

## Military Rumblings in Argentina

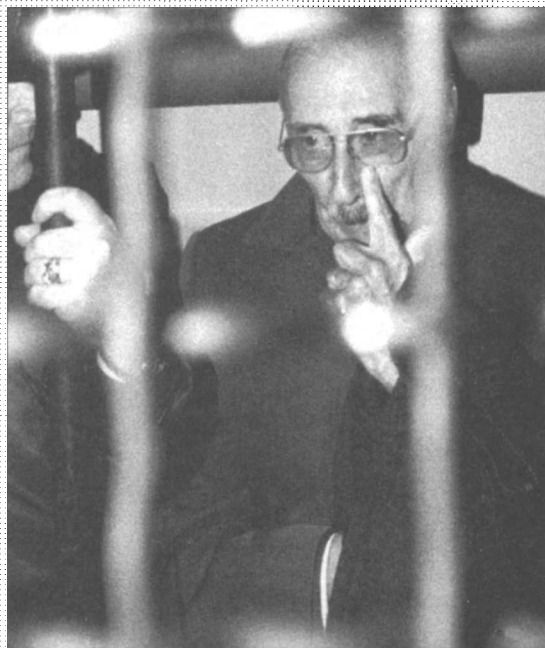
As the increasingly independent judicial branch in Argentina has taken important steps to address the legacy of military human rights abuses, disquiet has grown within the military officer corps. A handful of judges have opened up a number of investigations into the fate of the disappeared. Some cases, based on the "right to truth," aim at establishing what happened to the victims of state terror, even if the previous amnesty laws and pardons effectively preclude sanctions for the guilty. Other courts are investigating the military's illegal appropriation of children of the disappeared, a crime exempted from the amnesty laws.

In 1996, Judge Adolfo Bagnasco began investigating a major case of baby theft, including the question of whether the practice was systematic and organized from the top. He has since ordered the arrests of some 12 former commanders, including junta members Jorge Videla and Emilio Massera.

In March, this case led to an outburst of military animosity, when the Supreme Council of the Armed Forces suddenly demanded jurisdiction. The military court called the case an example of "persecution of the armed forces by the judicial branch, constituting a confrontation between two ideologies."<sup>1</sup> This move seemed to turn back the clock to the 1980s, when the question of military accountability stirred dangerous tensions after the transition from military rule. In 1984 the same Council resigned *en masse* rather than condemn the "dirty war" or sanction accused officers, and between 1987 and 1990 seditious officers staged four major uprisings. The Council's new posture may signal a hardening of military attitudes and renewed politicization now that General Martín Balza—the army chief known for his *mea culpa* regarding the dirty war—has stepped down.

The government of Fernando de la Rúa reacted to the Supreme Council's demand by ordering the removal of its president. Judge Bagnasco complained that Defense Minister Ricardo López Murphy should have issued "instructions" to the military prosecutor, as his civilian superior, clarifying that the case legally belonged in the constitutional court, and should have strongly defended the authority of the judicial branch.<sup>2</sup> López Murphy insisted that he should not intervene. The final decision regarding jurisdiction may go to the Supreme Court.

Another sign of military hostility was a series of public statements by the new army chief, Gen. Ricardo Brinzoni, this year. In April he denied that there



Leader of the 1976 coup and junta member Jorge Rafael Videla being arrested in June 1998.

had ever been a systematic campaign to illegally abduct children of the disappeared, and he criticized the arrests of officers who refused to testify or who gave false testimony in a "right to truth" case underway in Córdoba. There, Judge Cristina Garzón de Lascano is investigating the 1976 killings of 30 political prisoners by the military. Among those temporarily detained this year were several active-duty officers as well as the feared ex-commander of the province's Third Army Corps, General Luciano B. Menéndez, for refusing to testify. Before Menem pardoned him in 1989, Menéndez was accused of 77 cases of torture, 47 homicides and four baby thefts.

In April, Brinzoni sent an official delegation headed by the Secretary General of the Army to Córdoba to visit the detained officer, the first of several such visits. This show of force gave an institutional cast to military defiance of the civilian justice system. More worrisome were Defense Minister López Murphy's comments that he supported the visit and was unconcerned about renewed military political antagonism. The Human Rights Undersecretary also justified army behavior and questioned the seriousness of the Córdoba trial, though she later withdrew her comment.<sup>3</sup>

Despite Gen. Brinzoni's denial, there is considerable evidence that baby theft was systematic during the dictatorship. One judge discovered an army document from the 1970s entitled "Operations Against Subversive Elements," which included instructions

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on what to do with children of the disappeared. In February, during a search of the Campo de Mayo army base, Judge Bagnasco found partially destroyed birth registries dating from the period 1974 to 1978 that contained information about transfers of babies born to prisoners. Following these discoveries, documents, photographs and instruction manuals from the dirty war were destroyed by army intelligence.<sup>4</sup>

In other ominous incidents, María Servini de Cubría, a judge who is investigating suspected baby-trafficking by the navy, was forced off the road while driving last December, and in May, her assistant's house was broken into. His computer hard drive was stolen and a large knife was left on a table, a message reminiscent of past death squads. Servini demanded that the government intervene to stop the intimidation and, privately, directly implicated the navy in the threats against her. Other threats and break-ins of human rights groups' offices have occurred as well.

The resurgence of politicized military behavior in Argentina—and the government's passive response—is disturbing, particularly since the De la Rúa government also seems to be moving toward broadening the military mission. Defense Minister López Murphy has advocated the expansive "new threats" paradigm being promoted by the U.S. Southern Command (SOUTHCOM) that declares as issues of concern to the military problems as diverse as extreme poverty, social unrest, international terrorism, drug-trafficking, environmental destruction, migration and religious fundamentalism. In this context, López Murphy has called for the military to "assume new roles." And earlier this year the administration, in a quasi-clandestine manner, gave a newly retired army general, Ernesto Bossi, a leadership position in the state intelligence secretariat (SIDE) and the recently reactivated National Intelligence Center (CNI), a body that brings together all military and civilian intelligence agencies. Bossi is a vigorous proponent of military internal security and intelligence operations to combat "narcoterrorism." His expansive concept of "integral security" erases the distinction between internal security and defense, recalling the national security doctrine and calling into question the arduous struggle to remove the military from internal security and intelligence operations, codified in laws passed years ago.

Also disturbing is the administration's apparent retreat from human rights concerns. Early this year, for example, the administration supported the promotion of officers accused of human rights violations from the dirty war era, despite pressure from human rights groups. The administration has also declined to cooperate with Spanish judge Baltasar Garzón in his case against military commanders from the last dictatorship, moving away from campaign pledges made in 1999. These are troubling trends for Argentine democracy. ■

countries given the very different nature of the judicial systems and the rights issues involved. One major difference with the United States, for example, is that Latin American judicial institutions have been greatly discredited. Their lack of independence, their widespread corruption, the lack of access to justice suffered by vast sectors of the population—all these problems have severely eroded credibility in the system.<sup>7</sup> In the United States, a decision not to convict a defendant because he or she was not proved guilty is generally seen as evidence that the court recognized the defendant's rights. But in Argentina, a not-guilty verdict may provoke denunciations that the justice system is an "accomplice of the criminals."

In addition, we reasoned that the "leading cases" we address must reflect the principal human rights problems and priorities in our society. In other words, if our ultimate goal is to simultaneously critique and strengthen the judiciary through litigation, there must be an explicit political agenda behind the cases we take to court. In this sense, CELS is focusing on several issues that impact many Argentine citizens but which have traditionally been left out of human rights organizations' agendas. Among the most important are failures by government agencies to assure access to fundamental economic and social rights like education and healthcare. Discrimination based on gender, ethnicity, religion, sexuality or disability is also a major problem. Misconduct by security forces is also a serious issue, including police killings, abuse of authority and rampant corruption.<sup>8</sup>

CELS has handled a series of leading cases dealing with police corruption and misconduct. One such case is that of José Luis Ojeda, who was tortured while in police custody. After reporting these abuses, he was harassed by the Federal Police, brought in on arbitrary charges, and even experienced an attempt on his life. Though the charges against Ojeda have been dropped, the case has not been fully resolved. But the publicity surrounding this case sensitized public opinion to the long-standing problem of police abuse of authority, and became a key element in defeating a bill presented by the Executive that would have extended the period an individual may be held by police before being arraigned from 24 hours to seven days.

The case of Martín Follini highlighted the arbitrary nature of police conduct. Follini, wearing a T-shirt suggesting that President Menem was corrupt, was detained as he tried to enter a public event where Menem was scheduled to speak. Cit-

**Looking Ahead: New Challenges for Human Rights Advocacy**

- Ernesto de la Jara, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos," Organized by the Washington Office on Latin America (WOLA) and the Institute for Legal Defense (IDL), Lima, July 23-24, 1999.
- Martín Abregú, International Symposium, "50 años después... ¿y ahora qué?" Organized by Diakonia, Lima, November 6-8, 1998.
- George Vickers, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos."
- Vickers, "En Camino al Siglo XXI."
- Carlos Basombrío, "Crime: A Latin American Challenge for Human Rights," *Human Rights Dialogue* (Carnegie Council on Ethics and International Affairs), Vol. 2, No. 1 (Winter 2000).
- Basombrío, "Crime."
- Martín Abregú, International Symposium, "En Camino al Siglo XXI: Desafíos y estrategias de la comunidad latinoamericana de derechos humanos."

**Human Rights After the Dictatorship: Lessons from Argentina**

- See *Nunca Más: Informe de la Comisión Nacional sobre la Desaparición de Personas* (Buenos Aires: EUDEBA, 1999, Fifth Edition); and Eduardo Luis Duhalde, *El estado terrorista argentino: Quince años después, una mirada crítica* (Buenos Aires: EUDEBA, 1999).
- Derechos humanos en la Argentina: Informe anual 2000* (Buenos Aires: EUDEBA-CELS, 2000).
- See Carlos Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1996); Carlos Acuña and Catalina Smulovitz, "Militares en la transición argentina: Del gobierno a la subordinación constitucional," in Carlos Acuña et. al., eds., *Juicios, castigos y memorias* (Buenos Aires: Editorial Nueva Visión, 1995); Marcelo Sancinetti, *Derechos humanos en la Argentina post-dictatorial* (Buenos Aires: Lerner Editores, 1988); and Jaime Malamud-Goti, *Game Without End* (Tulsa: Oklahoma U. Press, 1996).
- Juan Méndez, Guillermo O'Donnell and Paulo Sérgio Pinheiro, eds., *The (Un)Rule of Law and the Underprivileged in Latin America* (South Bend: University of Notre Dame Press, 1999).
- See Nino, *Radical Evil*; Acuña and Smulovitz, "Militares"; Sancinetti, *Derechos humanos*; Goti, *Game Without End*; and Hugo Frühling, "From Dictatorship to Democracy: Law and Social Change in the Andean Region and the Southern Cone of South America," in Mary McClymont and Stephen Golum, eds., *Many Roads to Justice: The Law-related Work of the Ford Foundation Grantees Around the World* (New York: Ford Foundation, 2000).
- Martín Abregú, "La aplicación del derecho internacional de los derechos humanos por los tribunales: Una introducción," in Martín Abregú and Christian Courts, eds., *La aplicación de los tratados sobre derechos humanos por los tribunales locales* (Buenos Aires: Editores del Puerto-CELS, 1997).
- See Manuel Garrido, "Informe sobre Argentina," in Jorge Correa Suti, ed., *Situación y políticas judiciales en América Latina* (Santiago: Universidad Diego Portales Escuela de Derecho, Serie Publicaciones Especiales No. 2, N.D.).
- See *La inseguridad policial: Violencia de las fuerzas de seguridad en la Argentina* (Buenos Aires: EUDEBA-Human Rights Watch-CELS, 1998).

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- Daniel Gallo, "Un tribunal castrense rechaza la justicia civil," *La Nación* (Buenos Aires), March 31, 2000.
- The military tribunal reports to the Executive and is an administrative body responsible only for sanctioning narrow military infractions. It is not part of the judicial branch of government.
- The Human Rights secretariat is within the Justice Ministry.
- See "Argentina: Army Intentionally Destroys Documentation Regarding Human Rights Abuses," *Latin America Data Base*, Vol. 10, No. 11 (March 24, 2000).

**Building a Culture of Rights**

- Among other institutional settings, this debate has been promoted by and carried out under the auspices of the Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) of Bogotá, Colombia. National research and seminar proceedings appear in various publications of the Institute. See, for example, *El Otro Derecho*, No. 17, ILSA (1996).
- See Martha C. Nussbaum and Amartya Sen, eds., *The Quality of Life* (London: Oxford University Press/The United Nations University, 1993).
- The fundamental text is T.H. Marshall, *Class, Citizenship and Social Class* (New York: Doubleday, 1963). For a critique of the idea of

"generations of rights" see Asbjorn Eide, Catarina Krause and Allan Rosas, eds., *Economic, Social and Cultural Rights* (Dordrecht: Kluwer Academic Publishers, 1995).

- While the use of the term "neopopulism" is questionable, it refers to "a regime and a style of doing politics in which the relationship of the leader to the masses does not involve the mediation of autonomous institutions." See Aldo Panfichi and Cynthia Sanborn, "Democracia y neopopulismo en el Perú contemporáneo," *Márgenes*, V. 8, No. 13/14 (November 1995), p. 45.
- Javier Iguñiz, *Desigualdad y pobreza en el mundo* (Lima: Centro de Estudios Peruanos, 1999), pp. 84 and 110.
- For the Peruvian case, see Sinesio López, *Ciudadanos reales e imaginarios* (Lima: Instituto Diálogo y Propuesta, 1997).
- From the beginning of modern philosophy the right to security was considered a human right. Locke, for example, mentions this right together with the right to freedom and to property. In recent decades, most notably in UN documents, the concept of security has been broadened to include the aspects mentioned. It could be said that the "negative view" of security, restricted to protection in the face of external aggression, is being transformed into a more "positive" view of human security.
- This idea draws on the work of the noted economist Amartya Sen. A Spanish-language anthology of his work, published in English between 1985 and 1995, is Amartya Sen, *Bienestar, justicia y mercado* (Barcelona: Paidós, 1997).
- Iguñiz, *Desigualdad y pobreza en el mundo*, p. 112.

**"Gender Equity" Without Social Justice**

- I would like to thank Linzi Manicow, Melanie Randall, Elizabeth Riddell-Dixon, and Malcolm Blinco for their useful suggestions for this article.
- See Miriam Abramovay and Mary García Castro, *Engendrando um novo feminismo: Mulheres lideres de base* (São Paulo: UNESCO/Cepia, 1998); and Verónica Schild, "Market Citizenship and the 'New Democracies': The Ambiguous Legacies of Contemporary Chilean Women's Movements," *Social Politics* (Summer 1998), pp. 232-249.
- See Lucía Rayas, "Criminalizing Abortion. A Crime Against Women," in *NACLA Report on the Americas*, Vol. XXXI, No. 4 (January/February 1998), p. 25.
- William Roseberry, "Hegemony and the Language of Contention," in G. M. Joseph and D. Nugent, eds., *Everyday Forms of State Formation* (Durham, N.C.: Duke University Press 1994), p. 361.
- Author's interview, Santiago, October 1991. See also Verónica Schild, "Recasting 'Popular' Movements: Gender and Political Learning in Neighborhood Organizations in Chile," in *Latin American Perspectives*, Vol. 21, No. 2 (1994), pp. 59-80.
- See Verónica Schild, "Neoliberalism's New Gendered Market Citizens: The 'Civilizing' Dimension of Social Programs in Chile," *Citizenship Studies* (forthcoming 2000).
- In Jonathan Franklin, "Recession puts Chileans in the mood to punish coalition at polls," *The Guardian*, December 10, 1999, p. 21.
- For regional figures in women's participation in formal employment, see Teresa Valdés and Enrique Gomariz, *Mujeres latinoamericanas en cifras: Tomo comparativo*, (Santiago: Instituto de la Mujer/Facultad Latinoamericana de Ciencias Sociales, 1995), p. 63.
- See F. Marquéz and M. Schkolnik, "La reinvencción del trabajo y del espacio privado: Para una mayor equidad entre hombres y mujeres" (Santiago: SUR, Centro de Estudios Sociales y Educación, documento no. 163).
- Author's interview, Santiago, December 1997.
- Author's interview, Julia, community leader from La Pintana, and Miriam Ortega, Director of Centro Ana Clara, Santiago, December 1997.
- Author's interviews with women leaders of popular women's organizations in Santiago, December 1997; and Mary García Castro, "Gender and Power: Voices of Brazilian Women in Community Based Organizations (CBOs)," Paper presented at the pre-LASA conference organized by LASA's Gender Section, "An Assessment of Gender Policies in Latin America," Miami, Fla., March 14-15, 2000.
- Author's interviews with members of REMOS, and of Centro Ana Clara, Santiago, December 1997; see also Mary García Castro, "Gender and Power," p. 18.
- Rosalva Aida Hernández Castillo, "Construyendo la utopía: Esperanzas y desafíos de las mujeres chiapanecas de frente al siglo XXI," in Rosalva Aida Hernández Castillo, ed., *La otra palabra: Mujeres y violencia en Chiapas, antes y después de Acteal* (Mexico: CIESAS, 1998) pp. 125-142.
- Rosalva Aida Hernández Castillo, p. 136.