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Prologue to truth: Argentina's National Commission on the Disappeared and the authority of international law

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Abstract

Argentina's 1980s transition to democracy is globally admired for pioneering a state-led process addressing the 1976–1983 dictatorship's state-violence. The role of international law in the transition is well documented, especially through human rights and crimes against humanity. Yet, the extent to which Argentina's transition was intertwined with international law and subject to its jurisdictional force deserves greater attention. This article analyses how the Argentinian truth commission (TC) accounts for the dictatorship's state-violence, and how international law is implicated in the making of this account. It argues that the TC's account draws on the authority of international law to establish the unlawfulness of the dictatorship's state-violence. In turn, the TC subjects the meaning and interpretation of the dictatorship's state-violence to a Eurocentric/Anglo-American lawfulness embedded in, and mobilized by, international law in the late-Cold War. To examine this, the article re-reads the Prologue to the TC's Report as a literary text that does international legal work, harnessing the authority of international law in a way that has enabled the TC to deploy an authoritative, internationally acceptable, account of the unlawfulness of the dictatorship's state-violence. This reading is based on original archival research, on scholarship in the fields of 'law and literature' and the history and theory of international law.

Keywords: Argentina; international law; Prologue; transitions to democracy; truth commissions

1. Introduction

Between 1983 and 1989 Argentina established a set of state-led institutions to guide its transition from dictatorship to democracy. The most well-known of those institutions are a truth commission (TC) (1983–1984), the Junta Trials (1985–1986), and the 1986 and 1987 amnesty laws.¹ The role of international law – especially human rights law and crimes against humanity – in the transition is well documented.² Yet, the extent to which Argentina's transition was intertwined with international law and subject to its jurisdictional force deserves greater attention.

In this article I analyse how the Argentinian TC's report (the Report) accounts for the state-violence of the 1976–1983 dictatorship, and how international law is implicated in the making of this account. I focus on the Report because of its importance as the official means of recording, representing and disseminating the state's account of how and why systematic forced disappearances of people occurred during the dictatorship.

¹C. S. Nino, *Radical Evil on Trial* (1996), 67–104; M. Zunino, *Justice Framed: A Genealogy of Transitional Justice* (2019), 62–7.

²See generally P. Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice', (2009) 31 *Human Rights Quarterly* 137; A. Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (1994); R. Figari Layus, *The Reparative Effects of Human Rights Trials: Lessons from Argentina* (2017).

Nearly 40 years ago, Argentina's 1983–1984 TC, officially called Comisión Nacional sobre la Desaparición de Personas (National Commission on the Disappeared), or CONADEP, concluded its investigation with the delivery of its Report.³ For the newly-elected democratic government, the Report was important because it would not only explain CONADEP's investigation (about the dictatorship's violence, understood as the country's 'past'), but also create an archival record that would ensure the dictatorship continued to be remembered in a particular way.⁴ To that end, the government published the Report as a publicly-accessible book, titled *Nunca Más: The Report of the Argentine National Commission on the Disappeared*, which became popularly known in Argentina as *el Nunca Más* (Never Again).⁵ The *Nunca Más* reproduced the Report almost in its entirety, and can still be found in ordinary bookshops throughout the country.⁶

There is a towering literature analysing the global influence, overarching success and limitations of CONADEP, as well as its contribution to pioneering, from the Global South, an institution that has become a core case study in the research and practice of transitional justice.⁷ One of the achievements attributed to CONADEP is that the vast majority of Argentinians do not contest the fact of the dictatorship's forced disappearance of 30,000 people.⁸ However, the Report/*Nunca Más* remains central in Argentina's public debate over what exactly happened, and the meanings attached to this history. At the heart of this debate is the state's account of why the disappearances occurred, an account that is presented in the Prologue to the Report/*Nunca Más*. The contestation over the state's account played out, once again, in the last decade. In 2006 the government of the day decided to re-write the Prologue for a new edition of the Report/*Nunca Más*.⁹ In 2016, that re-write was removed and replaced with the original 1984 Prologue by a new oppositional government. This recent struggle over control of the Prologue points to the ongoing influence on Argentina's public life of CONADEP's account.

The argument that I develop is that, through the Report/*Nunca Más* Prologue, CONADEP draws on the authority of international law to establish the unlawfulness of the dictatorship's state-violence. In doing so, CONADEP subjects the meanings and interpretations of the dictatorship's state-violence to a Eurocentric/Anglo-American lawfulness embedded in, and mobilized by, international law and its institutions during the late-Cold War.¹⁰

To develop this argument, I re-read the Prologue as a literary text that is doing international law's legal work. I show how the Prologue does that work, even though it had a narrow mandate to

³CONADEP, *Nunca Más: The Report of the Argentine National Commission on the Disappeared; with an Introduction by Ronald Dworkin* (1986).

⁴Decreto 187/83, CONADEP (1983).

⁵CONADEP, *supra* note 3.

⁶CONADEP, *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (1985; 2011). The Report's list and technical information about each *desaparecido* was later updated and published, see Eudeba-CONADEP, *Anexo del Nunca Más* (2 Tomos) (2010).

⁷See, for example, P. B. Hayner, 'Fifteen Truth Commissions—1974 to 1994: A Comparative Study', (1994) 16 *Human Rights Quarterly* 597, at 614; N. J. Kritz, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (1995); Nino, *supra* note 1, at 146; R. G. Teitel, *Transitional Justice* (2000); K. Sikkink and C. Walling Booth, 'Argentina's Contribution to Global Trends in Transitional Justice', in N. Roht-Arriaza and J. Mariezcurrena (eds.), *Transitional Justice in the Twenty-First Century: Beyond Truth versus Justice* (2006); E. Crenzel, 'Argentina's National Commission on the Disappearance of Persons: Contributions to Transitional Justice', (2008) 2 *IJTJ* 173; Arthur, *supra* note 2; K. Sikkink, *The Justice Cascade: How Human Rights Prosecutions Are Changing World Politics* (2011); L. Balardini, 'Argentina. Regional Protagonist of Transitional Justice', in C. Collins, J. Garcia-Godos and E. Skaar (eds.), *Transitional Justice in Latin America: The Uneven Road from Impunity Towards Accountability* (2016); Zunino, *supra* note 1, at 72.

⁸According to Abuelas de Plaza de Mayo there were at least 30,000 *desaparecidos*. See 'Historia', *Abuelas de Plaza de Mayo*, available at www.abuelas.org.ar/abuelas/historia-9.

⁹O. Galak, 'Controversia por el prólogo agregado al informe "Nunca más"', *La Nación*, 19 May 2006, available at www.lanacion.com.ar/politica/controversia-por-el-prologo-agregado-al-informe-nunca-mas-nid807208.

¹⁰See Y. Dezalay and B. G. Garth, *The Internationalization of Palace Wars: Lawyers, Economists, and the Contest to Transform Latin American States* (2002). On the centrality of the European colonial project in the craft of international law see A. Anghie, *Imperialism, Sovereignty and the Making of International Law* (2005).

conduct a public investigation and not to develop an account of lawfulness.¹¹ This way of reading the Prologue, as a work of both literature and law, draws on scholarship in the field of law and literature.¹² One of the contributions of this scholarship to the study of law has been to show how international law ‘co-operates’, or operates together, with literary works to create, reinforce and deploy legal subjectivities according to particular normative worldviews.¹³ My reading of the Prologue is informed in particular by Joseph Slaughter’s work on the co-operative, ‘mutually enabling’ relationship between international human rights law and literature.¹⁴ For Slaughter this relationship is not so much about ‘a narratological alliance’ between human rights and literary texts; rather, the relationship is fundamentally one of ‘complicity’.¹⁵ That is, literature does not occupy a domain separate from (international) law, but is deeply complicit in ‘disseminating and naturalizing the norms of human rights’, by ‘making them both legible and commonsensical’ for society.¹⁶ This is what interests me here: how the Prologue’s engagement with international law generated a fundamental ‘mutually enabling’ relationship,¹⁷ which gave the Report/*Nunca Más* account both narrative coherency and lawful authority for Argentinians, as well as internationally.

Specifically, my analysis shows how the Report/*Nunca Más* enabled CONADEP to authoritatively establish the unlawfulness of the dictatorship’s state-violence, in part because of the Prologue’s literary form, or genre, as a *prologue*, and in part because of the language it used, which drew on the language of international law to describe and categorize events that occurred during the dictatorship.¹⁸ In doing that, the Prologue creates a coherent, singular account of the violent conduct of the state under dictatorship, out of the disparate, plural accounts of the dictatorship’s violence. At the same time, the Prologue uses international law’s *promise* – that the establishment of a democracy under the rule of (international) law will put an end to all forms of state-violence against society – to authoritatively deploy CONADEP’s (and thus the state’s) account.¹⁹

I begin in Section 2 by focusing on the literary work that the Prologue does as a ‘prologue’ to the *Nunca Más*/Report (rather than as an introduction or executive summary). The analysis draws on records of CONADEP’s sessions, which I obtained during a visit in 2018 to Argentina’s Archivo

¹¹Decreto187/83, *supra* note 4.

¹²For an overview of the field see M. Aristodemou, *Law and Literature: Journeys from Here to Eternity* (2000); J. Stone Peters, ‘Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion’, (2005) 120 PMLA 442; G. Olson, ‘De-Americanizing Law and Literature Narratives: Opening Up the Story’, (2010) 22 *Law and Literature* 338; D. Manderson, *Kangaroo Courts and the Rule of Law: The Legacy of Modernism* (2012), 9–20. See Manderson’s critique of using literature to redeem law, *ibid.*, at 12–15. See generally P. Goodrich, *Law in the Courts of Love: Literature and Other Minor Jurisprudences* (1996); A. Gearey, *Law and Aesthetics* (2001); K. Birrell, *Indigeneity: Before and Beyond the Law* (2016); M. Wan, *Masculinity and the Trials of Modern Fiction* (2017).

¹³J. R. Slaughter, *Human Rights, Inc.: The World Novel, Narrative Form, and International Law* (2007), 4. For a recent contribution see C. Gevers, ‘International Law, Literature and Worldmaking’, in S. Chalmers and S. Pahuja (eds.), *The Routledge Handbook of International Law and the Humanities* (2021), 191. Other scholars have also examined how literature and modern law, including international law, co-operate through truth commissions to create and deploy legal subjectivities; see, e.g., M. Sanders, *Ambiguities of Witnessing: Law and Literature in the Time of a Truth Commission* (2007); C. Clarkson, *Drawing the Line: Toward an Aesthetics of Transitional Justice* (2013). On the role of modern law, international law, and narratives in truth commissions see A. Orford, ‘Commissioning the Truth’, (2006) 15 CJGL 851; C. Moon, ‘Narrating Political Reconciliation: Truth and Reconciliation in South Africa’, (2006) 15 *Social and Legal Studies* 257; A. Sitze, *The Impossible Machine: A Genealogy of South Africa’s Truth and Reconciliation Commission* (2013); V. Vázquez Guevara, ‘Crafting the Lawful Truth: Chile’s 1990 Truth Commission, International Human Rights and the Museum of Memory’, (2019) 7 *London Review of International Law* 253; E. Cusato, ‘International law, the Paradox of Plenty and the Making of Resource-Driven Conflict’, (2020) 33 LJIL 649.

¹⁴J. R. Slaughter, ‘Enabling Fictions and Novel Subjects: The “Bildungsroman” and International Human Rights Law’, (2006) 121 PMLA 1405, at 1407.

¹⁵*Ibid.*, at 1408.

¹⁶*Ibid.*

¹⁷*Ibid.*, at 1407.

¹⁸On legal categories as technologies of jurisdiction see S. Dorsett and S. McVeigh, *Jurisdiction* (2012), 71–6.

¹⁹On crafting international law’s promise and its deployment in Latin America during the late-Cold War see Dezalay and Garth, *supra* note 10, at 61–72, 127–40.

Nacional de la Memoria (National Archive of Memory). The analysis shows how CONADEP-commissioners carefully designed the bi-partite structure of the Report/*Nunca Más*, to provide a normative account of the dictatorship.

In Section 3, I then turn to the content (rather than the form) of the 1984 Prologue, to examine the language that it uses. To do this, I re-read the Prologue in light of the major events and debates surrounding the creation of CONADEP in 1983, and the delivery of its Report in 1984, within the international context of the late-Cold War. The analysis shows how the Prologue, using international law's language and mobilizing its promise, crafts 'the' meaning and interpretation of the dictatorship's unlawfulness according to a Eurocentric/Anglo-American lawfulness.²⁰

Finally, in Section 4, I show how CONADEP's account, as crafted through the Prologue, continues to shape the meanings and interpretations of Argentina's 'past'. I do this by discussing the public debates sparked in 2006 by the Kirchner government's insertion of a new Prologue in the re-edition of the 1984 *Nunca Más*/Report, and how in 2016 the Macri government removed the 2006 Prologue and re-inserted the original 1984 Prologue. The analysis shows how the literary form of the prologue, and the language and promise of international law, continue to shape Argentina's public life according to the international lawfulness of the day.

2. Writing the Prologue, writing the Report/*Nunca Más*

2.1 A report 'to enlighten'

The minutes recording CONADEP's sessions reflect the care the commissioners placed on ensuring the Report/*Nunca Más* communicated to Argentinians, and the international community, the 'right' account about the dictatorship's state-violence.²¹ This sense of care was driven not only by the responsibility and complexity of having to produce a document on which the official account about the dictatorship's state-violence would rest, but also by the socio-political circumstances in which CONADEP was created and operated.²²

As I explain in detail in Section 3 of this article, although the creation of CONADEP in 1983 was one of the first decisions taken by president Raúl Alfonsín,²³ it was not part of his government's original plan.²⁴ Alfonsín, from the political party Unión Cívica Radical, unexpectedly won the 1983 elections,²⁵ which were called by the military junta after Argentina lost the 1982 Malvinas/Falklands War against the United Kingdom.²⁶ By then, it was impossible to publicly deny the fact that thousands of people disappeared during the dictatorship. It was impossible to deny, not only because the Junta itself confirmed the disappearances,²⁷ but more

²⁰There is a debate as to whether Latin America is 'Western/Occidental'. This is a very complex debate, and beyond the scope of this article. Yet, it is important to highlight that categorizing Latin America as 'Western/Occidental' is underpinned (by to name a few): the racism of the Spanish colonial project in the Americas; the ongoing denial and extermination of the indigenous peoples and their laws; binary worldviews (e.g., civilized/savage; modern/traditional; developed/backward). For a critique of a Western/Occidental identity in Argentina see I. Aguiló, *The Darkening Nation: Race, Neoliberalism and Crisis in Argentina* (2018). On identity, race and international law in Colombia (also helpful to consider other Latin America countries) see L. Eslava, 'Triguero International Law: On (Most of the World) being (Always, Somehow) Out of Place', in L. Chua and M. Massoud (eds.), *Out of Place: Power, Person and Difference in Socio-Legal Research* (forthcoming).

²¹Minute No. 20-27, at 80–109; Minute No. 37, at 151–2, *Libro de Actas*, Fondo CONADEP (1983–84); E. A. Crenzel, *The Memory of the Argentina Disappearances: The Political History of Nunca Más* (2012), 32–75.

²²*Ibid.*

²³Decreto 187/83, *supra* note 4.

²⁴D. Galante, *El Juicio a las Juntas: Discursos entre Política y Justicia en la Transición Argentina* (2019), 33; Nino, *supra* note 1, at 62–3, 73; J. Malamud-Goti, *Game Without End: State Terror and the Politics of Justice* (1996), 4; Crenzel, *supra* note 21, at 38–9.

²⁵'Elecciones 1983', Dirección Nacional Electoral, Ministerio del Interior, Gobierno de la Argentina (1983).

²⁶H. Verbitsky, *Malvinas: La Última Batalla de la Tercera Guerra Mundial* (2002).

²⁷The Junta declared the *desaparecidos* dead in the *Documento Final*, with which it aimed to stop public pressure. *Cadena Nacional: Documento Final de la Junta Militar* (1983), produced by Archivo Histórico RTA, available at www.archivorta.com.

fundamentally, because of the years of struggle of relatives of the *desaparecidos* (disappeared people) to expose the disappearances. In Argentina, in addition to the Madres and Abuelas de Plaza de Mayo's ongoing public demonstrations in front of the Casa Rosada (the government's offices), relatives of the *desaparecidos* legally registered the disappearances before a judge with the civil law legal form of *habeas corpus*.²⁸ Internationally, many human rights organizations also published reports documenting the disappearances.²⁹ And yet, while the fact of the disappearances was no longer contested, what remained unanswered was *why* and *how* the disappearances occurred, and the whereabouts of the *desaparecidos*.

In this context, Alfonsín committed himself and his government to provide an official answer about the *desaparecidos*, and to do so by putting the military on trial in a civilian court.³⁰ To do that, the government persuaded the congress to approve Decreto 158/83, to revoke the Junta's self-amnesty law.³¹ Yet, even with Decreto 158/83, relatives of the *desaparecidos* and human rights organizations were sceptical that a trial would ever take place.³² For that reason, they proposed to the government the creation of a parliamentary investigatory commission, comprising members of congress from all political parties, with a mandate to find the *desaparecidos* and the circumstances in which they went missing.³³ Against this, the government considered that the political circumstances would make it impossible for political parties to work together.³⁴ Instead, the government proposed the creation of a 'special commission of notables' or of 'citizens',³⁵ comprising activists or members of prominent human rights organizations, well-known and respected in 'public life' for their 'commitment to the defence of democracy and human rights'.³⁶

Following a similar institutional design to commissions of inquiry used in common law countries,³⁷ CONADEP was created with presidential decree Decreto 187/83 (Decreto), just a few days after Alfonsín's inaugural address.³⁸ The Decreto authorized CONADEP to 'clarify the facts related to the disappearance of people in the country'.³⁹ The Decreto also stated that CONADEP's investigation was an 'issue' that 'transcend[ed] public powers',⁴⁰ because the 'facts' that it was charged with investigating concerned 'grave violations of human rights'.⁴¹

[ar/asset/cadena-nacional-documento-final-de-la-junta-militar](http://www.argentina.gob.ar/sites/default/files/actas_tomo6.pdf). Documento Final de la Junta Militar sobre la Guerra contra la Subversión y el Terrorismo, Junta Militar (1983), at 36–60, available at www.argentina.gob.ar/sites/default/files/actas_tomo6.pdf.

²⁸Abuelas de Plaza de Mayo, *El Papel del Sistema de Justicia frente a las Violaciones Masivas de Derechos Humanos: Problemáticas Actuales* (2008), 20. On the international influence of Argentina's *desaparecidos* judicial process see A. E. Dulitzky, 'Argentina, Desapariciones Forzadas y el Sistema Interamericano de Derechos Humanos: A propósito del Caso Julien-Grisonas', (2020) *Revista de Pensamiento Penal*.

²⁹Amnesty International, *Report of an Amnesty International Mission to Argentina, 6–15 November 1976* (1977); Inter-American Commission on Human Rights, Organization of the American States, *Report on the Situation of Human Rights in Argentina* (1980); M. Franco, 'El "Documento Final" y las demandas en torno a los desaparecidos en la última etapa de la dictadura militar argentina', (2018) 11 *Antítesis* 244, at 245.

³⁰R. Alfonsín, 'No es Palabra Final: Respuesta del candidato Alfonsín al "Documento Final"' (1983).

³¹R. Alfonsín, *Memoria Política: Transición a la Democracia y Derechos Humanos; con prólogo de Juan Carlos Portantiero* (2009), 37. See also Ley 22.924, Ley de Pacificación Nacional (1983).

³²*Ibid.*; E. Mignone, *Derechos Humanos y Sociedad: El Caso Argentino* (1991), 156–7.

³³Nino, *supra* note 1, at 72; Alfonsín, *supra* note 31, at 39; Mignone, *supra* note 32, at 158; Crenzel, *supra* note 21, at 37.

³⁴Alfonsín, *ibid.*, at 39.

³⁵Crenzel, *supra* note 21, at 37–8 ('ciudadanos'). Raúl Alfonsín, 'Prólogo', in C. S. Nino (ed.), *Juicio al Mal Absoluto: ¿Hasta Dónde Debe Llegar la Justicia Retroactiva en Casos de Violaciones Masivas de los Derechos Humanos?* (1996), 22.

³⁶Alfonsín, *supra* note 31, at 40 ('vida pública'); ('compromiso con la defensa de la democracia y los derechos humanos').

³⁷Crenzel, *supra* note 21, at 37–8, n. 18. On the similarities between TCs and commissions of inquiry see J. Balint, J. Evans, and N. McMillan, 'Justice Claims in Colonial Contexts: Commissions of Inquiry in Historical Perspective', (2016) 42 *Australian Feminist Law Journal* 75.

³⁸Decreto 187/83, *supra* note 4.

³⁹*Ibid.*, Art. 1 ('esclarecer los hechos relacionados con la desaparición de personas ocurridos en el país').

⁴⁰*Ibid.*, ('la cuestión'); ('trasciende a los poderes públicos').

⁴¹*Ibid.*, ('los hechos'); ('gravísimas violaciones a los derechos humanos').

Furthermore, the Decreto declared that the investigation was a response to the ‘the legitimate interest[s]’ of both Argentinian ‘civil society’ and the ‘international community’.⁴² In light of that, the Decreto established that the investigation’s outcome would be recorded in the form of a ‘report’, which would ‘offer a detailed explanation of the facts investigated in order to enlighten national and international public opinion’ about the tragic episodes in which thousands of people disappeared in Argentina.⁴³

The commissioners began work in December 1983 in Buenos Aires. Nine months later, CONADEP formally delivered the Report/*Nunca Más* to Alfonsín in a televised ceremony at the Casa Rosada.⁴⁴ During the ceremony, CONADEP’s president, internationally renowned Argentinian writer Ernesto Sábato, handed over the Report/*Nunca Más*, and gave a speech. The words that Sábato read were excerpts of the Prologue.⁴⁵ Alfonsín then expressed his gratitude to the commissioners for their service to the nation.⁴⁶ Regarding the Report/*Nunca Más*, Alfonsín said: ‘the country . . . needed to know *the truth* about what happened because on the basis of a lie or of darkness we cannot build national unity’.⁴⁷ With this ceremony, the Report/*Nunca Más* began to fulfil the purpose the state envisioned for it: ‘to enlighten’ Argentinian society, and the international community, with its account.⁴⁸ And yet, for CONADEP’s account to have such ‘enlighten[ing]’ power, the commissioners knew it was necessary to do more than merely report in writing the findings of the investigation. They knew that the Report/*Nunca Más* not only had to publicly communicate a coherent answer of how and why the disappearances occurred, but also that its content – its truth – had to carry a clear ethical judgement about the state’s wrong-doing.

2.2. Writing the Prologue

The idea of a bi-partite structure for the Report/*Nunca Más*, and the choice of the Prologue as its introductory text, emerged from three concerns: the Report/*Nunca Más* had to present a coherent narrative about the victims’ experiences of state-violence; it had to be compelling and intelligible, primarily to Argentinians but also to the international community; and it had to have very broad social reach.⁴⁹

To address these concerns, from the early stages of the drafting process the commissioners worked on giving the Report/*Nunca Más* an accessible structure and language.⁵⁰ To achieve that, the commissioners created a Drafting Commission,⁵¹ which they decided should be assisted by ‘a trustworthy journalist’.⁵² This would ensure that all of the theme-specific ‘essays’ written by

⁴²*Ibid.*, (‘el interés legítimo’); (‘sociedad civil’); (‘comunidad internacional’).

⁴³*Ibid.*, (‘informe’); (‘que ofrezca una explicación detallada de los hechos investigados, que sirva para ilustrar a la opinión pública nacional e internacional’); (‘los trágicos episodios en los que desaparecieron miles de personas’).

⁴⁴*Entrega del Informe de la CONADEP* (1984), produced by Archivo Histórico RTA, available at www.archivorta.com.ar/asset/entrega-del-informe-de-la-conadep-20-09-1984/.

⁴⁵*Ibid.*

⁴⁶*Ibid.*

⁴⁷*Ibid.*, (‘el país . . . necesita saber la verdad acerca de lo que pasó porque sobre la base de la mentira o de la oscuridad no podemos construir la unión nacional’) (emphasis added).

⁴⁸Decreto 187/83, *supra* note 4, (‘para ilustrar’).

⁴⁹See Minute No. 27, *supra* note 21, at 108; Minute No. 28, *Libro de Actas*, Fondo CONADEP (1983–1984), at 109; Minute No. 30, *Libro de Actas*, Fondo CONADEP (1983–1984), at 115–116; Minute No. 37, *supra* note 21, at 154; Minute No. 39, *Libro de Actas*, Fondo CONADEP (1983–1984), at 158.

⁵⁰*Ibid.*

⁵¹Drafting Commission members: Graciela Fernández Mejide (teacher; CONADEP-Secretary of Depositions), Alberto Mansur (lawyer; CONADEP-Secretary of Legal Affairs), Ernesto Sábato (writer; CONADEP-president), Eduardo Rabossi (analytic legal philosopher) and Carlos Gattinoni (Protestant-Methodist pastor). Minute No. 27, *supra* note 21, at 108.

⁵²*Ibid.*, (‘periodista de confianza’). The name of the journalist is only recorded as ‘Gazola’ in Minute No. 37, *Libro de Actas*, Fondo CONADEP.

CONADEP's investigatory committees, would be coherently integrated in the report.⁵³ Additionally, the commissioners considered the writing of a prologue as the Report/*Nunca Más*'s opening text.⁵⁴

A draft of the Prologue was ready a little over a month before the Report/*Nunca Más* was due in late September 1984. It was Sabato who introduced it as 'a project of a prologue' to the commissioners.⁵⁵ While the minutes of the sessions do not record whose idea it was to choose that specific literary genre (prologue) to open the Report/*Nunca Más*, what is recorded is that the Prologue was deemed important because it 'would contain the essential points of the Report'.⁵⁶

Even though the commissioners carefully thought through the relationship between the Prologue and the body of the Report/*Nunca Más*, as a literary genre the Prologue carried with it a particular function. From a literary point of view, a prologue is understood to 'provide a directional framework for the reader' prior to reading (or viewing, in the case of performances) the main body of the literary work.⁵⁷ Although the specific 'directional' function of the prologue depends on the literary genre of the text that follows it (e.g., a novel, poem, play, etc.),⁵⁸ in general terms prologues 'have introductory features to something'.⁵⁹ Through a prologue, the audience gains 'insights into the way in which a text was composed, and the attitudes which led to its creation, which are rarely found elsewhere'.⁶⁰ With a prologue, the author aims to 'compel' the reader 'to take a position . . . in relation to' a text's story.⁶¹ In other words, despite being a 'minor' literary text that complements a 'major' one, through a prologue the author seeks to create a desired affective bond between the story narrated in the main text and its audience.⁶²

Yet, as Slaughter reminds us, the use of prologues as compelling introductory texts is not exclusive to literature, nor have they only been used by writers or playwrights.⁶³ In the field of law, literary genres have a history of 'cooperation in naturalizing' and deploying law's normative arrangements of how to live together.⁶⁴ Law-makers frequently turn to prologues (typically called 'preambles' in law) as the literary device that offers a socially accessible explanation of a law's 'origins and purposes', with the aim of making it normatively accepted.⁶⁵ Generally, through such prologues, legislators 'place the law in its historical and political context',⁶⁶ and provide 'reasons to assist in understanding' the 'object of the law'.⁶⁷ Yet, despite being common across different legal fields, prologues are especially prominent in constitutions and international treaties.⁶⁸ In constitutions, law-makers include a preambular section to 'set the tone for the subsequent constitutional

⁵³In the final writing stage, they are called 'essays' (Minute No. 39, at 158). At the beginning they are called 'ideas' or 'themes' (Minute No. 24, at 99–100), and later 'ideas in writing' (Minute No. 30, at 116). See Minute No. 39, *supra* note 49; Minute No. 24, *supra* note 21; Minute No. 30, *supra* note 49.

⁵⁴Minute No. 30, *ibid.*, at 116.

⁵⁵Minute No. 36, *Libro de Actas*, Fondo CONADEP (1983–1984), at 149 ('un proyecto de prólogo'). Crenzel, *supra* note 21, at 67.

⁵⁶Minute No. 30, *supra* note 49, at 116 ('contendría los puntos esenciales del Informe').

⁵⁷E. Dearnley, *Translators and their Prologues in Medieval England* (2016), 2.

⁵⁸On the varying role of a prologue see A. Porqueras Mayo, *El Prólogo como Género Literario: Su Estudio en el Siglo de Oro Español* (1957).

⁵⁹*Ibid.*, at 100 ('su carácter introductorio a algo') (emphasis in original).

⁶⁰Dearnley, *supra* note 57, at 2.

⁶¹G. Genette, *Paratexts: Thresholds of Interpretation* (1997), at 224.

⁶²*Ibid.*, at 212.

⁶³See Slaughter, *supra* note 14; S. Chalmers, 'The Beginning of Human Rights: The Ritual of the Preamble to Law', (2018) 9 *Humanity* 107.

⁶⁴Slaughter, *ibid.*, at 1419.

⁶⁵W. Voermans, M. Stremmer and P. Cliteur, *Constitutional Preambles: A Comparative Analysis* (2017), 9.

⁶⁶*Ibid.*, at 6.

⁶⁷Chalmers, *supra* note 63, at 109.

⁶⁸See M. T. Fögen, 'The Legislator's Monologue: Notes on the History of Preambles', (1995) 70 *Chicago-Kent Law Review* 1593; Chalmers, *ibid.*; M. M. Mbengue, 'Preamble', in R. Wolfrum (ed.), *Max Planck Encyclopedia of Public International Law* (2006).

text’, and, in many cases, to ensure that the constitution’s articles are ‘read and interpreted’ as a coherent text.⁶⁹ In international law, prologues are also frequently used to ‘defin[e] in general terms, the purposes and considerations that led the parties to conclude the treaty’, and ‘may also incorporate the parties’ motivations for concluding the treaty by describing the foundation of their past, present, and future relations’.⁷⁰ Put differently, prologues allow law-makers to narrate ‘a creation story’ about the ‘need’ of a new legal form to re-organize international or state-society relations.⁷¹ Narrating such a need in an accessible and compelling form gives the law social reach, ensuring that its normative content is known and, importantly, accepted.

Similarly, in the circumstances in which the Report/*Nunca Más* was written, through its final structure the Prologue deployed a normative narrative that directs its audiences as to how to interpret the body of the Report/*Nunca Más*.⁷² In doing so, CONADEP, and by extension the state, could shape not only how the past would be remembered, but also how a future life in a lawful democracy would be imagined. During the drafting process of the Report/*Nunca Más*, the commissioners looked for ways to transmit to its audience how unethical, and how unlawful, the state’s violence was against Argentinian society, and ultimately, against ‘humanity’.⁷³ Many commissioners felt an ethical responsibility to produce the Report/*Nunca Más*, regardless of the fact that they were required to do it by the Decreto.⁷⁴ One of them emphasized that it was not a ‘political’ but ‘a spiritual necessity’⁷⁵ to give the report a ‘form and content’ faithful to the gravity of the evidence gathered throughout the investigation.⁷⁶ CONADEP’s minutes show how the commissioners understood that part of their public responsibility was to ensure that the Report/*Nunca Más* would ‘mar[k] a limit’ by ‘making an ethical decision’ about what was wrong and right in state-society relations.⁷⁷ Drawing that ethical line was fundamental, because it would publicly represent a normative threshold in the social imaginary between two forms of organizing state-society relations: dictatorship and democracy.⁷⁸ Importantly, while the dictatorship would be represented as the unethical and unlawful ‘past’, democracy would be the ethically lawful ‘future’. CONADEP’s account would enable Argentinian state–society relations to transition from being wrongful and in a state of ‘darkness’,⁷⁹ to being rightful and enlightened. But to leave the dictatorship behind and bring about democracy, CONADEP’s account needed to be socially known and normatively understood. As the deadline for the Report/*Nunca Más* approached, Sábato became especially concerned that these objectives would be met.

Aware of the risk that the Report/*Nunca Más* could be written in a highly technical language (even with the assistance of a journalist), Sábato emphasized to the commissioners that ‘a basically technical book will not be read widely, that is why it is important to make it dramatic, which can be achieved with the transcription of testimonies’.⁸⁰ Commissioner Horacio Huarte agreed with Sábato, and proposed that it was ‘necessary’ to structure the report in two clearly distinct parts.⁸¹ One part would set out the ‘facts’, which would give the report ‘force ... through objective

⁶⁹Voermans et al., *supra* note 65, at 90.

⁷⁰Mbengue, *supra* note 68.

⁷¹Chalmers, *supra* note 63, at 111.

⁷²C. Levine, *Forms: Whole, Rhythm, Hierarchy, Network* (2015), 5; Chalmers, *ibid.*, at 1.

⁷³CONADEP, *supra* note 3, at 2.

⁷⁴Minute No. 20, *supra* note 21, at 86; and Minute No. 24, *supra* note 21, at 99–100. See also Crenzel, *supra* note 21, at 32–75.

⁷⁵Minute No. 20, *supra* note 74, at 86 (‘una necesidad espiritual’); (‘política’). See also Crenzel, *ibid.*, at 32–75.

⁷⁶Minute No. 23, *supra* note 21, at 92–4 (‘forma y contenido’).

⁷⁷Clarkson, *supra* note 13, at 1.

⁷⁸*Ibid.*, at 18.

⁷⁹*Entrega del Informe de la CONADEP*, *supra* note 44.

⁸⁰Minute No. 37, *supra* note 21, at 152 (‘un libro básicamente técnico no será leído masivamente, por lo que es importante cargarlo de dramaticidad lo cual se logra fundamentalmente con la transcripción de testimonios’).

⁸¹*Ibid.*, (‘necesario’).

content'.⁸² The other part would impart 'a message for the people'; it would be 'a general part, which reaches all sectors' and has 'a broad political content'.⁸³ CONADEP's minutes show how, for the commissioners, given the fragility of the situation, the priority was to make the normative meaning of CONADEP's account accessible and intelligible.

Indeed, the seemingly simple structure of the Report/*Nunca Más* was not so simple.⁸⁴ CONADEP-commissioners used the Prologue to communicate a coherent and unitary narrative about the dictatorship's state-violence, while guiding its audiences on how to interpret the un/lawfulness of the events. To that end, Sábato commissioned Gerardo Taratuto (a lawyer, playwright, and screenwriter of the TV documentary on CONADEP's investigation, also titled *Nunca Más*) to participate in the drafting.⁸⁵ The minutes record how, from that moment until the delivery of the Report/*Nunca Más*, Taratuto's role was fundamental in giving the Report/*Nunca Más* narrative coherency and dramatic appeal.⁸⁶ In the resulting final form of the Report/*Nunca Más*, the Prologue would 'frame',⁸⁷ in general political terms, the emergence of state-violence and how the dictatorship practiced it, while the body of the Report would reproduce the testimonies and facts. By communicating this narrative to public audiences (primarily Argentinian, but also internationally), the Prologue sought to establish a particular interpretation of the unlawfulness of state-violence during the dictatorship.

It is that aim, of authorizing *the* new shared imaginary of lawful state-society relations, that points to the ways in which there is a 'mutually enabling' relationship between international law and the Prologue as prologue (that is, as a literary genre).⁸⁸ I now turn to unpack the Prologue's text, and to discuss how the Prologue's account of the dictatorship's unlawfulness is doing international law's legal work in this way.

3. Reading the Prologue: International law's language and promise for Argentina

The Prologue begins not only by broadly situating in time (the 1970s) and place (Argentina) the socio-political context in which the dictatorship's violence emerged, but also by describing it as being 'torn by terror'.⁸⁹ However, this 'terrorism' was not unique to Argentinian society. According to the Prologue, it was a general 'phenomenon' that occurred in other states, such as Italy.⁹⁰ The Prologue presents the Italian state's response to 'the heartless attacks of Fascist groups, the Red Brigades, and other similar organizations' as an example to follow.⁹¹ The Prologue describes the conduct of the Italian state as one that '[n]ever at any time ... abandon[ed] the principles of law in its fight against ... terrorists', and that 'managed to resolve the problem through the normal courts of law'.⁹² The Prologue sets this in opposition to what the dictatorial Argentinian state had done.⁹³ The conduct of the Argentinian state, since the coup

⁸²*Ibid.*, ('hechos'); ('fuerza ... a través del contenido objetivo').

⁸³*Ibid.*, ('un mensaje a la población'); ('una parte general, que llegue a todos los sectores'); ('un contenido político amplio').

⁸⁴On how literary 'simple forms' manifest worldviews see A. Jolles, *Simple Forms: Legend, Saga, Myth, Riddle, Saying, Case, Memorable, Fairytale, Joke* (2017).

⁸⁵Minute No. 38, *Libro de Actas*, Fondo CONADEP (1983–1984), at 156 ('participo en su redacción'); Minute No. 29, *Libro de Actas*, Fondo CONADEP (1983–1984), at 115. See also Crenzel, *supra* note 21, at 57, 68–71.

⁸⁶Minute No. 42, *Libro de Actas*, Fondo CONADEP (1983–1984), at 173; Minute No. 38, *supra* note 85, at 156. Taratuto's role raised doubts (even amongst commissioners) about the authorship of the Prologue, which is, in Argentina and elsewhere, attributed to Sábato. Taratuto denied it and said that 'the prologue was "all Sábato"'. See Crenzel, *supra* note 21, at 68, 70.

⁸⁷B. W. Schneider, *The Framing Text in Early Modern English Drama: 'Whining' Prologues and 'Armed' Epilogues* (2011), 28.

⁸⁸Slaughter, *supra* note 14, at 1407.

⁸⁹CONADEP, *supra* note 3, at 1.

⁹⁰*Ibid.*

⁹¹*Ibid.*

⁹²*Ibid.*, (emphasis added).

⁹³*Ibid.*, at 1.

d'état on '24 March 1976', is presented as more like that of 'an absolute state',⁹⁴ which 'misuse[s]' its 'power' to 'abduct, torture and kill thousands of human beings'.⁹⁵ Furthermore, the Argentinian state's conduct in response to the 'terrorist crimes' is described as 'far worse than the one [terrorist groups] they were combating'.⁹⁶

In Argentina, one predominant way of interpreting the Prologue – particularly through that opening paragraph – is to focus on whether it institutionalizes the 'theory of two demons'.⁹⁷ The most common understanding of the 'theory of two demons' is that it seeks to explain the violence that occurred during the 1970s as being 'the responsibility and outcome of *two opposing forms of violence*',⁹⁸ one being the state, the other the guerrilla groups, such as Los Monteros and Ejército Revolucionario del Pueblo-Partido Revolucionario de los Trabajadores. According to Argentinian historian Marina Franco, the theory's meaning largely depends on who is using it and for what purpose.⁹⁹ For those who support this theory, it is understood to justify the dictatorship's state-violence, as a legitimate means of protecting the state and society against the violence caused by 'the guerrilla of the left'.¹⁰⁰ In this view, left-wing political groups have 'causal responsibility in starting the violence' before and during the dictatorship.¹⁰¹ Those who oppose the theory consider that it aims to 'equat[e] the violence' of both the state and guerrilla/left-wing groups, giving both sides 'symmetry of strength and/or methods' in prosecuting the violence, and ultimately assigns 'equa[l] historical responsibilities' for the conflict.¹⁰²

For many, especially groups of relatives of the *desaparecidos*, such as the Madres de Plaza de Mayo, the Prologue signals the state's support for the 'theory of two demons'.¹⁰³ In 2006, Hebe de Bonafini (current president of the Madres), in expressing her explicit disapproval of the 1984 Prologue and endorsing the Kirchner government's decision to write a new prologue for the re-edition of the Report/*Nunca Más*, said: '[o]ur children were not demons: they were revolutionaries, wonderful and unique guerrilla members who defended the motherland'.¹⁰⁴ As this suggests, what is at stake in the Prologue, and in particular its opening sentences, is the question of whether CONADEP, and thus the state, sought to equate the violence of guerrilla/left-wing groups *prior* to the dictatorship with the violence of the 1976–1983 dictatorship.

Interpreting the Prologue only through the 'theory of two demons', however, frames the Prologue's narrative as being just 'an Argentinian problem' that needed, and was given, 'an Argentinian solution' in the transition to democracy.¹⁰⁵ But if the opening paragraph is interpreted in a broader international context, not only in which the Prologue was written, but also

⁹⁴Ibid.

⁹⁵Ibid.

⁹⁶Ibid.

⁹⁷M. Franco, 'La "Teoría de los Dos Demonios": Un Símbolo de la Posdictadura en la Argentina', (2014) 11 *A Contra Corriente: A Journal on Social History and Literature in Latin American* 22; E. Crenzel, 'Dos Prólogos para un mismo Informe. El Nunca Más y la Memoria de las Desapariciones', (2007) 9 *Prohistoria* 49.

⁹⁸Franco, *ibid.*, at 26, ('la explicación del pasado de violencia de los años setenta como responsabilidad y resultado de *dos violencias enfrentadas*') (emphasis in original).

⁹⁹Ibid.

¹⁰⁰Ibid., at 25 ('las guerrillas de izquierda').

¹⁰¹Ibid., at 24 ('la responsabilidad causal de la izquierda en el inicio de la violencia').

¹⁰²Ibid., ('equiparación entre ambas violencias'); ('symmetry of strength and/or methods'); ('equiparación de responsabilidades históricas').

¹⁰³M. Guzmán Bouvard, *Revolutionizing Motherhood: The Mothers of the Plaza de Mayo* (1994), 134–7; B. Bevernage, *History, Memory, and State-Sponsored Violence: Time and Justice* (2011), 38–43.

¹⁰⁴See G. Grandin, 'Living in Revolutionary Time: Coming to Terms with the Violence of Latin America's Long Cold War', in G. Grandin and G. M. Joseph (eds.), *A Century of Revolution: Insurgent and Counterinsurgent Violence During Latin America's Long Cold War* (2010), at note 35 ('Nuestros hijos no eran demonios: eran revolucionarios, guerrilleros maravillosos y únicos que defendieron a la patria').

¹⁰⁵A. Orford, 'Locating the International: Military and Monetary Interventions after the Cold War', (1997) 38 *Harv. Int. Law J.* 443, at 449–50, 481.

in which the dictatorship occurred, then the ‘problem’ and ‘solution’ begin to take on a more global significance.

With the opening paragraph, the Prologue situates the ‘Argentinian problem’ in an international context that held great significance in Latin America: the Cold War.¹⁰⁶ The interventions of the Western Bloc, led by the US, and the Eastern Bloc, led by the USSR, in the public life of many Latin American states during this period, shaped socio-political, economic and legal relations between, and within, them.¹⁰⁷ As the renowned Mexican writer Octavio Paz said, ‘the models of development that today are offered to us by the West and the East are compendiums of horrors: can we invent more human models that correspond to what we are?’¹⁰⁸ Paz’s words were a critique of what seemed to be an impossible endeavour for many Latin American states: to create their own ways to live together within the state – and importantly, to do so outside the Cold War’s ideological paradigms embedded in the models of US liberalism and USSR communism. In this context, the internal socio-economic and political struggles that many Latin American states were going through since before the Cold War did not cease, but rather took on an internationalized dimension. Struggles – or revolutions – to address socio-economic inequalities were caught between what Paz called ‘the models of development’,¹⁰⁹ actively promoted on both sides of the Cold War as mutually exclusive solutions to all of Latin America’s deep-rooted and longstanding socio-economic problems.¹¹⁰

Reading the Prologue in light of the late-Cold War years anticipates the ‘post-conflict state-building’ model which international law and its institutions would formally promote after the Cold War in the 1990s.¹¹¹ In particular, the Prologue deploys a subtle yet powerful account of how international law offers a ‘state-building model’ to lay ‘civilizing’ legal foundations for state-society relations in the aftermath of violent conflict. That model *promised* to deliver the kind of peace, justice and economic prosperity enjoyed by the states in the Global North, through the embrace of democracy, the rule of law, and economic prescriptions for ‘development’, so that states in the Global South could finally be ‘free from either [Western or Eastern] pole’, and thus become masters of their own destiny.¹¹²

3.1 Looking North, saving the South: Realizing international law’s promise

The transition from dictatorship to democracy that Argentina officially began in 1983 seemed to be the moment to realize international law’s promise. After a longer history of predominantly US interventions in Latin America – not limited to the Cold War¹¹³ – Alfonsín’s government

¹⁰⁶See generally G. Grandin, *The Last Colonial Massacre: Latin America in the Cold War* (2011); O. A. Westad, *The Global Cold War: Third World Interventions and the Making of our Times* (2007); W. Blum, *Killing Hope: U.S. Military and CIA interventions since World War II* (1995).

¹⁰⁷*Ibid.*

¹⁰⁸Octavio Paz, *Postdata* (1970), 237 (‘Los modelos de desarrollo que hoy nos ofrecen el Oeste y el Este son compendios de horrores: ¿podremos nosotros inventar modelos más humanos y que correspondan a lo que somos?’).

¹⁰⁹*Ibid.*

¹¹⁰Although it is beyond the scope of this article, it is worth noting how actors in the Global South resisted and actively challenged Western approaches to international law and development projects. See, for example, W. D. Mignolo, *The Darker Side of Western Modernity: Global Futures, Decolonial Options* (2011); A. Escobar, *Encountering Development: The Making and Unmaking of the Third World* (2012); A. Becker Lorca, *Mestizo International Law: A Global Intellectual History 1842–1933* (2014); L. Eslava, M. Fakhri and V. Nesiha (eds.), *Bandung, Global History, and International Law: Critical Past and Pending Futures* (2017); J. von Bernstorff and P. Dann (eds.), *The Battle for International Law: South-North Perspectives on the Decolonization Era* (2019); J. Whyte, *The Morals of the Market: Human Rights and the Rise of Neoliberalism* (2019), 75–115.

¹¹¹S. Pahuja, *Decolonising International Law: Development, Economic Growth, and the Politics of Universality* (2011), 172–253. Coined by UNSG Annan as ‘post-conflict peace-building’. See An Agenda for Peace, UN Doc. A/47/277–S/24111 (1992).

¹¹²M. Craven, S. Pahuja and G. Simpson (eds.), *International Law and the Cold War* (2019) 3.

¹¹³On how the Junta adopted the U.S.’s ‘national security doctrine’, see F. López, *The Feathers Terrorism, Exiles and Civilian Anticommunism in South America* (Ph.D. thesis, University of New South Wales, 2014). Scarfi develops two excellent historical accounts of how the operation of international law in Latin American states was determined by US imperialism,

remained concerned with interventions in Argentina's post-dictatorial public life.¹¹⁴ That concern was also coupled with the pressing need to establish credible legal grounds for democratic and non-violent state-society relations in the post-dictatorship. Alfonsín's government attempted to address that concern through the creation of CONADEP (1983) and the Junta Trials (1985) – the transition's signature public institutions. While CONADEP was set up to establish 'the truth' about the dictatorship's state-violence, the Junta Trials would bring about 'justice'.¹¹⁵ In other words, both 'truth' and 'justice' would be established by the Argentinian state. For Carlos Nino – Alfonsín's closest advisor, and directly involved in designing CONADEP and the Junta Trials – the transition demonstrated that there was no need for the international community to push for 'an international duty to punish human rights violations of a prior regime',¹¹⁶ notably in the form of a Nuremberg-style tribunal.¹¹⁷ That was the case, Nino argued, because the Argentinian state was leading the re-foundation of its own rule of law, and in doing that, setting its own institutional arrangements to peacefully coexist in democracy.¹¹⁸

While there was no international intervention in the way that Alfonsín and Nino feared, the Prologue's descriptions of the dictatorship's violence reveal how CONADEP was, subtly but powerfully, subjecting the socio-political, legal and economic aspects of the transition to the 'standards' mobilized by international law and its institutions. This becomes apparent not only by paying close attention to the Prologue's engagement with international law, but also in more subtle expressions of faith in the 'civilizing' and 'saving' possibilities of Western-based values and ideas.¹¹⁹ For example, while the Prologue positions itself against the Junta's forceful imposition of 'Western, Christian values',¹²⁰ it makes the Junta explicitly 'responsible for' tainting those values,¹²¹ through kidnapping, torturing and forcing the disappearance of all those who dissented (called 'subversives' in the Junta's rhetoric),¹²² or who worked in the areas of socio-economic justice and labour rights. The Prologue's fierce disapproval of how the dictatorship's rhetoric used Western values to justify the practice of violence is not surprising. What is surprising, considering that Alfonsín's government was committed to escape the Cold War's ideological paradigms and interventions, is the Prologue's defence of the virtue of Western values through democracy, which was presented as the 'only' political model capable of delivering peace, justice and economic prosperity. This is remarkably explicit in the Prologue's concluding paragraph, which opens by affirming that '[g]reat catastrophes are always instructive'.¹²³ Then it claims that although Argentina's dictatorship is the 'most terrible' 'tragedy' 'ever suffered',¹²⁴ the lesson is that 'only democracy' is able to 'save a people from horror on this scale', and 'keep and safeguard the sacred, essential

see J. P. Scarfi, *The Hidden History of International Law in The Americas: Empire and Legal Networks* (2017); J. P. Scarfi, *El Imperio de la Ley: James Brown Scott y la Construcción de un Orden Jurídico Interamericano* (2014).

¹¹⁴Nino, *supra* note 1, at 186–189; Alfonsín, *supra* note 31, at 33–39.

¹¹⁵Malamud-Goti, *supra* note 24, at 59–60; Nino, *supra* note 1, at 81; CONADEP, *supra* note 3, at 1–2, 6.

¹¹⁶Nino, *ibid.*, at 186–7.

¹¹⁷Nino rejected international interventions for cases like Argentina. He proposed to create an 'international forum' that would not 'destabiliz[e] democratic governments'. See *ibid.*, at 186–9. For Nino's debate with Orentlicher see D. F. Orentlicher, 'Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime', (1991) 100 *The Yale Law Journal* 2537; C. S. Nino, 'The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina', (1991) 100 *Yale Law Journal* 2619; D. F. Orentlicher, 'A Reply to Professor Nino', (1991) 100 *Yale Law Journal* 2641.

¹¹⁸Nino, *supra* note 1, at 186–187; Alfonsín, *supra* note 31, at 33–48.

¹¹⁹On the historical relationship between the concept of 'civilization' in international law, see L. Obregón, 'The Civilized and the Uncivilized', in B. Fassbender and A. Peters (eds.), *The Oxford Handbook of the History of International Law* (2012), 918–940.

¹²⁰CONADEP, *supra* note 3, at 4.

¹²¹*Ibid.*, at 5.

¹²²On the Junta's rhetoric, see M. Feitlowitz, *A Lexicon of Terror: Argentina and the Legacies of Torture* (1998). Also mentioned in CONADEP, *supra* note 3, at 4.

¹²³CONADEP, *ibid.*, at 6.

¹²⁴*Ibid.*

rights of man'.¹²⁵ The Prologue concludes by affirming that '[o]nly with democracy will we be certain that NEVER AGAIN will events such as these, which have made Argentina so sadly infamous throughout the [civilized] world, be repeated in our nation' [sic].¹²⁶ Although the Prologue concludes with the promise that democracy will 'civilize' and 'save' Argentina, throughout the text the Prologue creates the impression that international law, in the form being advanced in the Cold War's final years, is necessary to achieve that.

3.2 The dictatorship's unlawfulness, democracy's lawfulness

The Prologue mobilizes the promise of 'salvation' and 'civilization', not by describing in detail what life within the democratic state will look like, but by drawing on the authority of international law to narrate the unlawfulness of the violence of the Argentinian state under dictatorship. For instance, the Prologue's constant emphasis that the Report is 'just' describing facts, and is not a legal judgment or equivalent to justice,¹²⁷ is contradicted by the Prologue's own references to the international legal forms that shape its description of the kinds of state-conduct that are unlawful. Thus the Prologue describes how the dictatorship's state-violence was 'the greatest and most savage tragedy in the history of Argentina',¹²⁸ and argues that it 'went far beyond what might be considered criminal offences, and takes us into the shadowy realm of crimes against humanity'.¹²⁹ According to the Prologue, what made that form of state-violence a crime against humanity was that, '[t]hrough the technique of disappearance and its consequences, all the ethical principles which the great religions and the noblest philosophies have *evolved* through centuries of suffering and calamity have been trampled underfoot barbarously ignored'.¹³⁰ In other words, the violence of the state violated international law (by committing 'crimes against humanity') as well as 'universal' religious and philosophical principles. According to the Prologue, those 'universal' principles informed the 'sanctity of individual rights', and were, in the first instance, given legal form through 'the French Revolution', and later through 'the universal declarations of human rights',¹³¹ 'the great encyclicals of this century', and 'constitution[s]'.¹³² They were, and are, the symbols of '[e]very civilized nation'.¹³³ Additionally, although the Prologue acknowledges that the Argentinian state had been part of those 'civilized nation[s]', according to those universal principles and rights,¹³⁴ the Prologue explicitly declares that CONADEP's investigation reveals that 'human rights were violated at all levels by the Argentinian state' during the dictatorship.¹³⁵

By stating that the acts of violence of the dictatorial state *are* a crime according to international law, the Prologue 'attach[es]' the definition of the Argentinian dictatorship's *particular* forms of violence 'to a larger normative story' of progress and universality.¹³⁶ In this story a state 'evolves' from 'barbaric to civilized' through a process facilitated by state-created 'closure mechanisms' (e.g., trials),¹³⁷ which would make anew the legal grounds for state-society relations in the

¹²⁵*Ibid.*

¹²⁶CONADEP, *supra* note 6, at 393. The word 'civilized' ('*civilizado*') appears in the original in Spanish (capitalization in original).

¹²⁷CONADEP, *supra* note 3, at 1, 7.

¹²⁸*Ibid.*, at 1.

¹²⁹*Ibid.*, at 2.

¹³⁰*Ibid.*, (emphasis added).

¹³¹*Ibid.* Plural declaration is in the original text.

¹³²*Ibid.*

¹³³*Ibid.*

¹³⁴*Ibid.*

¹³⁵*Ibid.*, at 2–3.

¹³⁶P. Rush, 'Dirty War Crimes: Jurisdictions of Memory and International Criminal Law', in G. Simpson and K. J. Heller (eds.), *The Hidden Histories of War Crimes Trials* (2013), 367, at 370.

¹³⁷S. Kendall, 'New Histories of the Present: Revisiting Post-WWII Juridical Forms (Review essay of Heller and Tanaka et al.)', (2012) 12 *Melbourne Journal of International Law* 349, at 349.

aftermath of state-violence in order to prevent a repetition of such violence. This story of progress and civilization was not only formally institutionalized as part of the operation of international law since the Nuremberg and Tokyo Trials,¹³⁸ but also *universalized* as ‘the way’ a state *should* hold accountable a previous government for acts categorized as ‘violent’, and therefore unlawful, by international law.¹³⁹ In this way, the Prologue represents CONADEP as the Argentinian state’s first institutional step in the process of becoming a ‘civilized’ state through the ‘reconstruction of the rule of [l]aw’,¹⁴⁰ just like the states in the Global North did after the Second World War.

As part of that ‘universal’ story of progress, the Prologue outlines what would be the second institutional step towards civilization and lawfulness: the Junta Trials, which would take place in 1985, a year after the delivery of CONADEP’s Report/*Nunca Más*. The Prologue explains that CONADEP was created *not to judge* the dictatorship’s ‘terrorism’,¹⁴¹ ‘but to investigate the fate of the people who disappeared during those ill-omened years of our nation’s life’.¹⁴² The Prologue specifies that the Report/*Nunca Más*, as the outcome of CONADEP’s investigation, is a way of breaking with the dictatorship-imposed silence about the *desaparecidos*.¹⁴³ The Prologue emphasizes that the findings of the investigation, set out in the body of the report/book, are not ‘the final word’ and cannot be considered to deliver ‘justice’ for the *desaparecidos* and their relatives.¹⁴⁴ The ‘final word’ had to be pronounced by ‘justice’, that is, by Argentinian civilian courts.¹⁴⁵ With this, the Prologue outlines and establishes the relationship between CONADEP and the Junta Trials, by differentiating between the contributions of both institutions to the re-establishment of civil and lawful state-society relations in democracy. While the Prologue describes CONADEP as the investigatory institution that delivers a facts-based account of the dictatorship’s state-violence, it presents the Junta Trials as the legal institution that judges and declares what is unlawful based on CONADEP’s account.

Although the Prologue describes as different yet complementary the work of both institutions, the creation of CONADEP and its role in the transition to democracy was more accidental than planned, unlike the Junta Trials. Alfonsín’s personal endeavour was to prosecute the military through a civilian court (like the Prologue states), but the political circumstances forced him to adopt a position he later described as somewhere between ‘what is desirable and what is possible to pay off the debts of the past; without losing sight of the future’.¹⁴⁶ According to Argentinian historian Marina Franco and sociologist Emilio Crenzel, most politicians – except for Alfonsín and a minority of his party (Partido Radical) and Partido Intransigente – rejected the idea of prosecuting the military, and were in favour of a ‘mantle of oblivion’.¹⁴⁷ Firmly against this, during his inaugural presidential speech in 1983, Alfonsín affirmed that his government would not ‘ac[t] as if nothing happened here’,¹⁴⁸ and was ‘determined to clarify the situation of the disappeared

¹³⁸For example, at the influential 1988 Aspen Institute’s State Crimes conference, which focused on transitions to democracy, the first agenda item was to discuss those trials. The Aspen Institute, *State Crimes: Punishment of Pardon: Papers and Report of the Conference* (1988), 1.

¹³⁹G. Simpson, *Law, War and Crime: War Crimes Trials and the Reinvention of International Law* (2007). On the jurisdictional work of legal categories, see Dorsett and McVeigh, *supra* note 18, at 71–6.

¹⁴⁰Alfonsín, *supra* note 31, at 33 (‘reconstrucción del estado de [d]erecho’).

¹⁴¹CONADEP, *supra* note 3, at 1.

¹⁴²*Ibid.*

¹⁴³*Ibid.*, at 1–2.

¹⁴⁴*Ibid.*, at 1.

¹⁴⁵*Ibid.*

¹⁴⁶Alfonsín, *supra* note 31, at 37 (‘lo deseable y lo posible para saldar las deudas del pasado; pero siempre teniendo en miras el futuro’).

¹⁴⁷Franco, *supra* note 29, at 247 (‘un manto de olvido’); Crenzel, *supra* note 21, at 31–75.

¹⁴⁸R. Alfonsín, ‘El Discurso de Asunción de Raúl Alfonsín ante la Asamblea Legislativa’, *Parlamentario.com*, 10 December 2013, available at www.parlamentario.com/noticia-68393.html (‘como si aquí no hubiera ocurrido nada’).

people'.¹⁴⁹ Moreover, Alfonsín promised that his government was going to 'correct and eliminate forever' the consequences of the dictatorship's 'irresponsible decisions',¹⁵⁰ and 'set the foundations for the free, grand, prosperous, fraternal and generous Argentina that we all want'.¹⁵¹ To achieve this, the government promoted the revocation of the Junta's self-amnesty law at congress.¹⁵²

However, even without the self-amnesty law, relatives of the *desaparecidos* and Argentinian human rights organizations were sceptical about the likelihood of putting the Junta on trial in a civilian court. The reason was that, under those political circumstances, Alfonsín's government negotiated for Junta members to be tried at first instance by a military court (Supreme Council of the Armed Forces) with the possibility of appealing the ruling in a civilian court.¹⁵³ Yet, for relatives of the *desaparecidos*, justice could only be delivered by the state's civilian institutions, not the military.¹⁵⁴ As I discussed in Section 2, that led Argentinian human rights organizations to propose the creation of an investigatory commission, comprised by members of congress representing all political parties. The aim of this commission was to locate the *desaparecidos* and explain the circumstances in which they disappeared.¹⁵⁵ But in the government's view, such a commission would fail to deliver answers.¹⁵⁶ The government considered that the circumstances would make it impossible for political parties to collaborate, and it could ultimately generate social and political confusion with the outcome of civilian trials of the military – if they were ever to take place.¹⁵⁷ As an alternative, Alfonsín and his advisors proposed the creation of CONADEP.¹⁵⁸ Within days after Alfonsín's inaugural address, CONADEP was created as a response to the 'the legitimate interest[s]' of both Argentinian 'civil society' and the 'international community'.¹⁵⁹

Considering this background, the way in which the Prologue differentiates between both institutions (CONADEP and Junta Trials) is telling of the subtle legal groundwork CONADEP's account established, so that the Junta Trials would be legally and politically feasible, and socially acceptable. Furthermore, the Prologue reveals how international law was embedded in CONADEP's truth-making process, and gave the *desaparecidos* legal subjectivity. In turn, there would be an identifiable victim for whom to deliver justice through the Junta Trials. The Prologue does that by representing the forced disappearance of people conducted by the state as a legal action that violently stripped human beings of 'their rights', and in turn, transformed them into something similar to 'mere objects'.¹⁶⁰ The Prologue then states that the *desaparecidos* were '[s]eized against their will' and that they 'no longer had civil presence [*presencia civil*]',¹⁶¹ because '[f]rom the moment of their abduction, victims lost all rights'.¹⁶² To make the *desaparecidos* subjects of rights, the Prologue acknowledges that they 'were not mere objects . . . and still possessed all the human attributes . . . They were people'.¹⁶³ With this, the Prologue gives legal meaning to the *desaparecidos* through international law's category of 'victim' – which was conceived, and

¹⁴⁹*Ibid.*, ('se empeñará en esclarecer la situación de las personas desaparecidos').

¹⁵⁰Alfonsín, *supra* note 148, ('corregirlos y eliminarlos para siempre'); ('decisiones irresponsables').

¹⁵¹*Ibid.*, ('echar los cimientos de la Argentina libre, grande, próspera, fraterna y generosa que queremos').

¹⁵²Alfonsín, *supra* note 31, at 37; Decreto 187/83, *supra* note 4.

¹⁵³Nino, *supra* note 1, at 67–70.

¹⁵⁴Mignone, *supra* note 32, at 156–157.

¹⁵⁵*Ibid.*, at 158; Nino, *supra* note 1, at 72; Brysk, *supra* note 2, at 68–70.

¹⁵⁶Alfonsín, *supra* note 31, at 39.

¹⁵⁷*Ibid.*

¹⁵⁸Crenzel, *supra* note 21, at 37–8; Alfonsín, *supra* note 31, at 40.

¹⁵⁹Decreto 187/83, *supra* note 4, ('el interés legítimo'); ('sociedad civil'); ('comunidad internacional').

¹⁶⁰CONADEP, *supra* note 3, at 4–5.

¹⁶¹The original text in Spanish captures better this point. CONADEP, *supra* note 6, at 345. English in text: 'no longer existed as citizens'. CONADEP, *supra* note 3, at 3.

¹⁶²CONADEP, *supra* note 3, at 4.

¹⁶³*Ibid.*

since then developed, in the context of the Second World War's Nuremberg Trials.¹⁶⁴ This victim is typically considered as an 'absent figure', to which international law 'promises' legal 'representation' through its institutions – that is, trials, but also, since CONADEP, through TCs.¹⁶⁵ By 1983–1984, when CONADEP operated and delivered its report/book, the situation of the *desaparecidos* – from Argentina and elsewhere – were beginning to have legal form under international law. In 1977 Amnesty International issued a report about the dictatorship's violence, which included a description of different forms of violence – torture, prisoners, and forced-disappearances – and a list of *desaparecidos*.¹⁶⁶ In 1982, the UN's Working Group on Enforced or Involuntary Disappearances defined the forced-disappearances as 'one of the cruellest forms of violation of the human rights of both the victims and their families' committed by the state.¹⁶⁷ The Prologue's recognition of the 'inherent' (human) rights of the *desaparecidos*, based on the 'fact' that they were human, began to give an identifiable international legal form to the *desaparecidos*. In turn it made the state directly responsible for violating international law.

Despite its narrow mandate,¹⁶⁸ the Prologue's way of attributing international legal responsibility *only* to the Argentinian state, is telling of how international law does not hold equally accountable all international actors and institutions.¹⁶⁹ Tellingly, in September 1984, when the Report/*Nunca Más* was made public, the Argentinian state reached the first loan agreement of the post-dictatorship with the IMF.¹⁷⁰ Writing about this 20 years later, in his memoir, Alfonsín said that during dictatorship the state was 'far away from the notion of the rule of [l]aw ... [b]ut paradoxically it was during that period that Argentina was lent more money, which demonstrates the enormous hypocrisy of international financial organizations back then'.¹⁷¹ But, as Argentinian historian Claudia Kedar's analysis shows, even though the loan contradicted Alfonsín's initial 'anti-imperialist' discourse, he was 'ambivalent and not as hostile toward the IMF' as it seemed.¹⁷²

The Prologue concludes by assuring its audiences that 'only democracy ... can save' Argentina from state-violence, because 'only democracy ... can keep and safeguard the sacred, essential rights of humans'.¹⁷³ This redemptive image of democracy was also famously mobilized by Alfonsín, who said during his inaugural address: 'with democracy one not only votes, but one is also educated, fed and healed'.¹⁷⁴ Yet, democracy and modern rule of (international) law were not 'saving' either the majority of Argentinians from sustained economic crises (aggravated with the public spending in the 1982 Malvinas/Falklands War),¹⁷⁵ or the state from inheriting the major foreign debt acquired by the dictatorship.¹⁷⁶ Indeed, for a majority of Argentinians, the

¹⁶⁴M. Elander, *Figuring Victims in International Criminal Justice: The Case of the Khmer Rouge Tribunal* (2018), 15–33.

¹⁶⁵*Ibid.*, at 2, 15; Zunino, *supra* note 1, at 67–72.

¹⁶⁶Amnesty International, *Report Mission to Argentina* (1977).

¹⁶⁷Commission on Human Rights: Report of the Thirty-Eighth Session, UN Doc E/CN.4/1982/30 (1982), at 48, 46–50.

¹⁶⁸Decreto 187/83, *supra* note 4.

¹⁶⁹Orford, *supra* note 105, at 444, 447–448.

¹⁷⁰Agencia Télam, 'Uno por uno: los acuerdos de Argentina con el FMI en 35 años de democracia', *La Voz*, 8 May 2018, available at www.lavoz.com.ar/politica/uno-por-uno-los-acuerdos-de-argentina-con-el-fmi-en-35-anos-de-democracia.

¹⁷¹Alfonsín, *supra* note 31, at 33 ('se estuvo más lejos de la noción de estado de [d]erecho ... [p]ero paradójicamente es el período en que mas dinero se le prestó a la Argentina, lo que demuestra la enorme hipocresía de los organismos internacionales de crédito en aquel entonces'). On how relying on international law to redress state-violence advances impunity and obscures the violence of capitalism in the roots of the conflict see T. Krever, 'Ending Impunity? Eliding Political Economy in International Criminal Law', in J. D. Haskell and U. Mattei (eds.), *Research Handbook on Political Economy and Law* (2015), 298.

¹⁷²C. Kedar, *The International Monetary Fund and Latin America: The Argentine Puzzle in Context* (2013), 165.

¹⁷³CONADEP, *supra* note 3, at 6.

¹⁷⁴Alfonsín, *supra* note 148, ('con la democracia no sólo se vota, sino que también se come, se educa y se cura').

¹⁷⁵On the Junta's opposition's concern about the sovereign debt see *Multipartidaria Nacional, Propuesta de la Multipartidaria* (1983).

¹⁷⁶Kedar, *supra* note 172, at 155. For an analysis of Argentina's 2000s foreign debt see J. E. Roos, *Why Not Default?: The Political Economy of Sovereign Debt* (2019), 173–222. See also J. Dehm, 'Rupture and Continuity: North–South Struggles over

desaparecidos, and the unceasing foreign debts and financial crises, both of which the democratic state inherited from the dictatorship, were two sides of the same coin.¹⁷⁷

4. Re-writing the 1984 Prologue

The fundamental aim of the Report/*Nunca Más* was to establish its account as authoritative. Yet, 36 years after its publication in 1984, the six pages of the Prologue continue to cause public debate.

In 2006, Argentina's Secretary of Human Rights, Eduardo Duhalde, under the presidency of Néstor Kirchner, announced that the latest edition of the Report/*Nunca Más* would include a new prologue.¹⁷⁸ The reason, the government said, was that '[t]he original Prologue did not reproduce the political philosophy that animates the State today in the prosecution of crimes against humanity'.¹⁷⁹ Although the original 1984 Prologue was not removed from the 2006 edition of the Report/*Nunca Más*, many public figures – including Alfonsín and former commissioner Magdalena Ruíz Guiñazú – considered that the new prologue was an attempt to 're-write history ... in the name of the present's political interest',¹⁸⁰ 'a dangerous tendency to reinvent history',¹⁸¹ and 'an example of intolerance and disfigurement of reality'.¹⁸²

Ten years later, in 2016, Mauricio Macri's government announced its decision to remove the 2006 Prologue. As in 2006, the Secretary of Human Rights, Claudio Avruj, was responsible for communicating the government's decision. At the new edition's official presentation, Avruj said that it 'show[ed] the Report as it was, without additional ideology'.¹⁸³ Avruj also emphasized that the removal of the 2006 Prologue was 'a political debt we had from politics, from the State'.¹⁸⁴ Even Sabato's son publicly welcomed the return to the original text.¹⁸⁵

At the time of this article's writing, the 1984 Prologue remains *the* prologue to the Report/*Nunca Más*.¹⁸⁶ However, the writing (in 1984 and 2006) or removing (in 2016) of the prologues reveals the importance of who gets to be the author of 'the account'. It also shows how unstable and plural official accounts of the past are, as well as the depth of their dependence on political interests contingent to the lawfulness advanced by international law at that time.

During the left-oriented Kirchner governments (Néstor's 2003–2007 and Cristina's 2007–2015), the state developed substantive public policies focused on memorialization and

Debt and Economic Co-operation at the End of the Cold War', in Craven, Pahuja and Simpson, *supra* note 112, at 287; S. Pahuja, 'Technologies of Empire: I.M.F Conditionality and the Reinscription of the North/South Divide', (2000) 13 LJIL 749; S. George, *A Fate Worse Than Debt* (1988; 1990), at 1–8.

¹⁷⁷N. Klein, *The Shock Doctrine* (2008).

¹⁷⁸Partido Justicialista (Kirchner) is the most influential political party representing the *Peronismo*.

¹⁷⁹Galak, *supra* note 9, ('El prólogo original no reproducía la filosofía política que hoy anima al Estado en la persecución de los crímenes de lesa humanidad').

¹⁸⁰L. Gregorich, 'Opinión. El peligro de reescribir la historia', *La Nación*, 11 July 2006, available at www.lanacion.com.ar/opinion/el-peligro-de-reescribir-la-historia-nid822374 ('en nombre del interés político del presente').

¹⁸¹'Dura réplica de Alfonsín', *La Nación*, 22 May 2006, available at www.lanacion.com.ar/politica/dura-replica-de-alfonsin-nid808028 ('una peligrosa tendencia a reinventar la historia').

¹⁸²'Editorial I. Cuando se Deforma la Verdad', *La Nación*, 24 May 2006, available at www.lanacion.com.ar/editoriales/cuando-se-deforma-la-verdad-nid808438 ('ejemplo de intolerancia y de desfiguración de la realidad').

¹⁸³'Circula un Petitorio que Será Presentado ante la Editorial Eudeba. Piden que el prólogo del "Nunca Más" lleve la firma de Sabato', *Clarín*, 13 November 2012, available at www.clarin.com/sociedad/Piden-prologo-lleve-firma-Sabato_0-H1imQ3TivQe.html ('m[ostraba]al Informe tal cual fue, sin aditamento ideológico').

¹⁸⁴*Ibid.*, ('una deuda que tenemos desde la política, desde el Estado').

¹⁸⁵'La Versión Original, de 1985. Editan el "Nunca más" sin los Agregados del Kirchnerismo: Hay Polémica', *Clarín*, 18 June 2016, available at www.clarin.com/cultura/editan-agregados-kirchnerismo-polemica_0-EJRDRYRN-.html.

¹⁸⁶Crenzel, *supra* note 97.

remembrance of the dictatorship's violence as a state-violence that encompassed socio-economic inequality.¹⁸⁷ Part of the Kirchner governments' policies was to create sites of memorialization and remembrance, by transforming public buildings which worked as clandestine detention and torture centres, or placing plaques on sidewalks to mark the place where a person was taken by the state's security forces.¹⁸⁸ Another major decision of the Kirchner governments (especially Nestor's) was to annul the amnesty laws passed during Alfonsín and Menem's presidencies. This led to new trials against Junta members.¹⁸⁹ Yet, these trials also showed that one can become a *desaparecido* even in democracy. In 2006, Jorge Julio López, a key witness in the contemporary trials, disappeared following their conclusion.¹⁹⁰ This was the second time that López went missing. The first was during the dictatorship. Yet, this time he has not returned.

Apart from removing the 2006 Prologue, Macri's right-wing government did not work much on memorialization policies. Rather, the efforts of Macri's government were geared towards demonstrating that Argentina was a liberal Western-minded state. At the 2016 Clinton Global Foundation's annual meeting, after being introduced by former US president Clinton, Macri said that under his presidency Argentina was on the road to 'being part of the world again'.¹⁹¹ Internationally, Macri's government sought to demonstrate to Western states that Argentina was 'again a reliable country' and ready to receive 'global corporations'.¹⁹² With this, Macri aimed to undo the Kirchner administrations' foreign and economic policy, which had prioritized South-South alliances (e.g., MERCOSUR over FTAA/NAFTA).¹⁹³ For that reason, the Kirchner governments' foreign and economic policy was viewed with suspicion by Western states. To improve Argentina's reputation amongst Western states, during Macri's presidency Argentina hosted high-profile international events, including the G20 Summit.¹⁹⁴ Simultaneously, the Argentinian state was, once again, negotiating an IMF loan.¹⁹⁵ The success of the IMF negotiations was causing much social, political and economic distress to Argentinians. That could be seen not only in the September 2018 national strike,¹⁹⁶ but also in banners hanging from the façade of many sites of memorialization – such as CONADEP's archives – or in posters made by the Madres de Plaza de Mayo.

¹⁸⁷Balardini, *supra* note 7, at 52, 56–7. See also M. F. Carmody, *Human Rights, Transitional Justice, and the Reconstruction of Political Order in Latin America* (2018), 117–206; V. Bell, *The Art of Post-dictatorship: Ethics and Aesthetics in Transitional Argentina* (2014), 1–15.

¹⁸⁸Espacio Memoria y Derechos Humanos, 'Baldosas por la Memoria', available at www.espaciomemoria.ar/baldosas-por-la-memoria.

¹⁸⁹Centro de Estudios Legales y Sociales, 'Megacausa ESMA: El Juicio', available at www.cels.org.ar/especiales/megacausaesma.

¹⁹⁰Agencia Télam, 'Se Cumplen 13 años de la Desaparición de Julio López', *La Voz*, 18 September 2019, available at www.lavoz.com.ar/politica/se-cumplen-13-anos-de-desaparicion-de-julio-lopez.

¹⁹¹Casa Rosada, 'Macri: "Queremos volver a ser parte del mundo"', 19 September 2016, available at www.caserosada.gob.ar/slider-principal/37334-mauricio-macri-queremos-volver-a-ser-parte-del-mundo-y-cortar-con-el-aislacionismo.

¹⁹²*Ibid.*, ('para volver a ser un país confiable').

¹⁹³E. Barcelona, 'Los Presidentes Entierran el ALCA', *Página 21*, 5 November 2015, available at www.pagina12.com.ar/diario/elpais/1-285456-2015-11-05.html.

¹⁹⁴D. Pardo, '¿Por qué Argentina está en el G20 si tiene una de las economías más frágiles del mundo?', *BBC*, 30 November 2018, available at www.bbc.com/mundo/noticias-america-latina-46390007.

¹⁹⁵IMF Communications Department, 'Press Release No. 18/362: IMF and Argentina Authorities Reach Staff-Level Agreement on First Review Under the Stand-By Arrangement', 26 September 2018, available at www.imf.org/en/News/Articles/2018/09/26/pr18362-argentina-imf-and-argentina-authorities-reach-staff-level-agreement.

¹⁹⁶'Martes de Protesta. Paro general: todo lo que hay que saber', *Clarín*, 24 September 2018, available at www.clarin.com/sociedad/paro-general-25-septiembre-saber_0_JwSvFkq2.html.



Figure 1. Fence surrounding the Casa Rosada (government’s office) with banners against the IMF (FMI in Spanish) during the Madres de Plaza de Mayo’s weekly demonstration in Buenos Aires. The banner says: ‘Out IMF’.¹⁹⁷



Figure 2. Banner against the IMF (FMI in Spanish) hanging from the street fence of Parque de la Memoria y Derechos Humanos in Buenos Aires. Banner says: ‘Yes to national sovereignty. No to the agreement with the IMF’.¹⁹⁸

Macri was not alone in his desire to show that Argentina was addressing the increasing socio-economic inequality, by becoming a liberal Western state and being internationally rule-of-law abiding. As I showed in the previous section, back in 1984 Alfonsín was in a similar position. But nearly two decades later, Alfonsín admitted his bewilderment about the operation of international law in Argentina. Alfonsín wrote:

¹⁹⁷Photograph by author (2018).

¹⁹⁸Photograph by author (2018).

I do not know this conflict will be resolved between an international norm that it is said to be imperative for all States and the right of peoples to “self-determination”, to decide the best way to resolve their democratic transitions . . .

In some instances, even the United Nations has legitimated the sanction of amnesty laws . . . Are all those amnesties null? Are societies obligated to always punish even if it is at the expense of making democracy fail? Those are the questions for a debate that I think reaches the entire world.¹⁹⁹

Alfonsín wrote these words in 2003, in a letter addressed to members of his party at congress. In the letter, Alfonsín openly disagreed with president Kirchner’s initiative to request the congress to annul the amnesty laws, which were passed in 1986 under Alfonsín’s presidency.²⁰⁰ Kirchner’s government argued the laws were unconstitutional because they went against the UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity – which Kirchner signed in 2003 right before the congress approved the laws’ annulment.²⁰¹ Alfonsín’s main point against Kirchner’s argument was that, what was once lawful before international law in 1984, had become unlawful in 2003. Alfonsín’s government believed that, by grounding the transition to democracy’s institutions, such as CONADEP’s account, in what was lawful under international law, Argentina would be seen as a civilized and lawful state by Western states. For Alfonsín, it was confusing that Kirchner’s memorialization policies were also grounded in an international law that still did not recognize Argentina as civilized unless it adopted the ‘new’ lawfulness. This reveals how fundamental decisions taken during Alfonsín’s presidency were ultimately subjected to the authority of international law and its institutions, while constraining the Argentinian state’s authority.

These recent debates show how, on one hand, the state’s decision to either write or remove prologues is contingent on the particular interests of the government of the day. On the other hand, it also shows how both international law and the prologue as a literary genre continued to be useful as a mode of reimagining the lawfulness of the state’s account about the dictatorship’s state-violence. Throughout, the 1984 and 2006 prologues consistently deployed the promise of democracy and the rule of (international) law as the pillars of an Argentinian state that would deliver peace, justice and prosperity. But in turn, the way in which the dictatorship’s unlawful state-violence is given meaning and understood is contingent on international law’s authorized conception of lawfulness.

5. Conclusions

On a chilly, rainy September afternoon in Buenos Aires, I encountered Juan Gelman’s powerful reflection: ‘One cannot let memory rest, one cannot lean back on the comforts of forgetfulness, because what is man if not memory?’²⁰² Gelman’s words are written on the walls of one of the most unsettling places I have visited: the former Escuela Superior de Mecánica de la Armada

¹⁹⁹ Alfonsín, *supra* note 31, at 244. (‘No sé cómo se va a resolver este conflicto entre una norma internacional que se dice imperativa para todos los Estados y el derecho de los pueblos a “autodeterminarse”, a decidir el mejor modo de resolver sus transiciones democráticas . . . En algunas oportunidades, incluso las Naciones Unidas han legitimado la sanción de leyes de amnistía . . . ¿Son nulas todas esas amnistías? ¿Las sociedades están obligadas siempre a castigar aunque de esa manera fracase el establecimiento de la democracia? Estas son las preguntas de un debate que creo alcanza al mundo entero.’)

²⁰⁰ *Ibid.*, at 242–6.

²⁰¹ E. Tagliaferro, ‘Crímenes Imprescriptibles’, *Página/21*, 7 August 2003, available at www.pagina12.com.ar/diario/elpais/subnotas/1-8848-2003-08-07.html; Carmody, *supra* note 187, at 181–197.

²⁰² (‘No se puede dejar descansar a la memoria, no se puede uno arrellanar en la comodidad del olvido, porque el hombre ¿es memoria o qué?’)

(ex-ESMA, or Higher School of Mechanics of the Navy).²⁰³ Ex-ESMA was one of the dictatorship's clandestine torture and detention centres in Buenos Aires. During Néstor Kircher's administration, ex-ESMA was renamed Espacio Memoria y Derechos Humanos (Memory Space and Human Rights), and re-purposed as a site of memorialization without changing ESMA's original architecture.²⁰⁴ It is there, in a highly significant site, that CONADEP's archives are kept, within the National Archive of Memory. Encountering Gelman's words at that particular site after delving into CONADEP's archives was puzzling. Standing before Gelman's words I became aware of a complex tension at the heart of CONADEP's account, between the need to craft a coherent normative account about the wrongfulness of the dictatorship's state-violence, and the risks of doing so.

Gelman's words can be interpreted as an invitation to wrestle with fixed accounts of 'the past'. Gelman invites us to deal with the memories about how life – with its moments of joy and pain – makes us who we are as individuals and as a community. Gelman's invitation, more than being written by one of Argentina's most internationally renowned writers, speaks about, and bears witness to, the great personal loss that the Gelman family and all those of the *desaparecidos* have suffered. Not only were two Gelman children and a daughter-in-law amongst the *desaparecidos*, but Macarena, the granddaughter, was separated at birth from her parents and smuggled to Uruguay.²⁰⁵ Joyfully, after decades of searching, Macarena and the Gelman family were reunited.²⁰⁶

It is undeniable that the driving force of Argentina's transition was the courageous struggle and resistance of Argentinians against the Junta's violence, coupled with the vision and commitment of Alfonsín's government to secure peaceful democratic coexistence. CONADEP's work was remarkable in tracing and recording the facts – names and circumstances – in which at least 30,000 people were forcefully 'disappeared'. Yet, Juan Gelman was openly critical of the Prologue to the Report/*Nunca Más*. Gelman, like many other Argentinians, disagreed about the way in which the Prologue narrated the facts by giving continuity to the dictatorship's 'theory of two demons'.²⁰⁷ Taking those debates into account, this article analysed the Prologue's narrative account in light of the late-Cold War's international context. It has sought to show how a Eurocentric/Anglo-American understanding of lawfulness, embedded in international law, played a fundamental role in the framing of the Prologue's narrative account.

As I discussed throughout this article, the main aim of CONADEP's investigation was to give answers about the whereabouts of the *desaparecidos* and the circumstances in which they disappeared, primarily to their relatives, then to Argentinians and the international community. Furthermore, in doing so, CONADEP's account was meant to establish a shared official account of the ethical wrongfulness of the forced disappearances. I began by showing in Section 2 how the Prologue was vital for communicating to Argentinians the state's narrative about how and why the dictatorship's state-violence caused the *desaparecidos*. Specifically, I discussed how the Prologue, in working as a specific literary genre (prologue) in the Report/*Nunca Más*, enabled CONADEP to establish a coherent, unitary narrative, so that Argentinians, and the international community, could understand and accept the unlawfulness of the dictatorship's state-violence as recorded in the body of the text. I then

²⁰³'Sobre el lugar', Espacio Memoria y Derechos Humanos, available at www.espaciomemoria.ar/lugar.

²⁰⁴*Ibid.*

²⁰⁵The case of Macarena Gelman occurred within the scheme of the CIA-supported Operation Cóndor. Operation Cóndor, created in 1975, was an international secret alliance between the intelligence services of Argentina, Uruguay, Chile, Paraguay, and Bolivia. One of Cóndor's main aims was to collaborate to successfully conduct the forced disappearances and separate them from their newborn children. See Centro por la Justicia y el Derecho Internacional (CEJIL), 'REF: Caso CDH- Gelman vs. Uruguay. Alegatos Finales Escritos', 10 December 2010. On Cóndor see generally López, *supra* note 113; J. P. McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (2005).

²⁰⁶M. López San Miguel, 'Todos Somos Bastante Más de lo Que Nos Tocó Vivir', *Página/21*, 21 April 2014, available at www.pagina12.com.ar/diario/dialogos/21-244541-2014-04-21.html.

²⁰⁷E. Crenzel, 'El Prólogo del Nunca Más y La Teoría de los Dos Demonios. Reflexiones Sobre una Representación de la Violencia Política en la Argentina', (2013) 1 *Contenciosa* 1, at 11.

unpacked the Prologue in Section 3 to show how it established the unlawfulness of the dictatorship's state-violence by drawing on the language and promise of international law as mobilized in the late-Cold War. The Prologue promised Argentinians that the 'new' democratic state would be non-violent, and therefore lawful. I showed how in doing that, international law was actively shaping Argentinian public life according to a Eurocentric/Anglo-American lawfulness. The analysis shows how the way in which international law was subjecting Argentina's transition-to-democracy to its authority occurred in more sophisticated and complex ways than as an overt foreign intervention (as Alfonsín's government feared). I showed how international law 'cooperated' with the literary form of the Prologue to subtly yet powerfully subject the meaning and interpretation of the dictatorship's unlawful state-violence to the authority of international law.²⁰⁸ The analysis of the 2006 and 2016 rival prologues, in Section 4, reveals how international law continues to actively shape Argentinian public life by determining the meaning and interpretation of 'the past'. In turn, international law continues to constrain the possibilities of crafting local accounts of the past that rival its authority and the state-society arrangements that it fosters.²⁰⁹

While it can be considered that the Prologue establishes an Argentinian narrative – written by Argentinians working for an Argentinian institution (CONADEP) – international law was fundamental, not only in giving CONADEP's account narrative coherency, but more importantly, lawful authority. One of the things that the Prologue shows is how international law did that not through one of its institutional 'sites' (e.g., international courts and tribunals, international organizations or treaties), but through seemingly 'non-legal or non-international' ones – such as a truth commission and its documents and/or artefacts. In a time when cultural and artistic expressions (broadly understood) are being incorporated into the research and practice of transitional justice²¹⁰ and international law,²¹¹ it is more important than ever to closely examine their interactions. The law and literature approach, or 'the humanistic study of law' followed in this article,²¹² invites us to ask how, who, what for, and for whom 'the past' is represented by particular international law or transitional justice institutions. In turn, this approach opens the possibility of learning how to listen more carefully, and respectfully, to the nuances of how post-conflict societies are subjected to the authority of international law. And to do so, on their own, lawful, terms.

²⁰⁸Slaughter, *supra* note 14, at 5.

²⁰⁹On how international law suppresses its 'others' through its different technologies and institutions see S. Pahuja, 'Laws of Encounter: A Jurisdictional Account of International Law', (2013) 1 *London Review of International Law* 63; S. Chalmers and S. Pahuja, '(Economic) Development and the Rule of Law', in M. Loughin and J. Meierhenrich (eds.), *The Cambridge Companion to the Rule of Law* (forthcoming); S. Chalmers, *Liberia and the Dialectic of Law: Critical Theory, Pluralism, and the Rule of Law* (2018). For an ethnographic study about the consequences of mobilizing Western international law as 'standard' in non-Western local post-conflict processes see P. Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (2010). On Global South jurists resisting to Western international law, and fighting for a meeting of international laws see Eslava, Fakhri and Nesiah, *supra* note 110.

²¹⁰See, for example, C. Ramírez-Barat (ed.) *Transitional Justice, Culture, and Society: Beyond Outreach* (2014); P. Rush and O. Simić, *The Arts of Transitional Justice: Culture, Activism, and Memory After Atrocity* (2014); E. Garnsey, *The Justice of Visual Art: Creative State-Building in Times of Political Transition* (2019); M. Aksenova et al., 'AJIL Unbound by Symposium: Art, Aesthetics, and International Justice', (2020) 114 *AJIL Unbound* 103; M. Elander, 'Visualizing Law and Justice at the Extraordinary Chambers in the Courts of Cambodia', (2020) 14 *AJIL Unbound* 128; L. Lixinski, *Legalized Identities: Cultural Heritage Law and the Shaping of Transitional Justice* (2021).

²¹¹See, for example, J. E. K. Parker, *Acoustic jurisprudence: Listening to the Trial of Simon Bikindi* (2015); H. Kazan, 'The Architecture of Slow, Structural, and Spectacular Violence and the Poetic Testimony of War', (2018) 44 *Australian Feminist Law Journal*; L. Eslava, 'The Moving Location of Empire: Indirect Rule, International Law, and the Bantu Educational Kinema Experiment', (2018) 31 *LJIL* 539; J. Hohmann and D. Joyce (eds.), *International Law's Objects* (2018); K. Grady, 'For whom the bell tolls: London's Iraq and Afghanistan Memorial 1990–2015', (2019) 7 *London Review of International Law* 353; Vázquez Guevara, *supra* note 13; K. Miles, 'Visuality of a Treaty: Reflection on Versailles', (2020) 8 *London Review of International Law* 7; M. Bak McKenna, 'Designing for International Law: The Architecture of International Organizations 1922–1952', (2020) 34 *LJIL* 22; C. Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law* (2021); Chalmers and Pahuja, *supra* note 13.

²¹²Chalmers and Pahuja, *ibid.*, at 9.

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