sup>

It was during the first months of the PRN dictatorship in 1976 that human rights organizations began to unfold an intense campaign on various fronts. They began the communication and public denunciation of repression and violation of human rights, at the domestic and international level, with the goal of obtaining solidarity and support in their fight against the military regime and to organize solidarity networks to assist, protect and help survive victims and their families.

Furthermore, human rights organizations undertook a fundamental role in the systematization of information on acts of repression. The accuracy of the information they gathered was later on confirmed by international organizations. This way, the first archive on disappeared persons was put together by APDH (The Permanent Assembly for Human Rights), an organization that in 1979 had documented 5,818 cases of abuses based on the information provided by family members of the victims and some survivors. In addition, in 1979, the Inter-American Commission for Human Rights of the Organization of American States received 5,580 claims.<sup>19</sup> Claims on abuses were also submitted abroad to CLAMOR, United Nations, Organization of American States, the USA Congress, the French National Assembly, Amnesty International and others civil and religious organizations, especially in Europe and the USA.<sup>20</sup>

It was also by way of these human rights organizations, many of them linked to intellectuals and academics who were organized in international and domestic research centers<sup>21</sup> and who had survived repression that many of the new debates on the nature and consequences of the PRN dictatorship began.<sup>22</sup>

Since their formation during the dictatorship, until the emergence of democracy in 1983, human rights organizations led the difficult task of document registration that included collecting testimonies, making lists and records, creating archives and centers of documentation, etc. This work created and consolidated an important collection of evidence that allowed for court claims. Once the transition began in 1982, these collections of information were used to put on trial those responsible for the dictatorship's crimes.<sup>23</sup>

## USE OF THE ARCHIVES DURING TRANSFORMATION

The process of transitional justice in Argentina entailed the implementation of a myriad of mechanisms to foster memory, justice, reparation and lustration.

This process was the result of both strategic innovations proposed by human rights organizations and by the implementation of state public policies.<sup>24</sup> In many ways, it was the constant struggles put forward by human rights organizations

and activists that set the pace of the transformation process in the country.

This became evident during the first phases of the transformation process initiated by the democratic government of President Raúl Alfonsín in 1983. The archives compiled by human rights organizations during the dictatorship provided crucial information to start the judicialization of human rights abuses by PRN.

In August of 1983, the Technical Commission for Gathering Data was created to consolidate all information compiled by human rights organizations on victims and perpetrators so as to make it available to the newly elected democratic authorities.<sup>25</sup> Beginning in 1984, this big data set was submitted to the *Comisión de Acuerdos del Senado* (Senate Commission for Promotions) in charge of approving military personnel promotions. This way, for the first time civilian control over military promotions became a tool to challenge those accused of severe human rights violations under the dictatorship.<sup>26</sup>

As a first public policy to know the truth about crimes against humanity, the newly elected democratic government of President Raúl Alfonsín created the National Commission for Disappeared Persons (CONADEP – Comisión Nacional de Desaparición de Personas), a special commission established by a presidential decree on December 15, 1983.<sup>27</sup>

CONADEP worked with human rights organizations, political parties and other political and social groups that were already involved in investigating state terrorism during the dictatorship to elaborate a special report. The report produced by the commission was titled NUNCA MAS (Never Again) and compiles in 50,000 pages a significant number of cases of human rights violations, torture, disappearances and murder and served as the basis for the trial of the military Juntas.<sup>28</sup> The report registered 8,961 disappeared persons and about 380 clandestine centers of detention and torture.

CONADEP functioned between December 15 of 1983 until September 20 of 1984 and it can be considered the first archive that centralized all claims on disappearances dispersed until then in the country and abroad.<sup>29</sup> The CONADEP archive has 4 types of

18 Carlos Acuña, Catalina Smulovitz, 1995.

19 Emilio F. Mignone, *Derechos Humanos y Sociedad. El caso argentino*, Buenos Aires: Ediciones Colihue, 1991.

20 Emilio Crenzel, "El archivo de la CONADEP. Una perspectiva desde una experiencia de investigación en Ciencias Sociales", in Memoria Abierta, *III Encuentro Regional de Archivos y Derechos Humanos, "El Archivo y el testimonio"*, Buenos Aires, 21 and 22 of September, 2009.

21 Research centers played a very important political and intellectual role under the dictatorships in Latin America. Among them are CEDES and CISEA in Argentina, CIEPLAN in Chile, CLAEH in Uruguay, IUPERJ and CEBRAP in Brazil, CLACSO and FLACSO at the regional level. See Paula Canelo, 2016.

22 Eduardo Luis Duhalde, *El Estado Terrorista Argentino. Quince años después, una mirada crítica*, Buenos Aires: El Caballito, 1983; Daniel Frontalini, María Cristina Caiati, *El mito de la guerra sucia*, Buenos Aires: CELS, 1984.

23 CELS, *Acceso a la información sobre violaciones a derechos humanos durante la dictadura cívico-militar (1976-1983) en la Argentina*, Buenos Aires, CELS, August 2014.

24 Ibid.

25 Ibid.

26 Ibid.

27 Boletín Oficial de la República Argentina, December 13, 1983.

28 Code of Military Justice, Law 23.049, 9.2.1984, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm>

29 Crenzel, 2009.

evidence: oral testimonies, photographic collection, blueprints provided by survivors of clandestine centers of detention, and evidence collected in prisons, police stations, hospitals, cemeteries and morgues that could confirm the connection between the illegal and legal system of repression. The archives created by the information gathered by human rights organizations and by CONADEP were crucial to make advances in the judicialization of human rights violations in Argentina and, first and foremost, to judge all members of the military Juntas that ruled the country between 1976 and 1983.<sup>30</sup>

Since the inauguration of democracy in 1983, there have also been some important advances in “genetic archives.” In 1987 by National Law Number 23.511 the *Banco Nacional de Datos Genéticos* (National Bank of Genetic Data) was created. An autonomous and autarchic institution, the Bank is a systematic archive of genetic material and biologic samples of family members of kidnapped and disappeared persons during the dictatorship that allows for the identification of any remains and of babies born in captivity and later appropriated by acquaintances of the armed and security forces. This “genetic archive” provides crucial information to bring to justice crimes against humanity.<sup>31</sup> Until today (November of 2018), 128 babies born in captivity in CCD have been identified.

## RIGHT TO ACCESS THE ARCHIVES

Access to information is a right recognized in several Articles of the National Constitution of Argentina (Art. 14, 38, 41 and 42). However, there is no National Law regulating access to public information: there is no unified set of norms that clearly establishes the subjects bound to provide information, under which provisions, through which procedures, terms, etc.

The only norm available similar to a National Law is presidential Decree No. 1172/03 (Annex VII) issued in 2003. The decree establishes that any physical or legal person, public or private, has the right to request, access and receive information in equal terms of timing, gratuity and informality. The decree also establishes that all information provided by the subjects bound to do so are presumed of being of public character, except in the cases foreseen by law or when it refers to personal data of sensitive content and whose publicity violates the right to intimacy or honor, among other motives.<sup>32</sup>

All norms that somehow are related to access of information in Argentina have a limitation when the request refers to personal data. Data protection is regulated by Law No 25.326 sanctioned in 2000. This Law differentiates between personal and sensitive data. Data that disclose racial or ethnic origin, political opinions, religious, philosophical or moral beliefs, union affiliation, or information related to health or sexual preferences could not be provided without the agreement of the person in question.

In addition, another fact that precludes access to information and, concomitantly, to the archives is the inexistence of a National System of Archives throughout the country to systematize how to deal with documents and how to preserve or destroy them.<sup>33</sup>

In this way, there is so far no public policy in Argentina, clear and comprehensive, aimed at the protection of the documental heritage of the State, neither are there agencies of accountability

regarding the obligations public institutions have about their archives. Even though the *General Archive of the Nation*<sup>34</sup> (Archivo General de la Nación, hereafter AGN) is the institution with the authority over archives, it is just an agency under the Minister of Interior, Public Works and Housing. The AGN has no independent budget and its bureaucratic structure is minimal.<sup>35</sup> This has negatively impacted academic work as well as the use of scientific knowledge in judicial cases.<sup>36</sup> In sum, the lack of an integral public policy of archives and access to them has been a major obstacle for the diffusion of the contents of the archives and for academic work.<sup>37</sup>

As a consequence, all public decisions aimed at searching, recording, and opening the archives of repression have not necessarily implied a better access to them.<sup>38</sup> Just in the year 2010, the President sanctioned Decree No 4/2010 that ordered the declassification of information linked to the activities of the Armed Forces during the PRN dictatorship and all information or documents that, even though generated in another period, would be related to the actions of the Armed Forces during that time.<sup>39</sup>

## DECLASSIFICATION AND OPENING UP THE ARCHIVES

The advances, although still limited, in archive declassification established by Decree No 4/2010 have been related to the process of judicialization of human rights violations. In 2001, a renewed phase of judicialization of crimes against humanity began to emerge by the sequential removal of the legal obstacles to bring to justice the perpetrators of the PRN. A first step in this process was the sentence on the “Simon case” that established the unconstitutional status of the “pardon laws.”<sup>40</sup> On August 12, 2003, under the Presidency of Dr. Néstor Kirchner a new law (25.779) superseded the *Punto Final* and *Obediencia Debida* laws as well as any pardons issued.<sup>41</sup> Starting in 2005, by a Supreme Court decision, any action framed under the figure of “state terror” became a crime against humanity and

30 See the chapter on *Investigation and Prosecution of the Crimes of the Regime* in this Guide.

31 CELS, 2014.

32 Ibid.

33 Ibid.; Memoria Abierta, 2011.

34 In Argentina the legal framework for public archives is Law 15.930 of 1961. The law gives AGN the task of gathering, ordering and preserving all documentation established by the law to communicate knowledge of sources of Argentina’s history; Memoria Abierta, 2011, <http://www.agnargentina.gob.ar/>

35 CELS, 2014; Memoria Abierta, 2011.

36 Canelo, 2016.

37 Gabriela Aguila, “La dictadura militar argentina: interpretaciones, problemas, debates,” in *Páginas. Revista digital de la Escuela de Historia UNR*, Year 1, No. 1, 2008; Mariana Nazar, “Dictadura, archivos y accesibilidad documental. A modo de agenda,” in CELS: *Derechos humanos en Argentina. Informe 2007*, Buenos Aires: Siglo XXI, 2007.

38 Memoria Abierta, 2011.

39 CELS, 2014.

40 The case makes reference to the torture and disappearance of the couple Poblete/Hlaczik and the kidnapping of their daughter.

41 See the chapter on *Investigation and Persecution of the crimes of the Regime* in this Guide. Also <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm>

imprescriptible. These decisions allowed many cases of human rights violations by the PRN to be reopened. President Néstor Kirchner also changed the extradition policy, allowing extradition for perpetrators prosecuted abroad but not facing charges in Argentina. In 2003, Argentina became a signatory of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity. A creative interpretation of the convention by the courts allowed them to circumvent the statutory limitations to crimes committed decades in the past, and also the *ex post facto* applicability of laws that were not in force at the time of the crimes.

Under the Kirchner's presidency this renewed judicialization was concomitant to the implementation of a series of politics of memory including a revalorization of the archives of repression not only as a primary source to bring perpetrators to justice, but also for research and teaching purposes.<sup>42</sup>

The renewed phase of judicialization made evident the legal and political obstacles the courts faced, as well as the institutional weakness for the production, systematization and access to information. With the beginning of a new cycle of trials, finding new information and documentation on the Armed and Security Forces actions under the dictatorship became crucial. However, according to the Law of National Intelligence No 25.520 of 2001 a great part of all documents were classified, and to gain access to them, a decree for each claim presented by the courts had to be issued.<sup>43</sup> For this reason, in April 2010, President Cristina Fernández de Kirchner decided by Decree No 4/2010 a general declassification of all information related to the actions of the Armed Forces during the PRN dictatorship and of all other documentation linked to that.<sup>44</sup>

An important measure also taken was the resolution No. 308/10 issued by the Ministry of National Defense that created "Teams" for the organization and analysis of all documentation with historical and/or judicial value. These Teams were part of the Human Rights and International Humanitarian Law agency of the Ministry of Defense, and worked extensively on the different archives and places gathering information about the Armed Forces to provide documentation to courts and other public agencies.

At the same time, since 2001 there has been a process of declassification of the dictatorship actions initiated by other countries. Human rights organizations asked the Argentine government to request declassification of documents to France and the USA. The declassification of diplomatic documents is underway with France, while the USA has already agreed to provide documents (of 14 state agencies) in three phases, between 2016 and 2017, and guaranteed public access online.<sup>45</sup>

Furthermore, in 2017, the Archbishops Conference of Argentina announced the opening of a set of documents of their institutional archives, as well as of the Secretary of State of the Vatican that include claims received by the Catholic Church from family members of the disappeared. Access to this information is limited to victims, their families and higher rank members of the church in cases they are somehow linked to.<sup>46</sup>

In spite of these advances in declassification of the archives of repression, obstacles remain due to lack of high quality archival management skills of state officers, overlapping of higher and lower ranking norms regulating the matter, absence of clear categories of types of information, and of mechanisms of declassification.<sup>47</sup>

## CURRENT STATUS

Nowadays Argentina has an institutionalized set of significant archives of repression<sup>48</sup> that contains diverse information from different sources.

In spite of the fragmentation that characterizes the archives, we can classify them as provincial archives, human rights organization archives, bureaucratic-governmental archives produced by the last dictatorship and general archives of the Armed Forces.<sup>49</sup>

The recovery of the archives of repression in Argentina began in 1999, with the archive of the Intelligence Agency of the Police of the Province of Buenos Aires (*Dirección de Inteligencia de la Policía de la Provincia de Buenos Aires*, hereafter DIPPBA). Buenos Aires is the most important Province of Argentina. DIPPBA was created in 1956 with the name of Central Intelligence and was dissolved in 1998 in the context of a police reform. During the dictatorship it was a very important actor of state terrorism in control of the province. In December of 2000, the provincial government transferred the DIPPBA archive to the Provincial Commission for Memory (*Comisión Provincial de la Memoria*, hereafter CPM). The CPM is an autonomous agency whose members represent organizations of human rights, unions, the judiciary, the legislature, universities and different regions of the province of Buenos Aires. The goal of the CPM is to be an archive and a Center of Information with public access not only for those directly affected by human rights violations, but also for anyone interested in research and dissemination.<sup>50</sup> The program of Management and Preservation of the CPM has been incorporating data, such as the Section of Intelligence of the Naval Prefecture of the North Atlantic, or files of political prisoners in the province, among other information. The program provides information to those directly affected, their families, scholars, and institutions that make claims regarding compensation laws. Since 2006 it also records court cases of crimes against humanity in the province.<sup>51</sup> The DIPPBA archive has been recognized by UNESCO as World Heritage in 2008.<sup>52</sup>

After the pioneering experience of DIPPBA, other provincial archives of repression were established. Worth mentioning are:

**a/ Archive of Memory of the Córdoba Province:** created in 2006 by the provincial legislature Law No. 9.286. It is located in the building known as D-2, where the intelligence unit of the provincial police department functioned during the dictatorship.

**b/ Archive of the Intelligence Department of the Province of Mendoza:** The intelligence department was the most important

42 Memoria Abierta, 2009.

43 CELS, 2014.

44 Ibid.

45 CELS, 2017.

46 Ibid.

47 CELS, 2014.

48 Federico Lorenz, Archivos de la represión y memoria en la República Argentina, in Pérotin-Dumon, Anne, *Historizar el pasado vivo en América Latina*, 2007, <http://www.historizarelpasadovivo.cl/>

49 The list is not exhaustive and follows the criteria Memoria Abierta, 2011.

50 Law No. 12.642, March 2001.

51 CPM, El Archivo, "Gestión y Preservación de Archivos", <http://www.comisionporlamemoria.org/archivo/gestion-y-preservacion/>, September 25, 2018.

52 Ibid.

clandestine center of detention of the province. Comprised of more than 2,300 personal files, it is located in the National University of Cuyo. The archive is digitalized.

c/ *Archive of Memory of the Province of Santa Fe*: created by decree No 2775/2006. The main source of the collection is the provincial Direction of Information, which received information from various other state agencies between the years 1966 to 1984. Since 2011 the information is permanently available and its collections have been declared World Heritage by the Memory of the World program of UNESCO.

d/ *Museum of Memory of the City of Rosario in the Province of Santa Fe*: located in the former building of the Command of the II Division of the Army, it houses the Documentation Center “Rubén Naranjo” (an artist and militant). It has an extensive collection of magazines, newspaper clips, and archives of important court cases of human rights violations.

Among the archives created by human rights organizations the most important one is that of *Memoria Abierta* (Open Memory) created in 1999 by a coalition of several organizations. Its main goal is to coordinate the organization, and to catalogue and preserve the archives of the organizations members of the coalition.<sup>53</sup> The catalogue contains 28.000 entries. The oral archive of *Memoria Abierta* contains interviews with victims of state terror. All archives under *Memoria Abierta*'s custody are considered World Heritage and part of the Memory of the World program of UNESCO. Another important archive is the *Archivo Institucional del Centro de Estudios Legales y Sociales (CELS)*.<sup>54</sup> The Archive has 913 boxes, which covers from 1974 to today. The Archive has seven types of documents and for its relevance is registered in the program Memory of the World of UNESCO.<sup>55</sup>

The National Archive of Memory (hereafter ANM) was created in 2003 by the President of the Republic. Today it is under the authority of the Secretary of Human Rights and Cultural Pluralism of the Ministry of Justice and Human Rights of the nation.

The main collection of ANM is the Archive of CONADEP. The archive also contains the archive of CONADI (the commission in charge of cases of kidnapping of minors), the full video of the trials of the military dictatorship Junta members and an Oral Archive. Access to the collections is restricted.<sup>56</sup>

Besides these archives, significant information has been found in piecemeal fashion out of some of the “legal” agencies of the PRN dictatorship. The most important documents found are the before mentioned *Secret Acts of the Dictatorship*. In 2013, in the basement of the Cóndor Building belonging to the Air Force, 1,500 files were found. These include black lists, actions plans by the dictatorship, receipts of financial contributions, meeting agendas, front desk records, etc. The Secret Acts are in digital form and have public access in the Open Archives site of the Ministry of Defense.

After this finding in 2013, the Ministry of Defense ordered all military units to search for more documents. This led to the finding of 7,000 files of political prisoners at the ex-prison of the Armed Forces in Magdalena, province of Buenos Aires.

Other archives produced by the legal agencies of the dictatorship such as the Fund CAL (Advising Legislative Commission of the Dictatorship) and Fund Consufa (Supreme Tribunal of the Armed Forces) are publicly available through the Department of Intermediate Archive of the General Audit of the Republic (AGN).

In addition to these archives, the Army, the Navy and the Air Force each have their own archives about their personnel that could be eventually consulted.

This fragmentary panorama of the archives of repression improved by the politics of memory implemented since the year 2006 by the administrations of President Néstor Kirchner and President Cristina Fernández de Kirchner.

However, since 2015 the administration of President Mauricio Macri has reversed some of these advances by dismantling state agencies, programs, web sites, and team of experts working on recovering the archives of repression.

## LESSONS LEARNT AND RECOMMENDATIONS

In 2011, the NGO *Memoria Abierta* (Open Memory) jointly with the *Unidad Fiscal de Coordinación y Seguimiento de las Causas por Violaciones a los Derechos Humanos cometidas bajo terrorismo de Estado de la Procuración General de la Nación* (Fiscal Unit of Coordination and Tracing of Court cases for Human Rights Violations of State Terror under the Office of the Attorney General of the Nation) carried out an investigation into the archives of repression that are used as source for court cases on crimes against humanity in the country.

The investigation warned that “the institutions (and the persons in charge of them) do not have the adequate expertise and skills to deal with the documents because of lack of public policies for training and professional development. As a consequence, there is a ‘diversity of archival realities’ in which voluntarism, common sense, and sometimes ignorance set the principles for documentation, instead of professionalism and norms.”<sup>57</sup>

The investigation concluded that, according to several deficits surrounding the issue of the archives of repression in Argentina, political will to search for and disseminate these crucial documents in order to understand the recent past of the country, does not necessary entail effective public access to them.<sup>58</sup>

Since the transition in 1982, many pending issues remain with the organization of the archives of repression; these issues have worsened lately by the public policies implemented by the current government of President Mauricio Macri (2015–2019).

After four decades of experience with archives of repression in Argentina we can draw several lessons and recommendations.

First, it is imperative to raise the status of all “archives of repression”, not only as a resource to promote justice against criminals who committed violations of human rights under the dictatorship, but also as a valuable primary source for historical, comparative, and journalistic research aimed at dissemination and teaching.

Second, the organization, description and systematization of the existing collections should be improved to effectively

53 *Memoria Abierta*, <http://memoriaabierta.org.ar/wp/organismos-integrantes/>, September 25, 2018.

54 CELS Archivo, <https://www.cels.org.ar/web/wp-content/uploads/2017/10/AR-CELS-Descripci%C3%B3n-Fondo-Archivo-CELS.pdf>, page 5, October 16, 2018.

55 Ibid.

56 CELS, 2014; Federico Lorenz, 2015.

57 *Memoria Abierta*, 2011.

58 Ibid.

democratize declassification and allow free access to all so as to deepen the process of Memory, Truth and Justice. Public policy should aim at establishing general and clear norms for access to the information provided by the archives and to instruct public authorities regarding those norms.<sup>59</sup>

Third, we need to advance in norms to regulate the archives of repression especially regarding state obligations on their access and preservation, as well as on the authority of the state on preservation and destruction of data.<sup>60</sup>

Fourth, we recommend the celebration of agreements with countries that are in the process of transitional memory and justice to speed exchange of information, to promote basic standards of preservation and access to archives, and to secure that

international organizations jurisprudence is respected to allow for greater impact in terms of access of information.<sup>61</sup>

Finally, we recommend decisively promoting the work of civil society organizations to demand accountability to authorities regarding all aspects of human rights, especially the conservation of archives of repression and access to them.

Argentina is an exceptional model in relation to the politics of Memory, Truth and Justice. However, we must be very aware that any achievements can be at anytime reversed.

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59 CELS, 2014 and 2017; Memoria Abierta, 2011.

60 CELS, 2014; Memoria Abierta, 2011.

61 CELS, 2014.

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# PURGING

SERGIO GABRIEL EISSA

## INTRODUCTION

In the Argentine Republic, no administrative or legal purging mechanism was implemented. This was mainly due to the fact that, although the transition was brought about by collapse, it did not imply a total defeat of the military and the civilians who led the March 24, 1976 coup d'état. Likewise, and due to the characteristics of the transition, the trial of those responsible for crimes against humanity was limited by the "categorical imperative" defined by President Raúl Alfonsín (1983–1989): to hand over command to another democratically elected president. All the linked actions were subordinated to this great objective.

The first section analyses the situation during the fall of the authoritarian regime. Secondly, it describes the context in which the transition took place in order to understand why laws were not implemented to purge the state of the officials who had held positions during the dictatorship. Thirdly, the crimes of the Dictatorship were tried after a long process with advances and setbacks that continues to this day. Finally, the final reflections are presented.

## TRANSITION FROM COLLAPSE?

Raúl Alfonsín (1983–1989) and his collaborators considered that the main objective of their government was to hand over the "presidential baton" to another civilian president, an unprecedented event that had not occurred since 1928, and that the Armed Forces were the greatest threat to the democratic transition.<sup>1</sup> In fact, the radical president considered before winning the elections that "the regime has not abandoned power, has abandoned the land and is entrenched in its last line of defense, where it is preparing to fight back"<sup>2</sup> In his opinion, the Armed Forces had made a "strategic withdrawal" leaving the country in a deep economic crisis, in an international scenario where the Cold War (1947–1991) had warmed up with the arrival of Ronald Reagan (1981–1989) to the presidency of the United States and where, in addition, the involvement of its Armed Forces in the so-called War on Drugs in Latin America had begun. Alfonsín therefore considered that it was impossible not only to judge all the military, but also his civilian accomplices. This context, plus the pardons granted by Carlos Menem (1989–1999), explains the absence of policies aimed at purging civilian and/or military officials who had been part of the state during the last dictatorship (1976–1983).

In fact, both Ernesto López<sup>3</sup> and Patrice McSherry<sup>4</sup> argue that the *Armed Forces, paramilitary groups, economic groups and the intelligence services retained an important veto power that made it impossible to fully prosecute those responsible for state terrorism and to implement policies aimed at modifying the functioning of military organizations*. Moreover, during the 18 months that the transition lasted until the assumption of the new civilian authorities on December 10, 1983, the Armed Forces controlled the process and acted ("veto power") to preserve certain prerogatives in the future constitutional and democratic government.

This was due to the fact that, among other factors, the political actors presented inconsistencies and hesitations to take advantage of the favourable moment that the defeat in the Malvinas/Falkland war (1982) meant. On the one hand, in the Justicialist Party (PJ) the position of accepting that the transition be commanded by the military prevailed. On the other hand, the Multiparty – formed by the main political parties in 1981 – agreed that the military government should establish "the bases and lead the process that would lead to the announcement of elections and the return to democracy."<sup>5</sup> The Dictatorship presented a proposal for agreement on the basis of fifteen points – covering both economic and foreign policy issues – which was rejected by the Multiparty. In addition, the military wanted to close the issue of human rights violations through a final report and a self-amnesty law No. 22.924. Despite the pressure of public opinion, expressed in the march of December 16, 1982, asking for trial and punishment, the Multiparty remained in the position of only asking for the release of the political and union prisoners. The exceptions were Raúl Alfonsín in the Radical Civic Union (UCR) and the internal line of Intransigence and Mobilization in the PJ, which insisted on the need to repeal the self-amnesty and to judge the repressors.<sup>6</sup>

The only priority the military had after the radical Raúl Alfonsín won the elections, unexpectedly for some domestic and external actors,<sup>7</sup> was to avoid judicial review of what had been done regarding human rights violations. Issues such as the application of lessons learned in the Malvinas/Falkland war<sup>8</sup> to reform the Armed Forces were set aside by the inability to reach consensus among the forces. In other words,

"there was no agreement between civilians and the military, which means that there was no agreed transition (...), but neither was there a complete political defeat of the military and a complete occupation of the spaces and resources of power by

1 Sergio Eissa, *¿La irrelevancia de los Estados Unidos? La política de defensa argentina (1983–2010)*, Buenos Aires: Arte y Parte, 2015. For example, the then head of the Navy maintains in his memoirs that he perceived that the radical government "did not view the military with friendly or at least neutral eyes..." They wanted to make the military appear to be the only ones responsible or guilty of all the evils that have occurred in the country. See Ramón Arosa, *De Constitución a Retiro. Reseña y reflexiones del Jefe de la Armada 1984–1989*, Buenos Aires: Instituto de Publicaciones Navales, 2008, 31.

2 Patrice McSherry, *Incomplete transition. Military power and democracy in Argentina*, Lexington: Authors Guild Backprint.Com Edition, 2008, 108.

3 Ernesto López, *Ni la ceniza ni la gloria. Actores, sistema político y cuestión militar en los años de Alfonsín*, Quilmes: Universidad Nacional de Quilmes, 1994.

4 Patrice McSherry, *op. cit.*, 2008, 86.

5 Ernesto López, *op. cit.*, 1994, 43.

6 *Ibid.*, 45.

7 Just as an example, both the United States and the military preferred the victory of the Peronist candidate, Italo Luder. See also Patrice McSherry, *op. cit.*, 2008, 112.

8 Ministerio de Defensa, *Informe Rattenbach*, Buenos Aires: Ministerio de Defensa, 2012 [1982].

civilians that placed them in a solid position of domination and control over the military (...) the military led – even in the midst of growing political weakness – the process of democratic re-institutionalization to the end, which allowed them to withdraw in a more orderly and less costly manner (...): this gave a very special peculiarity to consolidation (...): a) a residual capacity for pressure in the Armed Forces and b) the persistence of the limitations of the conception and behavior of the civilian actors – which obviously did not magically evaporate with the arrival of consolidation–, conditions were created so that it had strong features of instability and unpredictability with regard to the evolution of civil-military relations.”<sup>9</sup>

In conclusion, this transition, despite being characterized as a “collapse,”<sup>10</sup> allowed the military and its civilian allies to retain significant shares of real power with which they were able to effectively condition the new democratic government.

## **SOCIOPOLITICAL CONTEXT OF THE TRANSITION TO DEMOCRACY**

The democratic transition took place during the overheating of the Cold War and, in this context, the United States, with Ronald Reagan in the presidency, put aside the human rights policy of President James Carter and focused once again on the fight against communism in Latin America. Based on the discrepancies raised by Alfonsín regarding U.S. policies in Central America in March 1985, that country once again strengthened its *bridges with the Argentine military*. Since then, various U.S. government officials have warned of the danger of the resurgence of the *montonero guerrilla* and that in Latin America there was an enemy that was fighting governments from the inside “employing communist subversion, terrorism or the production and trafficking of narcotics.”<sup>11</sup> They also insisted again on the Soviet threat in the region,<sup>12</sup> due to the signing of fisheries agreements by Argentina with the countries within the Soviet-dominated sphere. This heightened U.S. fears about possible control by the South Atlantic Soviet Union that would allow a network of drug traffickers and subversives to carry arms on fishing boats to the Chilean opposition to the dictator Augusto Pinochet. Argentine Foreign Minister Dante Caputo assessed that this set of statements meant that, while the U.S. had unplugged the military plug in Argentina, it could be plugged back in at any time.<sup>13</sup> According to Verbitsky<sup>14</sup> this meant that for the superpower democracy it was good, but it was better if it was controlled by the military.

Secondly, the economic policy implemented by the dictatorship had transformed the socio-economic structure of the country: it had put an end to the model of import substitution industrialization (ISI) (provoking the financialization, de-industrialization and reprimarization of the economy) and had left an external debt of US\$ 45,000 million dollars compared to US\$ 5,000million in 1975.

In order to face this economic crisis, Alfonsín tried to apply a Keynesian policy during the first two (2) years.<sup>15</sup> In other words, they sought to design a gradual economic policy to reduce social costs, since the president believed that the application of recessive and *shock* recipes would affect the foundations of the nascent democracy.

Due to the failure of the approach outlined above, the “Austral Plan” was launched on May 14, 1985 with the aim of lowering

inflation and creating favorable conditions for deeper transformations. However, the success achieved in the short term hid the lack of structural measures to encourage recovery or growth.<sup>16</sup> Thus, given the ongoing deterioration of the political situation, the military resistance to the transformations and the electoral defeat of the governing party in the 1987 parliamentary elections, the new economic plan, known as “Primavera,” was born without the necessary strength to control the ever-increasing inflation. In early 1989 – at the behest of Argentine economist and former dictator Domingo Cavallo – the World Bank and the International Monetary Fund announced that they were limiting their loans to the Argentine government. The run against the dollar (“from which some financial groups were no strangers”)<sup>17</sup> and the lack of reserves in the Central Bank to intervene adequately in the exchange market, led the country from a situation of high inflation to a hyperinflation that precipitated the government’s early delivery to the Justicialist candidate triumphant in the presidential elections, Carlos Saul Menem.

## **THE UPS AND DOWNS IN THE TRIAL OF THOSE RESPONSIBLE FOR STATE TERRORISM AND ITS IMPACT ON PURGING**

While the Justicialist Party (PJ) was in favour of self-amnesty, Raúl Alfonsín considered the trial of those responsible for state terrorism important for the construction of a democratic society. However, he was convinced that it was impossible to judge all military personnel in a transitional context and that they should be differentiated by levels of responsibility: 1) the head who gave the orders; 2) those who exceeded their orders; and 3) those who had merely carried out the orders. In addition, he believed that the unrestricted persecution of the military was unjust because various sectors of the Catholic Church, political parties, trade unions, businessmen, the media, among others, had been complicit in state terrorism. Nor did Alfonsín order the trial of the illegal state action of the Armed Forces, Security Forces and police, and the paramilitary organization, Argentinian Anticommunist Alliance (Triple A) during the Justicialist government of María

9 Ernesto López, *op. cit.*, 1994, 47–50. See also Patrice McSherry *op. cit.*, 2008, 86 and 118.

10 In the collapsing transition, “authoritarian rulers fail to control the agenda of the negotiation issues and the outcome of the negotiation”. In the agreed transitions, “the rulers of authoritarian regimes [...] tend to have a strong dominance (although declining over time) over the rhythms and agendas of the transition”. Huntington establishes a third category: transfer. In the latter, “democratization is brought about by the combined action of government and opposition”. See respectively Guillermo O’Donnell, “Transiciones, continuidades y algunas paradojas”, in *Cuadernos Políticos*, 1989, (56), 25, 26; and Samuel Huntington, *La tercera ola. La democratización a finales del siglo XX*, Buenos Aires: Paidós, 1995, 143.

11 Horacio Verbitsky, *Civiles y militares: memoria secreta de la transición*, Buenos Aires: Contrapunto 1987, 132, 229, 234.

12 Patrice McSherry, *op. cit.*, 2008, 213-2014, 360.

13 Sergio Eissa, *op. cit.*, 2015.

14 Horacio Verbitsky, *op. cit.*, 1987, 264–267.

15 Mario Rapoport, *Historia económica, política y social de la Argentina (1880–2000)*, Buenos Aires: Ediciones Macchi, 2000, 924 and Andrew Mc-Adam, Viktor Sukup, Claudio Katiz, *Raúl Alfonsín. La democracia a pesar de todo*, Buenos Aires: Corregidor, 1999.

16 Mario Rapoport, *op. cit.*, 2000, 913–914.

17 *Ibid.*, 924.

Estela Martínez de Perón (1974–1976), because this could generate a “confrontation” with the PJ and he had no political margin to do so.

Based on this conceptualization, the main difficulties arose in its implementation.<sup>18</sup>

It is clear that Raúl Alfonsín never intended to try all the military and civilian accomplices, even if civil society and the military perceived exactly the opposite.<sup>19</sup> This led to an increase in civil-military tensions, which resulted in four (4) military uprisings between 1987 and 1990.

President Carlos Menem opted for another approach that was in line with the Justicialist Party’s position in 1983. Although he was not interested in military issues, he knew that he could not ignore the military situation if he wanted to focus mainly on the economic front, which had got out of hand due to hyperinflation in February 1989. To this end, on 7 October 1989, President Menem issued the first pardon, comprising four decrees: 1002/89, 1003/89, 1004/89 and 1005/89. They reached military personnel involved in acts of state terrorism and the Malvinas/Falkland war, persons belonging to armed organizations, and officers, non-commissioned officers and civilians who participated in the military uprisings of 1987 and 1988. The last carapintada (painted face) uprising occurred on 3 December 1990. After the repression, President Carlos Menem granted a second pardon on December 29, 1990, through decrees 2741/90, 2742/90, 2743/90, 2744/90 and 2745/90. They reached the military juntas of the last dictatorship, former guerrillas and former Economy Minister José Martínez de Hoz.<sup>20</sup>

After the repression of the last military uprising, it can be argued that full civilian control of the Armed Forces was established in the country. Throughout this process, which lasted throughout the 1980s, the Armed Forces ceased to be a relevant actor in the Argentine political system.<sup>21</sup>

Thus, in the context in which Alfonsín conceived and implemented his policy and the pardons decided by Carlos Menem, he made unthinkable any type of action to purge the state of the officials of the dictatorship. On the contrary, many soldiers – both those responsible for state terrorism and those who rebelled against the governments of Alfonsín and Menem between 1987 and 1990 – were able to stand as legislators, intendants and occupy positions in government. Moreover, the same happened with civil servants who were never subjected to any legal process until 2003, except for a few exceptions such as the former Minister of the Economy José Alfredo Martínez de Hoz.

The enactment of these laws and decrees of impunity prevented the prosecution of those responsible for state terrorism from 1989 onwards, with the exception of cases involving the abduction of newborns between 1976 and 1983.

In 1998, at the proposal of the daughter of Argentine writer Rodolfo Walsh, the National Congress repealed the “Full Stop” and “Due Obedience” laws. In this context, the Center for Legal and Social Studies (CELS) asked the courts to annul these rules. It was only in March 2001 that a first instance ruling declared these laws null and void and unconstitutional, and so the legal processes that had been closed in the 1980s began to be reopened in a completely different political context, in which the Armed Forces no longer constituted a factor of power in Argentine society. In 2003, when Néstor Kirchner (2003–2007) took over the presidency, there were already about “a hundred or so heads of the armed and security forces under arrest for the theft of babies, the looting of property and the reopening of cases.”<sup>22</sup> It was only in 2003 that

these laws were declared insensibly null and void and the Supreme Court of Justice ratified the first instance rulings in 2005.

Until 2003, relatives of the disappeared, human rights bodies and social scientists demanded that the Armed Forces, the Security Forces and the police grant access to their archives on the disappeared. However, since the last months of the dictatorship, they have claimed that they had been eliminated.<sup>23</sup> However, the Directives, Orders, Regulations and Plans were provided by the military themselves during the trials, as part of their defense, to justify that they had acted legally. On the other hand, the policy of impunity implemented by the Argentine government between 1989 and 2003 meant that the search for documentary material on state terrorism was completely neglected.

Néstor Kirchner’s assumption of the presidency (2003–2007) made it possible, in the context of the declaration of the nullity of the so-called Forgiveness Laws and the promotion of the trials of those responsible for state terrorism, to take initiatives to preserve private documents, which had been kept by individuals and NGOs, and to search for documents in state offices. Thus, the National Memory Archive (2003), the Provincial Commission for Memory in the Buenos Aires Province (2000) and the Instituto Espacio por la Memoria (Space for Memory Institute) in the Autonomous City of Buenos Aires (2002) were created.<sup>24</sup>

In December 2003,<sup>25</sup> it was reported that in mid-1978 the 601 Intelligence Battalion counted a total of 22,000 people dead and missing from 1975 to that date. This document was part of “a dossier of 1,500 original pages obtained by the Argentine Justice System in the office and home of Arancibia in Buenos Aires, in November 1978. After years of retention in the court archives, the American journalist John Dinges obtained a copy of the invaluable five-volume compilation in January 2002 and sent it to the George Washington University National Security Archive.”<sup>26</sup>

18 Jaunarena doubted that the Council would take up the task and argued that the entire trial would be unduly prolonged, which was detrimental to the democratic transition. He then proposed to apply the presumption that “under certain hierarchies, military personnel would be considered to have acted on orders”. Horacio Jaunarena, *La casa está en orden. Memoria de la transición*, Buenos Aires: TAEDA, 2011, 33, 35. See the chapter by Gabriela Ippolito O’Donnell and María Cecilia Alegre for more details.

19 Argentines thought the transition had ended with the presidential oath, while politicians aware of the military problem differed on that point. See Carina Perelli, *Legacy of transition to democracy in Argentina and Uruguay*, in Louis W. Goodman, Joanna S. R. Mendelson, Juan Rial, eds., *The military and democracy. The future of civil-military relations in Latin America*, Lexington: Lexington Books, 1990.

20 See the chapter by Gabriela Ippolito O’Donnell and María Cecilia Alegre for more details.

21 Eduardo Estévez, *Relaciones civiles – militares y política en la Argentina: de Alfonsín a Menem*, paper presented at the Seminar “Armed Forces and Democracy”, Academia Libertad y Desenvolvimiento, Friedrich Naumann Foundation – Stiftung, Sintra, 1991.

22 See Horacio Verbitsky, “Cuentas Pendientes”, in page 12, April 13, 2014, <https://www.pagina12.com.ar/diario/elpais/1-244021-2014-04-13.html>

23 Mariana Nazar, “Debate I. Dictadura, archivos y accesibilidad documental. A modo de agenda”, at the Centre for Legal and Social Studies (CELS) (Ed.), *Human Rights in Argentina. 2007 Report*, Buenos Aires: CELS.

24 Ibid.

25 “Según EE.UU., son 22.000 los muertos o desaparecidos víctimas de la represión entre el 75 y el 78 en Argentina”, in *DERF*, December 5, 2003, [http://www.derf.com.ar/despachos.asp?cod\\_des=1770](http://www.derf.com.ar/despachos.asp?cod_des=1770)

26 Sebastián Penelli, “Documento con información oficial militar computa al menos 22.000 víctimas del Terrorismo de Estado”, in *Ámbito Financiero*, March 27, 2017, <http://www.ambito.com/877233-documento-con-informacion-oficial-militar-computa-al-menos-22000-victimas-del-terrorismo-de-estado>

On 5 January 2010, President Cristina Fernández de Kirchner (2007–2015) ordered (Decree No. 4/2010) the declassification of “all information and documentation relating to the actions of the Armed Forces during the period 1976–1983, as well as any other information or documentation produced during another period relating to those actions.”

In this new political context, the Argentine Foreign Ministry created the Association for the Recovery of Historical Memory and, in order to have technical assistance, signed an agreement with the Center for Legal and Social Studies (CELS) in June 2011.

On March 13, 2014, the Argentine Army handed over to the Ministry of Defense 7,000 folders (350 of civilians) of files from the Magdalena prison, where Jacobo Timerman and Mario Galli, among others, had disappeared.<sup>27</sup> In November of the same year, the Argentine Navy handed over to the Minister of Defense the Isaac Rojas documentary collection, mainly related to the dictatorship that ruled Argentina between 1955 and 1958. In addition, on October 31, 2016, the Head of the Argentine Air Force reported the discovery of documentation related to the operation of the Military Junta and the Legislative Advisory Commission between 1976 and 1983.<sup>28</sup>

To this end, an area was created within the National Directorate of Human Rights and International Law of the Ministry of Defense for the digitization and preservation of such documents and the digitization and preservation of such documents.<sup>29</sup> In January 2018, workers and 500 civil and trade union organizations denounced the dismantling of the area.<sup>30</sup>

Finally, on 24 March 2016, United States President Barack Obama announced during his visit to Argentina that a project would be launched to “review and declassify intelligence [and military] records on the coup d’état in Argentina and the subsequent repression”. The first round was delivered between August and December of that year, and the second, during Donald Trump’s administration in April 2017.<sup>31</sup> In addition, the Vatican State announced in 2016 that it is arranging its own archives for the purpose of declassification.<sup>32</sup>

In summary,

Beginning in 2006, courts across the country began issuing sentences for the crimes of the dictatorship. From then until December 2013, 494 convictions and 47 acquittals were handed down, that is, almost 10 per cent (...) The 541 trials concluded with a sentence accounting for only 26 per cent of the total number of cases that are ready for trial. All this shows that these are trials in which due process and the right of defense of the accused are respected and that no one is convicted without solid evidence against them.<sup>33</sup>

## LESSONS LEARNT AND RECOMMENDATIONS

As a result of these ups and downs in the trial of those responsible for state terrorism and the absence of purging laws, the denial of state terrorism persisted; the attempt to involve the Armed Forces in the internal order (for example, in the fight against drug trafficking); economic policies that follow the neoliberal matrix of the dictatorship; and judicial decisions that favored impunity for civilians and the military.

The main thing that stands out is the persistence of “entrenched authoritarian clauses”<sup>34</sup> in the intelligence and security

agencies, where – it could be argued – there has been no transition to democracy.

Regarding the national intelligence system, Decree No. 1311/2015 was adopted, which sought to modify Argentina’s intelligence doctrine, professionalize the Federal Intelligence Agency as the governing body of the National Intelligence System and make it an institution capable of meeting the challenges of the twenty-first century in the collection and analysis of strategic information for security and defense. The reform project begun in 2014 was interrupted and the government of President Mauricio Macri (2015 to present) restored the old operating model and reinstated the spies who had been thrown out of the organization.

Regarding the Federal Police (PFA), for example, Marcelo Saín<sup>35</sup> states “that this police institution, created in December 1943 and set up in January 1945, lays its institutional foundations on Law Decree 333/58 and its complementary norms”. This rule of the dictatorship of Eugenio Aramburu (1955–1958). As for the professional regime of the PFA, “it was established by Law Decree No. 21.965, promulgated in March 1979 by Lieutenant General Jorge Rafael Videla, and was regulated in 1983 by a decree signed by General Reynaldo Bignone (...) These rules and their amendments are in force, as are Law Decree No. 9,021/63 establishing the ‘Organic Law of the Argentine Federal Police Information’ and its regulations approved by Decree No. 2.322/67. By means of these norms, a true state-owned information and intelligence service was created and put into operation, not subject to any type of administrative, judicial or parliamentary comptroller.”

On the other hand, many former officials of the Dictatorship and former soldiers who rebelled during the government of

27 Victoria Ginzberg, “Papeles de la prisión”, in *page 12*, March 14, 2014, <https://www.pagina12.com.ar/diario/elpais/1-241786-2014-03-14.html>

28 At the same time, the Ministry of Defence declassified the Rattenbach Report on responsibilities in the conduct and operations of the Malvinas/Falkland war (1982) through Decree No. 200/2012, a task that was completed with the declassification of all documentation relating to the conflict (Decree No. 503/2015).

29 Argentine Republic – Ministry of Defence (2015), *Libro Blanco de la Defensa 2015*, Buenos Aires: Ministry of Defence, 278–281.

30 “Denuncian un ‘vaciamiento’ en la investigación de archivos de la dictadura”, in *Perfil*, January 18, 2018, <http://www.perfil.com/noticias/politica/denuncian-un-vaciamiento-en-la-investigacion-de-archivos-de-la-dictadura.phtml>

31 Fernando Barrio, “Trump entregó a Macri los nuevos archivos desclasificados de la Dictadura”, in *Perfil*, April 27, 2017, <http://www.perfil.com/noticias/perfil-usa/trump-entrego-a-macri-los-nuevos-archivos-desclasificados-de-la-dictadura.phtml>. By 2002, the United States had already declassified 4,700 secret State Department files. This was the result of a request made by the CELS, the Mothers and Grandmothers of Plaza de Mayo to the United States government in 1999. See Werner Pertot, “Nuevos secretos pueden salir a luz”, in *page 12*, March 18, 2016, <https://www.pagina12.com.ar/diario/elpais/1-294874-2016-03-18.html>

32 “El Vaticano también desclasificará sus archivos secretos sobre la dictadura argentina”, in *Infobae*, March 19, 2016, <https://www.infobae.com/2016/03/19/1798315-el-vaticano-tambien-desclasificara-sus-archivos-secretos-la-dictadura-argentina/>

33 See Horacio Verbitsky, “Cuentas Pendientes”, in *page 12*, April 13, 2014, <https://www.pagina12.com.ar/diario/elpais/1-244021-2014-04-13.html>

34 The concept is used by Manuel Garretón to refer to the transition to democracy in Chile. See Manuel Garretón, *Incomplete Democracy*, Chapel Hill: University of North Carolina Press, 2003.

35 Marcelo Saín, “Los intocables”, in *page 12*, January 26, 2010, <https://www.pagina12.com.ar/diario/elpais/1-139049-2010-01-26.html>

TABLE NO. 1	
Memory, Truth and Justice	Impunity
Decrees 157/1983 and 158/1983 order the trial of the guerrilla leaders and the dictatorship.	Full Stop Law No. 23.492: establishes the statute of limitations for criminal prosecution of those responsible for crimes committed during the last dictatorship.
Decree No. 187/83: creation of the National Commission on the Disappearance of Persons (CONADEP),	Due Obedience Law No. 23.521: establishes the criminal responsibilities of those involved in the genocidal plan between 1976 and 1983 according to the three-tier criterion.
Law No. 23.040: repeals Law No. 22.924 on self-amnesty.	Decrees No. 1002, 1003, 1004 and 1005 of 1989, and 2741, 2742, 2743, 2744, 2745 and 2746 of 1990: pardons to the former military leaders of the last dictatorship, former ERP guerrillas and Montoneros, to the commanders who led the Malvinas/Falkland war (1982), to the former Minister of the Economy, Alfredo Martínez de Hoz and to the military rebels who rose up against democracy between 1987 and 1988.
Law No. 23.049: modifies the Code of Military Justice, which allowed, inter alia, for appeals to the civil courts.	Decrees Nos. 1228, 1229 and 1230 of 2003: pardons for the former military officer who had risen up against democracy in 1989 and 1990, Mohamed Ali Seineldin, and for former guerrillas, including one of the leaders of the MTP and ERP, Enrique Gorriarán Merlo.
Defense of Democracy Law No. 23.077: increases the penalties for those who depose the public authorities and for those who participate in an armed organization that endangers the validity of the National Constitution.	
Law No. 23.952: repeals Laws No. 23.492 and 23.521.	
Law No. 25.779: declares Laws No. 23.492 and 23.521 insanely null and void.	
Law No. 26.475: declares extinguished the benefits obtained by officials of the last dictatorship and granted under special regimes or laws.	

Source: own creation.

Raúl Alfonsín and returned to office during the democracy can be highlighted: a) José María Lladós was an official of the General Secretariat of the Presidency during the dictatorship and again assumed the positions in the Ministry of Defense during the radical governments (1983–1989 and 1999–2001);<sup>36</sup> b) Domingo Cavallo was Director of the Central Bank (1982) and later Minister of the Economy (1991–1996 and 2001), Foreign Minister (1989–1991) and National Deputy (1987–1989 and 1997–1999); c) Oscar Camilión was Foreign Minister in 1981 and Minister of Defense during the democracy between 1993 and 1996; d) Antonio Horacio Stiusso was a spy for the Secretary of State for State Intelligence during the dictatorship (1972–1976), he became Director of Counterintelligence at the beginning of the 21st century and was only displaced in 2014; e) Francisco Miret was one of the investigating judges who rejected the *habeas corpus* of the relatives, he became a member of a chamber during the democracy until he was suspended by the Judicial Council in 2010; f) Aldo Rico was leader of the “carapintadas” uprisings in 1987 and 1988 and was Minister of Security of the Buenos Aires Province (1999–2000), National Deputy (1991–1995) and Intendant of the Municipality of San Miguel (1997–2003); g) Juan José Gómez Centurión was a military rebel “carapintada” in 1987 and 1988 and was appointed head of Customs (2015–2017), vice-president

of the Banco de la Nación Argentina (2017–2018) and president of the same body since May 2018;<sup>37</sup> and f) Christian Von Wernich was police chaplain of the Buenos Aires Province and convicted of crimes against humanity. He was expelled from the police force in 1985 but continued serving in Bragado (Buenos Aires Province) and in Chile until he was arrested.

The possibility of implementing norms to purge the state of authoritarian government officials will depend on the type of transition and its socio-political context and requires political agreement among the main political parties, which did not occur in Argentina in 1983. Firstly, because the parties perceived the transition differently and, secondly, because many of the members of those parties – mainly radical and other smaller parties – held positions during the dictatorship.

36 See Paula Canelo, *La política secreta de la última dictadura argentina (1976–1983)*, Buenos Aires: Edhasa, 2016, 153.

37 Radicalism has appointed “ex-carapintadas” and military officials who were objected to by human rights bodies in the Ministry of Defence between 1999 and 2001 and from 2015. See Alejandra Dandan, “Militares retirados que se reciclan en cargos de defensa”, in *page 12*, February 1st, 2017, <https://www.pagina12.com.ar/diario/elpais/1-291548-2016-02-01.html> and Horacio Verbitsky, “Nuevas/Viejas Amenazas”, in *page 12*, undated, <https://www.pagina12.com.ar/2001/01-02/01-02-25/pag11.htm>

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# INVESTIGATION AND PROSECUTION OF THE CRIMES OF THE REGIME

MARÍA CECILIA ALEGRE AND GABRIELA IPPOLITO-O'DONNELL

## INTRODUCTION

From 1976 to 1983 Argentina experienced the most brutally repressive dictatorship of its entire history: the *Proceso de Reorganización Nacional* (Process of National Reorganization), as the military named the authoritarian experiment.<sup>1</sup>

During the seven years that the dictatorship lasted, a carefully designed strategy of repression was put into effect. This strategy included forced disappearances, torture in clandestine centers of detention, kidnapping children, expropriation of private property, and murder of those considered opponents to the regime. The *Proceso de Reorganización Nacional* (hereafter PRN) aimed at the eradication of left-wing guerrilla groups, as well as of all political and social groups committed to democracy. In addition to sheer repression, the PRN implemented a neoliberal economic program aimed at entirely changing the political economy of the country and, in so doing, disciplining workers and lower class citizens by reversing previously acquired social rights.

In 1982, economic mismanagement and the mobilization of human rights organizations, parties and unions led the dictatorship to embark on the Malvinas/Falkland war against Great Britain in a desperate attempt to regain some legitimacy. Two days before Argentina invaded the Malvinas/Falklands Islands, the dictatorship faced a massive mobilization and a general strike. The demise of the Malvinas/Falkland war on June 14 of 1982 precipitated the collapse of the dictatorship and triggered a rapid transition to democracy.

## THE 1983 ELECTION AND THE LEGAL CONDITIONS OF INVESTIGATION OF POLITICALLY MOTIVATED CRIMES

After a very short period of liberalization,<sup>2</sup> the PRN convoked the celebration of national free and fair elections on October 30 of 1983. Before the elections, on March 23 of 1983, and in the absence of a broad agreement of PRN with opposition forces to manage the transition process, the military passed Law 22.924, which exonerated them from all responsibilities for human rights violations. This law is known as the Self-Amnesty Law (*Ley de Autoamnistía*). The military also enacted a secret decree that ordered the destruction of records and other evidence of their past crimes.

During the electoral campaign, human rights violations committed by the PRN became a central issue of debate. The two main candidates running for the presidency Raúl Ricardo Alfonsín of the UCR (Unión Cívica Radical) and Italo Luder of the PJ (Peronist Party) adopted very different positions on the issue. One month after the PRN announced the Self-Amnesty Law, on April 25 of 1983, the UCR candidate Raúl Ricardo Alfonsín denounced the law, claiming that it was part of a broader impunity

pact between the military and union leaders closely linked to the Peronist Party. Even without proof of such a pact, the position expressed by Italo Luder, the Peronist Party Presidential candidate, stressing that the Self-Amnesty Law “was irreversible”, seemed to confirm its very existence. In September of 1983, in a crowded political meeting at the Ferro soccer Club Stadium, the UCR presidential candidate Alfonsín promised that, once in government, he would declare null the Self-Amnesty Law.

## CRIMINAL PROSECUTION OF THE CRIMES OF THE PREVIOUS POWER: THE RETURN OF DEMOCRACY

The UCR candidate Raúl Ricardo Alfonsín won the election with a 52 % share of the votes on October 30 of 1983 and took power on December 10. As promised during the campaign, the new government began to deal with the issue of human rights violations by revising the activities of the dictatorship. As soon as President Alfonsín assumed power, he repealed the Self-Amnesty Law and reformed the Military Code (with the agreement of Congress) expecting the military themselves to give an account of past human rights abuses by way of military tribunals, something that did not occur. The military commanders argued that they had followed orders to exterminate the left-wing guerrilla, orders that had been signed by the democratic constitutional government of President Isabel Perón in 1975, before the military coup of 1976. As a consequence of the military's resistance to give an account of their actions through military tribunals, the newly elected democratic government undertook an unprecedented task: to establish a National Criminal Court of Appeals, and put the top commanders of the PRN on trial. The trials were made possible due to a comprehensive investigation carried out by the National Commission for Disappeared Persons (CONADEP – Comisión Nacional de Desaparición de Personas), a special commission established by a presidential decree on December 15, 1983.<sup>3</sup>

The CONADEP commission was formed by a plural broad-based group of personalities among them Eduardo Rabossi, Gregorio Klimovsky, Hilario Fernández Long, Marshall Meyer, Ricardo Colombres, Monsignor Jaime de Nevares, Magdalena Ruiz Guiñazú, René Favaloro, and Carlos Gattinoni. World-known writer Ernesto Sabato chaired the commission.

The CONADEP worked with human rights organizations, political parties, and other political and social groups, which were already involved in investigating state terrorism during

1 For a comprehensive review of those years see Guillermo O'Donnell (2008).

2 O'Donnell et al. 1986.

3 Comisión Nacional sobre la Desaparición de Personas, Decree 187/83, 15. 12. 1983, <http://www.derechos.org/ddhh/arg/ley/conadep.txt>

the dictatorship, to elaborate a special report. The report produced by the commission was titled NUNCA MAS (Never Again) and compiles (in 50,000 pages) a significant number of cases of human rights violations, torture, disappearances and murders, and served as the basis for the trial of the military Juntas.<sup>4</sup> The report registered 8,961 individuals who were disappeared and 380 clandestine centers of detention and torture.

On April 22 of 1985, the trial of the military Juntas began. The main prosecutors were Julio César Strassera and his assistant Luis Moreno Ocampo. The trial was presided over by a tribunal of six judges: León Arslanián, Jorge Torlasco, Ricardo Gil Lavedra, Andrés D'Alessio, Jorge Valerga Aráoz, and Guillermo Ledesma. Prosecutors presented 709 cases, of which 280 were heard. A total of 833 witnesses testified during the cross-examination phase, which lasted until August 14. After several months of allegations, it became clear that the PRN had implemented a systematic and well-design repression plan. For this reason, the members of the three first military Juntas that had governed the country were found guilty.<sup>5</sup> Sentencing was issued on December 9. General Jorge Videla and Admiral Emilio Massera were sentenced to life imprisonment; General Roberto Viola to seventeen years; Admiral Armando Lambruschini to eight years; and General Orlando Agosti to four and a half years. Omar Graffigna, Leopoldo Galtieri, Jorge Anaya and Basilio Lami Dozo were acquitted, but later the three were court martialed for malfeasance in waging the Malvinas/Falkland war of 1982.

The Argentina military Juntas trial is the only case of transitional justice undertaken by civilian courts in Latin America. Also, it was the first major trial held against military commanders since the Nüremberg Trials in Germany following World War II. It is worth noting, that in contrast to the Nüremberg Trials, in Argentina, the process did not involve the participation of any foreign power.

The CONADEP report, allegations during the Juntas trial, and the Self-Amnesty law being repealed, opened the possibility to extend the trials to lower ranking officers involved in PRN repression. In 1986 new trials began to unfold, which generated a state of rebellion among lower ranking military officers. President Alfonsín had to confront three separate military upheavals between 1987 and 1988. This forced the new government to propose to Congress two new Laws to limit the number and scope of trials, and settle the matter once and for all: the *Punto Final* and the *Obediencia Debida* laws.

The *Punto Final* law (Final Point Law 23.492)<sup>6</sup> was passed on December 24 of 1986, and mandated the end of investigation and prosecution of individuals accused of political violence during the dictatorship, up to the restoration of democratic rule on December 10, 1983. It was passed after only a 3-week debate. The *Obediencia Debida* law (Due Obedience Law 23.521)<sup>7</sup> was passed a year later and exempted subordinates from prosecution when they were carrying out orders. Both laws were very controversial and hurt the legitimacy of the government, but they decreased unrest in the military and prevented a democratic breakdown.

## DEMOCRATIC CONSOLIDATION AND THE ENDLESS STRUGGLE FOR TRUTH, MEMORY AND JUSTICE

Between 1989 and 1991, under the Presidency of Dr. Carlos Saúl Menem of the PJ (Peronist Party), civic-military relationships

would change drastically. President Menem sanctioned ten decrees to grant pardons to all participants involved in actions of state terror during the dictatorship. Furthermore, in 1998 the *Punto Final* and the *Obediencia Debida* laws were repealed.<sup>8</sup> The military were totally demobilized by these decisions.

On August 12, 2003, under the Presidency of Dr. Néstor Kirchner of the PJ (Peronist Party) a new law (25.779) superseded the *Punto Final* and *Obediencia Debida* laws as well as the pardons previously issued by President Menem.<sup>9</sup> Starting in 2005, by a Supreme Court decision, any action framed under the figure of “state terror” became a crime against humanity and imprescriptible. These decisions allowed many cases of human rights violations by the PRN to be reopened. President Néstor Kirchner also changed the extradition policy, allowing extradition for people prosecuted abroad and not facing charges in Argentina. In 2003, Argentina became a signatory of the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity. A creative interpretation of the convention by the courts allowed them to circumvent the statutory limitations to crimes committed decades in the past, and also the *ex post facto* applicability of laws that were not in force at the time of the crimes.

Today the trials continue. In 2016, a court convicted 15 officials of conspiring to kidnap and assassinate dissidents during the US-backed Operation Condor, which killed 60,000 to 80,000 people in six Latin American nations from 1975 to 1989. As recent as November of 2017, a court sentenced 29 former soldiers for crimes against humanity, 19 of them received between 8 and 25 years, 6 were acquitted. Two of the officers received life sentences for piloting the so-called death flights, in which individuals were tortured, then drugged, and then killed, by being thrown out of airplanes into the river or sea. Among the victims were two French nuns abducted in December of 1977.

However, the most resonant recent cases are those of Alfredo Astiz, known as the “Blond Angel of Death,” and Jorge Acosta, nicknamed “The Tiger,” who also received life sentences for several crimes, including the 1977 disappearance of the 17-year-old Swedish citizen Dagmar Hagelin. Courts had already sentenced both men to life in prior trials. In spite of these achievements, in early 2017 the Supreme Court decreased jail time for human rights abuses, awakening fears of a regression.

It is worth noting as a way of closing, that the courts have begun to deal with the civilian accomplices of the PRN. A former Ford factory director and an ex-security officer are accused of conspiring with security forces to target workers at Ford’s suburban factory, north of the Argentine capital in 1976. According to the prosecution, they provided names, ID numbers, pictures and home addresses to military officials who then abducted 24 factory employees and union members. The victims were allegedly

4 Code of Military Justice, Law 23.049, 9. 2. 1984, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm>

5 The PRN had four military Juntas, but only the first three were set to trial.

6 Final Point Law 23.492, 23. 12. 1986, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=21864>

7 Due Obedience Law 23.521, 8. 6. 1987, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=21746>

8 See Law 24.952, 25. 3. 1998, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=50364>

9 See Law 25.779, 21. 8. 2003, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm>

subjected to hours of torture, electric shocks and interrogation on the factory premises in the suburb of General Pacheco before being hauled off to military prisons.<sup>10</sup>

## LESSONS LEARNT AND RECOMMENDATIONS

In the field of transitional justice, Argentina is an exceptional case. Never before in the history of the country, or any country in Latin America, has a civilian court put on trial military commanders accused of crimes against humanity. The experience of Argentina has not been one of reconciliation, but one of truth, memory and justice. For this reason, even today, the trials continue here and there. The identification of the perpetrators by their victims and their families is an ongoing process. Democratic institutions, fragile as they still are in many respects, have endured the many attempts by the perpetrators and their ideological supporters to stop the process of investigation and prosecution of state terrorism. It has not been an easy process; advances and setbacks are intertwined.

There are several lessons to learn from Argentina's transitional justice process. There are three aspects to take into account for an evaluation of the process as a whole: leadership, political opportunities, and organization.

First, it is clear that much of what has been achieved in terms of truth, justice and memory has depended upon the commitment of leaders, especially of Presidents, to the cause of human rights. President Alfonsín and President Kirchner were

definitely committed to condemn state terrorism. But leaders do not act in a vacuum; the political opportunities they face are also part of the equation of their eventual success or failure. This is a second aspect to take into account. President Alfonsín faced a very complex political environment to fully implement a policy of investigation and prosecution of crimes; he had to sustain some important setbacks. The military still had, at the time, significant power of retaliation. This contrasted sharply with the most favorable environment President Kirchner faced to reverse the policies implemented in favor of the military by President Menem, and make further advances in search of memory, truth and justice.

Third, leadership and favorable political opportunities are not the only factors that count for the successful implementation of a transitional justice strategy. As the case of Argentina shows, a dense civil society, highly mobilized for the cause of human rights, is a crucial aspect for success. Human rights organizations, domestic and international, as well as individual advocates have been fundamental in establishing synergies with other groups in government (all three branches, Executive, Judicial and Legislative) and in society to sustain collective action against impunity. The main recommendation is thus to consider these three aspects when designing a strategy of transitional justice.

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10 Natalie Muller, "Argentina: Ex-Ford executives on trial for aiding 1970s dictatorship torture", in *Deutsche Welle*, 19. 12. 2017, <https://www.dw.com/en/argentina-ex-ford-executives-on-trial-for-aiding-1970s-dictatorship-torture/a-41857423>

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# REHABILITATION OF VICTIMS

SOFÍA DEL CARRIL

## INTRODUCTION

Rehabilitating the victims of Argentina's *Proceso de Reorganización Nacional*<sup>1</sup> was not at the top of the agenda when the transition took off in 1983. Almost 35 years later, however, the country has amassed a broad legal framework to rehabilitate the victims and their families, with a focus on economic reparations.<sup>2</sup>

Yet this has not followed a linear path, and to understand the legal framework and its implementation we need to take into account political, social and economic factors. Especially important are the challenges faced and the decisions taken at the political and judicial level, which are covered in other chapters of this study on the Argentina case.

This chapter will explore the scope and typology of rehabilitation, as well as its historical context. A second section will detail the reparation's legal framework in chronological order; the focus is on economic reparations. Information about the implementation and social satisfaction will be provided, when available. We will then briefly describe the Argentine human rights movement. Finally, we will draw lessons learnt and make recommendations for similar situations around the world.

At all times, this chapter should be read along with other sections of the Democratic Transition Guide, especially the Transformation of the Political System, Investigations and Prosecutions of the Crimes of the Regime, and Education and Preservation of Sites of Conscience chapters.

## SCOPE AND TYPOLOGY OF REHABILITATION

During the 20th century, political violence in Argentina left a large amount of victims. For the purpose of this report, we will focus on the violence which occurred in the 1970s and early 1980s.

After the military defeat of the Malvinas/Falkland war, the country slowly started its transition. Raul Alfonsín, a candidate from the Radical Party, won the 1983 presidential election by 52 % of the votes; his campaign platform included measures to address the atrocities of the past.

Shortly after his December 10, 1983 inauguration, President Alfonsín issued decree 187/1983 mandating the creation of a sixteen-member commission, the National Commission on Disappeared Persons ("CONADEP" in Spanish). An extra judicial body, the CONADEP was tasked with "shedding light to the facts relating to the *disappearances* of people in Argentina."

It is important to note that its central mandate pertained to enforced disappearances, but not all crime committed by the Junta. Also, that the CONADEP was contested by social and political actors, which pushed for other alternatives.

Following an extensive investigation, which included several thousand testimonies, numerous interviews, and site-visiting, on September 18, 1984 the CONADEP released its final report,

*Nunca Más* ("Never Again"). Needless to say, the Commission faced several dilemmas and made crucial interpretative decisions.<sup>3</sup>

The CONADEP estimated an "open" number of 8,960 disappeared, based on complaints and information cross-checked with national and international human rights organizations. The Never Again report was also a milestone because it shed light on the institutional and systematic character of enforced disappearances, identified those responsible making reference to other actors besides the *Junta* and recommended an exhaustive investigation on others, who were not high-rank leaders.<sup>4</sup>

The final report made four key recommendations pertaining to justice and the enactment of new legislation. In particular, it recommended:

*"[t]hat the appropriate laws be passed to provide the children and/or relatives of the disappeared with economic assistance, study grants, social security and employment and, at the same time, to authorize measures considered necessary to alleviate the many and varied family and social problems caused by the disappearances."*<sup>5</sup>

Only two days after the report was presented, the Undersecretariat of Human and Social Rights was created, under the orbit of the Ministry of the Interior.<sup>6</sup> It would be a key player, following and systematizing the information exposed in the *Nunca Más*, being the custodian of the CONADEP archives and receiving new complaints.<sup>7</sup>

## DEFINING THE UNIVERSE OF VICTIMS

First and foremost, in this document we will mainly refer to the victims of the crimes perpetrated by the *Military Junta* – the dictatorship that ruled Argentina from March 24, 1976 to December 9, 1983. That is, to victims of State-sanctioned atrocities.

1 From March 24, 1976 to December 10, 1983. Also referred in this chapter as the Junta, the Military Junta, the Dictatorship.

2 María José Guembe, "La experiencia argentina de reparación económica de graves violaciones de derechos humanos", CELS, 1994, 1.

3 Emilio Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", in *Naveg@américa. Revista electrónica de la Asociación Española de Americanistas* [online], 2011, vol. 6, 7.

4 Emilio Crenzel, Ideas y Estrategias ante la violencia política y las violaciones a los derechos humanos en la transición política en Argentina, in Claudia Feld, Marina Franco, eds., *Democracia, hora cero. Actores, política y debates en los inicios de la postdictadura*, Buenos Aires: Fondo de Cultura Económica, 2015, 106.

5 *Nunca Mas* Report, CONADEP, 1984. English version available at: [http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain\\_000.htm](http://www.desaparecidos.org/nuncamas/web/english/library/nevagain/nevagain_000.htm)

6 Guembe, 2.

7 Ibid. As the author notes, the Undersecretariat changed its rank over time. Shortly after its creation it was transformed into a national direction. Nowadays, the Secretary of Human Rights and Cultural Pluralism is part of the Ministry of Justice and Human Rights.

There are other victims, such as those of the para-police organization Triple A (prior to the 1976 military coup), and of guerrilla organizations such as Montoneros and ERP. The acknowledgment and treatment, and the status of these victims are a widely debated issue in Argentina, then and now. As we will see in the next section, certain victims prior to the beginning of the Dictatorship have slowly started to receive compensations.

The Military Junta produced numerous types of victims. In this report, we will focus on certain crimes. Firstly, assassinations by State forces, often in “fake” confrontations, whose remains have been identified and returned to their families. Secondly, *desaparecidos* or disappeared, individuals assassinated by the government, but whose bodies have never been found. It must be noted that the concept of disappeared also includes individuals that were held prisoners at Centros Clandestinos de Detención (*clandestine detention centers*), but were later freed.

Prisoners were overwhelmingly subject to torture and inhumane treatments. Another grave crime was the appropriation and identity substitution of babies born to women held as prisoners. Finally, the Junta also applied labor-related sanctions to political opponents, such as layoffs and suspensions.

The notion of *victim* is a social and historical construction,<sup>8</sup> and the legal framework helps settle the contours of such construction, from the State’s standpoint. Besides ‘direct’ victims, it must be noted that families and other relatives were strongly affected. In this sense, the CONADEP report included a section called “The family as a victim”:<sup>9</sup>

*It is a feature of the disappearance syndrome that the stability and structure of the family of the person who disappears is profoundly affected. The arrest (generally carried out in the presence of the family or of people connected to the family); the anxious search for news at public offices, law courts, police stations and military garrisons; the hope that some information will arrive, the fantasy of a bereavement that is never confirmed; these are factors that destabilize a family group just as much as the individual members. Behind each disappearance, there is often a family that is destroyed or dismembered, and always a family that is assaulted in what is most intimate: its right to privacy, to the security of its members, and to respect for the profoundly affectionate relations that are the reason for its existence.*

## LEGAL FRAMEWORK OF THE REHABILITATION<sup>10</sup>

### 1984–1987: THE BEGINNING: LABOR-RELATED MEASURES

With the democratic transition, a series of laws were enacted with the aim to resolve the situation of workers that had been fired during the Dictatorship.<sup>11</sup> As María José Guembe notes, specific groups, independent from public opinion pressure, enacted this first set of laws upon direct pressure.<sup>12</sup> In 1984, two laws were enacted. Passed in February, Law 23.053 mandated the re-incorporation of Foreign Service employees that had been suspended.<sup>13</sup> Later, a similar law was enacted applying to state companies’ workers that had been laid off.<sup>14</sup>

Between 1985 and 1987, several laws were further enacted, pertaining to teachers and bank employees.<sup>15</sup> In September 1985,

Law 23.2781 was passed, with important effects. The law mandated that the “inactivity period” due to the dictatorship (being suspended, fired or forced to quit, or being forced to exile) should be counted for retirement purposes.<sup>16</sup>

As Guembe notes, in that time, political detainees began bringing their cases to justice, seeking reparations.<sup>17</sup> This led to the first discussion on general reparations within the judiciary power and the human rights movement.<sup>18</sup>

### 1986: PENSIONS FOR FAMILIES OF THE DISAPPEARED

In late 1986, Congress approved Law 23.466, creating a package of benefits for families of those disappeared before December 10, 1983, in line with CONADEP recommendations. This benefited underage children as well as spouses or partners and other close family members, which were in charge of the disappeared. The ‘package’ included a pension of approximately USD \$200 per month and medical coverage.<sup>19</sup>

Pablo de Greiff points out that the law was aimed more at responding to the situation of widows and children of the disappeared, rather than satisfying legal criteria on proportional compensations to the damages suffered by them.<sup>20</sup> As Guembe notes, this had to do with the financial problems that human rights organisms were suffering, since before 1986, they were the main providers of resources to the families of the disappeared.<sup>21</sup>

### 1991: COMPENSATIONS FOR POLITICAL PRISONERS

The late 1980s found Argentina coping with the effects of the *Juicio a las Juntas*, with military coup attempts and the enactment of norms that limited the scope of transitional justice, namely the *Punto Final* and *Obediencia Debida* laws.

As De Greiff notes, the situation made no place for a focus on reparations.<sup>22</sup> Along the same line, María José Guembe argues that the priority was the search for *truth and justice*.<sup>23</sup> Further, at the end of this decade, an acute economic and political crisis shook Argentina, and President Alfonsín had to call for early presidential elections. He was replaced by Carlos Menem, of the Peronist Party.

Several reasons, on the domestic and regional level, pushed Argentina’s executive and legislative power to grant reparations.

8 Emilio Crenzel, “Verdad, justicia y memoria. La experiencia argentina ante las violaciones a los derechos humanos de los años setenta revisada”, in *Telar*, 2015, vol. 13–14, 63.

9 *Nunca Mas* Report.

10 Legal framework will focus on national level norms. Argentina has a federal system, and several provinces have enacted specific laws.

11 Guembe, 3.

12 *Ibid.*

13 In Spanish, “declarados prescindibles.”

14 Law 23.117 (1984).

15 Laws 23.238 (1985) and 23.523 (1987).

16 Guembe, 3.

17 *Ibid.*, 3 and 4.

18 *Ibid.*

19 Pablo de Greiff, “Los esfuerzos de reparación en una perspectiva internacional: el aporte de la compensación al logro de la justicia imperfecta”, in *Revista Estudios Socio-Jurídicos*, 2005, vol. 7 (Esp), 166.

20 *Ibid.*

21 Guembe, 5.

22 De Greiff, 167 and 168.

23 Guembe, 5.

First, as is covered in other chapters of this study, between 1989 and 1991, when President Menem issued a series of decrees pardoning military officers and former guerilla members.

In this context of impunity, human rights organizations and families brought their cases to the Inter-American system, where Argentina's state responsibility was contested. This pushed President Menem, himself a former political prisoner, to issue decree 70/91 in January of 1991. The decree granted compensations to individuals, which were detained by authorities before December 10, 1983 and which had started a judicial process against the State before December 10, 1985.<sup>24</sup>

The benefit was calculated according to the number of days the prisoner spent detained. The reparation was of approximately USD \$27 per day at that time.<sup>25</sup> It also stipulated a one-time compensation for the families of political detainees that died while in prison and for those detainees that suffered "grave" injuries (approximately, USD \$46,275 and USD \$34,492 respectively).<sup>26</sup>

Later that year, in November 1991, Congress passed Law 24.043, which considerably expanded the reparations granted by decree 70/91.<sup>27</sup> The law granted economic reparation per day of detention to people detained under the custody of the Executive power or civilians detained by virtue of military tribunals' decisions. It was granted to political detainees between November 6, 1974 (when *the state of siege* was declared under the presidency of Isabel Martínez de Perón) and December 1983.<sup>28</sup> As De Greiff points out, the structure of the reparations was similar to the decree's, yet the economic benefits were larger.<sup>29</sup> Reparation per day of detention jumped to USD \$74.50 and reparations for individuals which died or suffered grave injuries in prison were set in USD \$136.254 and USD \$94.490 respectively.<sup>30</sup>

Victims and their families were given until 1998 to make filings, although this was later extended. 13,600 requests were received, and approximately 7,800 were granted.<sup>31</sup> Further, Law 24.043 introduced a new payment method: Argentine sovereign bonds.<sup>32</sup>

## 1994: COMPENSATIONS FOR ENFORCED DISAPPEARANCES AND ASSASSINATION VICTIMS

In 1994, Argentina's constitution was reformed and several human rights declarations and treaties were granted "constitutional" level. Further, in mid-1994, the general assembly of the OAS approved the Inter-American Convention on Enforced Disappearance of Persons.

Later that year Congress passed Law 24.411 which established compensation for victims of enforced disappearance and of assassination by armed security, and any other paramilitary forces. De Greiff explains that the law was not a product of the pressure of civil society and was passed without much debate.<sup>33</sup> Yet, Law 24.411's wording lacked operative clauses, and thus three years later, in 1997, it was amended, after an intense debate, by Law 24.823.<sup>34</sup> One of the key contentious points had to do with the *status* of the disappeared.

The law had ample scope, granting compensation for individuals that had been victims of enforced disappearances (at any point in time), and that were still disappeared at the moment the law was promulgated (May 23, 1997),<sup>35</sup> and also for those assassinated by security forces, in both cases before December 10, 1983.

The reparation was tied to the monthly salary of the highest level in the administration, by a coefficient; this was approximately

USD \$220.000 at that time.<sup>36</sup> Filings were made for 3,151 assassinated and 8,950 disappeared individuals.<sup>37</sup> Again, the reparations were issued in sovereign bonds.<sup>38</sup>

Although covered in other sections of this report, it must be noted that in the mid-1990s a legal maneuver by human rights group started to succeed. *Abuelas de Plaza de Mayo's* lawyers argued that because the crime of kidnapping minors, and changing their identities, had not been covered by amnesty laws, they could be brought to justice.<sup>39</sup> *Junta* leaders Videla and Massera were detained for charges connected with these crimes. Both the impunity granted to the Military Junta and the character of minors as victims were again a subject of discussion.

## CURRENT STATUS: NEW SOCIAL ACTORS AND EXPANSION OF REPAIRS

The early 2000 saw new judicial developments, with the landmark case Simón, later ratified by the Supreme Court. In 2003 Néstor Kirchner was elected president, and he quickly incorporated the human rights discourse into his platform.

Enacted in 2004, Law 25.914 established reparations for individuals born during their mother's captivity and to minors detained with their parents before December 10, 1983. As in other laws, in exchange, beneficiaries could not sue the State for damages in connection with these crimes. Further, the law mandated special compensation for those individuals whose identity had been changed. These victims would receive a compensation equivalent to the one granted by law 24.411 for disappeared and assassinated individuals.<sup>40</sup> Law 25.914 beneficiaries received their compensations in cash.

It is important to note that in 2004 the Supreme Court ruled a case and interpreted the concept of *detention*.<sup>41</sup> In this sense, the Court linked restrictions to freedom of movement, with the notion of *ostracism* associated with exile. Thus this reparation is also available to those individuals, which were forced to exile.

24 De Greiff, 169.

25 Ibid.

26 Ibid.

27 Ibid., 170.

28 As amended in 1997 by Law 24.906.

29 De Greiff, 170.

30 Ibid.

31 Ibid., 171.

32 Ibid. Águeda Goyochea, Mariana Eva Pérez, Leonardo Surraco, "Definiciones del universo de víctimas desde el Estado post0-genocida: la invisibilidad de los hijos de desaparecidos y asesinados como sujetos de derechos," working paper, 2011, 11.

33 De Greiff, 172.

34 Ibid.

35 Thus, it excluded as beneficiaries those individuals which were disappeared but later where freed, among others. See De Greiff, 173.

36 Emilio Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", 13. Economic reparations were not welcomed by some key players of the Human rights movement, namely the Mothers of Plaza de Mayo Association. See Goyochea, Pérez and Surraco, 14. Compensations were often split among the disappeared children.

37 Crenzel, "Veinticinco años de democracia en Argentina, un balance desde los derechos humanos", 13.

38 De Greiff, 173.

39 Kathryn Sikkink, *The Justice Cascade. How Human Rights Prosecutions are Changing World Politics*, New York: Norton, 2011, 77.

40 It also included more reparations in the case of injuries, for example.

41 Argentine Supreme Court, case *Vaca Narvaja de Yofre*, 2004.

In 2009, Law 26.564 expanded the benefits of Laws 24.043 and 24.411 to individuals that were detained, disappeared or assassinated between June 16, 1955 and December 9 1983. June 16, 1955 marks the beginning of the *Revolución Libertadora*, a coup, which ended with Juan Perón's second presidential mandate.

Finally, in 2013 Congress passed Law 26.913, granting a *pension* to individuals that have been detained due to political, labor or student-related causes, until December 1983. The law was implemented in 2014. Nowadays, the monthly sum is of approximately USD \$480.

## SOCIAL SATISFACTION

Victims and their families have widely made use of the legal framework described above, although public information regarding this is not available. As of 2016, over 27,000 case files based on the legal framework described above were reportedly being processed by the Human Rights Secretariat.<sup>42</sup>

It is important to note several criticisms reparations and its implementation have drawn:

- **High costs of the process:** Both at the economic and symbolic level. As Goyochea, Pérez and Surraco note with regard to the reparations granted by Law 24.411, in order to obtain them, families needed to start both a judiciary and an administrative process.<sup>43</sup> To do this, families had to hire lawyers and, in many cases, brokering agents, since reparations were paid in sovereign bonds.
- **Sovereign bonds as payment:** Families were affected by sovereign bonds' loss of value during Argentina's frequent economic crisis,<sup>44</sup> especially when the national currency was abruptly un-pegged from the US dollar in 2001.
- **Reluctance to accept economic reparations:** Some organizations such as *Madres de Plaza de Mayo* have criticized economic reparations and refused to cash them.<sup>45</sup> They strongly reject "setting a price to the lives of our daughters and sons."
- **Limits of economic reparations:** Often, economic reparations were not enough to rehabilitate victims, many of them coping for example with trauma effects.<sup>46</sup>
- **Scope of reparation to minors:** Reparations to minors have been questioned, and for instance Goyochea, Pérez and Surraco argue that they should be granted not only to those directly affected by the repression as Law 25.914 mandates.<sup>47</sup>

## ORGANIZATIONS OF FORMER VICTIMS

As its history of political violence goes back in time, the country has human rights organizations dating back to the early 20th century, such as *La Liga Argentina por los Derechos del Hombre*. At the beginning of the Dictatorship, it also had other organizations such as the Permanent Assembly for Human Rights and the Ecumenical Movement for Human Rights (both dating from the mid-1970s).<sup>48</sup>

Yet the majority of the organizations were founded after the coup in 1976.<sup>49</sup> As Kathryn Sikkink writes, after failed solitary searches for their loved ones, family members of the disappeared created new human rights organizations.<sup>50</sup> In 1977, *Madres de Plaza de Mayo* and *Abuelas de Plaza de Mayo* were created. Along with these two groups, another set of groups started developing, or increasing, their activity over time, such as CELS, SERPAJ

and the Permanent Assembly of Human Rights.<sup>51</sup> All of these groups faced repression, and some of their members were even disappeared – such as *Madres'* founder Azucena Villaflor – or imprisoned.<sup>52</sup>

As Sikkink notes, human rights groups started developing connections with international organization, such as Amnesty, regional bodies like the Inter-American Commission, and foreign governments such as the United States under Jimmy Carter's administration.<sup>53</sup> They were especially active pushing for and cooperating with the landmark country visit by the Inter-American Commission in 1979.

Argentina's human rights movement played a key role in the country's transition, activating mobilization, making complaints, and advocating to national and international actors. As Elizabeth Jelin puts it, the most relevant feature of the human rights movement during the early years of the transition was its ability not only to accept or reject, but to *create and build* political opportunities.<sup>54</sup>

Among the most important human rights organizations, we can identify:

- *Liga Argentina por los Derechos del Hombre* (1937)
- *Asamblea Permanente para los Derechos Humanos* – APDH (1973)
- *Servicio Paz y Justicia* – SERPAJ (1974)
- *Movimiento Ecuménico por los Derechos Humanos* (1976)
- *Familiares de Desaparecidos y Detenidos por Razones Políticas* (1976)
- *Madres de Plaza de Mayo* (1977)<sup>55</sup>
- *Abuelas de Plaza de Mayo* (1977)
- *Centro de Estudios Legales y Sociales* – CELS (1979)
- *Hijos e Hijas por la Identidad y la Justicia contra el Olvido y el Silencio* – H.I.J.O.S. (1995)

## LESSONS LEARNT

After tracing and evaluating the politics of reparations in Argentina, we can draw several lessons. First and foremost,

42 Alicia Panelo, "Terrorismo de Estado: La reparación en números", in *Adelanto* 24, March 14, 2017, <http://adelanto24.com/2017/03/14/terrorismo-de-estado-la-reparacion-en-numeros/>

43 Goyochea, Pérez and Surraco, 14 and 15.

44 Ibid.

45 See: Madres de Plaza de Mayo, platform. Available in Spanish at: <http://madres.org/index.php/consignas/>

46 Goyochea, Pérez and Surraco, 18.

47 Ibid., 21.

48 Elizabeth Jelin, *Certezas, incertidumbres y búsquedas: el movimiento de derechos humanos en la transición*, in Claudia Feld, Marina Franco, eds., *Democracia, hora cero. Actores, política y debates en los inicios de la post-dictadura*, Buenos Aires: Fondo de Cultura Económica, 2015, 197 and 198.

49 Hilda Sabato, "Los organismos de Derechos Humanos", in *Derechos Humanos en Argentina. Informe 2004*, CELS, 572, <https://www.cels.org.ar/web/wp-content/uploads/2016/10/IA2004-Dossier-2-Los-organismos-de-derechos-humanos.pdf>

50 Sikkink, 63.

51 Ibid.

52 Ibid.

53 Ibid., 63 and 64.

54 Jelin, 197.

55 The organization has a spinoff called *Madres de Plaza de Mayo - Línea Fundadora*.

the rehabilitation of victims must be a state policy. Reparations must be carefully considered and planned.

In Argentina's case, the victims were broadly compensated (especially in economic terms), but this was not the product of a straightforward public policy. Rather, it was constructed incidentally along the last three decades. In fact, there was no clear order, and the measures were taken due to several factors – including demands by affected groups, such as unions and victim's organizations or, the product of domestic and international litigation against the State. Putting the task to push for reparations on victims is re-victimizing *per se*. Thus, a political and social consensus on the necessity of granting remedies and reparations to the victims is adamant.

Second, along with the political decision to rehabilitate victims, the financial dimension must be incorporated, calculating and delivering the reparation in a timely manner and format. The use of sovereign bonds, in the case of Argentina with its economic history, has not facilitated the process for victims and families. The use of bonds created barriers of access to reparations, as well as a loss of value that the families had to bear.

Further, we can argue that economic compensations have limitations, and that we should explicitly incorporate other types of reparations. In this regard, the “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”<sup>56</sup> adopted by the UN General Assembly in December 2005 provides interesting input.

On the other hand, the Argentine case shows the importance of a strong, vibrant and proactive human rights movement. Civil society was crucial before and all along the transition, pushing the agenda at its lowest moments – such as after the amnesty laws were enacted in the late 1980s and early 1990s. Countries in transition and the international community in general should

aim for a robust civil society, channeling funds and giving them voice and recognition.

Finally, an important lesson, which can be drawn is an ample definition of “victim.” Although there is still a strong debate on the scope,<sup>57</sup> in the Argentina case families and relatives were considered central from the beginning. This has led to the 2004 *Ley de Hijos* and to the reparations in cases of exile.

## RECOMMENDATIONS

- 1/ Make rehabilitation of victims a state policy, backed by a political and social consensus.
- 2/ Create or empower a centralized State organism in charge of rehabilitations. This organism must be highly-ranked, well-funded and adequately staffed.
- 3/ Include several dimensions in the reparations, not only the economic. In this sense, recent UN principles and guidelines on remedy and reparations are useful.<sup>58</sup>
- 4/ Incorporate victims and families in a participative process of designing and implementing reparations.
- 5/ Adopt a wide criterion of proof for establishing crimes, since valid proofs for many of them such as enforced disappearances are nearly impossible to obtain.
- 6/ Ensure legal, social and psychological assistance to the victims and their families, both broadly and in connection with the process to obtain reparations.

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56 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN General Assembly, December 16, 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>

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58 See footnote 57.

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# EDUCATION AND PRESERVATION OF SITES OF CONSCIENCE

MARÍA CECILIA ALEGRE AND GABRIELA IPPOLITO-O'DONNELL

## INTRODUCTION

How newly democratized nations deal with their authoritarian past is a crucial aspect of a successful political transition. The construction of a collective memory to make visible past human rights violations is a difficult, but a fundamental task in the consolidation of democracy. There are many instruments transitional societies can use to recover the memory of state terror atrocities and to strengthen a democratic culture, among these education and preservation of sites of conscience stand out. In spite of a long history of military coups, conflicts and political violence during the 20th century, Argentina had never developed national policies aimed at preserving sites of conscience.

It has been rather recently, starting with the transition to democracy in 1983, that the preservation of memory has become an issue of public debate and of policy design and implementation aimed at uncovering the truth about the experience of state terror under the last military dictatorship that ruled Argentina from 1976 to 1983. However, we are still a long way away from consolidating a process of memory building by the implementation of a comprehensive and systematic set of public policies to preserve sites of conscience and promote democratic education. This is a process still very much in the making in Argentina, and not exempt from potential reversals.

## HISTORICAL BACKGROUND

With the return of democracy on December 10, 1983, under the Presidency of Dr. Raúl Ricardo Alfonsín of the Radical Party (UCR - Unión Cívica Radical), the State began to deal with the issue of human rights violations by revising the activities of the dictatorship that governed Argentina for seven long years (1976-1983). Under the President Alfonsín administration, the chief members of the military Juntas, from that time, were put on trial. This was made possible due to a comprehensive investigation carried out by the National Commission on the Disappearance of Persons (CONADEP - Comisión Nacional de Desaparición de Personas), a special commission established by presidential decree.<sup>1</sup>

The CONADEP commission worked with human rights organizations, political parties and other political and social groups that were already involved in investigating state terrorism under the dictatorship to elaborate a special report. The report was titled NUNCA MAS (Never Again) and compiles a significant number of cases of human rights violations, torture, disappearances and murder, which served as the basis for the trials of the military Juntas.<sup>2</sup>

Later on, Congress passed two laws to settle the matter: *Punto Final* (Full Stop Law 23.492, 1986)<sup>3</sup> and *Obediencia Debida* (Due Obedience Law 23.521, 1987).<sup>4</sup> These two laws were in response to the military resistance to the trials. It is important to mention

that at the time these laws were passed, the military still had significant political veto power and had threaten to oust the democratically elected government of President Alfonsín.

Between 1989 and 1991, under the Presidency of Dr. Carlos Saúl Menem of the PJ (Peronist Party), 10 (ten) decrees were issued to grant pardon to all participants involved in actions of state terror under the dictatorship. As a result, late in 1998 the *Punto Final* and the *Obediencia Debida* laws were finally repealed.<sup>5</sup>

By the turn of the century, however, official policy on this matter shifted once again. On August 21, 2003, under the Presidency of Dr. Néstor Kirchner of the PJ (Peronist Party) a new law (25.779) superseded the *Punto Final* and *Obediencia Debida* laws as well as the pardons previously issued by President Menem.<sup>6</sup>

Starting in 2005, by a Supreme Court decision, any action framed under the figure of "state terror" became a crime against humanity and imprescriptible.

One of the most interesting examples paralleling this shifting political environment with regard to memory policies is the changing criteria for the commemoration of March 24, a key date for building collective memory against state terrorism. In effect, March 24 is a landmark in Argentina history; it is the day of the military coup of 1976 that inaugurated the most brutal dictatorship the country had ever experienced. After the return to democracy in 1983, the first mobilization to remember the military coup was on March 24 of 1986, three years after the transition. This mobilization was organized by the Mothers of Plaza de Mayo (Madres de Plaza de Mayo), the group of mothers of the disappeared by the dictatorship, which eventually turned into the most salient human rights social movement of the country. There were no official commemorations of March 24 in 1984 or 1985, even though citizens did mobilize to support the Mothers.

In place of an official commemoration, on March 24, 1984, the Mothers of Plaza de Mayo published in the *Clarín* newspaper their position regarding President Alfonsín's policies on state terror. The Mothers demanded: 1) forced disappearances be considered a crime against humanity; 2) the establishment of a bicameral Congressional commission to investigate state terror; and 3) trials through civil courts and not through especial military courts.

A year later, in 1985 a commemoration of March 24 was convoked in the City of Cordoba, organized by the Movimiento de

1 Comisión Nacional sobre la Desaparición de Personas, Decree 187/83, 15. 12. 1983, <http://www.derechos.org/ddhh/arg/ley/conadep.txt>

2 Code of Military Justice, Law 23.049, 9. 2. 1984, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/25000-29999/28157/norma.htm>

3 Punto Final Law, 23.492, 23. 12. 1986, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=21864>

4 Obediencia Debida Law 23.521, 9. 6. 1987, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=21746>

5 Law 24.952, 17. 4. 1998, <http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=50364>

6 Law 25.779, 21. 8. 2003, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/85000-89999/88140/norma.htm>

Juventudes Políticas, and several human rights organizations; about one thousand participants attended the event.

In short, since the beginning of the transition, the way of remembering, keeping memory, and making memory, not only constantly changed, but was also disorganized, and sometimes even violent. These mobilizations were not organized by the state, but instead by various human rights organizations.

The crucial year for institutional inertia to change was 2001. For the first time in history direct action was organized by the State: March 24 became “Día Nacional de la Memoria por la Verdad y la Justicia” (National Day of Memory, Truth, and Justice). A year later, on August 1 of 2002, Congress sanctioned Law 25.633,<sup>7</sup> which declared March 24 a non-working day; a year later in 2005 it was also declared a non-working day, a national holiday and non-changeable in the calendar.<sup>8</sup> This decision was first resisted by human rights organizations, which wanted to avoid the day becoming a national holiday, but to no avail. In 2017, the government of President Mauricio Macri tried by decree to change March 24 to a movable commemoration date, but civil society organizations mobilized and aborted the initiative, so March 24 continues to be celebrated as established in 2005.

## ORAL HISTORY AND MEMORY

As the previous section shows, building collective memory is not an easy task, and the instruments available for doing so are of various kinds. The process is anything but linear. In addition to attempts by human rights organizations, and the state, to preserve memory, several historians tried to contribute to the process through their academic work. Among academic contributions, it is worth mentioning the field of “Oral History”, through the work of the Institute of Oral History, housed in the Department of Philosophy at the University of Buenos Aires since 1995 (Instituto de Historia Oral, Facultad de Filosofía y Letras, Universidad de Buenos Aires).

Several historians of the Institute worked to transform oral history into a vehicle to give voice to the voiceless victims of state terror, and to change the official story of how the events unfolded under the dictatorship.

Within the framework of oral history, the testimonies of the victims of state terror are considered crucial to understand the truth of what really happened under the dictatorship. Some of the testimonies were collected during the dictatorship, but the bulk after the return of democracy. Memory acts in the present to represent the past. That representation of the past is complex, and not just a simple reproduction of events; it entails an interpretation. Memory as a historical document has a peculiar character since it is retrospective and highly fluid. It does not exist as “pure memory,” but as reminiscence because memory always starts in the present toward the past.<sup>9</sup>

## BUILDING MEMORY OF STATE TERRORISM IN 21ST CENTURY ARGENTINA THROUGH SITES AND MONUMENTS

Argentina had to wait until the beginning of the 21st Century for the state to design and implement a public policy systematically aimed at building memory of the experience of authoritarianism

and state terror. In this newly designed policy, “sites of memory” and “monuments of memory” have a very important role.

Following the criteria of the Institute of Public Policies for Human Rights of Mercosur (IPPDH – Instituto de Políticas Públicas en Derechos Humanos del Mercosur), sites of memory are considered places where serious violations of human rights were committed, or where those violations were resisted, or places that victims, their families and communities associate with those violations and are used anew to recover, rethink and transmit traumatic processes and/or commemorate or provide reparation to the victims.<sup>10</sup>

The year 2003 is a landmark for building memory with the creation of the Memory Archive (Archivo de la Memoria).<sup>11</sup> This Archive is complemented with the archives of several human rights organizations, of CONADEP, of University of Buenos Aires (UBA), and of other Universities throughout the country.

Later on, in 2011, under the administration of President Cristina Fernández de Kirchner, the passing of Law 26.691<sup>12</sup> was a turning point in the history of the preservation of memory and of the events that occurred under state terrorism between 1976 and 1983. The National State in agreement with Provincial governments, municipalities and human rights organizations decided that the motto “Memory, Truth and Justice” would become national public policy to precisely preserve the memory of that time.

This new “Memory, Truth and Justice” national public policy was to be carried out through the preservation of the sites used by the dictatorship as clandestine centers of detention and torture, or where emblematic events of illegal repression developed until the return of democracy in 1983. With the passing of Law 26.691, the state together with human rights and social organizations surveyed the sites mentioned in the CONADEP report by human rights organizations and by the organization *Family Members of Detained and Disappeared Person for Political Reasons* (Familiares de Detenidos y Desaparecidos por Razones Políticas) as places of detention, torture, disappearance and murder of persons in the entire country. In this way, a national network of “spaces of memory” became established. This network includes military sites, health centers and even private housing. The map of sites or “spaces of memory” at the national level can be consulted through the official web site of the government, which includes a catalog of all sites of memory and related themes.<sup>13</sup>

The City of Buenos Aires, the capital of Argentina, is where the most important space of memory is located: *Space for Memory and Promotion and Defense of Human Rights-ex-ESMA* (Espacio para la Memoria y para la Promoción y Defensa de los Derechos

7 Law 25.633, 1. 8. 2002, <http://servicios.abc.gov.ar/docentes/efemerides/24marzo/htmls/presentacion.pdf>

8 Non-changeable date means it cannot be celebrated on a Friday or Monday to extend the weekend.

9 Dora Schwarzstein, “Historia Oral: memoria e historias traumáticas”, in *HISTORIA ORAL*, 4, 2001, 73–83, <http://arpa.ucv.cl/articulos/memoriaehistoriastraumaticas.pdf>

10 IPPDH-Mercosur: *Principios fundamentales para las Políticas Públicas sobre Sitios de Memoria*, 2012.

11 Decree 1259/2003, 16. 12. 2003, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/90000-94999/91115/norma.htm>

12 Law 26.691, 29. 06. 2011, <http://servicios.infoleg.gov.ar/infolegInternet/anexos/180000-184999/184962/norma.htm>

13 Map of sites of memory, <https://www.argentina.gob.ar/sitiosdememoria/mapacentrosclandestinos>

Humanos – Ex ESMA). This location is considered the most important space of memory due to the number of testimonies of detained persons that point to this site.

The space is located in the ESMA, Naval School of Mechanical Engineering (Escuela de Mecánica de la Armada), on Libertador Ave. 8100, in the upper class north side of Buenos Aires. In 1924, the Buenos Aires City Council gave the land to the Ministry of Navy to be used as a training camp for its forces. With the military coup of 24 March 1976, ESMA became a center of operations to implement a systematic plan by the dictatorship to repress, torture, disappear and murder people. A clandestine maternity ward also operated at ESMA where babies of detainees were born, and later appropriated by families of the perpetrators of state terror.

Today, the National Archive of Memory is located within ESMA, in the building where the School of Navy War used to function. As already mentioned, it was created by Law in 2003 to “preserve and classify the documents related to violations of human rights in Argentina, the testimonies recorded by CONADEP, and all testimonies that the Secretary of Human Rights of the country still receives.”<sup>14</sup>

The Museum of Malvinas e Islas del Atlántico Sur (Malvinas and Islands of the South Atlantic) has also been located at ESMA since June 2014. This site is not related to state terrorism directly, but aims to recognize the value and history of the Malvinas war in 1982, which was initiated by the military dictatorship against Great Britain to maintain legitimacy. The defeat in the war precipitated the transition to democracy. Many abuses by the military were committed during the war against regular soldiers, showing the various ramifications of state terror. This Museum has no heritage but it has the important goal of promoting thinking and reflection of the recent past. The fact that this museum, created by a Presidential decree, has no heritage is a favorable point: it allows the museum to be “a live museum” that grows up with donations, and calls upon citizens to think about its true meaning.<sup>15</sup>

The City of Buenos Aires has other important sites of memory; the “Space for Memory and Promotion of Human Rights: Automotores Orletti” (Espacio para la Memoria y la Promoción de los Derechos Humanos: Automotores Orletti) is located in the Floresta neighborhood on the west side of the City at Venancio Flores Street 3519/21. This site, located inside an old car-repair garage, was a clandestine center for detention, torture, disappearance, and murder of persons. The site was rented and refurbished by the Secretary of Intelligence SIDE (Secretaría de Inteligencia del Estado), and became the headquarters of Argentina “Operation Condor” (Operativo Condor), an Operation run in agreement with various intelligence and security forces of the Southern Cone countries of Latin America. Since 2006, by Law 2112 of the City of Buenos Aires Legislature, subject to expropriation and recovery, the site was declared a public use site. In 2009, it was transformed into a site of memory, and starting from 2014 is under the administration of the National Secretary of Human Rights. By Presidential decree 1762/2014 it has also been established as a “National Historical Site.”<sup>16</sup>

Another site of memory worth mentioning in Buenos Aires is “Athletic Club” (Club Atlético), which was under the command of the Air Force during the dictatorship. This site of memory shows how the three military branches, the Army, Navy and Air force, colluded between them the actions of state terrorism. Athletic Club is located in the south of the city, in the historic San Telmo

neighborhood at Ave. Paseo Colón, between Cochabamba and San Juan Streets, under the Highway Autopista 25 de Mayo. This location under the Highway was a late attempt at deleting its very existence. Law 1794 of the City Legislature declared it a “Historical Site”; and decree 1762/2014, a “National Historical Site.”<sup>17</sup> Passing by, underneath the Highway, one can see that the memory is very much alive, viewing the decorations and signs placed on the site.

Yet another site of detention, this one under the control of the Federal Police was “Virrey Cevallos” (Virrey Ceballos Street 628/30). This site is emblematic, because it was recovered by the collective action of neighbors of San Cristobal where it is located. Organized under the “Association of Neighbors of San Cristobal against Impunity” (Asociación de Vecinos de San Cristóbal contra la Impunidad), neighbors, families, human rights and civil society organizations denounced the site, and in 2004, achieved City Legislature sanctioned Laws 1.454 and 1.505, which declare the site a “public use, subject to expropriation and historical site.” Since 2014, it became a “National Historical Site” by Presidential decree 1.762.<sup>18</sup>

Another site of memory, difficult to imagine, is the Church of Saint Cross (Iglesia de la Santa Cruz, Estados Unidos Street 3150), it unfortunately became so because it was where several of the founding members of Mothers of May Square were kidnapped, together with two French nuns that were helping them, between December 8 and 10 of 1977. The forced disappearances occurred during a, now well-known, military operation commanded by the Navy.

Finally, in the City of Buenos Aires memory has become embodied in the natural environment: the Río de la Plata coastal line is a symbolic space, in whose waters many Argentines were drugged after being tortured and dropped still alive from planes into the river. The *Park of Memory and Monument for the Victims of State Terror* (Parque de la Memoria-Monumento a las Víctimas del Terrorismo de Estado), is located at Costanera Norte, Rafael Obligado St. 6745. This site of memory was designed in 1997 from a proposal of several human rights organizations. In 1998, Law 46 of the City of Buenos Aires ordered its construction, and an international bid was put forth for the several sculptures that are central to the landscape of the Park. In 2001, on August 30, during the International Day of the Detainees and Disappeared persons, the square that serves as main access to the Park was inaugurated. The Park was finally inaugurated in 2007 and since 2014 has become a “National Historical Monument,” and its sculptures “a public good of historical interest.”<sup>19</sup>

## OTHER SITES OF MEMORY

Laws and Decrees issued by initiative of the state, cities, social organizations, families of the victims, or the victims themselves, are not the only representations of the memory of state terror

14 *Espacios de Memoria en la Argentina*, Ministerio de Justicia y Derechos Humanos de la Nación, Secretaría de Derechos Humanos, Buenos Aires, 2015.

15 Ibid.

16 Ibid.

17 Ibid.

18 Ibid.

19 Ibid.

being constructed in Argentina. Other actions forming the building blocks of a collective memory are leaving an imprint on the urban landscape, without being a site of memory, a museum, or a monument. An example of this is the work organized by the association “Coordination of Neighborhoods x Memory and Justice” (Coordinadora Barrios x Memoria y Justicia) in the City of Buenos Aires, and in others cities throughout the country. This association was created at the end of 2005 to make visible popular activists detained, disappeared, and murdered by state terror, right before and during the last dictatorship in neighborhoods all over Argentina. The organization’s aim is to reconstruct the life history of those grassroots activists in their neighborhoods and, in this way, give proof of their existence in the streets they used to walk around. This is being done by the installation of tiles with their names and dates of disappearance on the sidewalks. These cement tiles transform the materials in live history and memory, and allows the socialization and communication of personal sentiments as public and collective signifiers. In doing so, they make visible, the invisible, for those who were unaware of what was happening during those years in their own neighborhoods. The first activity of “Coordinadora Barrios x Memoria y Justicia” was held on December 2 of 2005 at Saint Cross Church, where the first cement tiles were installed on the sidewalks in memory of the twelve persons kidnapped and disappeared in 1977.<sup>20</sup>

## NETWORKS OF SITES OF MEMORY

Up to now, we have made reference to “sites of memory,” “monuments of memory,” and “Memory Tiles” located in the City of Buenos Aires. But it is important to remember at this point that the jigsaw puzzle of building collective memory began to take form very slowly with the first testimonies collected by human rights organizations, mainly by the “Permanent Assembly for Human Rights” (APDH – Asamblea Permanente por los Derechos Humanos). During the dictatorship this organization formed by a broad multi-party constituency had the capacity to record testimonies and take action against state terror through requesting the legal figure of *habeas corpus*. As we have also shown, since 2014 with a series of new laws, a survey of “sites of memory,” allowed drawing a national map to locate most of them.<sup>21</sup> This process of building memory has developed slowly through the years and is still in the making.<sup>22</sup>

It is important to stress that until 2015, the sites of memory were referred as to “spaces of memory,” but since then it is preferred to use the term “sites of memory” following international classifications, including the one proposed by Mercosur (Common Market of the South) we have already mentioned above.<sup>23</sup>

## SITES OF MEMORY AND EDUCATION

All sites of memory, including the monuments and memory tiles, have an intrinsic pedagogic goal. The sites of memory, since their original denomination by the Decree 1762 of 2014, which instituted them as “official” sites of memory at the national level, are “spaces of memory and promotion of human rights”. This promotion of human rights entails the idea of education on human rights, for children and adults likewise. By reading the documents of Mercosur’s Institute of Public Policy

and Human Rights (Instituto de Políticas Públicas de Derechos Humanos), we observe the deep pedagogic character of sites of memory, besides their primary goal of keeping memory of past atrocities. This pedagogic or educational character has a formal side based on the Ministry of Education of Argentina and an informal side based on the multiple actions undertaken by the sites of memory themselves.

In the case of the formal institutional environment, starting in 2014 the sites of memory gained political leverage since the government decided to give them status of state policy. The sites of memory became an integral part of the “Education and Memory Program” (Programa Educación y Memoria) of the National Ministry of Education for secondary schools.

By the National Education Law, secondary education is mandatory in Argentina and one of the main axes of action of the Ministry of Education.<sup>24</sup> The relevance of secondary education made it a crucial environment to further develop a comprehensive program to link education and memory. Since 2003, the National Ministry of Education began to develop an education policy of memory whose goal would be to facilitate the difficult task of teaching in schools the recent past. This policy is based on the National Education Law 26.206 and as it says in article number 3: “Education is a national priority and a state policy to build a more just society, consolidate national identity and deepening the exercise of democratic citizenship, the respect of human rights and basic freedoms and strengthen the economic and social development of the nation.”<sup>25</sup>

Within this framework, the Program of Education and Memory (Programa Educación y Memoria) targets three fundamental themes: 1) State Terror: memories of the dictatorship; 2) Malvinas: memory, sovereignty and democracy; and 3) Teaching of the Holocaust and other genocides.

## LESSONS LEARNT AND RECOMMENDATIONS

Without a doubt, since the transition to democracy in 1983, the road to building memory has been a long and winding one. The process has not been linear; there have been many advances and a few setbacks. The past 35 years have been years of learning. The experiences of state terror recovered by the creation of various sites of memory have had the pedagogical value of showing that democracy, even with its flaws, is the most preferable political regime. As a result, democracy has endured in spite of military coup attempts, economic crises and low quality governments. Democratic institutions are stronger, and the construction of a collective memory a continuous process. In many ways, the sites of memory are an achievement of democracy and, at

20 Nahuel Gallotta, “Día de la Memoria: Homenaje a los desaparecidos: ya hay más de 1.200 baldosas que los recuerdan en Capital”, in *Clarín*, 23. 3. 2018, [https://www.clarin.com/ciudades/homenaje-desaparecidos-200-baldosas-recuerdan-capital\\_0\\_HkjEzem9G.html](https://www.clarin.com/ciudades/homenaje-desaparecidos-200-baldosas-recuerdan-capital_0_HkjEzem9G.html)

21 Map of sites of memory, <https://www.argentina.gob.ar/sitiosdememoria/mapacentrosclandestinos>

22 Sites of Memory, <https://www.argentina.gob.ar/derechoshumanos/sitiosdememoria>

23 IPPDH-Mercosur: *Principios fundamentales para las Políticas Públicas sobre Sitios de Memoria*, 2012.

24 “Lugares de Memoria”, Equipo Programa de Educación y Memoria, Ministerio de Educación de la Nación, Ciudad Autónoma de Buenos Aires, 2015.

25 Ibid.

the same time, one of its main sources of legitimacy. In these sites, memory and education are intertwined and complement each other. The sites of memory linked to education programs, formally and informally, are a pedagogic creative practice to re-think new forms of learning at school and in everyday life. In a nutshell, they contribute to understand the past to improve our lives in the present and avoid the same mistakes. As the experience of Argentina shows:

1/ It is crucial to secure the sites of memory and the concomitant educational programs through national legislation to avoid any regressions or nostalgia of the authoritarian past.

2/ It is also crucial that civil society groups work closely with government officials to demand accountability of all actors involved in the creation and administration of the sites.

3/ The previous recommendations are a way to shield the construction of collective memory from short-term changes in governments' ideological preferences.

It is a moral imperative to remember those who suffered the atrocities of state terror and transmit this memory to the new generations by way of education, so as the Prosecutor of the Military Juntas Dr. Julio César Strassera expressed at the end of the trials, this NEVER AGAIN! (NUNCA MAS!) happens in Argentina.

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# TIMELINE OF THE MAJOR EVENTS

## SOFÍA DEL CARRIL

<b>March 1973</b>	General elections held. Hector J. Cámpora of the Partido Justicialista wins with over 49 % of the vote
<b>July 1973</b>	President Cámpora and Vice President Solano Lima resign. General elections called
<b>September 1973</b>	General elections held. Juan Domingo Perón wins with over 61 % of the vote; María Estela Martínez, his wife, runs as his Vice President. Shortly after, Jose Rucci, a main ally of Perón, is assassinated by Montoneros, although the group does not acknowledge responsibility
<b>November 1973</b>	The <i>Alianza Anticomunista Argentina</i> (known as <i>Triple A</i> ), a state-sponsored parapolice group surfaces with a high-profile assassination attempt
<b>July 1974</b>	Juan D. Perón dies. Vice President María Estela Martínez becomes the new head of state
<b>November 6, 1974</b>	President Martínez de Perón establishes the <i>state of siege</i> in the Argentine territory
<b>February 1975</b>	President Martínez de Perón sanctions Decree 265, mandating the armed forces to neutralize or annihilate subversive forces in the northern province of Tucumán. <i>Operativo Independencia</i> is launched, involving national and subnational security forces and targeting PRT-ERP and Montoneros guerrilla groups
<b>October 1975</b>	On October 5, Montoneros attacks a military garrison in Formosa. The next day, decree 2772 extends the mandate of Decree 265 to the entire Argentine territory
<b>December 1975</b>	ERP attacks a military base in Provincia de Buenos Aires
<b>March 24, 1976</b>	Coup d'état. President Martínez de Perón is forced out of government and detained. The Military Junta rises to power, under the command of members of the army, air force and navy
<b>1976–1978</b>	Peak years of the repression with numerous CCD (clandestine centers of detention) active all over the country
<b>September 1979</b>	The Inter American Commission for Human Rights visits Argentina. The Commission receives 5580 complaints. In 1980, the Argentina Report is published
<b>December 1980</b>	Human rights activist Adolfo Perez Esquivel of SERPAJ wins the Nobel Prize
<b>April 2, 1982</b>	Argentina launches a military operation to recover the Falkland Islands
<b>June 14, 1982</b>	Argentine forces surrender the island to UK forces. The Falklands War ends, leaving 649 Argentine soldiers, 255 British soldiers and 3 civilians dead
<b>September 1983</b>	Auto-amnesty law enacted by the Military Junta
<b>October 1983</b>	Democratic elections held in Argentina. Raul Alfonsín of the Union Cívica Radical-UCR wins with 52 % of the vote
<b>December 10, 1983</b>	Alfonsín is inaugurated as president
<b>December 1983</b>	Presidential decrees 157 and 158 order the prosecution of the ERP, Montoneros and the Military Junta's leaders. Subsequently, a new decree creates an extra-judicial entity, the CONADEP, whose mandate is to investigate enforced disappearances
<b>April 1985</b>	The Federal Appeals Court begins the <i>Junta Trials</i>
<b>December 9, 1985</b>	The Federal Appeals Court condemns the former commanders of the Military Junta
<b>December 1986</b>	Congress passes the <i>Ley de Punto Final</i> , which limited the possibility to further investigate crimes
<b>April 1987</b>	Military rebellion to protest and stop prosecutions against military officers
<b>May 1987</b>	Congress enacts the <i>Ley de Obediencia Debida</i> , which protected low-ranking military officers from prosecutions, based on the fact they “received orders” under a military hierarchy
<b>January 1989</b>	Attack by the Movimiento todos por la Patria-MTP to a military garrison in La Tablada
<b>1989</b>	Within a context of acute economic crisis, including hyperinflation, President Alfonsín calls for early general elections

<b>May 1989</b>	Carlos Menem of the Partido Justicialista wins and in July is inaugurated as President
<b>October 1989</b>	President Menem pardons military officers and guerrilla members
<b>1990</b>	Last military uprising. President Menem dictates new decrees pardoning Junta leaders, among others
<b>1991</b>	Congress passes Law 24.034 on reparations for political detainees
<b>1994</b>	Inter American Convention on the Forced Disappearance of Persons approved by the OAS General Assembly. Argentina's constitution is reformed. Congress passes Law 24.411 on reparations for enforced disappearances and assassinations prior to December 10, 1983
<b>1998</b>	The newly autonomous City of Buenos Aires creates the Parque de la Memoria, a memorial of the victims of State terrorism located along the shore of the river
<b>2001</b>	Federal judge declares amnesty laws ( <i>Ley de Punto Final</i> and <i>Ley de Obediencia Debida</i> ) invalid and unconstitutional
<b>2003</b>	Congress annuls amnesty laws
<b>2004</b>	Congress passes law on reparations to minors affected by the repression, known as <i>Ley de Hijos</i> . Former clandestine detention center ESMA is transformed into the <i>Espacio para la Memoria</i>

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