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## **Operation Condor on Trial: Justice for Transnational Human Rights Crimes in South America** — [Source link](#)

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# Operation Condor on Trial

## *Justice for Transnational Human Rights Crimes in South America*

### **Abstract**

In May 2016, an Argentine federal court concluded a momentous trial, convicting 15 defendants for illegal kidnappings, torture, and *asociación ilícita* (illicit association) committed against over 100 victims of Operation Condor. Operation Condor was the codename given to a continent-wide covert operation devised in the 1970s by South American regimes to eliminate hundreds of left-wing activists across the region. The Operation Condor trial broke new ground in human rights and transitional justice, for its innovative focus on transnational crimes and for holding state agents accountable for extraterritorial human rights violations. By analysing this pioneering prosecution, the article begins to incorporate the question of cross-border crimes into academic debates. The research draws upon extensive fieldwork, encompassing 74 trial hearings and 76 interviews with survivors, experts, and legal professionals. As borders become increasingly more porous, scholars and practitioners can no longer afford to side-line the topic of accountability for transnational crimes.

### **Introduction**

At a secret meeting held in Santiago de Chile in late November 1975, Argentina, Bolivia, Chile, Paraguay, and Uruguay established a secret transnational system to share intelligence and conduct joint operations to track down left-wing activists across South America and beyond. “Operation Condor” was the codename given to this continent-wide covert network that, in practice, suspended state borders in order to eliminate political opponents to South America’s regimes wherever they were. Brazil, Ecuador, and Peru, also later joined in. Through the Condor system, hundreds of exiles were firstly closely monitored, and later kidnapped, tortured, and often forcibly returned to their country of origin. The majority of Condor’s victims were executed or disappeared; only a few survived.

Forty years later, on a rainy and grey afternoon, on 27 May 2016, a four-judge tribunal in the Downtown Retiro courthouses in Buenos Aires handed down a historic verdict. Concluding a landmark trial, which had lasted three years, two months, and 22 days, the judges convicted 15 defendants for illegal kidnappings, torture, and *asociación ilícita* (illicit association) perpetrated against over 100 victims of Operation Condor. This emblematic trial broke new ground in human

rights and transitional justice, for prosecuting for the first time atrocities of a transnational nature, in light of the nationality of victims and perpetrators, as well as the geographies of crimes, and for sentencing state officials for their role in committing human rights violations outside of national territories.

The Argentine Operation Condor trial is the latest manifestation of Latin America's ground-breaking role in human rights and justice. Latin American countries have been 'protagonists of the idea of "international human rights"' and have played a fundamental part in generating the post-World War II legal order as well as norms guaranteeing the promotion of human rights.<sup>1</sup> Furthermore, over the past thirty years, the region has been the first to start breaking away from the centuries-long pattern of amnesties, impunity, and oblivion, which normally shielded perpetrators of grave crimes from accountability.<sup>2</sup> As democracy returned to Latin America in the 1980s and 1990s, unprecedented efforts to shed light onto the unparalleled human rights violations perpetrated during the years of state terror took place. Such important developments were in large part due to the relentless mobilisation by victims' relatives, human rights activists, and lawyers who, through inventive and novel strategies, never gave up the quest for justice.<sup>3</sup> Early on, the 1985 historic Trial of the Military Junta Commanders in Argentina stood out as an exceptional achievement during what seemed times of obligatory impunity.<sup>4</sup> Over a decade later, the 1998 detention in London of Chilean General Augusto Pinochet then marked a turning point in international justice efforts and sent shockwaves all across the world.<sup>5</sup> The symbolic arrest of the once all-powerful dictator revived existing attempts to hold perpetrators accountable in Chile and beyond. Throughout Latin America, previously untouchable leaders, who had enjoyed a life of impunity for years after negotiating their way out of power, finally had to answer for unspeakable crimes. Several former heads of state were prosecuted and sentenced for serious atrocities, including Fujimori in Peru, Bordaberry in Uruguay, and Rios Montt in

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<sup>1</sup> Kathryn Sikkink, 'Latin America's Protagonist Role in Human Rights', *Sur – International Journal on Human Rights*, 12:22 (2015), p. 208.

<sup>2</sup> Francesca Lessa and Leigh Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives*, (Cambridge: Cambridge University Press, 2012).

<sup>3</sup> Francesca Lessa et al., 'Overcoming Impunity: Pathways to Accountability in Latin America', *International Journal of Transitional Justice*, 8:1 (2014), pp. 75–98.

<sup>4</sup> Carlos S Nino, *Radical Evil on Trial*, (New Haven and London: Yale University Press, 1996).

<sup>5</sup> Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia, PA.: University of Pennsylvania Press, 2005).

Guatemala,<sup>6</sup> with investigations also opened against lower-level state agents in Argentina and Chile. Undoubtedly, Latin America is a leader in human rights and transitional justice.<sup>7</sup>

While there has been a clear shift away from impunity towards accountability for past atrocities, existing scholarship and practice have mainly focused on investigating crimes committed within state borders. Likewise, the jurisprudence of various international and regional bodies and courts have also largely dealt with alleged violations carried out within the territories of states parties to human rights treaties and covenants.<sup>8</sup> It is generally accepted that states are responsible for promoting and protecting human rights within their territories, as well as providing redress when they are violated. Nevertheless, uncertainty surrounds the questions of whether and how states should be held accountable for breaching human rights outside their borders.<sup>9</sup> The theoretical concern of this article, namely how to respond to crimes that transcend the borders of states, lies at the intersection of transitional justice, human rights, and international relations. It raises the following questions. Who is responsible for providing redress for transnational atrocities? What remedies, if any, are available to victims? What role can transitional justice mechanisms play in this regard? And, finally, should human rights provisions applicable to crimes committed extraterritorially?

The specific contribution of this article is to shift the attention towards transnational human rights violations and the role of criminal accountability in that regard. Analysing the Operation Condor trial is especially useful, since it encompasses a complex web of agents and jurisdictions, in terms of victims, perpetrators, and countries across South America. It allows to study transnational dynamics in practice and helps clarify issues relating to the extraterritorial application of human rights guarantees. More precisely, this article contends that tackling transnational crimes does not entail the complete rethinking of accountability tools or the entire human rights system. As a matter of fact, the recent wave of trials probing past atrocities in Argentina and Chile, conducted by using existing criminal codes and through ordinary court systems with local judges and prosecutors in charge of investigations and prosecutions, clearly demonstrates there is no need to resort to extra-ordinary forms of justice.<sup>10</sup> Consequently, it is

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<sup>6</sup> Ellen Lutz and Caitlin Reiger, *Prosecuting Heads of State*, (Cambridge: Cambridge University Press, 2009).

<sup>7</sup> Elin Skaar, Jemima Garcia-Godos, and Cath Collins (eds.), *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability*, (London and New York: Routledge, 2016).

<sup>8</sup> John Cerone, 'Out of Bounds? Considering the Reach of International Human Rights Law', Center For Human Rights and Global Justice Working Paper, Number 5, (2006), p. 2.

<sup>9</sup> *Ibid.*, pp. 2-3

<sup>10</sup> Indeed, both countries are pioneers in accountability through domestic courts: 917 individuals were already prosecuted in Argentina as of October 2017 (see latest statistics at <https://www.fiscales.gob.ar/lesa-humanidad/juicios-en-numeros-818-condenados-99-absueltos-y-mas-de-la>

claimed here that, by rediscovering pre-existing concepts and employing creative strategies, current mechanisms, such as individual prosecutions, can also deal with cross-border crimes. Indeed, the Argentine tribunal effectively probed transnational crimes, by employing over 100 illustrative cases of victims and innovatively combining two types of jurisdictions, *territoriality* and *passive personality* (nationality of victims), as lenses to analyse Operation Condor atrocities. In this way, the court efficiently accounted for the entire geographical reach of the transnational network and the way in which states could commit atrocities both inside their national territories (territorial jurisdiction) and outside (passive personality). Thus, in an unprecedented step, state officials were held responsible for committing human rights violations *outside* state borders, applying human rights guarantees extraterritorially too.

The article proceeds as follows. First, it provides a focused review of the existing transitional justice literature, highlighting shortcomings regarding investigations into transnational crimes. Second, it describes the Operation Condor criminal network and the transnational nature of its atrocities. Third, it traces origins of prosecutions for Condor crimes in Latin America and discusses in detail the Operation Condor trial, from its origins in 1999 up to the verdict in 2016. Fourthly, it assesses the significance of the Condor trial and its reverberations for human rights and transitional justice. Finally, the conclusion summarises the key points raised throughout this work. In preparing the article, the author has conducted extensive field research between 2013 and 2017, attending 74 hearings of the Condor trial in Buenos Aires between 2014 and 2016, carrying out 76 interviews with survivors, lawyers, judges, prosecutors, and experts in Argentina, Chile, Paraguay, and Uruguay.

## **1 Accountability for Transnational Crimes**

Transitional justice has been characterised by numerous debates and has lately come under increased scrutiny regarding its meaning, relationship with human rights, relevance, actors and dynamics, as well as legitimacy. Several definitions have been coined. This article follows the one put forward by the United Nations Secretary General, as judicial and non-judicial processes and mechanisms (i.e. prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals) that societies use to come to terms with large-scale past abuses to ensure

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[mitad-de-los-detenidos-en-prision-domiciliaria/](http://www.ddhh.gov.cl/n122_10-12-2015.html) and 1,373 former agents in Chile as of December 2015 (see [http://www.ddhh.gov.cl/n122\\_10-12-2015.html](http://www.ddhh.gov.cl/n122_10-12-2015.html))

accountability, serve justice, and achieve reconciliation.<sup>11</sup> The boundaries between transitional justice and human rights have often been blurry, given their common concerns. As I argued elsewhere,<sup>12</sup> transitional justice mainly refers to extraordinary past times of violence during conflict or dictatorship, while human rights focus on numerous rights concerns, whether relating to political, civil, economic, cultural, or social, in diverse contexts. Both share the goal of protecting human rights and offering redress when these are violated. Currently, debates revolve around the uses and abuses of transitional justice. Some scholars have shown how the term has little resonance in some countries, such as in Argentina, where local actors do not employ it and do not consider ongoing trials to be mechanisms of transitional justice.<sup>13</sup> Others have criticised the central role attributed to the state to the detriment of other relevant actors, such as civil society which plays a crucial part in accountability efforts.<sup>14</sup> Indeed, new labels, such as “post-transitional justice”<sup>15</sup> and “transformative justice”<sup>16</sup> have emerged to distinguish between different waves of justice efforts, the part played by non-state actors, and the necessity to shift the focus away from state institutions towards communities. Finally, other scholars have highlighted how transitional justice has been misused in some opportunities, such as in Brazil, where the official discourse has silenced victims’ voices, blocking their demands for truth, justice, and reparations, while simultaneously legitimising processes of impunity emanating from the state.<sup>17</sup>

An additional criticism that can be levied against transitional justice, as well as human rights more broadly, is the lack of attention paid to the transnational. Scholars and practitioners have limited their analyses to primarily ‘offences within a single state’ perpetrated ‘by national actors.’<sup>18</sup> Indeed, the state has been until now the ‘primary means’ of reflecting on and organising discussions around transitional justice approaches, being its ‘cornerstone’.<sup>19</sup>

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<sup>11</sup> ‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General,’ United Nations Security Council, 23 August 2004, S/2004/616\*, paragraph 8.

<sup>12</sup> Francesca Lessa, ‘Beyond Transitional Justice: Exploring Continuities in Human Rights Abuses in Argentina between 1976 and 2010’, *Journal of Human Rights Practice*, 3:1 (2011), pp. 25-48.

<sup>13</sup> Rosario Figari Layús, ‘What Do You Mean by Transitional Justice?’: Local Perspectives on Human Rights Trials in Argentina’, in Nina Schneider and Marcia Esparza (eds.), *Legacies of State Violence and Transitional Justice in Latin America: A Janus-Faced Paradigm?* (Lanham, MA: Rowman and Littlefield, 2015), pp. 3-16.

<sup>14</sup> Cecilia MacDowell Santos, ‘Transitional Justice from the Margins: Legal Mobilization and Memory Politics in Brazil’, in Schneider and Esparza (2015), pp. 37-72.

<sup>15</sup> Cath Collins, *Post-transitional Justice: Human Rights Trials in Chile and El Salvador*, (Penn State University Press, 2010).

<sup>16</sup> Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’, *The International Journal of Transitional Justice*, 8: 3 (2014), pp.339-361.

<sup>17</sup> Edson Teles and Renan Qunalha, ‘Scopes and Limits to the Transitional Justice Discourse in Brazil’, in Schneider and Esparza, pp. 19-36.

<sup>18</sup> Amy Ross and Chandra Lekha Sriram, ‘Closing Impunity Gaps: Regional Transitional Justice Processes?’, *Transitional Justice Review*, 1:1 (2012), p.3

<sup>19</sup> Pierre Haza, ‘Beyond Borders: The New Architecture of Transitional Justice?’, *International Journal of Transitional Justice*, 11:1 (2017), p.1.

Contemporary challenges, such as globalisation, the fragmentation of states, and the rise of non-state actors, are increasingly questioning the relevance of such a limited framing. This prevalent state-centric approach has restricted the potential for analytically studying atrocities as well as developing policy responses. Undoubtedly, a few historians and political scientists did examine the transnational dimension to past atrocities in South America.<sup>20</sup> Seminal works by McSherry, Dinges, and Kornbluh extensively documented the political and historical origins of Operation Condor, and meticulously described its inner workings.<sup>21</sup> However, none have studied accountability efforts regarding transnational crimes.

Even in the field of human rights, there is no clarity on the limits of states' conduct outside their territories; the precise extent of states' human rights obligations abroad and their reluctance to be held responsible for extraterritorial actions have not been sufficiently addressed.<sup>22</sup> Powerful states have always disregarded the principle of inviolability of borders. Yet, in the past decade, the extraterritorial application of human rights treaties has attracted significant consideration and a burgeoning literature has emerged,<sup>23</sup> focusing predominantly on environmental protection, the responsibility of transnational corporations, as well as international assistance and cooperation.<sup>24</sup> As borders become increasingly weaker, the call for cross-border accountability is growing stronger and can no longer be ignored.<sup>25</sup> One of the early cases that raised these debates interestingly related to an Operation Condor episode. In *Lopez Burgos v. Uruguay*, in 1981, the UN Human Rights Committee found Uruguay responsible for violating the victim's rights to be free from torture and arbitrary arrest and detention in Argentina. The Committee importantly underscored how 'jurisdiction' referred to 'the relationship between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, wherever they occurred.'<sup>26</sup> Despite this precedent, the extent of states' extraterritorial obligations remains unclear and accountability efforts for such actions are few and far between.

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<sup>20</sup> Stella Calloni, *Los años del lobo: Operación Cóndor* (Buenos Aires: Ediciones Continente, 1999); Katie Zoglin, 'Paraguay's Archive of Terror: International Cooperation and Operation Condor', *University of Miami Inter-American Law Review*, 32:1 (2001), pp.57-82.

<sup>21</sup> John Dinges, *The Condor Years: How Pinochet and His Allies Brought Terrorism to Three Continents* (New York; London: New Press, 2004); Peter Kornbluh, *The Pinochet File: A Declassified Dossier on Atrocity and Accountability*, updated edition (New York: The New Press, 2013). J Patrice McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (Lanham, MD; Oxford: Rowman & Littlefield Publishers, Inc., 2005).

<sup>22</sup> Hugh King, 'The Extraterritorial Human Rights Obligations of States', *Human Rights Law Review* 9:4 (2009), p.521 and Mark Gibney and Sigrun Skogly, (eds.), *Universal Human Rights and Extraterritorial Obligations* (Philadelphia, PA: University of Pennsylvania Press, 2010), p.24.

<sup>23</sup> Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford, Oxford University Press, 2011), pp.4-5.

<sup>24</sup> Nehal Bhuta, (ed.), *The Frontiers of Human Rights* (Oxford: Oxford University Press, 2016); Gibney and Skogly (2010).

<sup>25</sup> Sigrun Skogly and Mark Gibney, 'Transnational Human Rights Obligations', *Human Rights Quarterly* 24:3 (2002), pp.781-98.

<sup>26</sup> King (2009), p. 524.

By focusing on Operation Condor atrocities and the recently concluded Argentine trial, this article contributes to the existing scholarship in three respects. *First*, it incorporates a transnational approach to the study of transitional justice and human rights. This shift from the national to the transnational is an important and long overdue analytical move. *Second*, it shows how criminal prosecutions can play a role in redressing cross-border crimes. *Third*, it proves how accountability for transnational crimes offers relevant lessons on the applicability of human rights provisions extraterritorially. Indeed, the Argentine Operation Condor prosecution explored the responsibility of South American states that perpetrated human rights violations outside national borders and effectively achieved justice for cross-border crimes. This sets a crucial precedent in pushing the boundaries of our understanding of human rights obligations, which do not end at the geographical frontiers of states, but *extend beyond them*.

## **2 The Crimes of Operation Condor**

Against the geopolitical backdrop of the Cold War and ideologically inspired by the National Security Doctrine, authoritarian takeovers swept across South America, starting with Paraguay in 1954. Brazil followed in 1964. Subsequently, coups occurred in Bolivia in 1971, Uruguay and Chile in 1973, and finally Argentina in 1976. These dictatorships brutally and systematically repressed all forms of opposition, targeting members of left-wing armed groups, politicians, teachers, students, trade union leaders, and political activists, and perpetrating thousands of extrajudicial executions, abductions,<sup>27</sup> enforced disappearances, instances of torture and inhumane treatment, baby theft, sexual violence, extortions, and robberies. By the mid-1970s, political repression acquired an additional and sinister regional dimension through Operation Condor, which came to play a fundamental role in the dictatorships' state terror practices and policies. These regimes deliberately created the transnational network to complement policies of repression unleashed at home, taking them to a higher level. In the majority of cases, Operation Condor specifically targeted exiles who had fled from their country of origin and continued to denounce from abroad the dictatorial governments in power at home. Nonetheless, in some instances, relatives looking for missing loved ones and/or refugees who had stopped being politically active also suffered persecution. By 1978, Operation Condor encompassed eight out

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<sup>27</sup> Abduction often constituted an initial step in the process of enforced disappearances. People would be illegally detained and taken to clandestine detention centres, where they suffered torture and inhumane treatment. In most cases, they were later arbitrarily executed and their bodies disposed of in clandestine graves, so that they would never be found. In few cases, victims of illegal detentions would regain their freedom or their detention was eventually recognised by the state.



of 13 countries and had, in practice, established a borderless area of terror and impunity in South America, affecting hundreds of victims. The Condor system reproduced the same range of violations carried out by these regimes at home, but with an additional ingredient: the transnational nature of the crimes. This can be seen in three respects. First, at least two countries, sometimes even more, were involved in atrocities: the country of nationality of the victim(s) sought and that where crimes were physically perpetrated. For instance, in the case of murdered senator Zelmar Michelini in May 1976, Argentina and Uruguay were implicated: the first, since Michelini had been in exile in Buenos Aires since 1973, and the second, given that Uruguay was where Michelini had had a long political trajectory and whose atrocities he was criticising internationally. Second, joint taskforces, composed of agents of the country where the victim was located, as well as their counterparts from the victim's country of origin (sometimes, even from other interested countries), conducted operations. For example, Chilean exile Laura Elgueta Diaz was kidnapped from her home in Buenos Aires in July 1977. To her surprise, upon arriving at the secret detention centre known as *Club Atletico*, she immediately noticed that not all her captors were Argentines but many were in fact Chilean state agents, unmistakably noticing their accent.<sup>28</sup> Third, the perpetration of crimes always entailed a crossing of borders, whether physical or informational. This exchange could take the form of intelligence sharing from one country to the other regarding individuals being sought, and/or the actual forceful, and usually, clandestine transfer of individuals detained in one country back to their home country. In the case of exiled Castulo Vera Baez, who disappeared in early 1977 from the border province of Misiones, Argentina, it was later proven that he had actually been illegally transferred to Paraguay soon after detention to later be disappeared. Indeed, in October 2016, human remains found buried on police premises in Asunción were identified as genetically corresponding to Vera Baez, thus proving his clandestine transfer to Paraguay.<sup>29</sup>

Operation Condor built upon and transcended prior forms of bilateral, *ad hoc*, and informal cooperation, exchanges of information, and joint operations that had existed between the region's armed and intelligence forces since the early 1970s. It has been well established that, by early 1974, the region's police forces had agreed to coordinate their actions in monitoring 'subversive elements, through the network of embassies, specifically through agents in charge of

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<sup>28</sup> Condor Trial hearing, 25 March 2014.

<sup>29</sup> 'Identifican a un desaparecido', *Página12*, 21 October 2016.

drug trafficking.<sup>30</sup> Scholars and lawyers investigating the cases before the formalisation of Operation Condor categorise them as ‘pre-Condor.’<sup>31</sup> Amongst the most well-known instances of this embryonic phase are the assassination of exiled General Carlos Prats and his wife in September 1974 in Buenos Aires, and the kidnapping and later disappearance of Chilean militant Jorge Fuentes Alarcon detained in May 1975 in Asunción, Paraguay. These atrocities already followed the pattern of detention, torture, and unlawful rendition that would later become Condor’s trademarks.<sup>32</sup>

Scholars and researchers have yet to reach a consensus on the exact start and end dates of Condor. This article follows the dates proposed in the trial with Condor operating from late 1975 until late 1980, with the years 1976 to 1978 constituting the highest of its lethal power. It is generally undisputed that Operation Condor was formalised during a meeting of security forces organized in Santiago between 25 November and 1 December 1975, chaired by Pinochet himself.<sup>33</sup> Fifty representatives from Argentina, Bolivia, Chile, Paraguay and Uruguay attended that gathering and signed a final founding document.<sup>34</sup> Brazil participated as observer at the meeting and joined formally in 1976. In 1978, Ecuador and Peru also became members.

Operation Condor consisted of three phases: first, close coordination and intelligence exchange; second, operations in the pursuit of opponents in South America; and third, targeted assassinations outside South America, such as the assassination of former Chilean diplomat Orlando Letelier together with his assistant in September 1976 in Washington DC.<sup>35</sup> This shadowy system completely disregarded traditional international law principles on refugees and a long custom of protecting asylum seekers in the region. Political activists, who thought they had found safe havens in neighbouring countries having fled repression and military coups back home, became victims of ‘deathly traps,’<sup>36</sup> facing persecution abroad. Terror was palpable everywhere. A former Chilean exile in Argentina told me how, as soon as he arrived to the

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<sup>30</sup> Author interview with Roger Rodríguez, investigative journalist, Montevideo, Uruguay, 4 October 2013.

<sup>31</sup> See judge Adrian F. Grünberg quoted in Alejandra Dandan, “‘Con el Cóndor, el país fue un coto de caza’”, *Página 12*, 2 October 2016.

<sup>32</sup> Trial hearing, Buenos Aires, 31 October 2014.

<sup>33</sup> Dinges (2004)

<sup>34</sup> See Minutes of the Conclusions of the First InterAmerican Meeting on National Intelligence] Secret, Meeting Minutes, November 28, 1975. <http://nsarchive.gwu.edu/NSAEBB/NSAEBB514/docs/Doc%2003%20-%20Acta%20document%20translation%20and%20original.pdf>

<sup>35</sup> Kornbluh (2013) and McSherry (2005). Also see the report presented by researcher Carlos Osorio to the Tribunal on 6 March 2015, written by Assistant Secretary of State for Latin America, Harry Shlaudeman, to Henry Kissinger on the coordination in South America. US Department of State, ‘The “Third World War” and South America,’ 3 August 1976, <http://nsarchive.gwu.edu/NSAEBB/NSAEBB416/docs/0000A02E.pdf> (accessed 5 July 2015).

<sup>36</sup> Author interview, Sara Méndez, Montevideo, victim and survivor of Operation Condor, Uruguay, 8 October 2013.

frontier city of Mendoza, he immediately changed his accent: he did not want to be easily identified as a Chilean living in Argentina in late 1973.<sup>37</sup>

Similar to the lack of consensus on the years of operation, there is no comprehensive list of victims. A 2016 UNESCO report estimates 377 victims between 1974 and 1981, including 177 Uruguayans, 72 Argentines, 64 Chileans and 25 Paraguayans.<sup>38</sup> In this author's view, this represents a conservative estimate. While final numbers remain contested, there is little doubt that victims encompassed renowned politicians, guerrilla members, political activists, and refugees under the protection of the United Nations High Commissioner for Refugees. The claws of Condor did not even spare children; at least 13 cases of illegally appropriated minors from Argentina, Bolivia, and Uruguay have been documented.<sup>39</sup> Due to the large number of exiles living in Buenos Aires since the late 1960s, most Condor crimes unfolded there. *Automotores Orletti*, a clandestine detention centre located in Buenos Aires' Floresta neighbourhood, is one of the emblems of Operation Condor. During its six months of operation between May and November 1976, over 300 people passed through *Orletti*, the vast majority being foreigners and still disappeared to date.<sup>40</sup> Other centres linked to Condor included, El Club Atlético, El Pozo de Quilmes, El Pozo de Banfield, and the Navy School of Mechanics in Argentina; Punta Gorda House, "300 Carlos," and the building of the Defence Intelligence Service (SID) in Montevideo, in Uruguay; Villa Grimaldi, Cuatro Alamos, and Simón Bolívar in Chile; and the Police Investigations Department in Asunción, Paraguay.

Condor crimes were systematically committed across South America. During the Condor years, perpetrators acted with absolute impunity; this was later further guaranteed by the sanctioning of amnesties legislated by successor democratic governments. Thus, how was justice for these atrocities ever possible?

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<sup>37</sup> Author interview with former member of Chilean Socialist Party, Mendoza, Argentina, 13 October 2016.

<sup>38</sup> *Operación Cóndor: 40 años después*. Centro Internacional para la Promoción de los Derechos Humanos. UNESCO: marzo de 2016, page 260, [http://www.cipdh.gov.ar/wp-content/uploads/2015/11/Operacion\\_Condor.pdf](http://www.cipdh.gov.ar/wp-content/uploads/2015/11/Operacion_Condor.pdf)

<sup>39</sup> See list of disappeared and recuperated children of Uruguay's Human Rights Secretariat for the Recent Past (hereafter SDHPR) [http://sdh.gub.uy/inicio/institucional/equipos/centro\\_de\\_documentacion\\_y\\_comunicacion/documentos\\_equipo\\_historia/Investigacion+historica+obre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+Seccion+Secuestro+y+Desaparicion+de+Ninos+y+Adolescentes/](http://sdh.gub.uy/inicio/institucional/equipos/centro_de_documentacion_y_comunicacion/documentos_equipo_historia/Investigacion+historica+obre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+Seccion+Secuestro+y+Desaparicion+de+Ninos+y+Adolescentes/)

<sup>40</sup> The estimate of 300 victims of *Automotores Orletti* is taken from information provided by Argentina's largest human rights NGO, the Centre for Legal and Social Studies, CELS, which is available at this link <http://www.cels.org.ar/comunicacion/?info=detalleDoc&ids=4&lang=es&ss=46&idc=2132>

### 3 The Long and Winding Road to Justice

As Operation Condor's destructive power peaked in the late 1970s, survivors and human rights activists were already denouncing the transnational terror network. They were not aware of its Condor codename, but this did not stop them. During those dark days, Amnesty International for instance gathered the testimonies of several Uruguay survivors.<sup>41</sup> One illustrative case is that of Uruguayan journalist Enrique Rodríguez Larreta. He had originally travelled to Buenos Aires in July 1976 to help his daughter-in-law locate his son who had disappeared. Rodríguez Larreta was then illegally detained and imprisoned with another 20 Uruguayans, including his son and daughter-in-law, in *Automotores Orletti*, interrogated, and tortured. After several days there, on 24 July 1976, they were all forcibly taken to Montevideo in what is now known as the *primer vuelo* (first flight), one of at least three clandestine flights through which prisoners were secretly returned from Argentina to Uruguay. Rodríguez Larreta was eventually freed in late December 1976. At that point, the journalist retraced the steps of his ordeal in Buenos Aires. Helped by the local community of Uruguayans and his own memories, he located the site where *Orletti* had functioned and took an emblematic photo of its façade. Months later, in March 1977, at great personal risk to himself and his family, the latter still living in Uruguay, he gave a pioneering testimony about those horrors in London.

After the return of democracy, the search for the accountability continued. Survivors importantly gave testimony before the Argentine National Commission on the Disappearance of Persons, CONADEP, and at the historic 1985 Trial of the Military Juntas.<sup>42</sup> The 1984 CONADEP's *Nunca Más* report already highlighted how, in parallel to the illegal repression inside Argentina, there had also been a coordinated terror network, without geographical limits and in clear violation of international law.<sup>43</sup> The occurrence of repressive operations by foreign security agents on Argentine soil during the dictatorship had been so well proven by the late 1980s that one of President Carlos Menem's 1989 pardons (Decree 1,003) exonerated from criminal accountability four Uruguayan military officers for crimes committed in Argentina.<sup>44</sup> In late December 1992, the fortuitous discovery of the 'Archives of Terror' by human rights lawyer

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<sup>41</sup> See for instance the testimony of Nelson Eduardo Dean Bermudez, February 1979, AI Index 52/18/79, copy emailed by Amnesty International to the author on 2 February 2015.

<sup>42</sup> See, Rodríguez Larreta's testimony, 17 June 1985, <http://www.desaparecidos.org/nuncamas/web/testimon/rodlarre.htm> (accessed 5 July 2015).

<sup>43</sup> *Informe de la Comisión Nacional sobre la Desaparición de Personas - Nunca Mas* (Buenos Aires: Editorial Universitaria de Buenos Aires, 2006), pp. 268-276.

<sup>44</sup> Decree 1003 of 6 October 1989 pardoned José Nino Gavazzo, Jorge Silveira, Manuel Cordero and Hugo Campos Hermida for criminal trial no. 42.335 bis: 'Rodríguez Larreta Piera, Enrique s/Denuncia.' See, 'Boletín Oficial, De la República Argentina,' 10 October 1989, <http://www.boletinoficial.gov.ar/DisplayPdf.aspx?s=01&f=19891010> (accessed 5 July 2015).

Martin Almada and judge José Agustín Fernández in the outskirts of Asunción provided the missing piece of evidence corroborating the transnational terror conspiracy that survivors had been denouncing for years. The archive in fact contained thousands of documents belonging to the secret police and other institutions of the Stroessner dictatorship (1954-1989), accounting for political repression in Paraguay and the region. While searching through these records, researchers found the invitation letter sent from the Head of the Chilean DINA to his Paraguayan counterpart to attend the 1975 founding meeting of Operation Condor.<sup>45</sup>

Prosecuting transnational atrocities was no small endeavour. Even though Condor crimes had been denounced to the courts in Argentina and Uruguay<sup>46</sup> as early as 1984, the prevailing context of impunity and the subsequent sanctioning of amnesty laws resulted in the stalling of almost all criminal investigations across the region. The only exception was the 1993 verdict in Chile for the Letelier murder, later upheld by Supreme Court of Justice in 1995, which sentenced to prison the former head of the Chilean National Intelligence Directorate (DINA) General Manuel Contreras and Brigadier Pedro Espinoza.<sup>47</sup> Starting from the early 2000s, owing to more favourable political conditions, criminal investigations into past human rights violations eventually resumed. In particular, investigations into Operation Condor atrocities helped shift the tide against impunity in the Southern Cone.

In Argentina, an investigation into a Condor murder helped legitimate long-standing justice demands by victims and activists. This occurred well before the 2005 nullification of the amnesties and the resuming of trials in 2006. In November 2000, a first instance court sentenced to life imprisonment a former Chilean secret police agent, Enrique Arancibia Clavel, for the 1974 murder in Buenos Aires of exiled General Prats and his wife.<sup>48</sup> When the Supreme Court of Justice reviewed the case in 2004, it recognised for the first time in Argentine jurisprudence that crimes against humanity should not be subject to statutory limitations. This acknowledgment reopened the door to trials regarding past crimes to restart.<sup>49</sup> In Chile, although there were over 200 lawsuits filed by victims and relatives against Pinochet for dictatorship-era crimes, it was the investigation into Operation Condor atrocities that eventually

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<sup>45</sup> Simon Watts, "How Paraguay's 'Archive of Terror' put Operation Condor in focus," *BBC News*, 22 December 2012.

<sup>46</sup> See Lawsuit 42.335 bis: 'Rodríguez Larreta Piera, Enrique s/Denuncia' filed in Buenos Aires and Lawsuit 90-190/1984 of April 12, 1984 before Montevideo's Criminal Tribunal No. 2 under the name 'Rodríguez Larreta, Enrique su denuncia.'

<sup>47</sup> William R. Long, 'Letelier Murder Case Sentences Upheld in Chile', *Los Angeles Times*, 31 May 1995.

<sup>48</sup> 'Pena máxima para Arancibia Clavel' *La Nación*, 21 November 2000.

<sup>49</sup> Irina Hauser, 'Crímenes que no borra el paso del tiempo', *Página12*, 25 August 2004.

led to the first successful prosecution against the ex-dictator in December 2004.<sup>50</sup> Finally, Uruguay is especially illuminating of how Condor crimes contributed to undermining a scenario of absolute impunity. There, the 1986 sanctioning of the *Ley de Caducidad* amnesty had halted all judicial proceedings.<sup>51</sup> Twenty years later, human rights lawyers and activists adopted a deliberate policy of strategically litigating a set of crimes outside the amnesty's remit, aiming to challenge judicial paralysis.<sup>52</sup> In that context, Operation Condor atrocities were crucial: lawyers contended that the amnesty was inapplicable to those crimes, since those had been perpetrated outside of Uruguayan territory. This innovative argument was accepted and the judiciary began investigations into cases of Uruguayans who had been victims of Condor in Argentina and Paraguay.<sup>53</sup> Indeed, the very first sentence to be dictated in a trial for past crimes in Uruguay was in a Condor lawsuit in March 2009. In *Adalberto Soba et al.*, the judge condemned eight former military and police officers for the murder of 28 Uruguayans, all members of the political party *Partido de la Victoria del Pueblo*, who had been illegally detained in 1976 in Argentina and later murdered. This policy of strategic litigation across the Southern Cone was instrumental for activists to successfully bypass existing *de jure* or *de facto* obstacles (amnesties, pardons, or other legal instruments halting prosecutions) in their respective countries, paving the way for renewed accountability efforts.

All of above mentioned lawsuits, however, only tackled a limited number of Condor crimes, either by focusing on emblematic episodes such as the Prats murder, or particular subsets of victims, whether defined by nationality, political affiliation, or crime location, such as the *Soba* verdict. The recent Operation Condor trial was, instead, truly exceptional for transcending this earlier approach. Indeed, this prosecution, by collating over a hundred cases of Operation Condor victims, which encompassed instances of foreign nationals persecuted on Argentine soil as well as of Argentines who suffered a similar fate in Bolivia, Brazil, Paraguay, and Uruguay, shifted the focus away from a limited set of cases to investigating the overall *modus operandi* of the transnational terror across South America.

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<sup>50</sup> Larry Rohter, 'Judge Declares Pinochet Fit to Face Human Rights Charges', *The New York Times*, 13 December 2004.

<sup>51</sup> Francesca Lessa, 'Barriers to Justice: The Ley de Caducidad and Impunity in Uruguay', in Francesca Lessa and Leigh A. Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (Cambridge: Cambridge University Press, 2012), pp.123–51.

<sup>52</sup> Francesca Lessa, *Memory and Transitional Justice in Argentina and Uruguay: Against Impunity* (New York: Palgrave Macmillan, 2013).

<sup>53</sup> Gabriela Fried and Francesca Lessa (eds.), *Luchas contra la impunidad. Uruguay 1985-2011* (Montevideo: Trilce, 2011).

### *Seeking Justice in Times of Impunity*

The Operation Condor trial stemmed from the tireless efforts by victims' relatives who never gave up their quest for justice. Its origins date back to Argentina in the late 1990s. At that time, silence and impunity dominated in the aftermath of the sanctioning of parliamentary amnesties in 1986 and 1987 and the granting of presidential pardons in 1989 and 1990. Those measures brought about the shelving of the majority of criminal investigations into past atrocities. Only lawsuits probing instances of baby kidnapping continued, since that crime had explicitly been excluded from their remit.<sup>54</sup> Pitted against this difficult scenario, human rights activists and their lawyers had to ingeniously generate opportunities for justice.<sup>55</sup> They undertook a multipronged strategy, simultaneously pushing forward demands to guarantee the right to truth, investigate the fate of illegally appropriated children, and shed light onto Operation Condor. In 1996, lawyers Alberto Pedroncini and David Baigún filed the first of two strategic lawsuits in this respect. The first alleged that, during the dictatorship, babies born to women held in clandestine detention had been illegally adopted by families loyal to the regime and this practice had amounted to a systematic plan. As a result, in 1998, several emblematic figures of the dictatorship, including former dictators Jorge Videla and Emilio Massera, were indicted for baby theft, abduction, and forgery.<sup>56</sup> Subsequently, on 8 November 1999, the same lawyers together with six women<sup>57</sup> who were relatives of Condor victims, filed in Buenos Aires a second lawsuit (*querrela* in Spanish), initiating the Operation Condor trial. These two cases became the keystone of this resourceful strategy that, in the long run, successfully undermined judicial paralysis. As judge Daniel Rafecas put it, this strategic litigation generated 'cracks and holes in the wall of impunity (*muralla de impunidad*).'<sup>58</sup>

The original Condor *querrela* denounced two sets of crimes, namely illegal deprivations of liberty and *asociación ilícita*. It encompassed seven victims of disappearance (four Argentines, two Paraguayans, and one Chilean) who had all been illegally detained between

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<sup>54</sup> Between 1988 and 2005, 23 individuals were sentenced on charges of illegal appropriation of children. See *A diez años del fallo "Simón". Un balance sobre el estado actual del proceso de justicia por crímenes de lesa humanidad*. Buenos Aires: Procuraduría de Crímenes contra la Humanidad, Ministerio Público Fiscal, p.2. <http://www.fiscales.gob.ar/lesa-humanidad/wp-content/uploads/sites/4/2015/06/20150612-Informe-Procuradur%C3%ADa-de-Cr%C3%ADmenes-contra-la-Humanidad.pdf>

<sup>55</sup> 'Murió Alberto Pedroncini', *Página12*, 6 August 2017.

<sup>56</sup> HRW, "Argentina - Country Summary," (Human Rights Watch, 2002).

<sup>57</sup> Namely Chilean Dora Gladys Carreño Araya, Paraguayan Idalina Wilfrida Radice Arriola de Tatter, Uruguayan Sara Rita Méndez, and Argentines Elsa Pavón de Grinson, Claudia Mabel Careaga, and Ana María Careaga.

<sup>58</sup> Author's interview with Daniel Rafecas, Judge at the Juzgado Criminal y Correccional Federal N° 3 de Capital Federal, Buenos Aires, 30 October 2013.

1976 and 1978 in Buenos Aires and Montevideo.<sup>59</sup> These disappearances shared a common element: they entailed more than one country and were all committed partially in Argentina. The charge of illegal deprivation of liberty had been deliberately selected: since the bodies of the *desaparecidos* had never been found, these unlawful kidnappings constituted ongoing crimes and, therefore, could be investigated despite amnesties or pardons. This reflected the broader strategy of intentionally bypassing obstacles in the way of justice. Miguel Ángel Osorio, the prosecutor at the time, indeed affirmed:

When Condor [criminal case] began, it did so with a small group of cases that, from a juridical point of view, constituted permanent crimes [...]. The strategy was irrefutable because the state had the ethical and constitutional obligation to investigate. Afterwards, through permitted mechanisms, it may eventually forgive, amnesty, or pardon but, first of all, the crimes had to be known.<sup>60</sup>

On the other hand, the charge of illicit association, which is similar to the crime of conspiracy under UK and US law,<sup>61</sup> constitutes a particularly serious crime under the Argentine Criminal Code (article 210), carrying severe penalties, three to ten years, and up to 20 in its aggravated format (article 210bis).<sup>62</sup> Its use in this lawsuit underscored how Operation Condor had allowed criminal states to carry out illegal detentions notwithstanding borders by resorting to state apparatuses and resources.<sup>63</sup> Seventeen high-ranking officers, encompassing three Argentines, three Chileans, four Paraguayans, and seven Uruguayans, were explicitly named in the *querella* as responsible for the crimes. They included former Argentine dictator Videla, the head of the Uruguayan Armed Forces Julio César Vadora, General Pinochet, and the former Paraguayan dictator Alfredo Stroessner.<sup>64</sup>

Overall, the *querella* had two main goals: first, a personal objective for the families to have the cases of their relatives investigated by the judiciary,<sup>65</sup> and second, a broader goal of

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<sup>59</sup> Text of the original *querella*, copy on file with the author, provided by Dr Jaime Nuguer, emailed to the author on 21 November 2013.

<sup>60</sup> Author interview with Miguel Ángel Osorio, federal prosecutor at the investigative stage for the Operation Condor trial, Buenos Aires, 26 September 2013.

<sup>61</sup> As highlighted by Prosecutor Pablo Ouviaña, the crime of conspiracy under US law lacks the requirement of stability that the charge of illicit association in Argentina requires. The crime of *associazione per delinquere* under article 416 of the Italian Criminal Code on the other hand shares more similarities with the Argentine category. Email communication to the author, 3 November 2017.

<sup>62</sup> Código Penal de La Nación Argentina, Libro Segundo, Título VIII, Delitos contra el orden público, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#22> Accessed 3 November 2017.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> Author interview with Pablo Ouviaña and Mercedes Moguilanski, prosecutors of the Operation Condor trial, Buenos Aires, 26 September 2013.



challenging impunity in Argentina.<sup>66</sup> In the words of Paraguayan Federico Tatter, the son of one of the victims, the Condor lawsuit was a ‘*estrellita en la noche* (a small star in the night).’<sup>67</sup>

### *An Uphill Struggle*

In the early 2000s, the Condor lawsuit proceeded slowly in the *etapa de instrucción* (pre-trial phase), owing to the political context and lasting impunity. Even though first-instance and appeals courts had deemed the amnesties unconstitutional in 2001, such verdicts were limited to the case in question and lacked broader applicability. In this complex scenario, a significant step forward occurred in September 2001, when federal judge Rodolfo Canicoba Corral indicted Videla, already charged with baby kidnapping, and also requested the extradition of several of his regional counterparts, including Pinochet and Stroessner.<sup>68</sup> The judge also demanded Uruguay to detain four military officers (José Nino Gavazzo, Manuel Cordero, Jorge Silveira and Hugo Campos Hermida), accused of kidnapping and disappearing 24 Uruguayans in Argentina. By and large, the endurance of impunity, combined with the complex economic and social crisis engulfing Argentina in 2001 and 2002, created a generally unfavourable scenario to making further progress. Against this backdrop, therefore, the investigative judge focused on gathering testimonies and archival documents, so that these would be readily available if and when progress could feasibly occur in the future.<sup>69</sup>

Under president Nestor Kirchner (2003-2007), the political context significantly changed in favour of accountability. In 2003, Congress annulled the amnesties and in 2005, the Supreme Court of Justice confirmed their unconstitutionality, leading to the reopening of trials. At that time, the Condor lawsuit witnessed a ‘qualitative jump.’<sup>70</sup> Nonetheless, it still took another eight years before it reached the trial stage. Several obstacles, both nationally and internationally, endured. Within Argentina, the judiciary was at the outset unprepared to oversee and manage the opening of hundreds of intricate human rights trials; consequently, courts at first struggled to cope with these proceedings. Several problems emerged at this stage. Logistically, for example, only a few courtrooms were initially available to hold hearings. This generated a backlog of cases and the beginning of many trials had to be postponed; the lack of appropriate venues for

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<sup>66</sup> Author’s interview with human rights lawyer Pablo Llonto, Buenos Aires, 26 September 2013

<sup>67</sup> Author interview with Federico Jorge Tatter Radice, son of a victim of Operation Condor, Asuncion, Paraguay, 6 September 2016.

<sup>68</sup> Lourdes Heredia, ‘Operación Cóndor: Videla Procesado’, *BBC Mundo*, 27 September 2001.

<sup>69</sup> Author’s interview with Judge Daniel Rafecas.

<sup>70</sup> Alejandra Dandan, ‘El plan de la represión sin fronteras’, *Página12*, 4 March 2013.

hearings remained an issue until at least 2010.<sup>71</sup> Other delays resulted from procedural matters. For instance, Federal Criminal Tribunal 1 was scheduled to hear proceedings in both the *Automotores Orletti* and Operation Condor trials. The court decided to prioritise to the *Orletti* trial, to safeguard due process guarantees and the rights of the defendants, since they were all already in preventive detention, while some Condor defendants were not. These difficulties at the national level were compounded by obstacles in the international sphere, which were specifically linked to the transnational nature of Condor. Prosecutors and judges had to compile relevant proof and evidence, whether testimonial or archival, in Argentina, but also from neighbouring countries.<sup>72</sup> International official requests for information, through Ministries of Foreign Affairs, take on average at least a year to be dealt with, thus affecting the investigation's progress. Finally, processing extradition requests also produced additional deferrals. Out of the 2001 extradition requests, encompassing eight defendants,<sup>73</sup> only one was ultimately successful.<sup>74</sup> The granting of the extradition from Brazil was, nevertheless, far from straightforward. After a lengthy judicial process lasting five years, former Uruguayan coronel Manuel Cordero was finally sent to Argentina in early 2010.

### *The Trial*

On 5 March 2013, proceedings in the so-called 'public and oral phase' of the trial finally started before Federal Criminal Tribunal 1 in Buenos Aires, composed of four judges, Oscar Ricardo Amirante, Adrian Federico Grünberg and Pablo Gustavo Laufer, and substituting judge, Ricardo Angel Basilico. The prosecution had grown exponentially since 1999, encompassing three portions of the Condor investigation and one from *Automotores Orletti*, and bringing the initial seven victims and 17 defendants to 174 and 27 respectively. Of the accused, 26 were Argentines and one was Uruguayan; 24 had belonged to the Army, one to the Navy, and one had been a civilian intelligence officer, Miguel Angel Furci, indicted in the *Orletti* portion, while the Uruguayan defendant had been an Army coronel.<sup>75</sup> Emblematic figures of the Argentine

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<sup>71</sup> CELS, 'Derechos humanos en Argentina: Informe 2010' (Buenos Aires: Siglo XXI Editores, 2010), p. 71. I would like to thank Lorena Balardini for clarifying this issue to me.

<sup>72</sup> Author interview with CELS human rights lawyer and *querellante* Marcos Kotlik, Buenos Aires, 19 September 2013.

<sup>73</sup> 'Piden extradición de Pinochet', *BBC Mundo*, 20 July 2001.

<sup>74</sup> Human rights activists played a fundamental role in achieving this extradition. In particular, Brazilian campaigner Jair Krischke eventually located Cordero in 2005, as living in a border city between Uruguay and Brazil, when he tried to collect his pension at the local Uruguayan Consulate. See Roger Rodríguez, 'Cordero fue extraditado a Argentina', *La Republica*, 24 January 2010.

<sup>75</sup> *La Judicialización de la Operación Cóndor, Informe de la Procuraduría de Crímenes contra la Humanidad*, Buenos Aires, noviembre de 2015, p. 8, <http://www.fiscales.gob.ar/wp-content/uploads/2015/11/Informe-ProcuLesas-Op-C%C3%B3ndor-Final.pdf>

dictatorship stood among the defendants, including former dictators Videla (1976-1981) and Reynaldo Benito Bignone (1982-1983), and the Commander of the Fourth Army Corps Santiago Omar Riveros. Videla passed away a couple of months into the trial. Most defendants were high-ranking officials; this reflected the political strategy of the late 1990s in breaking impunity, but was also due to the fact that, in most instances, the direct authors of the crimes were unknown.<sup>76</sup> Consequently, all the defendants except two were prosecuted as perpetrators by means (*autores mediatos*), for occupying decision-making posts and giving orders. Only Cordero and Furci were indicted as direct perpetrators (*autores materiales*), for committing kidnappings and torture.<sup>77</sup> The accused faced different sets of charges. Cordero, because of the extradition's terms, could only be prosecuted for kidnappings, since the Brazilian Federal Supreme Court (hereafter STF) had dropped the indictment for *asociación ilícita*, applying statutory limitations. Furci was the only one accused for illegal detentions and torture in *Orletti*. The remaining 25 were prosecuted for kidnappings and *asociación ilícita*. The charges related to 65 victims in *Automotores Orletti*, 107 in Operation Condor, and two that belonged to both lawsuits; when broken down by nationality, the 109 Condor victims comprised 48 Uruguayans, 22 Chileans, 16 Argentines, 13 Paraguayans, 9 Bolivians, and 1 Peruvian.<sup>78</sup>

The start of the trial was greeted by much expectation and anticipation. Chief Prosecutor Pablo Ouviaña emphasised its significance both locally and regionally, asserting how the probing of 'crimes against humanity transcends individual interest, since it concerns not only victims and relatives, but society as a whole.'<sup>79</sup> Furthermore, there was a broader interest than usual, since people from all across South America had long been waiting for answers: 'not only were our fellow nationals watching us, but *all our neighbours were too* (my emphasis).'<sup>80</sup> The trial consisted of two main phases. The first, known in Spanish as *recepción de prueba*, was the longest, lasting from May 2013 to April 2015. During that time, the accusation and defence presented testimonies and evidence relevant to the proceedings. Owing to the large number of

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<sup>76</sup> Feedback by Luz Palmas Zaldúa on a conference presentation of the paper, Buenos Aires, September 2015.

<sup>77</sup> Miguel Angel Furci, a former intelligence agent, had already been prosecuted in the 1990s for the illegal appropriation of Mariana Zaffaroni, the daughter of two Uruguayan exiles detained and disappeared in Buenos Aires in 1976. Mariana finally recovered her identity in 1992 and, subsequently, in 1994, Furci and his wife were sentenced to five and three years in prison respectively for the crimes of hiding and retaining a minor. See Mariana Zaffaroni's case file in the SDHPR, at [http://sdh.gub.uy/wps/wcm/connect/sdh/0a7f7311-adce-415b-9917-5f597fb6b3c7/19+ZAFFARONI+ISLAS+Mariana.pdf?MOD=AJPERES&CONVERT\\_TO=url&CACHEID=0a7f7311-adce-415b-9917-5f597fb6b3c7](http://sdh.gub.uy/wps/wcm/connect/sdh/0a7f7311-adce-415b-9917-5f597fb6b3c7/19+ZAFFARONI+ISLAS+Mariana.pdf?MOD=AJPERES&CONVERT_TO=url&CACHEID=0a7f7311-adce-415b-9917-5f597fb6b3c7)

<sup>78</sup> *La Judicialización de la Operación Cóndor*, p. 6.

<sup>79</sup> 'Operación Cóndor: con el veredicto previsto para el viernes próximo, llegará el final de un juicio histórico', 20 May 2016, <http://www.fiscales.gob.ar/lesa-humanidad/operacion-condor-con-el-veredicto-previsto-para-el-viernes-proximo-llegara-el-final-de-un-juicio-historico/>

<sup>80</sup> *Ibid.*

countries and victims, the court organised this phase in *binomios* (dyads of countries), pairing up the six countries to process testimonies, evidence, documents, and expert witnesses. The *recepción de prueba* played an essential role in putting together the pieces of the Condor puzzle, reconstructing the circumstances surrounding each disappearance and, simultaneously, providing elements demonstrating the workings of the network. The tribunal received over 200 testimonies from survivors, victims' relatives, document analysts, and other experts. Moreover, a large amount of documentary evidence, encompassing academic books and thousands of records received from archives in Argentina, Uruguay, Chile, the United States, and Paraguay, were scrutinised. This first stage was fundamental in demonstrating how the 109 illustrative cases of victims were not isolated incidents but amounted to a systematic pattern of human rights violations, perpetrated in a similar and coordinated manner across the region.

The second phase, the *alegatos* (accusation and defence arguments), lasted between June 2015 and April 2016. Jaime Nuguer, representing the original *querrela*, was the first to appear before the judges. Subsequently, the public prosecution outlined its argument. It particularly emphasised how Condor had constituted 'a criminal organisation by illegitimate States, which coordinated their structures and resources to commit the most serious crimes against humanity.'<sup>81</sup> The prosecution had three goals: 'first, to know the truth [...], second for the authors of the crimes face criminal responsibility for their actions in court and third, but deeply interrelated, providing an answer to the victims.'<sup>82</sup> The prosecution underscored how, even though several countries had previously established truth commissions that probed Operation Condor as part of their proceedings, this trial represented the first judicial response and, at a historical level, constituted a fundamental step. Other private prosecutors,<sup>83</sup> including the Centre for Legal and Social Studies and the Argentine State's Human Rights Secretariat, also presented their accusation. Finally, between December 2015 and April 2016, private and public defence lawyers exposed their arguments.

After 38 months of public hearings and almost 17 years since the filing of the original lawsuit, on 27 May 2016, the Tribunal dictated its verdict before hundreds of people, with

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<sup>81</sup> 'Se desdibujaron las fronteras para propiciar un plan criminal', 18 August 2015, *InfoJus*, <http://www.infojusnoticias.gov.ar/nacionales/se-desdibujaron-las-fronteras-para-propiciar-un-plan-criminal-9468.html>

<sup>82</sup> Author interview with Pablo Ouviaña and Mercedes Moguilanski, prosecutors of the Operation Condor trial, Buenos Aires, 26 September 2013.

<sup>83</sup> Michel and Sikkink define private prosecution as the right that 'allows victims and their lawyers, including domestic human rights organizations, to open a criminal investigation and actively participate throughout every stage of the criminal proceedings.' Verónica Michel and Kathryn Sikkink, 'Human Rights Prosecutions and the Participation Rights of Victims in Latin America', *Law and Society Review* 47:4 (2013), p. 874.

survivors and victims' relatives crowding the courtroom in Buenos Aires and Argentine Consulates in Santiago, Asunción, La Paz, and Montevideo, where it was livestreamed.

Journalists from major international newspapers, including *The New York Times*, *The Washington Post*, and *The BBC*, were in attendance. Only 17 defendants remained that day, with 10 having either passed away or deemed unfit to stand trial. The judges condemned 15 defendants, with sentences ranging from 8 to 25 years, and asserted that Operation Condor had constituted a transnational illicit association. Former Argentine dictator Bignone received 20 years, while Uruguayan Cordero, former Argentine General Riveros, and *Orletti* defendant Furci were sentenced to 25 years. Others received lesser sentences, while two were acquitted.

### *The Verdict*

This sentence was the first to be handed down for crimes against humanity committed by ‘a transnational illicit association, dedicated to illegally exchanging information and intelligence, and persecuting, kidnapping, forcefully repatriating, torturing, and murdering political activists in the Southern Cone.’<sup>84</sup> Earlier trials in Argentina and Chile had acknowledged that during their respective dictatorial governments, *asociaciones ilicitas* were responsible for perpetrating human rights crimes at the national level. But, never before, had a court recognised that such a conspiracy had also existed at the international level, to coordinate persecution across South America.

In the verdict,<sup>85</sup> the judges trace the origins of Condor to the geopolitical context of the Cold War, the National Security Doctrine, and the French School Doctrine.<sup>86</sup> Informal exchanges of information and prisoners in the early 1970s through ‘gentlemen’s pacts’<sup>87</sup> paved the way for Condor’s subsequent formalisation in 1975. Condor is defined as a platform that ‘standardised practices of coordinated repression already present in the region and had involved the provision of human, material, and technical resources,’ to facilitate the destruction or elimination of

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<sup>84</sup> “Operación Cóndor: se probó la asociación ilícita y se impusieron penas de 8 a 25 años de prisión,” 27 de mayo de 2016, <http://www.fiscales.gob.ar/lesa-humanidad/operacion-condor-se-probo-la-asociacion-ilicita-y-se-impusieron-penas-de-8-a-25-anos-de-prision/>

<sup>85</sup> For the full text of the verdict please see [www.cij.gov.ar/http://www.cij.gov.ar/d/doc-15250.pdf](http://www.cij.gov.ar/http://www.cij.gov.ar/d/doc-15250.pdf)

<sup>86</sup> See J. Patrice McSherry, ‘Operation Condor: Clandestine Inter-American System’, *Social Justice*, 26:4 (1999), p.144 and also see the Documentary ‘Death Squadrons: The French School’ by French filmmaker Marie-Monique Robin, <https://www.idfa.nl/en/film/59cf5aff-80eb-4e5a-9ae8-4c6b78a2396e/death-squadrons-the-french-school>

<sup>87</sup> Verdict, page 1,222. All the excerpts from the verdict in the article have been translated from Spanish into English by the author. The verdict is available at this link <http://www.cij.gov.ar/nota-22663-Lesa-humanidad--difundieron-los-fundamentos-de-la-sentencia-por-el--Plan-C-ndor-.html>

political opponents, ‘whether they were individuals or organizations - actual or potential.’<sup>88</sup> Condor indeed amounted to an institutionalised and permanent multilateral network.

The Condor states effectively and intentionally suspended traditional norms of sovereignty and territorial integrity, breaching the internationally recognised right to asylum, with each state permitting persecution on political grounds against both nationals and foreign citizens. Since the 1950s and 1960s, asylum seekers and exiles had fled from the dictatorial regimes in Paraguay, Brazil, Bolivia, Uruguay, and Chile. The vast majority settled in Argentina that, by 1973, was the only country still under relatively democratic rule, and became a sanctuary for thousands of political activists. But, after the 24 March 1976 coup, most Condor crimes did occur in Argentina given this high concentration of exiles. As the judges affirmed, being the stronghold where activists and opponents were located, the country was converted into ‘a hunting ground in which they [exiles] were trapped.’<sup>89</sup>

The tribunal underscored how the transnational terror had unfolded outside any jurisdictional control. Condor respected no borders —whether geographical or otherwise— and was responsible for hundreds of illegal kidnappings, torture, killings, illegal raids, thefts, baby kidnapping, extortion and threats in any of the Condor states’ territories. The court importantly emphasised how the network was implemented by the armed forces, together with security and intelligence agencies, but also drew upon civilian structures, including the diplomatic corps, as well as immigration and border control agencies. This recognition is significant in understanding how Condor used all the resources at the states’ disposal, both military and civilian. The judges, thus, reached the conclusion that this coordinated alliance among the South American criminal states amounted to an enormous and transnational illicit association. It was additionally acknowledged how the Condor association coexisted with national-level illicit associations set up locally inside each country, sharing members and means at their disposal to perpetrate crimes.

#### **4 Justice beyond Borders: Innovations and Implications**

Although numerous journalists, lawyers, and academics had described the origins and workings of Operation Condor since the 1990s, this recent sentence added an additional crucial element,

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<sup>88</sup> Verdict, page 1,221.

<sup>89</sup> Verdict, page 1,225-6.

namely the recognition by a court of law of the network's existence. The tribunal's work was critical in two respects. First, the court compiled and systematised possibly the entire corpus of existing evidence about Operation Condor and the perpetration of cross-border atrocities. The judges surveyed academic investigations, read hundreds of archival records, and listened to plentiful testimonies, from both survivors and experts, bringing all these elements together in the courthouse.<sup>90</sup> This colossal effort was truly unparalleled. Second, the tribunal's function was, however, not simply one of amassing evidence. Rather, the judges evaluated this evidentiary corpus and, after considering both the accusation and defence's arguments and proofs following strict legal criteria, reached the conclusion that Operation Condor had indeed occurred and, moreover, amounted to a transnational illicit association.<sup>91</sup>

### *The Verdict, locally and regionally*

The judgment was significant not only in Argentina but also in the rest of the region. The trial particularly possessed four unique features, which are all connected to the transnational nature of the crimes. First, while several Argentine citizens had been previously extradited, for instance from Mexico or France, to stand trial for human rights violations in their native country, this was the first time that a foreign defendant was.<sup>92</sup> The extradition to Argentina of a former Uruguayan coronel had been approved by the Brazilian STF. This landmark extradition was significant for Argentina, but also for Brazil. Indeed, in allowing Cordero's extradition to go forward in 2009, the STF acknowledged that enforced disappearances were equivalent to kidnapping and thus, as continuous crimes, they were not subject to statutory limitations. This jurisprudence was later used by a Brazilian military prosecutor in 2012 to reopen investigations into 39 instances of disappearances occurred during the country's own dictatorship.<sup>93</sup> This is especially important, considering that Brazil is the only country in the region that has not conducted a single criminal trial for past atrocities and efforts to hold perpetrators accountable have repeatedly stalled.

Second, prior human rights prosecutions in Argentina, but also in Chile and Uruguay, were often framed around crimes committed within a specific clandestine centre, such as the emblematic ESMA trials probing the crimes carried out in the Navy School of Mechanics. With

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<sup>90</sup> Author interview with Adrian F. Grünberg, judge of the Operation Condor trial, Buenos Aires, 26 October 2016.

<sup>91</sup> Author interview with Pablo Ouviaña, Chief Prosecutor of the Operation Condor trial, Buenos Aires, 9 June 2016.

<sup>92</sup> Ibid.

<sup>93</sup> Glenda Mezarobba, 'Brazil: The Tortuous Path to Truth and Justice', in Elin Skaar, Jemima Garcia-Godos, and Cath Collins (eds.), *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability* (London and New York: Routledge, 2016), pp. 103-125.

regard to earlier Operation Condor investigations, we have already seen how those only addressed specific episodes or particular subsets of victims. In the Condor trial, instead, the investigation extensively scrutinised atrocities executed in the territories of six states. The adoption of such a lens clearly exposed the length to which the criminal states went in order to persecute political opponents notwithstanding borders.<sup>94</sup> By selecting emblematic cases encompassing different sets of nationalities, victims' political affiliations, and geographies of crimes, the Argentine judges examined the entire Operation Condor's *modus operandi* and better captured how the entire repressive system functioned. This prosecution surpassed previous ones by deliberately probing a multiplicity of transnational crimes and thus putting Operation Condor as a whole on trial.<sup>95</sup>

Third, the tribunal handed down a verdict recognising the existence of a transnational illicit association to commit human rights violations on a regional scale. Argentine courts frequently employ the legal figure of illicit association to investigate local criminal gangs or in trials linked to the crimes of the last dictatorship. In the previously cited *Arancibia Clavel* verdict, the Supreme Court sentenced the defendant for belonging to the Chilean DINA secret police; the latter amounted to an illicit association dedicated to persecuting opponents to the Pinochet dictatorship inside and outside Chile.<sup>96</sup> Subsequently, many other Argentine courts charged and sentenced numerous defendants in the context of human rights trials; they were found guilty for taking part in illicit associations dedicated to carrying out kidnappings, torture, and murder during the years of dictatorial rule.<sup>97</sup> Notwithstanding those important precedents, this was the first time that a court applied the charge to the international level, highlighting how the Condor states had coordinated their repressive policies and carried out criminal activities in a joint manner throughout South America.<sup>98</sup> This charge was key for the judges to emit, in an unprecedented step, a verdict on the very nature of Condor; they 'did not simply look into human rights violations committed against emblematic victims in a particular context, but also scrutinised and judged *that very context*, considering it amounted to an illicit association and

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<sup>94</sup> 'Operation Condor: Landmark human rights trial reaches finale,' BBC News, 27 May 2016, <http://www.bbc.com/news/world-latin-america-36394820>

<sup>95</sup> Author interview with Pablo Ouviaña, 9 June 2016.

<sup>96</sup> Irina Hauser, 'Crímenes que no borra el paso del tiempo', *Página 12*, 25 August 2004.

<sup>97</sup> See 'Dossier de sentencias pronunciadas en juicios de lesa humanidad en Argentina', [http://www.fiscales.gob.ar/wp-content/uploads/2016/03/LH\\_Dossier\\_23-3.pdf](http://www.fiscales.gob.ar/wp-content/uploads/2016/03/LH_Dossier_23-3.pdf) Accessed 2 November 2017.

<sup>98</sup> Author interviews with human rights lawyer Pablo Llonto, Buenos Aires, 26 September 2013, and with Pablo Ouviaña and Mercedes Moguilanski, prosecutors of the Operation Condor trial, Buenos Aires, 26 September 2013.



finding individuals criminally responsible for it.<sup>99</sup> Through Condor, the power and dangerousness of each of the illegal structures of the dictatorships in the region increased exponentially.<sup>100</sup> Indeed, the verdict clearly recognised how, through this vast illicit association, the criminal states better achieved their objective of repressing opposition to their rule wherever needed. Therefore, the court's judicial recognition that Operation Condor was a 'transnational criminal conspiracy devised by South America's dictators' is unparalleled.<sup>101</sup>

Finally, this trial drew 'an overwhelming quantity of documents.'<sup>102</sup> Prosecutions for crimes against humanity normally only rely upon a 'few documents and are mainly based on testimonies of survivors and families of victims.'<sup>103</sup> Conversely, thousands of declassified documents were gathered from across South America and beyond to help the prosecution put together a complicated puzzle of cross-border repression. In order to observe Condor, as judge Adrian Grünberg asserted, the tribunal had 'to cross borders too, symbolically and practically,' compiling all the relevant elements and pieces for its investigation.<sup>104</sup> In an unprecedented manner, thus, both the prosecution and the court could incorporate into their arguments and judgement written documents from archives from all the ex-Condor countries and the US. Such unmatched archival evidence complemented the testimonies of survivors and victims' relatives in accounting for the transnational crimes perpetrated and shedding light onto the responsibility of the defendants.

Human rights lawyers are hopeful that the Condor trial could catalyse efforts for accountability, spurring neighbouring 'countries to judge the responsibility of their officials regarding victims of their nationalities.'<sup>105</sup> This is especially significant given that progress with accountability has been uneven across South America. On sentence day, this could not have been clearer. The courtroom was full of people who had travelled long distances, from Uruguay, Chile, and Paraguay, to listen to the verdict. The verdict was however particularly momentous for survivors and relatives from Brazil, Bolivia, Paraguay, and Uruguay, countries where justice for past horrors has been harder to achieve. According to lawyer Martin Rico, the verdict could

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<sup>99</sup> Ibid.

<sup>100</sup> Pablo Ouviaña, email communication to the author, 3 November 2017.

<sup>101</sup> Author interview with Jaime Nuguer, lawyer for the *querrela original*, Buenos Aires, 8 June 2016.

<sup>102</sup> 'Operation Condor: Landmark human rights trial reaches finale,' BBC News.

<sup>103</sup> Ibid.

<sup>104</sup> Author interview with Adrian F. Grünberg, judge, Condor trial, Buenos Aires, 26 October 2016.

<sup>105</sup> Author interview with Martin Rico, lawyer for the Argentine Human Rights Secretariat, Ministry of Justice and Human Rights, Buenos Aires, 1 October 2013.

become ‘a leading case in international jurisprudence’.<sup>106</sup> Meanwhile, Marcos Kotlik, another lawyer, raised a parallelism with what happened in Argentina back in the 1990s, when European countries, such as Spain, Italy, and France, began investigating and prosecuting Argentine military officers for human rights abuses perpetrated in Argentina. Those investigations by European courts had a positive impact in Argentina, reactivating local accountability efforts. Those cases ‘hurt the pride of local judges’,<sup>107</sup> Kotlik stated, pushing them to begin investigating the same crimes inside Argentina. Kotlik envisaged a similar reaction could happen in Uruguay, because of its proximity to Argentina and the close relations between the them.

Undeniably, as these lawyers underscored, the verdict does set an important precedent and could constitute a powerful tool in the hands of regional human rights activists and lawyers to pressure governments and judiciaries to shed light onto appalling atrocities and bring to justice those responsible. However, the actual reactivation of accountability efforts across the region is yet to be seen. No significant developments have occurred in neither Brazil nor Paraguay. Regarding Uruguay, some timid steps forward have taken place. The sentence was especially important there, since half of the trial’s victims were Uruguayan and the only foreign defendant was also a national of that country. By strategically using sentences, such as the Inter-American Court of Human Rights’ *Gelman vs. Uruguay* and the Condor verdict, local human rights activists and lawyers have repeatedly called upon the judiciary and the state to ensure accountability. Still, accountability remains extremely slow. Despite having a well-functioning judiciary, only a handful of verdict for dictatorship-era crimes have been handed down in Uruguay. In 2017, for instance, only one prosecution began and no new verdicts were dictated out of a universe of over 300 criminal lawsuits pending before the courts.<sup>108</sup> The Argentine verdict stands in stark contrast to this scenario of judicial inactivity and passivity inside Uruguay.

### *Implications for Human Rights and Transitional Justice*

Undoubtedly, the Condor trial constituted a landmark step in the search for justice in South America. Analysing this prosecution, furthermore, helped provide affirmative answers to the two

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<sup>106</sup> Ibid.

<sup>107</sup> Author interview with CELS human rights lawyer, Marcos Kotlik.

<sup>108</sup> ‘El procesamiento de Rodolfo Álvarez, un fallo histórico por el delito de tortura’, *Radio Uruguay*, 12 April 2017, <http://radiouruguay.uy/el-procesamiento-de-rodolfo-alvarez-un-fallo-historico-por-el-delito-de-tortura/> Accessed 3 November 2017.

questions raised in the introduction. First, can transitional justice mechanisms help redress transnational crimes? And, second, are human rights provisions applicable extraterritorially?

The Condor prosecution demonstrates in practice how existing transitional justice mechanisms and the human rights system already possess valuable tools and concepts to be used in tackling transnational crimes. Indeed, unlike earlier justice efforts when international or special courts were the preferred mechanism to confront complex atrocities, in this case it was a domestic court in one of the former Condor countries, composed of ordinary federal judges, that took upon itself the task of prosecuting the crimes of Operation Condor.<sup>109</sup> Therefore, the Argentine trial, as well as the similar subsequent prosecution that concluded in January 2017 in Court of Assizes in Rome, which addressed cases of Operation Condor's victims of Italian descent, plainly validate how transitional justice mechanisms can help redress cross-border crimes. In addition, other tools beyond just prosecutions have aided investigations into transnational crimes. Albeit falling outside our scope here, it can be briefly mentioned how the final reports of the Argentine, Paraguayan, and Brazilian's truth commissions in 1984, 2008, and 2014 respectively, all dealt with Condor atrocities to different extents. Similarly, in Uruguay, in 1985, a Parliamentary Commission, set up to investigate disappearances during the dictatorship, had to especially consider the large number of Uruguayans who had disappeared in Argentina.<sup>110</sup>

Generally, states are reluctant to investigate human rights violations. They, as a matter of fact, prefer to consider atrocities alleged to have occurred in the territories of other states,<sup>111</sup> rather than having their own conduct analysed. When investigations do occur, jurisdiction is claimed, often, on the basis of territoriality, to review crimes occurred inside the national territory<sup>112</sup> and, less habitually, through passive personality or universal jurisdiction.<sup>113</sup> Human rights atrocities have also often been investigated through foreign trials, namely prosecutions

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<sup>109</sup> Ibid.

<sup>110</sup> Francesca Lessa, 'Parliamentary Investigative Commission on the Situation of Disappeared Persons and its Causes (Uruguay)' and 'Peace Commission (Uruguay)' in Lavinia Stan and Nadya Nedelsky (eds.), *Encyclopedia of Transitional Justice*, vol.3 (New York: Cambridge University Press, 2013), pp.353-357.

<sup>111</sup> Skogly (2006), p. 15.

<sup>112</sup> Cedric Ryngaert, *Jurisdiction in International Law* (2nd Edition), (Oxford: Oxford University Press, 2015).

<sup>113</sup> According to universal jurisdiction, a state -regardless of the crimes' location or the nationality of victims and perpetrators- may initiate prosecutions for breaches of international law so serious to constitute offences to all humankind, i.e. genocide, war crimes, crimes against humanity. Prosecutions grounded in this principle are often controversial and such an approach has increasingly been under fire, with Belgium repealing its universal jurisdiction statute in 2003, and Spain limiting the reach of its universal jurisdiction law in 2009. Nonetheless, important investigations were initiated by using this principle, including the indictment in Spain against 20 members of the Salvadoran Army for the 1989 murder of six Jesuit priests and two civilians during El Salvador's civil war.

‘conducted in a single country for human rights abuses committed in another country.’<sup>114</sup> Foreign trials were extremely important for the Southern Cone in the 1990s and 2000s. Indeed, several human rights activists, who were unable to pursue justice at home, strategically filed lawsuits before courts of Spain, Italy, and France, asking them to investigate atrocities in Argentina, Chile, or Uruguay against citizens of Spanish, Italian, or French descent on the basis of passive personality.<sup>115</sup> While building upon these earlier efforts, the approach of the Argentine tribunal is nonetheless original. In fact, the court did not simply use one ground for jurisdiction but innovatively combined territoriality and passive personality to effectively investigate Operation Condor transnational crimes. The 109 illustrative cases encompassed atrocities committed against (a) foreign citizens in Argentina (territorial jurisdiction) and (b) Argentine victims abroad (passive personality). Consequently, the judges considered not only crimes that had unfolded on Argentine soil, but also against Argentine citizens in the territories of other Condor countries. Through this novel approach to jurisdiction, the court investigated cross-border violations in two overlapping and complementary ways. First, when looking at (a) *crimes committed against foreign exiles in Argentina*, the judges scrutinised the role of Argentine state agents together with that of their foreign counterparts, who purposely travelled to Argentina from Uruguay, Chile, or Paraguay, to kidnap exiles of interest to their dictatorial regimes back home. In this regard, the tribunal sentenced defendant Cordero for kidnapping 11 Uruguayan exiles in Buenos Aires in 1976, human rights violations that Uruguay committed extraterritorially through this state agent. Regarding (b) *crimes perpetrated abroad against Argentine nationals*, the tribunal looked into the role of Argentine state agents who carried out extraterritorial human rights violations against their co-nationals inside the territories of Paraguay, Uruguay, or Brazil, atrocities committed together with local counterparts. For example, the court looked into how a special team from Argentina’s Intelligence Battalion 601 specifically travelled to Brazil to illegally detain two Argentine exiles in Rio de Janeiro’s international airport in 1980 and subsequently take back them to Buenos Aires, where they ultimately disappeared. By overlapping territorial and passive personality jurisdictions, the court was able to explore the entire machinery of transnational terror that Condor had efficiently established. What is especially significant is that the judges

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<sup>114</sup> Kathryn Sikkink and Carrie Booth Walling, ‘The Impact of Human Rights Trials in Latin America’, *Journal of Peace Research*, 24:4 (2007): p.430.

<sup>115</sup> Important sentences were dictated through foreign trials. In March 2007, a court in Rome sentenced to life imprisonment five high-ranking Argentine officials for the torture and murders of three Italian citizens.

effectively studied states' behaviour outside their borders, an approach so far unseen in transitional justice and human rights.

This links us to second question on the extraterritorial application of human rights. The trial plainly shows how the behaviour of states and their agents can be reviewed not only inside their territorial boundaries, but that responsibility can be attributed also for carrying out human rights violations extraterritorially. To have a state's extraterritorial actions looked into from a human rights perspective is a significant step forward if compared to past justice efforts, which only looked into a state's conduct inside national borders. Prior human rights jurisprudence, both at the international and regional level, had offered little guidance of whether human rights' guarantees applied 'irrespective of the physical location of the victim vis-à-vis the state.'<sup>116</sup> Within the scholarship too, the same question is far from settled and clear parameters for determining the scope of a state's 'obligations when it acts abroad'<sup>117</sup> are still lacking. The approach followed in the Condor trial marks an important step forward in these discussions. By probing transnational crimes and attributing criminal responsibility for them to state agents even when acting outside national borders, the court has in fact acknowledged that human rights violations committed extraterritorially *do* entail responsibility for states. The view of the Argentine judges reflects the precedent set in 1981 in *Lopez Burgos v. Uruguay*, as well as the UN Human Rights Committee's general approach that states should abstain from violating human rights against individuals wherever they are.<sup>118</sup> What the Argentine court achieved, thus, represents a qualitative leap in the trajectory of international justice. By intertwining territorial and passive personality jurisdictions, the court was able to deliver justice for atrocities committed across borders in South America, redressing for the first time for transnational crimes and finding state agents responsible also for human rights atrocities perpetrated outside national borders. This sets an important antecedent in terms of accountability for extraterritorial human rights violations that could be applied to contemporary forms of transnational crimes too.

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<sup>116</sup> Cerone (2006). p. 2.

<sup>117</sup> *Ibid.*, p. 26.

<sup>118</sup> *Ibid.*, p. 33.

## Conclusion

Forty years after Operation Condor, the judgment in the Argentine trial was a landmark moment in the search for truth, justice, and reparations in South America and beyond. For long, survivors, human rights activists, journalists, and historians had relentlessly worked to demonstrate the existence of the transnational terror network and obtain some form of justice for those unspeakable atrocities. Their claims were finally corroborated by the verdict of a court of law, which recognised that the South American states acted in a criminal way, perpetrating serious human rights violations *both inside and outside* state borders.

By exploring the Operation Condor trial, this article incorporated the question of accountability for transnational crimes to human rights and transitional justice. As borders become more elusive, it becomes a pressing priority for scholars and practitioners to elucidate the extent of a state's extraterritorial human rights obligations and what tools can be employed to offer redress to victims of cross-border crimes. This is an issue worthy of urgent consideration since many of the worse contemporary human rights atrocities are in fact of a transnational nature: trafficking of women, children, and migrants, the extraordinary rendition of alleged terrorists, and the horrors carried out by Islamic State that transcend well beyond the borders of Syria and Iraq.

As the Argentine trial has shown, transitional justice mechanisms, such as prosecutions, can play a successful role in responding to cross-border crimes. This article emphasised how there is no need to resort to extraordinary forms of justice, nor completely rethink the accountability tools at our disposal, or radically reform the human rights system, in order to tackle transnational crimes. Conversely, both transitional justice and the human rights system already have important concepts and mechanisms that can be applied in a novel way for that purpose. It is not argued here that the model used in the Condor trial is a panacea that should be unquestionably replicated everywhere. Rather, this unprecedented experiment in tackling transnational crimes should push scholars and policy-makers to generate innovative solutions by resorting to already existing tools.

Four lessons emerge from the Argentine prosecution that could inform future thinking and practice in redressing contemporary transnational atrocities. First, unless there is a particular reason that warrants the establishment of an international/special court or other

extraordinary justice tools, domestic courts can successfully be used to examine instances of transnational crimes. This is also in line with the complementarity principle of the International Criminal Court, whereby the latter only steps in if national jurisdictions *are unable or unwilling* to genuinely investigate and prosecute atrocities. Second, different jurisdictional principles (namely territoriality, nationality, passive personality, or universality) can be combined to establish grounds to investigate cross-border crimes. There is no specific recipe here but, rather, varying combinations can be adopted for different circumstance in light of the particular nature of each situation. In the Condor trial, territoriality and passive personality were employed to fully grasp the complexities surrounding Operation Condor, but this does not preclude other potential arrangements. Third, a fundamental precondition to efficiently scrutinise transnational atrocities is the existence of fluid networks of international cooperation among judges, lawyers, prosecutors, and human rights activists, to be able to gather and exchange evidence, whether testimonial or documentary, that may be relevant to the proceedings. Finally, in the same way that extraterritorial jurisdiction has recently expanded for an increasing number of criminal law offences,<sup>119</sup> state borders should not be perceived as an insurmountable obstacle in situations of transnational human rights violations. Indeed, the Condor trial effectively showed how state agents could held responsible also for perpetrating human rights crimes outside their national borders. These lessons can hopefully provide useful insights to scholars and policy-makers working on different manifestations of transnational crimes in finding ways to help victims obtain accountability for the horrors suffered.

### **Annex – Sentences dictated in the Condor Trial<sup>120</sup>**

1. Santiago Omar Riveros (Army) 25 years imprisonment;
2. Miguel Ángel Furci (Civil intelligence), 25 years imprisonment;
3. Reynaldo Benito Bignone (Army and former dictator), 20 years imprisonment;
4. Eduardo Samuel De Lío (Army), 12 years imprisonment;
5. Humberto José Román Lobaiza (Army), 18 years imprisonment;
6. Enrique Braulio Olea (Army), 13 years imprisonment;
7. Luis Sadi Pepa (Army), 12 years imprisonment;
8. Rodolfo Emilio Feroglio (Army), 20 years imprisonment;

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<sup>119</sup> Ryngaert (2015), pp. 101-103.

<sup>120</sup> See Centro de Información Judicial, CIJ, “Les a humanidad: condenaron a 15 acusados en el juicio oral por el “Plan Cóndor,” May 27, 2016, <http://www.cij.gov.ar/nota-21519-Lesa-humanidad--se-conocer--este-viernes-la-sentencia-en-el-juicio-oral-por-el--Plan-C-ndor--.html>

9. Carlos Caggiano Tedesco (Army), 12 years imprisonment;
10. Antonio Vañek (Navy), 13 years imprisonment;
11. Eugenio Guañabens Perelló (Army), 13 years imprisonment;
12. Felipe Jorge Alespeiti (Army), 12 years imprisonment;
13. Manuel Cordero Piacentini (Uruguayan Army), 25 years imprisonment;
14. Néstor Horacio Falcón (Army), 12 years imprisonment;
15. Federico Antonio Minicucci (Army), eight years imprisonment;
16. Juan Avelino Rodríguez (Army), acquitted;
17. Carlos Tragant (Army), acquitted.