

ORIGINAL ARTICLE

# Operation Condor on Trial: Justice for Transnational Human Rights Crimes in South America

Francesca Lessa\*

Marie Skłodowska-Curie Research Fellow, Latin American Centre, University of Oxford; International Consultant, Observatorio Luz Ibarburu, Uruguay; and Affiliate Member, Latin American Transitional Justice Network

\*Corresponding author. Email: [francesca.lessa@lac.ox.ac.uk](mailto:francesca.lessa@lac.ox.ac.uk)

(First published online 13 November 2018)

## Abstract

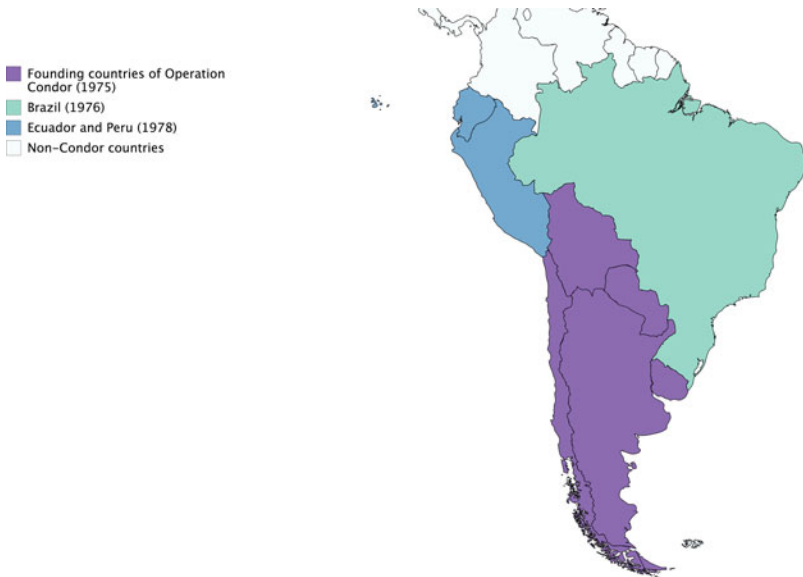
In May 2016, an Argentine federal court concluded a momentous trial, convicting 15 defendants of illegal kidnappings and torture committed against over 100 victims of Operation Condor, and of *asociación ilícita* ('illicit association': conspiracy to commit a criminal offence) to perpetrate these violations. Operation Condor was the codename given to a continent-wide covert operation devised in the 1970s by South American regimes to eliminate hundreds of left-wing activists across the region. The Operation Condor verdict of 2016 broke new ground in human rights and transitional justice, for its innovative focus on transnational crimes and for holding state agents accountable for extraterritorial human rights violations. By analysing this pioneering case, the article brings the question of cross-border crimes into academic debate. As borders become more porous, scholars and practitioners can no longer afford to side-line the topic of accountability for transnational crimes.

**Keywords:** impunity; Operation Condor; transnational crimes; accountability; civil society

## Introduction

At a secret meeting held in Santiago de Chile in late November 1975, Argentina, Bolivia, Chile, Paraguay and Uruguay established a secret transnational system to share intelligence and conduct joint operations to track down left-wing activists across South America and beyond. 'Operation Condor' was the codename given to this continent-wide covert network that ignored state borders in order to eliminate political opponents to South America's regimes, wherever they were. Brazil, Ecuador and Peru joined later (see [Figure 1](#)). Through the Condor system, hundreds of exiles were at first closely monitored, and later kidnapped, tortured and often forcibly returned to their country of origin. The majority of Condor's victims were executed or 'disappeared'; only a few survived.

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**Figure 1.** Operation Condor Countries  
 Source: Francesca Lessa, using mapchart.net

Forty years later, during a rainy and grey afternoon on 27 May 2016, a four-judge court (Federal Criminal Court no. 1) in the Retiro courthouses in downtown Buenos Aires handed down a historic verdict (Figures 2 and 3). Concluding a landmark trial, which had lasted three years, two months and 22 days, the judges convicted 15 defendants of illegal kidnappings and torture carried out against over 100 victims of Operation Condor, and of *asociación ilícita* ('illicit association': conspiracy to commit a criminal offence, in common-law jurisdictions) to carry out these violations. This emblematic trial broke new ground in human rights and transitional justice, for prosecuting for the first time atrocities of a transnational nature – in terms of the nationality of both victims and perpetrators, as well as of the physical locations of the crimes – and for sentencing state officials for their role in committing human rights violations outside of national territories.

Argentina's Operation Condor trial is the latest manifestation of Latin America's ground-breaking role in human rights and transitional justice.<sup>1</sup> Latin American countries have been 'protagonists of the idea of "international human rights"' and have played a fundamental part in generating the post-World War II legal order as well as norms guaranteeing the promotion of human rights.<sup>2</sup> Furthermore, over the past 30 years the region has been the first to start breaking away from the centuries-long pattern of amnesties, impunity and oblivion, which

<sup>1</sup>Elin Skaar, Jemima Garcia-Godos and Cath Collins (eds.), *Transitional Justice in Latin America: The Uneven Road from Impunity towards Accountability* (London and New York: Routledge, 2016).

<sup>2</sup>Kathryn Sikkink, 'Latin America's Protagonist Role in Human Rights', *Sur – International Journal on Human Rights*, 12: 22 (2015), p. 208.



**Figure 2.** Victims and Relatives Await the Verdict in the Operation Condor Trial, 27 May 2016. Note the glass security wall separating the judges, lawyers, prosecution and defendants from the public.

Source: Francesca Lessa

typically shielded perpetrators of grave crimes from accountability.<sup>3</sup> As democracy returned to Latin America in the 1980s and 1990s, hitherto unprecedented efforts took place to shed light on the human rights violations perpetrated during the years of state terror. Such important developments were in large part due to mobilisation by victims' relatives, human rights activists and lawyers who, through inventive and novel strategies, never gave up the quest for justice.<sup>4</sup> Previously, the historic Trial of the Juntas in Argentina in 1985 had stood out as an exceptional achievement during times of what seemed to be obligatory impunity.<sup>5</sup> Over a decade later, the 1998 detention in London of Chilean General Augusto Pinochet marked a turning point

<sup>3</sup>Francesca Lessa and Leigh Payne (eds.), *Amnesty in the Age of Human Rights Accountability: Comparative and International Perspectives* (Cambridge: Cambridge University Press, 2012).

<sup>4</sup>Francesca Lessa *et al.*, 'Overcoming Impunity: Pathways to Accountability in Latin America', *International Journal of Transitional Justice*, 8: 1 (2014), pp. 75–98.

<sup>5</sup>Carlos S. Nino, *Radical Evil on Trial* (New Haven, CT, and London: Yale University Press, 1996).



**Figure 3.** The Judges Deliver the Verdict in the Operation Condor Trial, 27 May 2016

Source: Francesca Lessa

in international justice efforts and sent shockwaves all across the world.<sup>6</sup> The symbolic arrest of the once all-powerful dictator revived attempts to hold perpetrators accountable in Chile and beyond. Throughout Latin America, previously untouchable leaders, who had enjoyed a life of impunity for years after negotiating their way out of power, finally had to answer for unspeakable crimes. Several former heads of state were prosecuted and sentenced for serious atrocities, including Alberto Fujimori in Peru, Juan María Bordaberry in Uruguay and Efraín Ríos Montt in Guatemala,<sup>7</sup> with investigations also opened against lower-level state agents in Argentina and Chile.

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

<sup>6</sup>Naomi Roht-Arriaza, *The Pinochet Effect: Transnational Justice in the Age of Human Rights* (Philadelphia, PA: University of Pennsylvania Press, 2005).

<sup>7</sup>Ellen Lutz and Caitlin Reiger, *Prosecuting Heads of State* (Cambridge: Cambridge University Press, 2009).

<sup>8</sup>John Cerone, 'Out of Bounds? Considering the Reach of International Human Rights Law', Center for Human Rights and Global Justice at NYU School of Law, Working Paper no. 5 (2006), p. 2.

<sup>9</sup>*Ibid.*, pp. 2–3.

This paper will address the latter two questions. Its specific contribution is, therefore, to shift attention towards transnational human rights violations and the role of criminal accountability in this regard. Analysis of the Operation Condor trial is especially useful, since it encompasses a complex web of agents and jurisdictions, in terms of victims, perpetrators and countries across South America. It allows the study of transnational dynamics in practice and helps to clarify issues relating to the extraterritorial application of human rights guarantees. More precisely, this article contends that tackling transnational crimes does not entail the complete rethinking of accountability tools or of the entire human rights system. On the contrary, the recent wave of trials probing past atrocities in Argentina and Chile, conducted through existing criminal codes and ordinary court systems with local judges and prosecutors in charge of investigations and prosecutions, clearly demonstrates there is no need to resort to extraordinary forms of justice.<sup>10</sup> Consequently, it is claimed here that, by rediscovering pre-existing concepts and employing creative strategies, current mechanisms – such as criminal prosecutions – can also deal with cross-border crimes. Indeed, the Argentine court effectively probed transnational crimes by employing over 100 illustrative cases of victims and innovatively combining two types of jurisdiction, *territoriality* and *passive personality*,<sup>11</sup> as lenses through which to analyse Operation Condor atrocities. In this way, the court effectively accounted for the entire geographical reach of the transnational network and the way in which states committed atrocities both inside their national territories (*territoriality*) and outside it (*passive personality*). Thus, the court held that state officials were responsible for human rights violations *outside* state borders, thereby applying human rights guarantees extraterritorially too.

The article proceeds as follows. Firstly, it provides a focused review of the existing transitional justice literature, highlighting shortcomings regarding investigations into transnational crimes. Secondly, it describes the Operation Condor criminal network and the transnational nature of its atrocities. Thirdly, it traces the origins of prosecutions for Condor crimes in Latin America and discusses in detail the Operation Condor trial, from its beginning in 1999 up to the verdict in 2016. Fourthly, it assesses the significance of the Condor trial and its reverberations for human rights and transitional justice. Finally, the conclusion summarises the key points raised throughout this work.

In preparing the article, the author conducted extensive field research between 2013 and 2017, attending 74 hearings of the Condor trial in Buenos Aires between 2014 and 2016 and carrying out 76 interviews with survivors, lawyers, judges, prosecutors and other experts in Argentina, Chile, Paraguay and Uruguay.

<sup>10</sup>The two countries are pioneers in accountability through domestic courts: 982 individuals had already been prosecuted in Argentina by June 2018 (see latest statistics at <https://www.fiscales.gov.ar/lesa-humanidad/?tipo-entrada=estadisticas>; last access 5 Sept. 2018), and 1,373 former agents in Chile by December 2015 (see <http://pdh.minjusticia.gob.cl/wp-content/uploads/2015/12/lista-HISTORICA-2015-1373-procesados-acusados-condenados-1.pdf>; last access 3 Sept. 2018).

<sup>11</sup>According to the principle of 'passive personality', a state can claim jurisdiction over an act committed abroad if the victim is a national of that country.

## Accountability for Transnational Crimes

Transitional justice has lately come under increased scrutiny in respect of its meaning, relationship with human rights, relevance, actors and dynamics, as well as legitimacy. Several definitions have been coined. This article follows the one put forward by the United Nations Secretary General: transitional justice entails judicial and non-judicial processes and mechanisms (i.e. prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals) that societies use to come to terms with large-scale past abuses to ensure accountability, serve justice and achieve reconciliation.<sup>12</sup> The boundaries between transitional justice and human rights have often been blurry, given their common concerns. As I have argued elsewhere,<sup>13</sup> the term transitional justice is normally employed in the context of extraordinary past times of violence during conflict or dictatorship, while human rights focus on numerous rights concerns, whether political, civil, economic, cultural or social, in diverse contexts. Both share the goal of protecting human rights and offering redress when these are violated. Currently, debates revolve around the uses and abuses of transitional justice. Some scholars have shown how the term has little resonance in some countries, such as in Argentina, where local actors do not employ it and do not consider ongoing trials to be mechanisms of transitional justice.<sup>14</sup> Others have criticised the central role attributed to the state to the detriment of other relevant actors, such as civil society, which plays a crucial part in accountability efforts.<sup>15</sup> Indeed, new labels, such as ‘post-transitional justice’<sup>16</sup> and ‘transformative justice’,<sup>17</sup> have emerged to distinguish between different waves of justice efforts, the part played by non-state actors, and the necessity of shifting the focus away from state institutions towards communities. Finally, other scholars have highlighted how transitional justice has been misused on some occasions, such as in Brazil, where the official discourse has silenced victims’ voices, blocking their demands for truth, justice and reparations, while simultaneously legitimising processes of impunity emanating from the state.<sup>18</sup>

An additional criticism that can be levelled against the literature on transitional justice, as well as against that on human rights more broadly, is the lack of attention paid to the transnational. Scholars and practitioners have limited their analyses

<sup>12</sup>‘The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Report of the Secretary-General’, United Nations Security Council, 23 Aug. 2004, S/2004/616\*, para. 8.

<sup>13</sup>Francesca Lessa, ‘Beyond Transitional Justice: Exploring Continuities in Human Rights Abuses in Argentina between 1976 and 2010’, *Journal of Human Rights Practice*, 3: 1 (2011), pp. 25–48.

<sup>14</sup>Rosario Figari Layús, ‘“What Do You Mean by Transitional Justice?”: Local Perspectives on Human Rights Trials in Argentina’, in Nina Schneider and Marcia Esparza (eds.), *Legacies of State Violence and Transitional Justice in Latin America: A Janus-Faced Paradigm?* (Lanham, MD: Rowman and Littlefield, 2015), pp. 3–16.

<sup>15</sup>Cecilia MacDowell Santos, ‘Transitional Justice from the Margins: Legal Mobilization and Memory Politics in Brazil’, in *ibid.*, pp. 37–72.

<sup>16</sup>Cath Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (Philadelphia, PA: Penn State University Press, 2010).

<sup>17</sup>Paul Gready and Simon Robins, ‘From Transitional to Transformative Justice: A New Agenda for Practice’, *The International Journal of Transitional Justice*, 8: 3 (2014), pp. 339–61.

<sup>18</sup>Edson Teles and Renan Qunalha, ‘Scopes and Limits to the Transitional Justice Discourse in Brazil’, in Schneider and Esparza (eds.), *Legacies of State Violence*, pp. 19–36.

primarily to 'offences within a single state' perpetrated 'by national actors'.<sup>19</sup> Indeed, the state has until now been the 'primary means' of reflecting on and organising discussions around transitional justice approaches, being its 'cornerstone'.<sup>20</sup> Contemporary challenges, such as globalisation, the fragmentation of states and the rise of non-state actors, are increasingly questioning the relevance of such a limited framing. This prevalent state-centric approach has restricted the potential for analytically studying atrocities as well as for developing policy responses. This is not to deny that some historians and political scientists have examined the transnational dimension to past atrocities in South America.<sup>21</sup> Seminal works by J. Patrice McSherry, John Dinges and Peter Kornbluh have extensively documented the political and historical origins of Operation Condor, and meticulously described its inner workings.<sup>22</sup> However, none has studied accountability efforts regarding transnational crimes.

Even in the field of human rights, there is no clarity on the limits of states' conduct outside their territories; the precise extent of states' human rights obligations abroad and their reluctance to be held responsible for extraterritorial actions have not been sufficiently addressed.<sup>23</sup> Powerful states have always disregarded the principle of inviolability of borders. Yet, in the past decade, the extraterritorial application of human rights treaties has attracted significant consideration<sup>24</sup> and a burgeoning literature has emerged, focusing predominantly on environmental protection, the responsibility of transnational corporations and international assistance and cooperation.<sup>25</sup> As borders become increasingly weak, the call for cross-border accountability is growing stronger and can no longer be ignored.<sup>26</sup> Interestingly, one of the early cases of transnational crimes that gave rise to these debates related to an Operation Condor episode. In *López Burgos v. Uruguay*, in 1981, the UN Human Rights Committee found Uruguay responsible for violating the victim's rights to be free from torture, arbitrary arrest and detention in Argentina. The Committee importantly underscored how 'jurisdiction' referred to 'the relationship

<sup>19</sup>Amy Ross and Chandra Lekha Sriram, 'Closing Impunity Gaps: Regional Transitional Justice Processes?', *Transitional Justice Review*, 1: 1 (2012), p. 3.

<sup>20</sup>Pierre Haza, 'Beyond Borders: The New Architecture of Transitional Justice?', *International Journal of Transitional Justice*, 11: 1 (2017), p. 1.

<sup>21</sup>Stella Calloni, *Los años del lobo: Operación Cóndor* (Buenos Aires: Ediciones Continente, 1999); Katie Zoglin, 'Paraguay's Archive of Terror: International Cooperation and Operation Condor', *University of Miami Inter-American Law Review*, 32: 1 (2001), pp. 57–82.

<sup>22</sup>J. Patrice McSherry, *Predatory States: Operation Condor and Covert War in Latin America* (Lanham, MD, and Oxford: Rowman and Littlefield, 2005); John Dinges, *The Condor Years: How Pinochet and his Allies Brought Terrorism to Three Continents* (New York and London: New Press, 2004); Peter Kornbluh, *The Pinochet File: A Declassified Dossier on Atrocity and Accountability* (New York: The New Press, 2013)

<sup>23</sup>Hugh King, 'The Extraterritorial Human Rights Obligations of States', *Human Rights Law Review*, 9: 4 (2009), p. 521, and Mark Gibney and Sigrun Skogly (eds.), *Universal Human Rights and Extraterritorial Obligations* (Philadelphia, PA: University of Pennsylvania Press, 2010), p. 24.

<sup>24</sup>Marko Milanovic, *Extraterritorial Application of Human Rights Treaties* (Oxford: Oxford University Press, 2011), pp. 4–5.

<sup>25</sup>Nehal Bhuta (ed.), *The Frontiers of Human Rights* (Oxford: Oxford University Press, 2016); Gibney and Skogly (eds.), *Universal Human Rights*.

<sup>26</sup>Sigrun Skogly and Mark Gibney, 'Transnational Human Rights Obligations', *Human Rights Quarterly*, 24: 3 (2002), pp. 781–98.

between the individual and the State in relation to a violation of any of the rights set forth in the Covenant, *wherever* they occurred'.<sup>27</sup> Despite this precedent, the extent of states' extraterritorial obligations remains unclear and accountability efforts for such actions are few and far between.

This article contributes to the existing scholarship beyond the important analytical shift in focus from the national to the transnational. It also shows how criminal prosecutions can play a role in redressing cross-border crimes, and draws out some lessons on the applicability of human rights provisions extraterritorially. The Argentine Operation Condor prosecution sets a crucial precedent in pushing the boundaries of our understanding of human rights obligations, showing that they do not end at the geographical frontiers of states, but extend beyond them.

### The Crimes of Operation Condor

Against the geopolitical backdrop of the Cold War and ideologically inspired by the National Security Doctrine, authoritarian takeovers swept across South America, starting with Paraguay in 1954. Brazil followed in 1964. Subsequently, coups occurred in Bolivia in 1971, Uruguay and Chile in 1973, and finally Argentina in 1976. These dictatorships brutally and systematically repressed all forms of opposition, targeting members of left-wing armed groups, politicians, teachers, students, trade union leaders and political activists, and perpetrating thousands of extrajudicial executions, abductions,<sup>28</sup> enforced disappearances, instances of torture and inhumane treatment, baby theft, sexual violence, extortions and robberies. By the mid-1970s, political repression acquired an additional and sinister regional dimension through Operation Condor, which came to play a fundamental role in the dictatorships' state terror practices and policies. These regimes deliberately created the transnational Condor network to complement policies of repression unleashed at home, taking them to a higher level. In the majority of cases, Operation Condor specifically targeted exiles who had fled their country of origin and continued to denounce from abroad the dictatorial governments in power at home. In some instances, relatives looking for missing loved ones and/or refugees who had stopped being politically active also suffered persecution. By 1978, Operation Condor encompassed eight of the 13 countries in South America and had, in practice, established a borderless area of terror and impunity on the continent, affecting hundreds of victims.

The Condor system reproduced the same range of violations as those carried out by the regimes at home, but with an additional ingredient: transnationality. This can be seen in three respects. Firstly, at least two countries, sometimes even more, were involved in atrocities: the country of nationality of the victim and that where crimes were physically perpetrated. For instance, in the case of murdered Uruguayan Senator Zelmar Michelini in May 1976, Argentina and Uruguay were

<sup>27</sup>King, 'The Extraterritorial Human Rights Obligations of States', p. 524.

<sup>28</sup>Abduction often constituted an initial step in the process of enforced disappearances. People would be illegally detained and taken to clandestine detention centres, where they suffered torture and inhumane treatment. In most cases, they were later arbitrarily executed and their bodies disposed of in clandestine graves, so that they would never be found. In a few cases, victims of illegal detention would regain their freedom or their detention was eventually recognised by the state.



implicated: the former, since Michelini had been in exile in Buenos Aires since 1973, and the latter, as Uruguay was where Michelini had had a long political career and it was that country's atrocities that he was criticising internationally. Secondly, operations were conducted by joint taskforces, composed of agents of the country where the victim was located, as well as their counterparts from the victim's country of origin (sometimes even from other interested countries). For example, Chilean exile Laura Elgueta Díaz was kidnapped from her home in Buenos Aires in July 1977. To her surprise, upon arriving at the Club Atlético secret detention centre, she immediately noticed that not all her captors were Argentines but that many were in fact Chilean state agents, unmistakable from their accent.<sup>29</sup> Thirdly, the perpetration of crimes always entailed a crossing of borders, whether physical or informational. This exchange could take the form of intelligence-sharing from one country to the other regarding individuals being sought, and/or the actual forceful and, usually, clandestine transfer of individuals detained in one country back to their home country. In the case of Paraguayan exile Cástulo Vera Báez, who disappeared in early 1977 from the border province of Misiones, Argentina, it was later proven that he had actually been illegally transferred to Paraguay soon after detention to be 'disappeared' later. Indeed, in October 2016, human remains found buried on police premises in Asunción were genetically identified as being those of Vera Báez, thus proving his clandestine transfer to his native Paraguay.<sup>30</sup>

Operation Condor built upon and transcended prior forms of bilateral, *ad hoc* and informal cooperation, exchanges of information and joint operations that had existed between the region's armed and intelligence forces since the early 1970s. It has been established that, by early 1974, the region's police forces had agreed to coordinate their actions in monitoring 'subversive elements, through the network of embassies, specifically through agents probing drug trafficking'.<sup>31</sup> Scholars and lawyers investigating such cases before the formalisation of Operation Condor categorise them as 'pre-Condor'.<sup>32</sup> Amongst the best-known instances of this embryonic phase are the assassination of exiled Chilean General Carlos Prats and his wife in September 1974 in Buenos Aires, and the kidnapping and later disappearance of Chilean militant Jorge Fuentes Alarcón detained in May 1975 in Asunción, Paraguay. These atrocities already followed the pattern of detention, torture and unlawful rendition that would later become Condor's trademarks.<sup>33</sup>

Scholars and researchers have yet to reach a consensus on the exact start and end dates of Condor. This article follows the dates proposed in the trial, with Condor operating from late 1975 until late 1980, with the years 1976 to 1978 constituting the peak of its lethal power. It is generally undisputed that Operation Condor was formalised during a meeting of security forces organised in Santiago between 25 November and 1 December 1975,<sup>34</sup> chaired by General Pinochet himself. Fifty

<sup>29</sup> Author's notes from Condor trial hearing, 25 March 2014.

<sup>30</sup> 'Identifican a un desaparecido', *Página12*, 21 Oct. 2016.

<sup>31</sup> Author interview with Roger Rodríguez, investigative journalist, Montevideo, Uruguay, 4 Oct. 2013.

<sup>32</sup> Condor Trial Judge Adrián F. Grünberg coined the term, quoted in Alejandra Dandan, 'Con el Cóndor, el país fue un coto de caza', *Página12*, 2 Oct. 2016.

<sup>33</sup> Author's notes from trial hearing, Buenos Aires, 31 Oct. 2014.

<sup>34</sup> Dinges, *The Condor Years*.

representatives from Argentina, Bolivia, Chile, Paraguay and Uruguay attended that gathering and signed a final founding document.<sup>35</sup> Brazil participated as an observer at the meeting and joined formally in 1976. In 1978, Ecuador and Peru also became members.

Operation Condor comprised three phases: first, close coordination and intelligence exchange; second, operations in the pursuit of opponents in South America; and third, targeted assassinations outside South America, such as that of former Chilean diplomat Orlando Letelier together with his assistant in September 1976 in Washington DC.<sup>36</sup> This shadowy system completely disregarded traditional principles of international law on refugees and a long custom of protecting asylum seekers in the region. South American political activists, who thought they had found safe haven in neighbouring countries having fled repression and military coups back home, became victims of ‘deathly traps’,<sup>37</sup> and faced persecution abroad. Terror was palpable everywhere. A former Chilean exile in Argentina told me how, as soon as he arrived in the frontier city of Mendoza, he immediately changed his accent: he did not want to be easily identified as a Chilean living in Argentina in late 1973.<sup>38</sup>

Similarly to the lack of consensus on the years of operation, there is no comprehensive list of Condor’s victims. A 2016 UNESCO report estimates 377 victims between 1974 and 1981, including 177 Uruguayans, 72 Argentines, 64 Chileans and 25 Paraguayans.<sup>39</sup> In this author’s view, this represents a conservative estimate. While final numbers remain contested, there is little doubt that victims encompassed renowned politicians, members of guerrilla organisations, political activists and refugees under the protection of the United Nations High Commissioner for Refugees. Condor’s talons did not even spare children; at least 13 cases of illegally appropriated minors from Argentina, Bolivia and Uruguay have been documented.<sup>40</sup> Due to the large number of exiles living in Buenos Aires from the late 1960s, most Condor crimes unfolded there. Automotores Orletti, a clandestine

<sup>35</sup>See Minutes of the Conclusions of the First InterAmerican Meeting on National Intelligence (Secret), Meeting Minutes, 28 Nov. 1975: <http://nsarchive.gwu.edu/NSAEBB/NSAEBB514/docs/Doc%2003%20-%20Acta%20document%20translation%20and%20original.pdf>; last access 20 Aug. 2018.

<sup>36</sup>Kornbluh, *The Pinochet File* and McSherry, *Predatory States*. Also see a report presented as evidence by the US National Security Archives’ analyst Carlos Osorio to the Condor trial on 6 March 2015. This report, dated 2/3 Aug. 1976, by Assistant Secretary of State for Latin America Harry Shlaudeman to Henry Kissinger concerned security coordination in South America and was entitled ‘The “Third World War” and South America’. It is available at <http://nsarchive.gwu.edu/NSAEBB/NSAEBB416/docs/0000A02E.pdf>; last access 20 Aug. 2018.

<sup>37</sup>Author interview with Sara Méndez, victim and survivor of Operation Condor, Montevideo, Uruguay, 8 Oct. 2013.

<sup>38</sup>Author interview with former member of Chilean Socialist Party, Mendoza, Argentina, 13 Oct. 2016.

<sup>39</sup>Centro Internacional para la Promoción de los Derechos Humanos (International Centre for the Promotion of Human Rights, CIPDH), *Operación Cóndor: 40 años después* (Buenos Aires: UNESCO, 2016), p. 260, downloadable from: <http://www.cipdh.gob.ar/2017/08/28/libro-operacion-condor-40-anos-despues/>; last access 3 Sept. 2018.

<sup>40</sup>See list of ‘disappeared’ and recovered children of Uruguay’s Secretaría de Derechos Humanos para el Pasado Reciente (Human Rights Secretariat for the Recent Past, hereafter SDHPR): [http://sdh.gub.uy/inicio/institucional/equipos/centro\\_de\\_documentacion\\_y\\_comunicacion/documentos\\_equipo\\_historia/Investigacion+historica+sobre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+Seccion+Secuestro+y+Desaparicion+de+Ninos+y+Adolescentes/](http://sdh.gub.uy/inicio/institucional/equipos/centro_de_documentacion_y_comunicacion/documentos_equipo_historia/Investigacion+historica+sobre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+Seccion+Secuestro+y+Desaparicion+de+Ninos+y+Adolescentes/); last access 20 Aug. 2018.

detention centre located in Buenos Aires' Floresta neighbourhood, is one of the emblems of Operation Condor. During its six months of operation between May and November 1976, over 300 people passed through Orletti, the vast majority of whom were foreigners whose bodies have still not been recovered.<sup>41</sup> Other centres linked to Condor included the Club Atlético, El Pozo de Quilmes, El Pozo de Banfield and the Escuela de Mecánica de la Armada (Navy Mechanics School, ESMA) in Argentina; Punta Gorda House, '300 Carlos' and the building of the Servicio de Inteligencia de Defensa (Defence Intelligence Service, SID) in Montevideo, Uruguay; Villa Grimaldi, Cuatro Álamos, and Simón Bolívar in Chile; and the Departamento de Investigaciones de la Policía (Police Investigations Department) in Asunción, Paraguay.

Condor crimes were systematically committed across South America. During the Condor years, perpetrators acted with absolute impunity; this impunity was later guaranteed by the passing of amnesties by successor democratic governments. In this situation, how was justice for these atrocities ever going to be achieved?

### The Long and Winding Road to Justice

As Operation Condor's destructive power peaked in the late 1970s, survivors and human rights activists were already denouncing the transnational terror network. They were not aware of its Condor codename, but this did not stop them. During those dark days, Amnesty International, for instance, gathered the testimonies of several Uruguayan survivors.<sup>42</sup> One illustrative case is that of Uruguayan journalist Enrique Rodríguez Larreta. He had originally travelled to Buenos Aires in July 1976 to help his daughter-in-law locate his son, who had disappeared. Rodríguez Larreta was then illegally detained and imprisoned with another 20 Uruguayans, including his son and daughter-in-law, in Automotores Orletti, interrogated and tortured. After several days there, on 24 July 1976, they were all forcibly taken to Montevideo in what is now known as the *primer vuelo* (first flight), one of at least three clandestine flights on which prisoners were secretly returned from Argentina to Uruguay. Rodríguez Larreta was eventually freed in late December 1976. At that point, the journalist retraced the steps of his ordeal in Buenos Aires. Helped by the local community of Uruguayans and his own memories, he located the Orletti site and, in an act of considerable bravery, took a photo of its façade so as to be able to provide material proof of the existence of the detention centre (see Figure 4). In March 1977, at great personal risk to himself and his family – the latter was still living in Uruguay – he gave Amnesty International in London his testimony about those horrors.<sup>43</sup>

After the return of democracy in Argentina, the search for accountability continued. Survivors gave testimony before the Argentine Comisión Nacional sobre

<sup>41</sup>The estimate of 300 victims of Automotores Orletti is taken from information provided by Argentina's largest human rights NGO, the Centro de Estudios Legales y Sociales (Centre for Legal and Social Studies, CELS), available at this link: <https://www.cels.org.ar/web/2016/09/comienzo-un-nuevo-juicio-por-automotores-orletti/>; last access 3 Sept. 2018.

<sup>42</sup>See the testimony of Nelson Eduardo Dean Bermúdez, Feb. 1979, AI Index 52/18/79, copy emailed by Amnesty International to the author on 2 Feb. 2015.

<sup>43</sup>Enrique Rodríguez Larreta, 'Kidnapped in Buenos Aires', *Index on Censorship*, 6: 4 (1977), pp. 22–9.



**Figure 4.** Façade of Automotores Orletti, early 1977

Source: Enrique Rodríguez Larreta Piera

la Desaparición de Personas (National Commission on the Disappearance of Persons, CONADEP),<sup>44</sup> and at the Trial of the Juntas (1985). CONADEP's *Nunca Más* report (1984), significantly, highlighted how, in parallel with the illegal repression inside Argentina, there had also been a coordinated cross-border terror network, without geographical limits and in clear violation of international law.<sup>45</sup> The occurrence of repressive operations by foreign security agents on Argentine soil during the 1976–83 dictatorship had been so well proven by the late 1980s that one of President Carlos Menem's 1989 pardons (Decree no. 1.003) exonerated from criminal accountability four Uruguayan military officers for crimes committed in Argentina.<sup>46</sup> In late December 1992, the fortuitous discovery of the 'Archives of Terror' by human rights lawyer Martín Almada and judge José Agustín Fernández in the outskirts of Asunción provided the missing pieces of evidence corroborating the transnational terror conspiracy that survivors had been denouncing for years. The archive contained thousands of documents belonging to the secret police and other institutions of the Stroessner dictatorship (1954–89), recording political repression in Paraguay and the region.<sup>47</sup> While searching through these records, researchers found the invitation letter sent from the head of the Chilean Dirección de Inteligencia Nacional (National Intelligence

<sup>44</sup>See for example Rodríguez Larreta's testimony to CONADEP, 17 June 1985: <http://www.desaparecidos.org/nuncamas/web/testimon/rodlarre.htm>; last access 7 Aug. 2018.

<sup>45</sup>*Informe de la Comisión Nacional sobre la Desaparición de Personas – Nunca Más* (Buenos Aires: Editorial Universitaria de Buenos Aires, 2006), pp. 268–76.

<sup>46</sup>Decree no. 1.003 of 6 Oct. 1989 exonerated José Nino Gavazzo, Jorge Silveira, Manuel Cordero and Hugo Campos Hermida in respect of case no. 42.335 bis: 'Rodríguez Larreta Piera, Enrique s/denuncia'. See the website of the Sistema Argentino de Información Jurídica (Argentine Judicial Information System, SAIJ), 'Indultos, Decreto nacional 1.003/1989': [http://www.saij.gov.ar/legislacion/decreto-nacional-1003-1989-indultos#parte\\_2](http://www.saij.gov.ar/legislacion/decreto-nacional-1003-1989-indultos#parte_2); last access 3 Sept. 2018.

<sup>47</sup>Simon Watts, 'How Paraguay's "Archive of Terror" put Operation Condor in Focus', *BBC News*, 22 Dec. 2012.

Directorate, DINA) to his Paraguayan counterpart to attend the 1975 founding meeting of Operation Condor.

Prosecuting transnational atrocities was no small endeavour. Even though survivors of human rights abuses and/or their relatives filed complaints in respect of Condor crimes with the courts in Argentina and Uruguay as early as 1984,<sup>48</sup> the prevailing context of impunity and the subsequent passing of amnesty laws resulted in the stalling of almost all criminal investigations across the region. The only exception was the 1993 verdict in Chile for the Letelier murder, later upheld by the country's Corte Suprema de Justicia (Supreme Court of Justice) in 1995, which handed down prison sentences to DINA's former head General Manuel Contreras and to his second-in-command Brigadier Pedro Espinoza.<sup>49</sup> From the early 2000s, owing to more favourable political conditions, criminal investigations into past human rights violations resumed. In particular, investigations into Operation Condor atrocities helped shift the tide against impunity in the Southern Cone.

In Argentina, an investigation into a Condor murder helped legitimate long-standing demands for justice by victims and activists. This occurred well before the 2005 repeal of the amnesties<sup>50</sup> and the resumption of trials for past human rights violations in 2006. In November 2000, a court of first instance sentenced to life imprisonment a former Chilean secret police agent, Enrique Arancibia Clavel, for the 1974 murder in Buenos Aires of exiled General Prats and his wife.<sup>51</sup> When the Corte Suprema de Justicia de la Nación (National Supreme Court of Justice, CSJ) reviewed the case in 2004, it recognised for the first time in Argentine jurisprudence that crimes against humanity should not be subject to statutory limitations.<sup>52</sup> This acknowledgment opened the door to trials in respect of crimes committed in the past.<sup>53</sup> In Chile, although over 200 lawsuits were filed by victims and relatives against Pinochet for dictatorship-era crimes, it was the investigation into Operation Condor atrocities that eventually led to the first successful prosecution against the ex-dictator in December 2004.<sup>54</sup> Finally, Uruguay is especially illuminating as to how investigations into Condor crimes contributed to undermining a scenario of absolute impunity. There, the passing of the Ley de Caducidad de la Pretensión Punitiva del Estado (Law on the Expiry of the Punitive Claims of the State, the amnesty known as the 'Ley de Caducidad') of 1986 had

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<sup>48</sup>See case no. 42.335 bis: 'Rodríguez Larreta Piera, Enrique s/denuncia' filed in Buenos Aires (see [note 46](#)) and lawsuit no. 90-190/1984 of 12 April 1984 before Montevideo's Criminal Tribunal No. 2 under the title 'Rodríguez Larreta, Enrique su denuncia'.

<sup>49</sup>William R. Long, 'Letelier Murder Case Sentences Upheld in Chile', *Los Angeles Times*, 31 May 1995.

<sup>50</sup>The text of the repeal of the amnesties is available on the SAJ website: <http://www.sajj.gob.ar/corte-suprema-justicia-nacion-federal-ciudad-autonoma-buenos-aires-simon-julio-hector-otros-privacion-ilegitima-libertad-etc-poblete-causa-17768-fa05000115-2005-06-14/123456789-511-0005-00ts-eupmocsollaf>; last access 1 Sept. 2018.

<sup>51</sup>'Pena máxima para Arancibia Clavel', *La Nación*, 21 Nov. 2000.

<sup>52</sup>The full text of the *Arancibia Clavel* CSJ review is available at <https://www.mpf.gob.ar/Institucional/UnidadesFE/Arancibia-Clavel-CSJN.pdf>; last accessed 31 Aug. 2018.

<sup>53</sup>Irina Hauser, 'Crímenes que no borra el paso del tiempo', *Página12*, 25 Aug. 2004.

<sup>54</sup>Larry Rohter, 'Judge Declares Pinochet Fit to Face Human Rights Charges', *The New York Times*, 13 Dec. 2004.

halted all judicial proceedings.<sup>55</sup> Twenty years later, human rights lawyers and activists adopted a deliberate policy of strategically filing before the courts a set of specific charges that fell outside the amnesty's remit, aiming to challenge judicial paralysis.<sup>56</sup> In that context, Operation Condor atrocities were crucial: lawyers contended that the amnesty was inapplicable to those crimes, since they had been committed outside Uruguayan territory. This innovative argument was accepted and the judiciary began investigations into cases of Uruguayans who had been victims of Condor in Argentina and Paraguay.<sup>57</sup> Indeed, the very first two sentences to be handed down in trials for past crimes in Uruguay both related to a Condor case: the judge found eight former military and police officers guilty of the murder of 28 Uruguayans, all members of the Partido por la Victoria del Pueblo (Party for the People's Victory, PVP), illegally detained in 1976 in Argentina and later murdered.<sup>58</sup> This policy of strategic litigation across the Southern Cone was instrumental in enabling activists to successfully bypass existing *de jure* or *de facto* obstacles (amnesties, pardons, or other legal instruments halting prosecutions) in their respective countries, paving the way for renewed accountability efforts.

All of above-mentioned lawsuits, however, tackled only a limited number of Condor crimes, by focusing either on emblematic episodes, such as the Prats murder, or on particular subsets of victims, defined by nationality, political affiliation or crime location, as in the Uruguayan verdicts. The Operation Condor trial was, instead, truly exceptional for transcending this earlier approach. Indeed, this prosecution, by collating over 100 cases of Operation Condor victims, encompassing instances of foreign nationals persecuted on Argentine soil as well as of Argentines who suffered a similar fate in Bolivia, Brazil, Paraguay and Uruguay, shifted the focus away from a limited set of cases to investigating the overall *modus operandi* of the transnational terror network across South America.

### Seeking Justice in Times of Impunity

The Operation Condor trial stemmed from tireless efforts by victims' relatives in their quest for justice. Its origins date back to Argentina in the late 1990s. At that time, silence and impunity dominated in the aftermath of the passing of

<sup>55</sup>Francesca Lessa, 'Barriers to Justice: The *Ley de Caducidad* and Impunity in Uruguay', in Lessa and Payne (eds.), *Amnesty in the Age of Human Rights Accountability*, pp. 123–51.

<sup>56</sup>Francesca Lessa, *Memory and Transitional Justice in Argentina and Uruguay: Against Impunity* (New York: Palgrave Macmillan, 2013).

<sup>57</sup>Gabriela Fried and Francesca Lessa (eds.), *Luchas contra la impunidad. Uruguay 1985–2011* (Montevideo: Trilce, 2011).

<sup>58</sup>See the sentences published on the website of the Observatorio Luz Ibarburu (Luz Ibarburu Observatory, a network of Uruguayan human rights organisations): Sentence no. 36 ('Gavazzo Pereira, José Nino. Arab Fernández, José Ricardo – Un delito de privación de libertad', ficha 98-247/2006, 26 March 2009, hereafter *Gavazzo Pereira et al.*): [http://www.observatorioluzibaturu.org/media/uploads/98\\_247\\_2006.pdf](http://www.observatorioluzibaturu.org/media/uploads/98_247_2006.pdf); last access 1 Sept. 2018 and Sentence no. 37 ('Silveira Quesada, Jorge Alberto. Ramas Pereira, Ernesto Avelino. Medina Blanco, Ricardo José. Vázquez Bisio, Gilberto Valentín. Maurente, Luis Alfredo. Sande Lima, José Felipe – Un delito de privación de libertad', ficha 2-43332/2005, 26 March 2009, hereafter *Silveira Quesada et al.*): [http://www.observatorioluzibaturu.org/media/uploads/2\\_20Silveira%20Ramas%20Medina%20Vazquez%20Maurente%20Sande%2026.03.2009.pdf](http://www.observatorioluzibaturu.org/media/uploads/2_20Silveira%20Ramas%20Medina%20Vazquez%20Maurente%20Sande%2026.03.2009.pdf); last access 1 Sept. 2018.

parliamentary amnesties in 1986 and 1987 and the granting of presidential pardons in 1989 and 1990. Those measures brought about the shelving of the majority of criminal investigations into past atrocities. Only lawsuits probing instances of baby kidnapping continued, since that crime had explicitly been excluded from the remit of the amnesties.<sup>59</sup> Pitted against this difficult scenario, human rights activists and their lawyers were ingenious in their search for justice.<sup>60</sup> They followed a multipronged strategy, simultaneously pushing forward demands to guarantee the right to truth, to investigate the fate of illegally appropriated children and to shed light on Operation Condor. In 1996, lawyers Alberto Pedroncini and David Baigún filed the first of two strategic lawsuits in this respect. The first alleged that, during the dictatorship, babies born to women held in clandestine detention had been illegally adopted by families loyal to the regime, and that this practice had amounted to a systematic plan. As a result, in 1998, several emblematic figures of the dictatorship, including former dictators Jorge Videla and Emilio Massera, were indicted for baby theft, abduction and forgery.<sup>61</sup> Subsequently, on 8 November 1999, the same lawyers, together with six women<sup>62</sup> who were relatives of Condor victims, filed a second lawsuit (*querrela* in Spanish) in Buenos Aires, initiating the Operation Condor trial. These two cases became the keystone of this resourceful strategy that, in the long run, successfully undermined judicial paralysis. As Judge Daniel Rafecas put it, this strategic litigation generated ‘cracks and holes in the wall of impunity (*muralla de impunidad*)’.<sup>63</sup>

The original Condor *querrela* cited two sets of crimes, namely illegal deprivation of liberty and *asociación ilícita* (defined below). It encompassed seven victims of disappearance (four Argentines, two Paraguayans and one Chilean) who had all been illegally detained between 1976 and 1978 in Buenos Aires and Montevideo.<sup>64</sup> These disappearances shared a common element: they entailed more than one country and were all committed partially in Argentina. The charge of illegal deprivation of liberty had been deliberately selected: since the bodies of the *desaparecidos* (disappeared persons) had never been found, these unlawful kidnappings constituted ongoing crimes and could, therefore, be investigated despite amnesties or pardons. This reflected the broader strategy of bypassing obstacles

<sup>59</sup>Between 1988 and 2005, 23 individuals were sentenced on charges of illegal appropriation of children. See Ministerio Público Fiscal, Procuración General de la Nación (Public Prosecutor’s Office, Procurator-General of the Nation, MPF, PGN), ‘A diez años del fallo “Simón”. Un balance sobre el estado actual del proceso de justicia por crímenes de lesa humanidad’ (Buenos Aires, 2015), p. 2: <http://www.fiscales.gob.ar/lesa-humanidad/wp-content/uploads/sites/4/2015/06/20150612-Informe-Procuradur%C3%ADa-de-Cr%C3%ADmenes-contra-la-Humanidad.pdf>; last access 20 Aug. 2018.

<sup>60</sup>One such human rights lawyer was commemorated on the occasion of his recent death: ‘Murió Alberto Pedroncini’, *Página12*, 6 Aug. 2017.

<sup>61</sup>Human Rights Watch (HRW), *Argentina – Country Summary, 2002* (New York: HRW, 2002).

<sup>62</sup>Namely Chilean Dora Gladys Carreño Araya, Paraguayan Idalina Wilfrida Radice Arriola de Tatter, Uruguayan Sara Rita Méndez, and Argentines Elsa Pavón de Grinson, Claudia Mabel Careaga and Ana María Careaga.

<sup>63</sup>Author interview with Daniel Rafecas, Judge at the Juzgado Criminal y Correccional Federal no. 3 de la Capital Federal (Third Federal Court for Criminal Correctional Matters of the Federal Capital), Buenos Aires, 30 Oct. 2013. Judge Rafecas was not directly involved with the Condor trial.

<sup>64</sup>Text of the original *querrela*: copy on file with the author, provided by Jaime Nuguer, lawyer for the original *querrela*, emailed to the author on 21 Nov. 2013.

in the way of justice. Indeed, Miguel Ángel Osorio, the prosecutor at the time, affirmed:

When the Condor [criminal case] began, it did so with a small group of cases that, from a juridical point of view, constituted permanent [ongoing] crimes [...]. The strategy was irrefutable because the state had the ethical and constitutional obligation to investigate. Afterwards, through permitted mechanisms, it may eventually forgive, declare amnesty, or pardon but, first of all, the crimes had to be known.<sup>65</sup>

On the other hand, the charge of *asociación ilícita*, which is similar to the crime of conspiracy under UK and US law,<sup>66</sup> constitutes a particularly serious crime under the Argentine Criminal Code (article no. 210), carrying severe penalties, three to ten years, and up to 20 in its aggravated form (article no. 210 bis).<sup>67</sup> The crime of *asociación ilícita* in Argentina penalises ‘participation in a criminal organisation’, irrespective of whether or not a crime is eventually committed. Such an organisation has to meet the following requirements in order to be regarded as an *asociación ilícita*: an agreement must exist between its members to achieve a goal; there has to be a decision-making structure accepted by its members; there must be coordinated action, with the participation of each member; and finally this agreement has to endure over time.<sup>68</sup> Its specific use in this trial underscored how South America’s criminal states had created a criminal organisation – i.e. Operation Condor – whose objective was to carry out illegal detentions beyond borders by resorting to state apparatuses and resources.<sup>69</sup> Seventeen high-ranking officers – three Argentines, three Chileans, four Paraguayans and seven Uruguayans – were explicitly named in the *querrela* as responsible for the crimes. They included former Argentine dictator Jorge Rafael Videla, the head of the Uruguayan Armed Forces Julio César Vadora, General Augusto Pinochet and the former Paraguayan dictator Alfredo Stroessner.<sup>70</sup>

Overall, the original *querrela* had two main goals: firstly, the families’ personal objective of having the cases of their relatives investigated by the judiciary<sup>71</sup> and,

<sup>65</sup> Author interview with Miguel Ángel Osorio, Federal Prosecutor at the investigative stage of the Operation Condor trial, Buenos Aires, 26 Sept. 2013.

<sup>66</sup> As highlighted by Chief Prosecutor Pablo Ouviña, the crime of conspiracy under US law lacks the requirement of ‘stability’ (in terms of duration and membership) that the charge of *asociación ilícita* in Argentina requires. The crime of *associazione per delinquere* under article no. 416 of the Italian Criminal Code, on the other hand, shares more similarities with the Argentine category. Email communication to the author, 3 Nov. 2017.

<sup>67</sup> Código Penal de La Nación Argentina, Libro Segundo, Título VIII, Delitos contra el orden público, <http://servicios.infoleg.gob.ar/infolegInternet/anexos/15000-19999/16546/texact.htm#22>; last access 20 Aug. 2018.

<sup>68</sup> See the commentary on the website of the Asociación Pensamiento Penal (Penal Thought Association), an Argentine NGO: ‘Código Penal Argentino comentado de acceso libre, Art. 210 y 210 bis Asociación Ilícita’: <http://www.pensamientopenal.com.ar/system/files/cpcomentado/cpc37788.pdf>; last access 1 Sept. 2018.

<sup>69</sup> Text of the original *querrela*.

<sup>70</sup> *Ibid.*

<sup>71</sup> Author interview with Pablo Ouviña and Mercedes Moguilanski, Chief and Assistant Prosecutors, respectively, in the Operation Condor trial, Buenos Aires, 26 Sept. 2013.



secondly, the broader goal of challenging impunity in Argentina.<sup>72</sup> In the words of Paraguayan Federico Tatter, the son of one of the victims, the Condor lawsuit was an '*estrellita en la noche* (a little star in the night)'.<sup>73</sup>

### **An Uphill Struggle**

In the early 2000s, the Condor lawsuit proceeded slowly in the *etapa de instrucción* (pre-trial phase). Even though the courts of first instance and appeals had deemed the amnesties unconstitutional in 2001 in certain criminal cases, such verdicts lacked broader applicability and the Condor lawsuit made little progress initially. In this complex scenario, a significant step forward occurred in September 2001, when Federal Judge Rodolfo Canicoba Corral indicted Videla, already charged with baby kidnapping, and also requested the extradition of several of his regional counterparts, including Pinochet and Stroessner.<sup>74</sup> The Judge also demanded that Uruguay detain four military officers (José Nino Gavazzo, Manuel Cordero, Jorge Silveira and Hugo Campos Hermida) accused of kidnapping and 'disappearing' 24 Uruguayans in Argentina. In essence, the continuation of impunity, combined with the complex economic and social crisis engulfing Argentina in 2001 and 2002, created a generally unfavourable scenario for further progress. Against this backdrop, therefore, the investigative judge focused on gathering testimonies and archival documents, so that these would be readily available if and when progress could feasibly occur in the future.<sup>75</sup>

Under President Néstor Kirchner (2003–7), the political context significantly changed in favour of accountability. In 2003, Congress annulled the amnesties and, in 2005, the CSJ confirmed their unconstitutionality, leading to the reopening of investigations regarding past human rights violations. At that moment, the Condor lawsuit witnessed a 'qualitative jump'.<sup>76</sup> Nonetheless, it still took another eight years before it reached the trial stage. Several obstacles, both nationally and internationally, remained. Within Argentina, the judiciary was at the outset ill prepared to oversee and manage the opening of hundreds of intricate human rights trials; consequently, the courts at first struggled to cope with these proceedings. Logistically, for example, only a few courtrooms were initially available to hold hearings. This generated a backlog of cases and the beginning of many trials had to be postponed; this lack of appropriate venues for hearings remained an issue until at least 2010.<sup>77</sup> Other delays resulted from procedural matters. For instance, Federal Criminal Court no. 1 was scheduled to hear proceedings in two separate trials: the first related to the crimes committed in the clandestine detention centre known as Automotores Orletti and the second concerned the atrocities perpetrated

<sup>72</sup> Author interview with human rights lawyer Pablo Llonto, Buenos Aires, 26 Sept. 2013. Lawyer Llonto was not directly involved with the Condor trial.

<sup>73</sup> Author interview with Federico Jorge Tatter Radice, son of a victim of Operation Condor, Asunción, Paraguay, 6 Sept. 2016.

<sup>74</sup> Lourdes Heredia, 'Operación Cóndor: Videla Procesado', *BBC Mundo*, 27 Sept. 2001.

<sup>75</sup> Author interview with Judge Daniel Rafecas.

<sup>76</sup> Alejandra Dandan, 'El plan de la represión sin fronteras', *Página12*, 4 March 2013.

<sup>77</sup> CELS, *Derechos humanos en Argentina: Informe 2010* (Buenos Aires: Siglo XXI Editores, 2010), p. 71. I would like to thank Lorena Balardini for clarifying this issue for me.

within the framework of Operation Condor. The court decided to prioritise to the Orletti trial, in order to safeguard due process guarantees and the rights of the defendants: these were all already in preventive detention, while some Condor defendants were not. These difficulties at the national level were compounded by obstacles in the international sphere, which were specifically linked to the transnational nature of Condor. Prosecutors and judges had to compile dossiers of all relevant proofs and evidence, either testimonial or archival, not only in Argentina, but also from neighbouring countries.<sup>78</sup> International official requests for information, through Ministries of Foreign Affairs, take on average at least a year to be dealt with, thus affecting an investigation's progress. Finally, processing extradition requests also produced deferrals. Of the 2001 extradition requests, covering eight defendants,<sup>79</sup> only one – that of Colonel Manuel Juan Cordero Piacentini, formerly of Uruguayan army intelligence – was ultimately successful.<sup>80</sup> The execution of the extradition from Brazil was, nevertheless, far from straightforward. After a lengthy five-year judicial process, Manuel Cordero was finally sent to Argentina in early 2010.

### **The Trial**

On 5 March 2013, proceedings in the so-called 'public and oral phase' of the trial finally started before Federal Criminal Court no. 1 in Buenos Aires, composed of Judges Oscar Ricardo Amirante, Adrián Federico Grünberg and Pablo Gustavo Laufer, and Substitute Judge Ricardo Ángel Basílico. The prosecution had grown exponentially since 1999, encompassing three dossiers within the Condor investigation and one for Automotores Orletti, and bringing the initial seven victims and 17 defendants up to 174 and 27 respectively. Of the accused, 26 were Argentine and one was Uruguayan; 24 had belonged to the Army, one to the Navy, and one – Miguel Ángel Furci – had been a civilian intelligence officer, indicted in the Orletti dossier, while the Uruguayan defendant was a former Army colonel.<sup>81</sup> Emblematic figures of the Argentine dictatorship were among the defendants, including former dictators Videla (1976–81) and Reynaldo Benito Bignone (1982–3), and the Commander of the Fourth Army Corps Santiago Omar Riveros. Videla passed away a couple of months into the trial. Most of the defendants were high-ranking officials; this reflected the political strategy on the part

<sup>78</sup> Author interview with former CELS human rights lawyer and private prosecutor (see note 89) Marcos Kotlik, Buenos Aires, 19 Sept. 2013.

<sup>79</sup> One of the eight defendants was General Pinochet: 'Piden extradición de Pinochet', *BBC Mundo*, 20 July 2001.

<sup>80</sup> Human rights activists played a fundamental role in achieving this extradition. In particular, Brazilian campaigner Jair Kriskhke located Cordero living in a city on the border between Uruguay and Brazil. He was finally uncovered in 2005 when he went to sign a proxy at the local Uruguayan consulate so that his brother-in-law could collect his pension. See 'Cordero fue extraditado a Argentina', *La República/La Red* 21, 24 Jan. 2010.

<sup>81</sup> Ministerio Público Fiscal, Procuraduría de Crímenes contra la Humanidad (Prosecutor of Crimes against Humanity, MPF, PCH), *La judicialización de la Operación Cóndor, Informe de la Procuraduría de Crímenes contra la Humanidad* (Buenos Aires: Procuración General de la Nación, 2015), p. 8: <http://www.fiscales.gob.ar/wp-content/uploads/2015/11/Informe-Proculesa-Op-C%C3%B3ndor-Final.pdf>; last access 20 Aug. 2018.

of the prosecutors of the late 1990s in breaking impunity, but was also due to the fact that, in most instances, the direct authors of the crimes were unknown.<sup>82</sup> Consequently, all the defendants except two were prosecuted as perpetrators by means (*autores mediatos*), for occupying decision-making posts and giving orders. Only Cordero and Furci were indicted as direct perpetrators (*autores materiales*), for committing kidnappings and torture.<sup>83</sup> The accused faced different sets of charges. Cordero, because of the extradition's terms, could be prosecuted only for kidnappings, since the Brazilian Supremo Tribunal Federal (Federal Supreme Court, STF) had dropped the indictment for *asociación ilícita*, applying statutory limitations. Furci was the only person accused of illegal detentions and torture against 67 victims held in Orletti. The remaining 25 were prosecuted for kidnappings and *asociación ilícita*. The charges related to 65 victims in the Automotores Orletti trial, 107 in Operation Condor and two who appeared in both lawsuits; when broken down by nationality, the 109 Condor victims comprised 48 Uruguayans, 22 Chileans, 16 Argentines, 13 Paraguayans, nine Bolivians and one Peruvian.<sup>84</sup>

The start of the trial was greeted with much expectation and anticipation. Chief Prosecutor Pablo Ouviña emphasised its significance both locally and regionally, asserting how the probing of 'crimes against humanity transcends individual interest, since it concerns not only victims and relatives, but society as a whole'.<sup>85</sup> Furthermore, there was greater interest than usual, since people from all across South America had long been waiting for answers: 'not only were our fellow nationals watching us, but *all our neighbours were too*'.<sup>86</sup> The trial consisted of two main phases. The first, known in Spanish as *recepción de prueba* (admission of evidence), was the longest, lasting from May 2013 to April 2015. During this time, the prosecution and defence presented testimonies and evidence relevant to the proceedings. Owing to the large number of countries and victims, the court organised this phase into *binomios* (dyads of countries), pairing up the six countries to process testimonies, evidence, documents and expert witnesses. The *recepción de prueba* played an essential role in piecing together the Condor puzzle, reconstructing the circumstances surrounding each disappearance and, simultaneously, providing elements demonstrating the workings of the network. The

<sup>82</sup>Feedback by Luz Palmas Zaldua on a conference presentation of the paper, Buenos Aires, Sept. 2015.

<sup>83</sup>Miguel Angel Furci, a former intelligence agent, had already been prosecuted in the 1990s for the illegal appropriation of Mariana Zaffaroni, the daughter of two Uruguayan exiles detained and 'disappeared' in Buenos Aires in 1976. Mariana finally rediscovered her identity in 1992 and, subsequently, in 1994, Furci and his wife were sentenced to five and three years in prison respectively for the crimes of hiding and detaining a minor. Mariana Zaffaroni's case file can be accessed by clicking on the 'Descargar ficha' ('download file') button on the SDHPR's webpage: [http://sdh.gub.uy/inicio/institucional/equipos/centro\\_de\\_documentacion\\_y\\_comunicacion/documentos\\_equipo\\_historia/investigacion+historica+sobre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+seccion+secuetro+y+desaparicion+de+ninos+y+adolescentes/fichas\\_personales](http://sdh.gub.uy/inicio/institucional/equipos/centro_de_documentacion_y_comunicacion/documentos_equipo_historia/investigacion+historica+sobre+detenidos+desaparecidos+y+asesinados+politicos+%28actualizacion+2015-febrero%29/4ra+seccion+secuetro+y+desaparicion+de+ninos+y+adolescentes/fichas_personales); last access 3 Sept. 2018.

<sup>84</sup>MPF, PCH, *La judicialización de la Operación Cóndor*, p. 6.

<sup>85</sup>MPF, PGN, 'Operación Cóndor: Con el veredicto previsto para el viernes próximo, llegará el final de un juicio histórico', Buenos Aires, 20 May 2016: <http://www.fiscales.gob.ar/lesa-humanidad/operacion-condor-con-el-veredicto-previsto-para-el-viernes-proximo-llegara-el-final-de-un-juicio-historico/>; last access 20 Aug. 2018.

<sup>86</sup>*Ibid.*; emphasis added.

court received over 200 testimonies from survivors, victims' relatives, document analysts and other experts. Moreover, a large amount of documentary evidence, including books written by academics and/or investigative journalists and thousands of records from archives in Argentina, Uruguay, Chile, the United States and Paraguay, was scrutinised. This first stage was fundamental in demonstrating how the 109 illustrative cases of victims were not isolated incidents but amounted to a systematic pattern of human rights violations, perpetrated in a similar and coordinated manner across the region.

The second phase, the *alegatos* (prosecution and defence arguments), lasted between June 2015 and April 2016. Jaime Nuguer, lawyer for the original *querrela*, was the first to appear before the judges. Subsequently, the public prosecution outlined its argument. It particularly emphasised how Condor had constituted 'a criminal organisation by illegitimate states, which coordinated their structures and resources to commit the most serious crimes against humanity'.<sup>87</sup> The prosecution had three goals: 'firstly, to find out the truth [...], secondly for the authors of the crimes to face criminal responsibility for their actions in court and thirdly, but deeply interrelated [with the first two goals], to provide an answer to the victims'.<sup>88</sup> The prosecution underscored how, even though several countries had previously established truth commissions that had probed Operation Condor as part of their proceedings, this trial represented the first judicial response and, at a historical level, was ground-breaking. Other private prosecutors,<sup>89</sup> including CELS and Argentina's Secretaría de Derechos Humanos y Pluralismo Cultural (Human Rights and Cultural Pluralism Secretariat), also presented their case for the prosecution. Finally, between December 2015 and April 2016, private and public defence lawyers presented their arguments.

On 27 May 2016, after 38 months of public hearings and almost 17 years since the filing of the original lawsuit, the court handed down its verdict before hundreds of people, with survivors and victims' relatives crowding the courtroom in Buenos Aires and Argentine consulates in Santiago, Asunción, La Paz and Montevideo, where it was livestreamed. Journalists from major international newspapers and media outlets, including *The New York Times*, *The Washington Post* and the BBC, were in attendance. Only 17 defendants were there on the day, ten having either passed away or been deemed unfit to stand trial. The judges found 15 defendants guilty, and gave them sentences ranging from eight to 25 years, asserting that Operation Condor had constituted a transnational *asociación ilícita*. Former Argentine dictator Reynaldo Bignone received 20 years, while the Uruguayan Manuel Cordero, former Argentine General Santiago Riveros and Orletti defendant

<sup>87</sup>'Se desdibujaron las fronteras para propiciar un plan criminal', *InfoJus*, 18 Aug. 2015: <http://www.infojusnoticias.gov.ar/nacionales/se-desdibujaron-las-fronteras-para-propiciar-un-plan-criminal-9468.html>; last access 20 Aug. 2018.

<sup>88</sup>Author interview with Pablo Ouviaña and Mercedes Moguilanski.

<sup>89</sup>Verónica Michel and Kathryn Sikkink define private prosecution as the right that 'allows victims and their lawyers, including domestic human rights organizations, to open a criminal investigation and actively participate throughout every stage of the criminal proceedings': Michel and Sikkink, 'Human Rights Prosecutions and the Participation Rights of Victims in Latin America', *Law and Society Review*, 47: 4 (2013), p. 874.

Miguel Ángel Furci were sentenced to 25 years. Others received lesser sentences, while two were acquitted.

### The Verdict

This sentence was the first to be handed down for crimes against humanity committed by ‘a transnational *asociación ilícita*, dedicated to illegally exchanging information and intelligence, and persecuting, kidnapping, forcefully repatriating, torturing and murdering political activists in the Southern Cone’.<sup>90</sup> Earlier trials in Argentina and Chile had acknowledged that, during their respective dictatorial governments, *asociaciones ilícitas* were responsible for perpetrating human rights crimes at the national level.<sup>91</sup> But never before had a court recognised that such a conspiracy had also existed at the international level to coordinate persecution across South America.

In the verdict,<sup>92</sup> the judges trace the origins of Condor to the geopolitical context of the Cold War and the National Security and French School Doctrines.<sup>93</sup> Informal exchanges of information and prisoners in the early 1970s through ‘gentlemen’s pacts’<sup>94</sup> paved the way for Condor’s subsequent formalisation in 1975. Condor is described as a platform that ‘standardised practices of coordinated repression already present in the region and [that] involved the provision of human, material and technical resources [...] to facilitate the destruction or elimination of political opponents – actual or potential – whether they were individuals or organisations’.<sup>95</sup> Condor indeed amounted to an institutionalised and permanent multilateral network.

The Condor states effectively and intentionally suspended traditional norms of sovereignty and territorial integrity, breaching the internationally recognised right

<sup>90</sup>Operación Cóndor: Se probó la asociación ilícita y se impusieron penas de 8 a 25 años de prisión’, 27 May 2016: <http://www.fiscales.gob.ar/lesa-humanidad/operacion-condor-se-probo-la-asociacion-ilicita-y-se-impusieron-penas-de-8-a-25-anos-de-prision/>; last access 20 Aug. 2018.

<sup>91</sup>See for example the verdict in the *Contraofensiva de Montoneros* trial (Argentina), 31 May 2012: <https://www.cij.gov.ar/nota-9197-El-juez-federal-Ariel-Lijo-conden-a-dos-acusados-por-cr-menes-de-lesa-humanidad.html>; last access 4 Sept. 2018, and that in the *Colonia Dignidad* trial (Chile), 9 April 2014: <http://www.derecho-chile.cl/sentencia-en-la-investigacion-por-el-delito-de-asociacion-ilicita-en-contra-de-integrantes-de-la-ex-colonia-dignidad-y-de-agentes-de-la-dina/>; last access 4 Sept. 2018.

<sup>92</sup>For the full text of the verdict see Centro de Información Judicial (CIJ), ‘Les a humanidad: Difundieron los fundamentos de la sentencia por el “Plan Cóndor”’, hereafter ‘Verdict’: <http://www.cij.gov.ar/nota-22663-Lesa-humanidad--difundieron-los-fundamentos-de-la-sentencia-por-el--Plan-C-ndor--.html>; last access 20 Aug. 2018. All excerpts from the verdict in this article have been translated from Spanish by the author.

<sup>93</sup>The French School of Counterinsurgency emerged out of France’s experience in the conflicts in Indochina and Algeria in the twentieth century; this strategy for counterinsurgency revolved around the torture and enforced ‘disappearance’ of captured insurgents, the division of the territory and the importance of intelligence and interrogation methods. While the French applied it in their colonial territories of Indochina and Algeria, the Argentines used it against their own fellow citizens. See Khatchik DerGhougassian and Leiza Brumat, ‘The Argentine Military and the *Antisubversivo* Genocide: The School of Americas’ Contribution to the French Counterinsurgency Model’, *Genocide Studies International*, 12: 1 (2018), p. 58.

<sup>94</sup>Verdict, p. 1222.

<sup>95</sup>*Ibid.*

to asylum, with each state permitting persecution on political grounds against both nationals and foreign citizens. Since the 1950s and 1960s, asylum seekers and exiles had fled the dictatorial regimes in Paraguay, Brazil, Bolivia, Uruguay and Chile. The vast majority settled in Argentina that, by 1973, was the only country still under relatively democratic rule, and had become a sanctuary for thousands of political activists. But, after the 24 March 1976 coup, most Condor crimes occurred in Argentina, with its high concentration of exiles. As the judges affirmed, being the stronghold where activists and opponents were located, the country was converted into 'a hunting ground in which they [exiles] were trapped'.<sup>96</sup>

The court underscored how the transnational terror had unfolded outside any jurisdictional control. Condor respected no borders – neither geographical nor otherwise – and was responsible for hundreds of illegal kidnappings, torture, killings, illegal raids, thefts, baby kidnapping, extortion and threats in all of the Condor states' territories. The court, significantly, emphasised how the agreement was implemented by the armed forces, together with security and intelligence agencies, and also drew upon civilian structures, including the diplomatic corps, as well as immigration and border control agencies. This recognition is significant for our understanding of how Condor used all the resources at the states' disposal, both military and civilian. The judges, thus, reached the conclusion that this coordinated alliance among the South American criminal states amounted to an enormous and transnational *asociación ilícita*.<sup>97</sup> It was additionally acknowledged how the Condor association coexisted with national-level *asociaciones ilícitas* set up locally inside each country, sharing members and resources in order to perpetrate crimes.<sup>98</sup>

### Justice beyond Borders: Innovations and Implications

Although numerous journalists, lawyers and academics had described the origins and workings of Operation Condor since the 1990s, the sentence handed down in 2016 added an additional crucial element, namely the recognition by a court of law of the network's existence. The court's work was critical in two respects. Firstly, it compiled and systematised possibly the entire corpus of existing evidence about Operation Condor and the perpetration of cross-border atrocities. The judges surveyed academic investigations, read hundreds of archival records and listened to testimonies, from both survivors and experts, bringing all these elements together in the courthouse.<sup>99</sup> This colossal effort was truly unparalleled. Secondly, the tribunal's function was not simply one of amassing evidence. Rather, the judicial evaluation of this evidentiary corpus according to strict legal criteria, and the conclusion that Operation Condor both existed and amounted to a transnational *asociación ilícita*, was crucial because it recognised the systematic and coordinated nature of the human rights violations perpetrated across borders.<sup>100</sup>

<sup>96</sup>*Ibid.*, pp. 1225–6.

<sup>97</sup>*Ibid.*, p. 5097.

<sup>98</sup>*Ibid.*, p. 5098.

<sup>99</sup>Author interview with Adrián F. Grünberg, Judge in the Operation Condor trial, Buenos Aires, 26 Oct. 2016.

<sup>100</sup>Author interview with Pablo Ouviaña, Chief Prosecutor in the Operation Condor trial, Buenos Aires, 9 June 2016.

### The Verdict, Locally and Regionally

The judgment was significant not only in Argentina but also in the rest of the region. The trial in particular displayed four unique features, which are all connected to the transnational nature of the crimes.

Firstly, while several Argentine citizens had been previously extradited, for instance from Mexico or France, to stand trial for human rights violations in their native country, this was the first time that a foreign defendant had been extradited to Argentina.<sup>101</sup> This landmark extradition to Argentina of a former Uruguayan colonel, approved by the Brazilian STF, was significant not only for Argentina, but also for Brazil. Indeed, in allowing Cordero's extradition to go forward in 2009, the STF acknowledged that enforced disappearances were equivalent to kidnapping and thus, as ongoing crimes, they were not subject to statutory limitations. This jurisprudence was later used by a Brazilian military prosecutor in 2012 to reopen investigations into 39 instances of disappearances which occurred during the country's own dictatorship.<sup>102</sup> This is especially important when we consider that Brazil is the only country in the region that has not (as of September 2018) conducted a single criminal trial for past atrocities and where efforts to hold perpetrators to account have repeatedly stalled.

Secondly, earlier human rights prosecutions not only in Argentina, but also in Chile and Uruguay, were often framed around crimes committed within a specific clandestine centre, such as the emblematic trials for the crimes carried out at the ESMA.<sup>103</sup> With regard to earlier Operation Condor investigations, we have already seen how those (the Chilean Prats trial; the Uruguayan trials of 2009)<sup>104</sup> addressed only specific episodes or particular subsets of victims. In the Condor trial, on the other hand, the investigation scrutinised in detail atrocities carried out in the territories of six states. The adoption of such a lens clearly exposed the lengths to which the criminal states had gone in order to persecute political opponents beyond borders. By selecting representative cases involving different sets of nationalities, victims' political affiliations and locations of crimes, the Argentine judges examined the *modus operandi* of Operation Condor as a whole and better captured how the entire repressive system functioned. This prosecution surpassed previous ones by deliberately probing a multiplicity of transnational crimes and thus putting Operation Condor itself on trial.<sup>105</sup>

Thirdly, the court handed down a verdict recognising the existence of a transnational *asociación ilícita* to commit human rights violations on a regional scale. Argentine courts frequently employ the legal concept of *asociación ilícita* to investigate local criminal gangs or in trials linked to the crimes of the 1976–83 dictatorship. In the previously cited *Arancibia Clavel* review, the CSJ found the defendant

<sup>101</sup>*Ibid.*

<sup>102</sup>Glenda Mezarobba, 'Brazil: The Tortuous Path to Truth and Justice', in Skaar, Garcia-Godos and Collins (eds.), *Transitional Justice in Latin America*, pp. 103–25.

<sup>103</sup>Known as 'ESMA *Megacausa*', this series of trials tried the cases of crimes against humanity committed against 789 people perpetrated by 54 defendants in the Navy's biggest clandestine detention centre between 1976 and 1983: see CELS' dedicated webpage <http://www.cels.org.ar/especiales/megacausaesma/#pagina-ejemplo>; last access 4 Sept. 2018.

<sup>104</sup>*Gavazzo Pereira et al.; Silveira Quesada et al.*

<sup>105</sup>Author interview with Pablo Ouviaña.

(a Chilean) guilty of belonging to the Chilean secret police (the DINA); this amounted to an *asociación ilícita* dedicated solely to persecuting opponents of the Pinochet dictatorship inside and outside Chile.<sup>106</sup> Subsequently, many other Argentine courts charged and sentenced numerous defendants in the context of human rights trials; they were found guilty of taking part in *asociaciones ilícitas* devoted to carrying out kidnappings, torture and murder during the years of dictatorial rule.<sup>107</sup> Notwithstanding those important precedents, the Condor trial was the first time that a court had applied the charge of *asociación ilícita* at the international level, highlighting how the Condor states had coordinated their repressive policies and carried out criminal activities in a joint manner throughout South America.<sup>108</sup> This charge was key for the judges to publish, in an unprecedented step, a verdict on the very nature of Condor; they 'did not simply look into human rights violations committed against emblematic victims in a particular context, but also scrutinised and judged *that very context*, considering that it amounted to an *asociación ilícita* and finding individuals criminally responsible for it'.<sup>109</sup> Through Condor, the power and danger posed by each of the illegal structures of the dictatorships in the region was increased exponentially.<sup>110</sup> Indeed, the verdict clearly recognised how, through this vast *asociación ilícita*, the criminal states were more successful in achieving their objective of repressing opposition to their rule wherever they needed to. The court's judicial recognition that Operation Condor was a 'transnational criminal conspiracy devised by South America's dictators' is unparalleled.<sup>111</sup>

Finally, this trial drew on 'an overwhelming quantity of documents'.<sup>112</sup> Prosecutions for crimes against humanity normally rely upon only a 'few documents [...]; they are mainly based on testimonies of survivors and families of victims'.<sup>113</sup> Thousands of archival and/or declassified documents were gathered from across South America, the United States and beyond to help the prosecution put together a complicated picture of cross-border repression. In order to pass judgment on Condor, as Judge Adrián Grünberg asserted, the court had 'to cross borders too, symbolically and practically', compiling all the relevant evidence for its investigation.<sup>114</sup> In an unprecedented manner, thus, both the prosecution and the court incorporated into their arguments and judgment written documents from archives from all the ex-Condor countries and the United States. This unmatched archival evidence complemented the testimonies of survivors and victims' relatives in exposing the transnational crimes perpetrated and shedding light on the responsibility of the defendants.

<sup>106</sup>Hauser, 'Crímenes que no borra el paso del tiempo'.

<sup>107</sup>See MPF, PGN, 'Dossier de sentencias pronunciadas en juicios de lesa humanidad en Argentina': [http://www.fiscales.gov.ar/wp-content/uploads/2016/03/LH\\_Dossier\\_23-3.pdf](http://www.fiscales.gov.ar/wp-content/uploads/2016/03/LH_Dossier_23-3.pdf); last access 20 Aug. 2018.

<sup>108</sup>Author interviews with Pablo Llonto and with Pablo Ouviaña and Mercedes Moguilanski.

<sup>109</sup>Author interview with Pablo Ouviaña.

<sup>110</sup>Pablo Ouviaña, email communication to the author, 3 Nov. 2017.

<sup>111</sup>Author interview with Jaime Nuguer, Buenos Aires, 8 June 2016.

<sup>112</sup>'Operation Condor: Landmark Human Rights Trial Reaches Finale'.

<sup>113</sup>*Ibid.*

<sup>114</sup>Author interview with Adrián F. Grünberg.



Human rights lawyers are hopeful that the Condor trial can catalyse efforts for accountability, spurring neighbouring 'countries [such as Brazil, Paraguay and Uruguay] to consider the responsibility of their officials regarding victims of their nationalities'.<sup>115</sup> This is especially significant given that progress with accountability has been uneven across South America. On sentence day, this could not have been clearer. The courtroom – and the Argentine consulates across South America – was full of people who had come from many different countries to listen to the verdict, a verdict that was however particularly momentous for survivors and relatives from Brazil, Bolivia, Paraguay and Uruguay, countries where justice for past horrors has been harder to achieve. According to lawyer Martín Rico, the verdict could become 'a leading case in international jurisprudence'.<sup>116</sup> Meanwhile, former CELS human rights lawyer Marcos Kotlik has drawn attention to a parallel with what happened in Argentina back in the 1990s, when European countries, such as Spain, Italy and France, began investigating and prosecuting Argentine military officers for human rights abuses perpetrated in Argentina. These investigations by European courts had a positive impact in Argentina, reactivating local accountability efforts, but at the same time they 'hurt the pride of local judges', pushing them to begin investigating the same crimes in Argentina.<sup>117</sup> Kotlik envisages that there could be a similar reaction in Uruguay, because of its proximity to Argentina and the close relations between the two nations.

Undeniably, as these lawyers have underscored, the verdict does set an important precedent and could constitute a powerful tool in the hands of regional human rights activists and lawyers to pressurise governments and judiciaries to shed light on appalling atrocities and bring those responsible to justice. However, the actual reactivation of accountability efforts across the region is yet to be seen. No significant developments have occurred in either Brazil or Paraguay. In Uruguay, some timid steps have been taken. The sentence was especially important there, since half of the trial's victims were Uruguayan and the only foreign defendant was also a national of that country. By strategic reference to sentences such as that in the *Gelman vs. Uruguay* case heard in the Inter-American Court of Human Rights (2011)<sup>118</sup> and the Condor verdict, local human rights activists and lawyers have repeatedly called upon the judiciary and the state to ensure accountability. However, despite having a well-functioning judiciary, only a handful of verdicts for dictatorship-era crimes have been handed down in Uruguay. As of September 2018, for instance, only 3 per cent of all allegations of atrocities committed during the dictatorship ended with a judicial verdict out of 307 criminal

<sup>115</sup>Author interview with Martín Rico, lawyer for the Secretaría de Derechos Humanos y Pluralismo Cultural, Buenos Aires, 1 Oct. 2013.

<sup>116</sup>*Ibid.*

<sup>117</sup>Author interview with Marcos Kotlik.

<sup>118</sup>María Macarena Gelman was kidnapped as a baby, her parents having been 'disappeared' in a joint operation by Argentine and Uruguayan forces, and was brought up by a Uruguayan family. Decades later she was found by her paternal grandfather, who, with his granddaughter, sued the Uruguayan state. See [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_221\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_221_ing.pdf); last access 23 Aug. 2018.

lawsuits pending before the courts: Uruguay's impunity rate stands at 97 per cent.<sup>119</sup> The Argentine verdict stands in stark contrast to this scenario of judicial inactivity and passivity in Uruguay.

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

Undoubtedly, the Condor trial constituted a landmark step in the search for justice in South America. Analysing this case, furthermore, helps to provide affirmative answers to two of the four questions raised in the introduction. First, what role can transitional justice mechanisms play in redressing transnational atrocities? And, second, should human rights provisions be applicable to crimes committed extraterritorially?

The Condor prosecution demonstrates in practice how existing transitional justice mechanisms and the human rights system already possess valuable tools and concepts to be used in tackling transnational crimes. Indeed, unlike earlier justice efforts, in which international or special courts were the preferred mechanism to confront complex atrocities, in this case it was a domestic court in one of the former Condor countries, composed of ordinary federal judges, that took upon itself the task of prosecuting the crimes of Operation Condor.<sup>120</sup> Therefore, the Argentine trial, as well as the similar subsequent prosecution that concluded in January 2017 in the Court of Assizes in Rome, which addressed cases of victims of Operation Condor of Italian descent, plainly validate how transitional justice mechanisms can help redress cross-border crimes. In addition, other tools beyond simply prosecutions have aided investigations into transnational crimes. Albeit falling beyond the scope of this article, it can be briefly mentioned how the final reports of the Argentine, Paraguayan and Brazilian truth commissions in 1984, 2008 and 2014 respectively all dealt with Condor atrocities to different extents. Similarly, in Uruguay, in 1985, a Parliamentary Commission, set up to investigate disappearances during the dictatorship, had to give special consideration to the large number of Uruguayans who had disappeared in Argentina.<sup>121</sup>

Generally, states are reluctant to investigate human rights violations; they prefer to consider atrocities alleged to have occurred in the territories of other states<sup>122</sup> rather than having their own conduct analysed. When investigations do occur, jurisdiction is claimed – frequently on the basis of territoriality – over the review of crimes that have occurred inside the national territory<sup>123</sup> and, less often, through

<sup>119</sup>Lucía Barrios, 'Uruguay está atrasado en impartir justicia por crímenes dictatoriales', *Sputnik Mundo*, 31 Aug. 2018: <https://mundo.sputniknews.com/americalatina/201808311081627863-victimas-dictadura-militar-uruguay/>; last access 3 Sept. 2018.

<sup>120</sup>Author interview with Jaime Nuguer.

<sup>121</sup>Francesca Lessa, 'Parliamentary Investigative Commission on the Situation of Disappeared Persons and its Causes (Uruguay)' and 'Peace Commission (Uruguay)', in Lavinia Stan and Nadya Nedelsky (eds.), *Encyclopedia of Transitional Justice*, vol. 3 (New York: Cambridge University Press, 2013), pp. 353–7 and 361–6.

<sup>122</sup>Sigrun Skogly, *Beyond National Borders: States Human Rights Obligations in International Cooperation* (Antwerp and Oxford: Intersentia, 2006), p. 15.

<sup>123</sup>Cedric Ryngaert, *Jurisdiction in International Law* (2nd edn) (Oxford: Oxford University Press, 2015).

'passive personality'<sup>124</sup> or universal jurisdiction.<sup>125</sup> Human rights atrocities have also often been investigated through foreign trials, namely prosecutions 'conducted in one country for human rights abuses committed in another country'.<sup>126</sup> Foreign trials were extremely important for the Southern Cone in the 1990s and 2000s. Indeed, several human rights activists, unable to pursue justice at home, strategically filed lawsuits before courts in Spain, Italy and France, asking them to investigate atrocities in Argentina, Chile or Uruguay against citizens of Spanish, Italian or French descent on the basis of passive personality.<sup>127</sup> While building upon these earlier efforts, the approach of the Argentine court is nonetheless original. In fact, the court did not simply use one ground for jurisdiction but innovatively combined territoriality and passive personality to effectively investigate Operation Condor transnational crimes. The 109 illustrative cases encompassed atrocities committed against (a) foreign citizens in Argentina (*territoriality*) and (b) Argentine victims abroad (*passive personality*). Consequently, the judges considered not only crimes that had unfolded on Argentine soil, but also crimes against Argentine citizens in the territories of other Condor countries. Through this novel approach to jurisdiction, the court investigated cross-border violations in two overlapping and complementary ways. First, when looking at (a) *crimes committed against foreign exiles in Argentina*, the judges scrutinised the role of Argentine state agents together with that of their foreign counterparts, who purposely travelled to Argentina from Uruguay, Chile or Paraguay to kidnap exiles of interest to their dictatorial regimes back home. In this regard, the court sentenced defendant Cordero for kidnapping 11 Uruguayan exiles in Buenos Aires in 1976, human rights violations that Uruguay committed extraterritorially through this state agent. Regarding (b) *crimes perpetrated abroad against Argentine nationals*, the court looked into the role of Argentine state agents who had carried out extraterritorial human rights violations against their co-nationals inside the territories of Paraguay, Uruguay or Brazil, atrocities committed together with their local counterparts. For example, the court looked into how a special team from Argentina's Intelligence Battalion 601 specifically travelled to Brazil to illegally detain two Argentine exiles at Rio de Janeiro's international airport in 1980 and subsequently take them back to Buenos Aires, where they eventually disappeared. By overlapping territorial and passive personality jurisdictions, the court was able to explore the entire machinery of transnational terror established by Condor. What is especially

<sup>124</sup>See note 11.

<sup>125</sup>According to universal jurisdiction, a state – regardless of the location of the crimes or the nationality of victims and perpetrators – may initiate prosecutions for breaches of international law so serious as to constitute offences to all humankind, i.e. genocide, war crimes, crimes against humanity. Prosecutions grounded in this principle are often controversial and such an approach has increasingly been under fire, with Belgium repealing its universal jurisdiction statute in 2003, and Spain limiting the reach of its universal jurisdiction law in 2009. Nonetheless, important investigations have been initiated by reference to this principle, including the indictment in Spain of 20 members of the Salvadorean army for the 1989 murder of six Jesuit priests and two civilians during El Salvador's civil war.

<sup>126</sup>Kathryn Sikkink and Carrie Booth Walling, 'The Impact of Human Rights Trials in Latin America', *Journal of Peace Research*, 24: 4 (2007), p. 430.

<sup>127</sup>Significant sentences were handed down in foreign trials. In March 2007, a court in Rome sentenced to life imprisonment five high-ranking Argentine officials for the torture and murders of three Italian citizens.

significant is that the judges in effect studied states' behaviour outside their borders, an approach hitherto not seen in transitional justice and human rights.

This leads us to the second question, on the extraterritorial application of human rights. The trial plainly shows not only how the behaviour of states and their agents can be examined inside their territorial boundaries, but also that responsibility can be attributed for carrying out human rights violations extraterritorially. To have a state's extraterritorial actions looked into from a human rights perspective is a significant step forward when compared to past justice efforts, which looked into a state's conduct only inside its national borders. Prior human rights jurisprudence, at both the international and regional level, had offered little guidance as to whether human rights guarantees applied 'irrespective of the physical location of the victim vis-à-vis the state'.<sup>128</sup> Within academia too, the same question is far from settled, and clear parameters for determining the scope of a state's 'obligations when it acts abroad'<sup>129</sup> are still lacking. The approach followed in the Condor trial marks an important step forward in these discussions. By probing transnational crimes and attributing criminal responsibility for them to state agents even when acting outside national borders, the court has in fact acknowledged that human rights violations committed extraterritorially *do* entail responsibility on the part of states. The view of the Argentine judges reflects the precedent set in 1981 in *López Burgos v. Uruguay*, as well as the UN Human Rights Committee's general approach that states should abstain from violating human rights against individuals, wherever they are.<sup>130</sup> What the Argentine court achieved thus represents a qualitative leap in the trajectory of international justice. By intertwining territorial and passive personality jurisdictions, the court was able to deliver justice for atrocities committed across borders in South America, providing redress for the first time for transnational crimes and finding state agents responsible for human rights atrocities perpetrated outside national borders. This sets an important precedent in terms of accountability for extraterritorial human rights violations that could be applied to contemporary forms of transnational crimes too.

## Conclusion

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

By exploring the Operation Condor trial, this article has combined the question of accountability for transnational crimes with those of human rights and transitional justice. As borders become more porous, it becomes a pressing priority for

<sup>128</sup>Cerone, 'Out of Bounds?', p. 2.

<sup>129</sup>*Ibid.*, p. 26.

<sup>130</sup>*Ibid.*, p. 33.

scholars and practitioners to elucidate the extent of a state's extraterritorial human rights obligations and the tools that can be deployed to offer redress to victims of cross-border crimes. This is an issue that requires urgent consideration since many of the worst contemporary human rights atrocities are in fact of a transnational nature: trafficking of women, children and migrants, the extraordinary rendition of alleged terrorists, and the horrors carried out by the Islamic State that transcend well beyond the borders of Syria and Iraq.

As the Argentine trial has shown, transitional justice mechanisms, such as prosecutions, can play a successful role in responding to cross-border crimes. This article has emphasised how there is no need to resort to extraordinary forms of justice, to completely rethink the accountability tools at our disposal, or to radically reform the human rights system, in order to tackle transnational crimes. On the contrary, both transitional justice and the human rights system already have important concepts and mechanisms that can be applied in a novel way for that purpose. It is not argued here that the model used in the Condor trial is a panacea that should be unquestionably replicated everywhere. Rather, this unprecedented experiment in tackling transnational crimes should push scholars and policy-makers to generate innovative solutions by resorting to already existing tools.

Four lessons emerge from the Argentine prosecution that could inform future thinking and practice in redressing contemporary transnational atrocities. Firstly, unless there is a particular reason that warrants the establishment of an international/special court or other extraordinary justice tools, domestic courts can successfully be used to examine instances of transnational crimes. This is in line with the complementarity principle of the International Criminal Court, whereby the latter steps in only if national jurisdictions *are unable or unwilling* to genuinely investigate and prosecute atrocities. Secondly, different jurisdictional principles (namely territoriality, nationality, passive personality, universality) can be combined to establish grounds to investigate cross-border crimes. There is no specific prescription here but, rather, varying combinations can be adopted for different circumstance in light of the particular nature of each situation. In the Condor trial, territoriality and passive personality were employed to fully grasp the complexities surrounding Operation Condor, but this does not preclude other potential arrangements. Thirdly, a fundamental precondition for the efficient scrutiny of transnational atrocities is international cooperation between judges, lawyers, prosecutors and human rights activists, to be able to gather and exchange evidence, whether testimonial or documentary, that may be relevant to the proceedings. Finally, in the same way that extraterritorial jurisdiction has recently been expanded to encompass an increasing number of criminal law offences,<sup>131</sup> state borders should not be perceived as an insurmountable obstacle in situations of transnational human rights violations. Indeed, the Condor trial effectively showed how state agents could be held responsible for perpetrating human rights crimes outside their national borders. These lessons can hopefully provide useful insights for scholars and policy-makers working on different manifestations of transnational crimes into finding ways to help victims obtain accountability for the horrors they have suffered.

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<sup>131</sup>Ryngaert, *Jurisdiction in International Law*, pp. 101–3.

## Annex: Sentences Handed down in the Condor Trial<sup>132</sup>

The defendants are Argentine, unless otherwise noted.

1. Santiago Omar Riveros (Army), 25 years imprisonment
2. Miguel Ángel Furci (civil intelligence), 25 years imprisonment
3. Reynaldo Benito Bignone (Army and former dictator), 20 years imprisonment
4. Eduardo Samuel de Lío (Army), 12 years imprisonment
5. Humberto José Román Lobaiza (Army), 18 years imprisonment
6. Enrique Braulio Olea (Army), 13 years imprisonment
7. Luis Sadi Pepa (Army), 12 years imprisonment
8. Rodolfo Emilio Feroglio (Army), 20 years imprisonment
9. Carlos Caggiano Tedesco (Army), 12 years imprisonment
10. Antonio Vañek (Navy), 13 years imprisonment
11. Eugenio Guañabens Perelló (Army), 13 years imprisonment
12. Felipe Jorge Alespeiti (Army), 12 years imprisonment
13. Manuel Cordero Piacentini (Uruguayan Army), 25 years imprisonment
14. Néstor Horacio Falcón (Army), 12 years imprisonment
15. Federico Antonio Minicucci (Army), eight years imprisonment
16. Juan Avelino Rodríguez (Army), acquitted
17. Carlos Tragant (Army), acquitted

The Fourth Chamber of the Federal Criminal Court of Appeals confirmed all 15 guilty verdicts on 4 May 2018.<sup>133</sup>

**Acknowledgements.** Earlier versions of this article were presented at the International Congresses of the Latin American Studies Association in New York City and Lima in 2016 and 2017. I would like to especially thank all the interviewees who kindly agreed to participate in this research project for generously donating their time and sharing with me recollections of often painful personal and family stories. I would also like to express my deepest gratitude to all the members of my family, friends and colleagues who have stood by me and relentlessly supported me since I received death threats in early 2017, a direct consequence of the research I carried out into Operation Condor and impunity in Uruguay. This project has received funding from the European Union's Horizon 2020 research and innovation programme under the Marie Skłodowska-Curie grant agreement no. 702004 (2016); the University of Oxford's Economic and Social Research Council (ESRC) Impact Acceleration Account no. IAA-MT14-008 (2015); a British Academy/Leverhulme Small Research Grant no. SG142423 (2015); the John Fell Oxford University Press (OUP) Research Fund grant no. 122/686 (2013); and it has also been supported by the Open Society Foundation's Human Rights Initiative.

### Spanish abstract

En mayo de 2016, una corte federal argentina concluyó un juicio monumental al condenar a 15 acusados por secuestros ilegales y tortura cometidos contra más de 100 víctimas de la Operación Cóndor, y por asociación ilícita para cometer estos delitos. 'Operación Cóndor' fue el nombre en clave dado a una operación encubierta a nivel continental desarrollada en los años 1970 por regímenes sudamericanos para eliminar a cientos de activistas de izquierda a lo largo de la región. El veredicto de la Operación Cóndor llevó a los derechos humanos y a la justicia transicional a nuevos terrenos, por su enfoque novedoso en cuanto

<sup>132</sup>See CIJ, 'Lesa humanidad: Condenaron a 15 acusados en el juicio oral por el "Plan Cóndor"', 27 May 2016: <http://www.cij.gov.ar/nota-21519-Lesa-humanidad--se-conocer--este-viernes-la-sentencia-en-el-juicio-oral-por-el--Plan-C-ndor--.html>; last access 20 Aug. 2018.

<sup>133</sup>See <https://www.cij.gov.ar/nota-30155-Lesa-humanidad--la-C-mara-Federal-de-Casaci-n-Penal-confirm--condenas-en-la-causa-por-el--Plan-C-ndor-.html>; last access 21 Sept. 2018.

a los crímenes transnacionales y por hacer responsables a agentes estatales de violaciones a los derechos humanos extraterritoriales. Al analizar este enjuiciamiento pionero, el artículo lleva la cuestión del delito extra-fronterizo al debate académico. En la medida que las fronteras se hacen más porosas, los académicos y practicantes legales no pueden ya marginar el tema de la rendición de cuentas para los crímenes transnacionales.

**Spanish keywords:** impunidad; Operación Cóndor; crímenes transnacionales; responsabilidad; sociedad civil

### **Portuguese abstract**

Em Maio de 2016, uma corte federal Argentina concluiu um julgamento histórico, condenando 15 réus acusados de sequestro e tortura cometido contra 100 vítimas da Operação Condor, e de associação criminosa para cometer estes crimes. A Operação Condor foi o codinome dado à operação secreta, abrangendo todo o continente, concebida nos anos 70 pelos regimes sul-americanos para eliminar centenas de ativistas de esquerda da região. O veredicto da Operação Condor em 2016 abriu novas perspectivas em direitos humanos e justiça de transição pelo seu foco inovador no julgamento de crimes transnacionais e por responsabilizar agentes do Estado por violações de direitos humanos em nível extraterritorial. Através da análise desse processo pioneiro, este artigo leva a questão de crimes transnacionais para dentro dos debates acadêmicos. À medida que fronteiras se tornam cada vez mais permeáveis, acadêmicos e profissionais já não podem deixar de lado assuntos como a responsabilidade por crimes transnacionais.

**Portuguese keywords:** impunidade; Operação Condor; crimes transnacionais; responsabilidade; sociedade civil

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**Cite this article:** Lessa F (2019). Operation Condor on Trial: Justice for Transnational Human Rights Crimes in South America. *Journal of Latin American Studies* 51, 409–439. <https://doi.org/10.1017/S0022216X18000767>