

January 1992

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### Recommended Citation

Jon M. Van Dyke & Gerald W. Berkley, Redressing Human Rights Abuses, 20 Denv. J. Int'l L. & Pol'y 243 (1992).

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## Redressing Human Rights Abuses

### Keywords

Human Rights Law, International Law: History

# Redressing Human Rights Abuses\*

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## I. INTRODUCTION

When an authoritarian regime that has engaged in gross violations of fundamental human rights is replaced by a freely elected government committed to the rule of law and fair procedures, how should the new government handle the violations of the previous regime? This question has challenged the new governments in Argentina, Uruguay, and Chile directly, and has also been an issue recently in other Latin American nations such as Brazil, Paraguay, Guatemala, Nicaragua, Panama, and El Salvador. European countries such as Spain, Greece, and the nations of Eastern Europe have also had to grapple with this question, as have Asian countries such as the Philippines, South Korea, and others.

Each of these nations has considered this problem in the context of its unique situation. Their actions have been affected by the level of "grossness" of the human rights abuses, the extent to which their new government is stable and secure, the extent to which members of the previous government retain positions of power, and the state of the nation's economy. The national responses have ranged from a total disregard of past human rights abuses to the prosecution of all primarily responsible.

A number of human rights scholars and activists have written recently on these diverse reactions, and they have almost uniformly concluded that each nation has an obligation to prosecute their violators. This conclusion, although certainly moral and just, is apparently not realistic as a practical matter for many nations. It is necessary, therefore, for other nations and the international community as a whole to assist by providing tribunals and forums for prosecutions. This paper surveys the national responses that have thus far occurred, reviews the recent literature on this topic, and offers some recommendations about how the international community can assist.

## II. THE OBLIGATION TO PROVIDE REDRESS FOR GROSS ABUSES

A rich literature has emerged in the last several years from the human rights community arguing that international law requires governments to act affirmatively to punish those who have committed gross

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\* This article was presented at the conference held in honor of the late Senator Spark M. Matsunga, entitled "Restructuring for Peace: Challenges for the 21st Century," held in Honolulu, Hawaii, June 2-5, 1991.

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human rights abuses.<sup>1</sup> The arguments in favor of prosecuting the culprits who have used official positions to violate the rights of citizens are simple and straightforward:

1. To deter future violations of fundamental human rights.<sup>2</sup>
2. To reassert the central role of law in civilized society, to foster respect for democratic institutions and advance the nation's transition (or return) to democracy, and clearly distinguish between the previous regime and the new government.<sup>3</sup>
3. To reassert the inherent dignity of each individual by providing the victims and their families their day in court.<sup>4</sup>
4. To provide a complete and irrefutable record of what happened, so that no one can pretend the abuses did not occur.<sup>5</sup>
5. To comply with obligations of international law.

The argument that international law requires prosecution is developed in detail in several recent articles.<sup>6</sup> These commentators identify

1. See, e.g., THEODOR MERON, *HUMAN RIGHTS AND HUMANITARIAN NORMS AS CUSTOMARY LAW* 136-245 (1989) (Chapter III is entitled "Responsibility of States for Violations of Human Rights and Humanitarian Norms"); Alejandro Garro & Enrique Dahl, *Legal Accountability For Human Rights Violations in Argentina: One Step Forward and Two Steps Back*, 8 HUM. RTS. L.J. 283 (1987); Ellen Lutz, *After the Elections: Compensating Victims of Human Rights Abuses*, in *NEW DIRECTIONS IN HUMAN RIGHTS* 195 (E. Lutz, H. Hannum & K. Burke eds., 1989); George C. Rogers, *Argentina's Obligation to Prosecute Military Officials for Torture*, 20 COLUM. HUM. RTS. L. REV. 259 (1989); Jamie Malamud-Goti, *Transitional Governments in the Breach: Why Punish State Criminals*, 12 HUM. RTS. Q. 1 (1990); Kathryn Lee Crawford, *Due Obedience and the Rights of Victims: Argentina's Transition to Democracy*, 12 HUM. RTS. Q. 17 (1990); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Grave Human Rights Violations in International Law*, 78 CAL. L. REV. 451 (1990); Ricardo Antonio Latcham, *Duty to Punish: International Law and Human Rights Policy of Argentina*, 7 B.U. INT'L L.J. 355 (1990); Symposium, *Transitions to Democracy and the Rule of Law*, 5 AM. U.J. INT'L L. & POL'Y 965 (1990) [hereinafter cited as American University Symposium] (see especially Remarks of Nigel Rodley at 1044-48, remarks of Diane Orentlicher at 1049-58, remarks of Juan Mendez at 1058-61, remarks of Lawrence Weschler at 1061-63, remarks of Hurst Hannum at 1080-83); Diane Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991).

2. 7 See, e.g., Malamud-Goti, *supra* note 1, at 11-12; Orentlicher, *supra* note 1, at 2542.

3. See, e.g., Orentlicher, *supra* note 1, at 2542-44; Malamud-Goti, *supra* note 1, at 11-12; Rogers, *supra* note 1, at 300-4.

4. See, e.g., Orentlicher, *supra* note 1, at 2544 n.22.

5. See, e.g., Malamud-Goti, *supra* note 1, at 11; Orentlicher, *supra* note 1, at 2546 n.32.

6. See, e.g., Roht-Arriaza, *supra* note 1; Orentlicher, *supra* note 1; Meron, *supra* note 1; Crawford, *supra* note 1, at 44-49; Rogers, *supra* note 1, at 272-91; Rodley, in American University Symposium, *supra* note 1, at 1044-48. One dissenting perspective has been offered by Professor Hurst Hannum, who said in 1990 that he thought the "conclusion that punishment of human rights violators was required under international law . . . cannot be sustained at the present time." Professor Hannum also said that he was "quite attracted to Diane Orentlicher's suggestion that 'wholesale impunity' . . . might be an illegal abdication of international responsibility, but I think we are far from having achieved customary inter-

several specific human rights treaties that contain an explicit duty to prosecute violators<sup>7</sup> and also contend that other comprehensive human rights treaties<sup>8</sup> establish an affirmative duty to protect human rights which includes investigating abuses and punishing wrongdoers. One commentator states, for instance, that:

Authoritative interpretations make clear, however, that these treaties require States Parties generally to investigate serious violations of physical integrity — in particular, torture, extra-legal executions, and forced disappearances — and to bring to justice those who are responsible. The rationale behind these duties is straightforward: prosecution and punishment are the most effective — and therefore only adequate — means of ensuring a narrow class of rights that merit special protection.<sup>9</sup>

The recent decision of the Inter-American Court of Human Rights in the *Velasquez Rodriguez Case*<sup>10</sup> is cited in support of this conclusion. In a case involving an unresolved disappearance in Honduras, the Court said that the American Convention on Human Rights imposed on each state party a:

legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.<sup>11</sup>

Customary international law can also be cited to support the proposition that prosecutions are required in cases of serious violations of the right to physical integrity, as exemplified by the prosecutions after World War II at Nuremberg and Tokyo.<sup>12</sup>

As persuasive as these arguments are, it is also possible to identify

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national law that any foreign ministry in any country in the world would consider itself bound by." *Id.*

7. See, e.g., Convention on the Prevention and Punishment of Genocide, Dec. 9, 1948, G.A. Res. 260A (III), 7 U.N.T.S. 227; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Feb. 4, 1985, 39 U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/39/51 (1985), entered into force June 26, 1987, reprinted in 23 I.L.M. 1027 (1984), as modified, 24 I.L.M. 535 (1985).

8. See, e.g., International Covenant on Civil and Political Rights [hereinafter "ICCPR"], done at New York, Dec. 16, 1966, entered into force March 23, 1976, U.N.G.A. Res. 2200 (XXI), 21 U.N. GAOR Supp. No. 16, at 52, U.N. Doc. A/6316 (1967), reprinted in 6 I.L.M. 368 (1967); European Convention for the Protection of Human Rights and Fundamental Freedoms, done at Rome, Nov. 4, 1950, entered into force Sept. 3, 1953, 213 U.N.T.S. 221; American Convention on Human Rights, done at San Jose, Nov. 22, 1969, entered into force, July 18, 1978, 36 O.A.S. Treaty Series 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. rev. 2, reprinted in 9 I.L.M. 673 (1970).

9. Orentlicher, *supra* note 1.

10. Judgment of 29 July 1988, Inter-Am. C.H.R. Ser. c/4, reprinted in 28 I.L.M. 291 (1989).

11. *Id.* at ¶ 174.

12. See, e.g., Orentlicher, *supra* note 1, at 2585-95.

substantial arguments against prosecutions:

1. "Fragile democracies may not be able to survive the destabilizing effects of politically charged trials."<sup>13</sup>
2. Even in more stable countries, protracted trials may make it harder to heal the wounds that have divided a country. Protracted trials will promote the "psychology of vengeance and hatred," which will divide rather than unite a people and will interfere with nation-building and economic development.<sup>14</sup>
3. Authoritarian regimes that face "a virtual certainty of punishment" will resist "voluntarily relinquishing power."<sup>15</sup>

Some commentators who argue that prosecutions are not always warranted contend that many of the goals of prosecutions can be achieved by a thorough investigation that lays out the facts but does not take the additional step of punishing the wrongdoers.<sup>16</sup> This approach has been pursued in Chile.<sup>17</sup> It has also been pointed out that punishment need not always take the form of criminal prosecution and incarceration, but can also include loss of rank, job, or pension rights, and monetary fines which can be used to compensate victims and their families.<sup>18</sup>

The next section describes what has happened in some of the countries that have moved from authoritarian regimes to democratic governance in recent years. Their methods of dealing with leaders in the authoritarian regime who have violated human rights has varied dramatically from the swift and sure prosecutions in Greece against the top "Colonels,"<sup>19</sup> to the general amnesty in Uruguay,<sup>20</sup> to ignoring the problem altogether in several countries. The one lesson that seems clear from these descriptions is that some help will be needed from regional and international human rights bodies, and from the national courts of other countries, if the apparent requirement of international law that human rights violators be pursued and punishment is to be given real teeth.

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13. Orentlicher, *supra* note 1, at 2544. This argument has been used, for instance, in Uruguay and the Philippines. See *infra* notes 39-50 and 103-4 and accompanying text.

14. Orentlicher, *supra* note 1, at 2550, quoting a statement made by Polish activist Adam Michnik in Lawrence Weschler, *A Reporter At Large*, THE NEW YORKER, Dec. 10, 1990, at 127.

15. Orentlicher, *supra* note 1, at 2549.

16. See, e.g., Orentlicher, *supra* note 1, at 2546 n.32; Roht-Arriaza, *supra* note 1, at 508-09.

17. See *infra* notes 32-38 and accompanying text.

18. Roht-Arriaza, *supra* note 1, at 509.

19. See *infra* notes 81-87 and accompanying text.

20. See *infra* notes 39-50 and accompanying text.

## III. WHAT HAS ACTUALLY HAPPENED

A. *Latin America*<sup>21</sup>

Argentina, Brazil, Chile, Paraguay, and Uruguay, and — perhaps more ambiguously — El Salvador, Guatemala, Nicaragua, and Panama have each moved from an entrenched military dictatorship to elected civilian rule in the last few years. Each nation has had to confront the human rights abuses of the former dictatorships and each has developed its own strategy for addressing this difficult problem. The widely differing approaches taken by each country illustrate the challenges presented.

## 1. Argentina

Several different military juntas dominated the Argentine government between 1976 and 1983. Arguing that they were waging a “war against subversion,” the military personnel of these juntas forcibly abducted somewhere between 9,000 and 30,000 Argentine citizens during this period.<sup>22</sup> Several hundred military officers reportedly planned this strategy, and many of these individuals also participated in the torture sessions which frequently followed the kidnappings.<sup>23</sup>

The loss of the war with the United Kingdom over the Malvinas (Falkland) Islands in 1982 caused the junta to lose popular support, and civilian rule was restored with the election of Raul Alfonsin as President at the end of 1983. His election brought forth immediate demands both from the families of those who had disappeared (*desaparecidos*) and from various human rights organizations to prosecute those responsible for the human rights abuses of the past. President Alfonsin responded with a plan to investigate and initiate criminal proceedings against those considered liable. A decree was issued authorizing the arrest and prosecution of nine junta leaders in power between 1976 and 1983.<sup>24</sup>

The Argentine Congress then approved further action. Their law pro-

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21. For a comprehensive survey of available Latin American human rights resources, see Perkins, *Latin American Human Rights Research 1980-89: A Guide to Sources and a Bibliography*, 19 DENV. J. INT'L L. & POL'Y 163 (1990).

22. The exact number of the “disappeared,” a euphemism for the forced and unacknowledged abduction of persons by the state military, security, or police forces, or by other state-sanctioned groups, is disputed. The National Commission on the Disappearance of Persons, *NUNCA MAS 10 479-81* (Farrar, Straus, and Giroux, trans. eds. 1986). See Osiel, *The Making of Human Rights Policy in Argentina: The Impact of Ideas and Interests on a Legal Conflict*, 18 J. LATIN AM. STUD. 135 (1986). See generally Rogers, *supra* note 1; Malamud-Goti, *supra* note 1; Crawford, *supra* note 1; Carlos S. Nino, *The Duty to Punish Past Abuses of Human Rights Put Into Context: The Case of Argentina*, 100 YALE L.J. 2619 (1991); and Judgment on Human Rights Violations by Former Military Leaders, Suprema Corte de Argentina, Dec. 30, 1986, 26 I.L.M. 317 (1987).

23. Osiel, *supra* note 22, at 141; Emilio F. Mignone, Cynthia L. Estlund & Samuel Is-sacharoff, *Dictatorship on Trial: Prosecution of Human Rights Violations in Argentina*, 10 YALE J. INT'L L. 118, 119 (1984).

24. Garro & Dahl, *supra* note 1, at 284. See also Latcham, *supra* note 1, at 357.

vided a rebuttable presumption of innocence for military personnel acting under orders from a superior officer, but this presumption did not extend to those who were found guilty of committing "atrocious or aberrant" acts such as torture.<sup>25</sup> Original jurisdiction was given to Argentina's highest military tribunal, with the proviso that if that court's actions were unjustifiably or negligently delayed, the Federal Chamber of Appeals would assume jurisdiction.

Alfonsin, hoping to reduce the military's alienation, announced that he would limit prosecutions to those most responsible for authorizing the abuses and those who actually committed the most egregious violations. Unfortunately, this strategy failed, because it badly miscalculated the Argentine military's willingness to have *any* of its members prosecuted. Their position manifested itself in the Supreme Council of the Armed Forces' refusal to continue proceedings against the junta leaders.<sup>26</sup>

The Federal Chamber of Appeals then assumed authority over these cases as the statute authorized. Several additional indictments were handed down, and public trials commenced in April 1985. Six months later, five of the defendants were convicted. The Argentine press carried daily accounts of the trials, and huge rallies occurred at which thousands of the nation's citizens demanded justice.<sup>27</sup>

The military, its sense of persecution and alienation heightened by the constant publicity, reacted with threats of violence. The Argentine Congress, in an attempt to defuse the situation, then passed a "Full Stop" law which imposed a 60-day deadline for filing additional complaints or charges against any alleged perpetrators.<sup>28</sup> This strategy also failed. Special prosecutors and human rights activists worked day and night to draft as many indictments as possible. The military rose in insurrection.

With few options available to him, President Alfonsin reached an agreement whereby in exchange for a halt to the rebellion a law was enacted that exonerated all military personnel below the rank of brigadier general from any criminal liability for acts committed between 1976 and 1983. This law also created an irrebuttable presumption that lower-ranking officers were merely following orders or acting under other modes of duress. Accordingly, about 400 officers and enlisted personnel who had been subject to prosecution were granted immunity, leaving fewer than

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25. Law 23049, art. 11. "Torture . . . is widely agreed to be so manifestly illegal an act that no officer could reasonably be presumed to have been unaware of the criminality of such an order." Osiel, *supra* note 22, at 147. See also Carlos Santiago Nino, *The Human Rights Policy of the Argentine Constitutional Government: A Reply*, 11 YALE J. INT'L L. 217, 228 (1985).

26. Mignone, Estlund & Issacharoff, *supra* note 23, at 125-38.

27. Osiel, *supra* note 22, at 142; Garro & Dahl, *supra* note 1, at 287; Latcham, *supra* note 1, at 361. The demonstrations regularly drew as many as 70,000 supporters.

28. Law No. 23492, (Dec. 23, 1986)(Law of "Full Stop"), translated in 8 HUM. RTS. L.J. 476 (1987).



fifty officers to stand accountable for the disappearance, torture, and death of thousands of Argentine citizens.<sup>29</sup>

In May 1989, Carlos Menem replaced Alfonsín as the elected president of Argentina. On October 6, 1989, pressured by riots and hyperinflation, President Menem pardoned both those already convicted and the remaining thirty senior military officers who were to have been tried. Two federal public prosecutors who challenged the constitutionality of this action were threatened with disciplinary hearings and dismissal because they ignored orders from the Argentine Attorney General to say nothing. The pardons ended all but one of the criminal prosecutions of those responsible for the human rights abuses of the past. The only trial that remained on the docket was that of Guillermo Suarez Mason, former Commander of the First Army Corps,<sup>30</sup> and he was also later pardoned.<sup>31</sup>

## 2. Chile

General Augusto Pinochet seized power during the 1973 overthrow of elected President Salvador Allende. During the more than 16 years of harsh military rule that followed, thousands of Chileans suffered gross human rights abuses. On March 11, 1989, President Patricio Aylwin took power after the first free election since 1971.<sup>32</sup> President Aylwin found himself in a very difficult position with regard to the abuses of the Pinochet period. The new Chilean Constitution, written mostly to General Pinochet's specifications, leaves the General with substantial residual power. Not only does he have the authority to hand-pick nine members of the 48-seat Senate, but General Pinochet himself remains as chief of the Army. In addition, General Pinochet provided an amnesty during his reign for human rights abuses committed before 1978.<sup>33</sup>

Pinochet's continuing power was assumed to stand in the way of meeting the demands for justice and retribution by those who had suffered torture, imprisonment, and exile, and by the relatives of those who were murdered or "disappeared" during the 1973 to 1989 period. President Aylwin, however, courageously appointed an independent body, the Commission of Truth and Reconciliation, made up of prominent public

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29. Crawford, *supra* note 1, at 25.

30. *Argentina's Phony "Reconciliation,"* WASH. POST, Jan. 1, 1991, at A22; Daniel Drosdoff, *Menem Pardons: A Bid for Military Support*, UNITED PRESS INT'L, Jan. 1, 1991; *Argentina Decrees Explain Why Former Military Leaders Were Pardoned*, BBC SUMMARY OF WORLD BROADCASTS/THE MONITORING REP., Jan. 1, 1991, at ME/0959/iii; Cristina Bonasegna, *Critics Denounce Argentina's "Dirty War" Pardons*, CHRISTIAN SCI. MONITOR, Dec. 31, 1990, at 4.

31. Suarez Mason had been extradited from the United States in 1988 where he had fled to avoid prosecution. See Daniel Drosdoff, *U.S.—Argentina Ties Strained*, UNITED PRESS INT'L, Jan. 9, 1991.

32. Tom Wicker, "Middle Way" in Chile, N.Y. TIMES, Aug. 16, 1990, at A25, col. 1. Thomas Boadle, *Chilean Government Moves to Defuse Explosive Rights Issue*, REUTERS LIBR. REP., Apr. 23, 1990.

33. Wicker, *supra* note 32.

figures, who were charged with investigating and disclosing the facts of Pinochet's human rights transgressions.<sup>34</sup> This group was not given the authority to fix blame or recommend prosecution, in an apparent concession to Pinochet's threat that the day one of his men was touched, the rule of law in Chile would end.<sup>35</sup>

On March 5, 1991, President Aylwin went on national television in Chile to reveal to the people of his country what the Commission had discovered after nine months of investigation.<sup>36</sup> The first 1,094 pages of the report defined concepts and described the historical, political, judicial, and institutional framework in which the events took place, and then recounted, in chronological order, all the cases in which the Commission determined that a human rights violation resulted in the death or disappearance of identified victims. It also provided a report on the background and circumstance of each abuse.

Three distinct time periods were identified. During the first — September 11 to December 31, 1973 — massive detentions and the executions of many political prisoners occurred. The second period — January 1974 to August 1977 — was the DINA (National Intelligence Directorate) era, when systematic action was taken to exterminate those considered politically dangerous. The largest number of "disappearances" took place during this period. The third period — September 1977 to 1983 — featured attacks on terrorists groups and the repression of protests.

The total number of victims of gross violations of human rights, according to the Commission, was more than 2,000 for all three periods: 59 killed after a court-martial; 90 killed during protests; 101 killed while attempting to avoid capture; 815 died as a result of torture; 957 "disappeared;" and 90 killed by attacks carried out by politically motivated civilians.

The next seventy-four pages of the Report recommended types of reparations and vindications to impede or prevent future human rights violations. Noting that both moral and material compensation was absolutely necessary for the transition towards true democracy, the Commission proposed the public vindication of the victims' good names, and the establishment by law of a single reparation pension designed to provide relatives of the victims with special health, education, and housing benefits. The Commission also proposed the creation of an autonomous human rights foundation that would continue the task of trying to determine the whereabouts of the disappeared, and keep records of human rights abuses.<sup>37</sup> The final 635 pages of the Report contain brief biographi-

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34. *Id.* See also Paul Mylread, *Chile's Government Seeks to Heal Scars of Military Rule*, REUTERS LIBR. REP., Apr. 23, 1990.

35. Ariel Dorfman, *Perspective on Chile*, L.A. TIMES, Mar. 26, 1991, at B7, col. 3.

36. *Chilean President's Address and Comments on Human Rights Violations Report*, BBC SUMMARY OF WORLD BROADCASTS, Mar. 6, 1991, at ME/1013/D/1.

37. *Id.* See also Leslie Crawford, *Chile's Litany of Torture Becomes Contested History*, FIN. TIMES, Mar. 21, 1991, at 8.

cal data, in alphabetical order, for each of the individuals who, in the Commission's judgment, died or disappeared as victims of violations of their human rights.

This Report is an extraordinary indictment of the Pinochet dictatorship's cruelty, its systematic policy of terror, and its incessant lies; it had the streets and cafes of Chile abuzz with talk. Not only was the wall of silence removed, but the military's desecration of Chile is now an official truth in the public domain. The reality belongs to all and can be denied by none, although not surprisingly General Pinochet has said that "The army denies the report both historical and juridical validity."<sup>38</sup>

### 3. Uruguay

In contrast to most of its neighbors, Uruguay was profoundly committed to a pluralistic democracy during the first half of this century. With its relatively small population of less than three million, Uruguay served as an oasis of tolerance surrounded by a desert of repression. Unfortunately, in the 1960's this began to change.<sup>39</sup>

Uruguay's civilian government proved incapable of handling a deepening economic crisis, and an urban-based guerrilla movement, the Tupamaros, began to emerge. In 1973, the country's military commanders took charge. Congress was disbanded, and the nation's long-cherished human rights were suspended. During the next ten years, according to Amnesty International, Uruguay acquired the dubious distinction of having the world's highest per-capita rate of political incarceration. Although relatively few "disappearances" or killings occurred, one out of every 50 Uruguayans was detained at some point between 1973 and 1985. Torture was pervasive — virtually everyone arrested was tortured.<sup>40</sup>

Finally, in March 1985, after prolonged negotiations, the military dictatorship relinquished enough power so that a democratically elected government could assume office. Julio Maria Sanguinetti, a center-right corporate attorney who had been heavily involved in the bargaining for the return to civilian rule, was chosen by the people of Uruguay as their President. Almost immediately an amnesty covering all political prisoners was granted.<sup>41</sup>

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38. Malcolm Coad, *Chile To Press Rights Probes Despite Pinochet's Criticism*, WASH. POST, Mar. 29, 1991, at A17.

39. Lawrence Weschler, *A Reporter at Large: The Great Exception*, THE NEW YORKER, April 10, 1989, at 85 (Part I appeared in THE NEW YORKER, April 3, 1989).

40. *Id.* See also David Kennedy, *Spring Break (Visiting a Political Prisoner in Uruguay)*, 63 TEX. L. REV. 1377 (1985); *Uruguay: Encouraging Return to Democracy*, 34 INT'L COMMISSION OF JURISTS 20 (1985); Camille Jones, *Human Rights: Rights of Relatives of Victims (Uruguay)*, 25 HARV. INT'L L.J. 470 (1984); *Statement By Senator Dr. Alberto Zumaran, Special Representative of His Government of Uruguay to the United Nations Commission of Human Rights*, Mar. 8, 1985 (transcript), 7 HUM. RTS. Q. 574 (1985).

41. *Statement by Dr. Zumaran, supra note 40, at 579; Uruguay: Encouraging Return to Democracy, supra note 40, at 23-24.*

Between the spring of 1985 and the final days of 1986, a flood of criminal complaints against the military concerning gross human rights violations clogged the judicial system. High ranking military officers, who were still powerful and totally unrepentant, simply refused to allow anyone serving under them to honor the subpoenas requiring court appearances. In reaction, on December 22, 1986, the Sanguinetti Government passed a "Law Declaring an Expiration of the State's Punitive Authority," which in effect granted total amnesty to those responsible for past human rights abuses.<sup>42</sup>

Senator Manuel Flores Silva, a journalist and professor, who voted in favor of this 1986 law, explained his position as follows:

Uruguay lived through a transition from authoritarian rule which was not at all typical. We didn't have the benefit of the classic situation in which the dictatorship suffers an external defeat, like Argentina in the Malvinas or the Greek generals in Cyprus, and therefore has to step down. We didn't have the other classic way out, either, in which the dictatorship loses as a result of an internal war, as happened in Nicaragua with the downfall of Somoza. Our way was to mobilize civil society and gradually encircle the regime until it accepted the transition.

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The trouble is that by mid-1986 we were falling back into the logic of extremes. Ironically, dictatorships freeze things, and, coming out of ours, we almost seemed to be back in 1972 and 1973 — the same hatreds and polarizations all over again, leading toward an identical impasse and an identical probable outcome. *We had to find a way out of that trap.* It was very important, because it hasn't been shown anywhere that there is a law according to which dictatorships automatically fall. Sometimes they don't fall. For us to present an amnesty project, therefore, was not a matter of doing the necessary dirty work. *It was a matter of making a moral decision to give priority to the possibility of a future of agreement over a past of division.*<sup>43</sup>

Vice-President Enrique Tarigo, a journalist and lawyer who also supported the 1986 amnesty, rationalized his decision as follows:

To secure convictions against, say, fifty military people, we would have had to have at least five hundred officers parading through the courts — as accused, as suspects, as accomplices, or, at any rate, as witnesses. It would have taken anywhere from four to eight years, because that's how long a penal process does take. . . . And I don't think any state can withstand having its armed forces destroyed in such a fashion.<sup>44</sup>

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42. Weschler, *supra* note 39, at 85.

43. *Id.* at 90 (emphasis added).

44. *Id.* at 91.

As to whether Uruguay could build a democracy after ignoring the gross human rights violations of the past, Tarigo responded:

When Franco died [in Spain], a new page was turned, because everybody realized that to go back and review events of forty years earlier would provoke a whole new civil war. Life continues, life is made up of things that are not pretty, that are not the subject of a beautiful poem. And the function of government is not to write poetry but to build a real future.<sup>45</sup>

President Sanguinetti argued that because all political prisoners had been granted amnesty in March 1985, giving the military amnesty in 1986:

was a question of moral equivalency: we felt that if we were going to a settling of accounts for the left and the terrorists the military should be amnestied too . . . .<sup>46</sup>

We could have had a moral trial, an investigation followed by an amnesty. But that situation had all the problems and none of the advantages. To open that discussion would have been to preserve old wounds . . . . The experience of Argentina confirms it: the trials there were not permitted to continue — only the top generals were punished, and not those directly responsible for all the assassinations.<sup>47</sup>

Sanguinetti felt that a year and a half of controversy was enough, and that it was time to move on: “[I]t was time for a punto final (full stop). I don’t have eyes in the back of my head. I have eyes only for the future.”<sup>48</sup>

Many Uruguayans disagreed with these views. They favored a commission of inquiry, an officially sanctioned truth telling. Some wanted trials and verdicts. Accordingly, they challenged the “Law Declaring an Expiration of the State’s Punitive Authority” under a constitutional provision allowing a referendum on any law if 25 percent of the registered voters so request. Just before Christmas 1987, and after a heated petition drive that was marked by repeated governmental attempts to disqualify voters’ signatures, over 637,702 signatures were turned into the Electoral Court, more than enough to force the referendum. The government’s initial response was to try a filibuster. Every one of the signatures was reviewed twice, and then, finally, checked against the original of the signer’s registration papers. While this was going on, Sanguinetti took to the Uruguayan airwaves to remind the people of the problems that had occurred in Argentina when efforts were made to redress past human rights abuses.<sup>49</sup>

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45. *Id.*

46. *Id.*

47. *Id.* at 92

48. *Id.* at 86-87.

49. *Id.* at 87-88. See also Washington Varela, *The Referendum Campaign in Uruguay: An Unprecedented Challenge to Impunity*, 13 H.R.I. REP. 16 (1989). Varela makes the point that no other country in Latin America has a referendum provision such as Uruguay’s.

Next the Electoral Court announced that it would accept retractions of signatures from those so inclined. Finally, on April 16, 1989, after more government-backed scare campaigns, the referendum was held and the attempt to overturn the 1986 amnesty was defeated. A strong minority of 42 percent had, however, supported repeal of the "Law Declaring an Expiration of the State's Punitive Authority."<sup>50</sup>

#### 4. Brazil

A military dictatorship ruled Brazil between 1964 and 1985. Although not as brutal as some in the region, these military leaders were responsible for the deaths of about 200 people, the disappearance of another 150, and the torture of thousands. Negotiated civilian rule returned in 1985, but with the understanding that the new government would not investigate or try the former military officials.<sup>51</sup>

In March 1990, Fernando Collor de Mello took office as Brazil's first directly elected president since 1960. He had promised the people of Brazil that he would abolish the National Intelligence Service, the former dictatorship's secret police force which was responsible for most of the past human rights violations. In September 1990, a mass grave containing more than 1,700 bodies was discovered. Most were the remains of paupers, but about 50 were apparently the victims of summary execution during the military rule.<sup>52</sup> The painful memories stirred by this discovery caused many Brazilians to demand a full investigation.

#### 5. Paraguay

In February 1989, the reign of the Western Hemisphere's most durable dictator ended. General Alfredo Stroessner, who first took power in a coup in August 1954, had utilized repression to resist any movement toward democracy in Paraguay for nearly 35 years. Declining health and attempts to transfer leadership to his son prompted a fierce military coup

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He also quotes Sanguinetti as saying that the petition drive was a "Mission Impossible."

50. Varela, *supra* note 49, at 16. Amnesty International reacted to the Uruguayan referendum with the following statement:

The results of the referendum cannot be interpreted as freeing the Government of Uruguay of its international obligations, including the need to take steps to make the truth about past criminal human rights violations such as torture, "disappearances" and extra-judicial executions publicly known, to bring those responsible for such violations to justice and to ensure that measures are taken to ensure that such abuses are not under any circumstances tolerated in the future.

Remarks of Nigel Rodley, American University Symposium, *supra* note 1, at 1045 (1990). In the most recent election, Sanguinetti's Colorado Party lost by a large percentage to the opposition Blanco o Nacional Party. Remarks by the Honorable Didier Operti, American University Symposium, *supra* note 1, at 1042.

51. *Old Fears Die Hard in Brazil*, CHI. TRIB., Sept. 10, 1990, at 8.

52. *Id.*

led by General Andres Rodriques.<sup>53</sup>

Within a week of the overthrow, tens of thousands of Paraguayans took to the streets demanding an end to the corruption and violence, and free and open elections. Unfortunately, General Rodriguez announced that he intended to fill the remainder of Stroessner's term until 1993 and indicated that political change would be neither sudden nor profound. He did make a commitment to respect human rights and eventually bring democracy to Paraguay, but has made no mention of any attempt to redress past human rights violations.<sup>54</sup> Time will tell. As for Stroessner, at seventy-eight years of age he is in exile in Brasilia, but his ghosts, real and imagined, continue to influence events in Paraguay.<sup>55</sup>

## 6. Guatemala

During the intense, systematic repression of the successive military regimes that ruled Guatemala from 1978 to 1985, it is estimated that nearly 40,000 people disappeared.<sup>56</sup> A period described as a "Reign of Official Terror" commenced in 1978 under General Lucas Garcia.<sup>57</sup> All persons suspected of harboring "dangerous" opinions were targeted. The two military dictatorships that followed, the first in 1982 under General Rios Mantt, and the second in 1983 under General Oscar Humberto Mejia Victores, continued the use of violence as a means of social and political control.<sup>58</sup> In 1986, when President Cerezo took office as the first democratically elected civilian president in twenty years, some expressed hope that the human rights abuses would cease and that some redress of the past violations would be forthcoming. Unfortunately, although the military had relinquished formal power in hopes of obtaining foreign aid, they retained considerable actual authority. They enacted an amnesty law (Decree Law 8-86) a few days before Cerezo's inauguration, and have seen to it that no human rights investigations have occurred.<sup>59</sup>

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53. *Stroessner Shows Force That Has Kept Him in Power 32 Years*, REUTERS, June 25, 1986; Brian Nicholson, *Paraguayans Await Changes in Wake of Coup*, UNITED PRESS INT'L, Feb. 4, 1989.

54. James Smith, *Military Coup Topples Paraguay's Stroessner; Incoming President Promises Democracy, Respect for Rights*, L.A. TIMES, Feb. 4, 1989, at 1, col. 2; James Smith, *Paraguay Ruler Denies Links to Drug Traffic*, L.A. TIMES, Feb. 7, 1989, at 5, col. 1; Peter Bate, *Opposition Stages First March After Stroessner's Downfall*, REUTER LIBR. REP., Feb. 11, 1989; Peter Bate, *Thousands of Paraguayans March to Mark Stroessner's Downfall*, REUTERS, Feb. 11, 1989.

55. James Brooke, *Paraguay Jittery Over The Exiled Stroessner*, N.Y. TIMES (Nat'l ed.), Mar. 3, 1991, at A14, col. 3.

56. *Central America Report* (Infopress Centro Americana), Mar. 7, 1986, at 6.

57. GEORGE BLACK, GARRISON GUATEMALA 47 (1984).

58. *Id.*; See generally AMNESTY INTERNATIONAL, GUATEMALA: A GOVERNMENT PROGRAM OF POLITICAL MURDER (1981).

59. William Schirmer, "Those Who Die for Life Cannot Be Called Dead:" *Women and Human Rights Protests in Latin America*, 1 HUM. RTS. Y.B. 41, 59-60 (1988).

## 7. Nicaragua

Between the time the Sandinista-led revolution toppled rightist dictator Anastasio Somoza in 1979 and their subsequent loss of power in the February 1989 general election, numerous instances of human rights abuses occurred. Recent discoveries of clandestine graves have sparked debate in President Violeta Chamorro's government over whether the human rights violations committed by both the Sandinistas and their opposition, the Contras, should be investigated and prosecuted or forgiven and forgotten in a spirit of national reconciliation.<sup>60</sup>

The Nicaraguan Association for Human Rights, founded in 1986 with U.S. funding to educate and monitor the Contras on human rights, and the Nicaraguan Centre for Human Rights, funded by Dutch nongovernmental organizations and international church groups, are both active in investigating and publicizing past abuses.<sup>61</sup> The latter group utilizes forensic experts from Argentina and Costa Rica.

Sweeping amnesty laws for political crimes were passed by both the outgoing Sandinista-dominated assembly in March and the pro-Chamorro assembly in May. These laws may or may not cover violations of international human rights.<sup>62</sup>

## 8. El Salvador

In October 1979, a group of young military officers ended the atrocity-filled rule of General Carlos Humberto Romero. The new regime frequently proclaimed ambitious plans to democratize the government of El Salvador, but many members of this new government had, in fact, been involved in the death squads of the past which were responsible for some 30,000 killings.<sup>63</sup>

In December 1981, the United States Congress, motivated at least in part by continuing reports of human rights abuses in El Salvador, enacted an aid certification program that required periodic reviews of that nation's domestic policies and activities. The President of the United States was directed to determine whether the government of El Salvador was making a concerted and significant effort to comply with internationally recognized human rights norms.<sup>64</sup> In late 1990, the U.S. Congress actually withheld \$425 million in military aid after the El Salvador government failed to prosecute vigorously the military men responsible for the

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60. William Jacobsen, *Clandestine Graves in Nicaragua Open Debate on War Crimes*, REUTERS LIBR. REP., Oct. 3, 1990. The original story concerning these graves may have been a hoax. See Abe Rosenfeld, *Contras May Have Played Grim Hoax*, CHI. TRIB., Nov. 1, 1990, at C22.

61. *Id.*

62. *Id.*

63. Amy S. Griffin, Comment, *Constitutional Impediments to Enforcing Human Rights Legislation: The Case of El Salvador*, 33 AM. U. L. REV. 163, 164 (1983).

64. *Id.* at 163, 173.



deaths of six Jesuits, their housekeeper, and her daughter in November 1989.<sup>65</sup>

On March 10, 1991, the first relatively peaceful elections — after thirteen years and some 75,000 deaths — were conducted in El Salvador. These elections were for legislative seats and municipal posts, and actually succeeded in reintroducing some diversity into El Salvador's politics.<sup>66</sup> As a further ray of hope, almost immediately after this plebiscite, a United Nations human rights fact-finding team visited the country with the aim of initiating a full-scale U.N. monitoring of human rights in El Salvador. Both sides of the current civil war, the U.S.-backed government and the leftist guerrillas (FMLN), requested the U.N. action.<sup>67</sup>

## 9. Panama

In 1968, the military took charge of the government of Panama under General Omar Torrijos. After Torrijos' death in a 1981 plane crash, General Manuel Antonio Noriega, commander of the Panama Defense Forces, quickly deposed two military rivals to achieve power behind a succession of civilian presidents. Human rights abuses, sporadic under Torrijos, escalated rapidly under Noriega.<sup>68</sup>

Serious attempts to topple Noriega commenced in March 1988. Demonstrations, strikes, coup attempts, and a United States-engineered cash crisis all failed to dislodge the General.<sup>69</sup> Finally, on December 20, 1989, U.S. forces drove Noriega from power and replaced him with a three-party coalition.<sup>70</sup> Within six months, however, one of the three top leaders, Ricardo Arias Calderon, had begun rebuilding the military with many of the same officers and men who had made up Noriega's corrupt and brutal Panama Defense Forces.<sup>71</sup> In April 1991, several U.N. human rights officials stated that the government of Panama has a duty at least to investigate all violations of human rights since 1968, but no such action

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65. Lyng-how Ramirez, *United States: New Debate in Congress Over Aid to El Salvador*, INTER PRESS SERVICE, Mar. 14, 1991.

66. *Bleeding Toward Peace — Exhaustion Could End El Salvador's Civil War*, SEATTLE TIMES, Mar. 14, 1991, at A14.

67. *U.N. Rights Team Ends Fact-Finding Mission to El Salvador*, REUTERS LIBR. REP., Mar. 22, 1991.

68. Richard Boudreaux, *Panama Suspends Rights, Jails Scores to Quell Unrest*, L.A. TIMES, June 12, 1987, at 1, col. 5; *Doctors Begin Autopsy of Body of Panama Supreme Court Justice*, REUTERS, Nov. 2, 1987.

69. Bernard Debusmann, *Panama Declares Emergency, Suspends Basic Civil Rights*, REUTERS, Mar. 18, 1988; William Branigan, *Strike Aimed at Ousting Noriega Begins Today*, WASH. POST, Mar. 21, 1988, at A13; Dan Williams, *Church Pressed to Take Active Panama Role*, L.A. TIMES, Mar. 28, 1988, at A1, col. 4; Lionel Barber, *U.S. Takes Fresh Tack in Bid to Oust Noriega*, FIN. TIMES, at 5; Robert Pear, *Hemispheric Group Asks Noriega to Yield Power*, N.Y. TIMES, May 18, 1989, at A8, col. 3.

70. Helen Dewar & Tom Kenworthy, *Decision Was Made Necessary by the Reckless Actions of General Noriega*, WASH. POST, Dec. 21, 1989, at A35.

71. Kenneth Freed, *Noriega Officers Resurface; Panama Coalition Strained*, L.A. TIMES, June 25, 1990, at A1, col. 5.

has yet taken place.<sup>72</sup>

## B. *Europe*

Several European countries have recently struggled with these same questions of how to redress past human rights as they have moved from dictatorship to democracy. Their approaches have been mixed. Spain, because of the nature of the Spanish Civil War, the long Franco regime that followed and the negotiated nature of the transition to civilian rule, virtually ignored the human rights violations of the Franco period. Greece, on the other hand, actively prosecuted those responsible for human rights abuses during the 1960's under "the Colonels." For the newly emerging democracies of Eastern Europe, the decision of how best to handle past human rights transgressions has not yet been made.

### 1. Spain

Between 1924 and 1936, diverse ideological groups of the right and left engaged in an intense political struggle in Spain, and in 1936, this ideological conflict blossomed into a full-scale civil war.<sup>73</sup> When the war ended in 1939, the left was defeated and many leftists fled to exile. General Francisco Franco took power and for the next several years his brand of fascist/military dictatorship engaged in gross human rights violations, including arbitrary arrest, imprisonment, torture, and execution. Around 1960, however, a more moderate phase began. Opposition groups from the Catholic Church, labor, and higher education succeeded in gaining some concessions. The press and the media became more open, and democracy was openly promoted in the universities. These accomplishments, however, did not signal a complete end to the repression. Arrest and prosecution of labor and student leaders continued, albeit sporadically.<sup>74</sup>

When Franco finally died in 1975, enlightened leaders such as King Juan Carlos and Prime Minister Adolfo Suarez deftly directed the transition to democracy. Juan Carlos championed rapid liberalization in both work and deed.<sup>75</sup> Suarez installed liberal General Gutierrez Mellado as Minister of Defense.<sup>76</sup> Then Suarez, with United States support, cleverly enveloped the Francoist military hierarchy in NATO. They became so absorbed in committees, meetings, and travel that the civilian government

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72. *Panama Urged to Investigate Civil Rights Abuses Past*, REUTER LIBR. REP., Apr. 4, 1991.

73. The best account of the Spanish Civil War in English is H. THOMAS, *THE SPANISH CIVIL WAR* (1986).

74. See generally THOMAS LANCASTER & GARY PREVOST, *POLITICS AND CHANGE IN SPAIN* (1985). See also RAYMOND CARR & JAMES FUSI, *SPAIN: DICTATORSHIP TO DEMOCRACY* (1979); JOHN COVERDALE, *THE POLITICAL TRANSFORMATION OF SPAIN AFTER FRANCO* (1979); and PETER PRESTON, *SPAIN IN CRISIS* (1976).

75. James Malefakis, *Spain and Its Francoist Heritage*, in *FROM DICTATORSHIP TO DEMOCRACY* 225 (J. Henz ed., 1982).

76. *Id.* at 226.

was free to map the transition to democracy.<sup>77</sup>

The issue of amnesty was defused. In July 1976 and March 1977, all political prisoners were released.<sup>78</sup> Those in the police and military who were responsible for the gross human rights abuses that had occurred in the 1940s and 1950s had either died or, if still alive, were retired. Memories of the past brutality had sufficiently faded so that redress never became a major issue. The people of Spain appeared content with utterly repudiating the Francoist past at the polls.<sup>79</sup>

Since 1975, Spain has witnessed a remarkable series of events: the dismantling of the 36-year-old Franco fascist/military dictatorship; its replacement in 1979 with a constitutionally elected government; and in 1982, 1986, and 1989, the election of Socialist majorities in the Spanish Parliament. Today Spain stands as one of the more stable parliamentary democracies in Europe.<sup>80</sup>

## 2. Greece

In 1967, George Papadopoulos established the military dictatorship of "the Colonels" in the nation renowned as the birthplace of Western democracy. In the early stages of his regime, Papadopoulos spoke of providing a transition to parliamentary democracy, but the deeds of his dictatorship served instead to halt and reverse the process of democratization. Maladministration, scandal, corruption, and human rights abuses, including the systematic use of torture, became hallmarks of the regime.<sup>81</sup>

The immediate cause of the Colonels' loss of power was its ill-conceived military adventure in Cyprus in 1974. This foolish act gave Turkey the excuse it needed to seize a section of the island. Senior Greek military officers who had previously supported the establishment of the Papadopoulos junta<sup>82</sup> decided that a return to civilian rule was appropriate to prevent the military disaster that would result from a full-scale war with Turkey.

A new government was immediately formed under the leadership of exiled former premier Constantine Karamanlis. The military attempted

77. Remarks of Professor Howard J. Wiarda, American University Symposium, *supra* note 1, at 1026-27.

78. Malefakis, *supra* note 75, at 226.

79. *Id.* at 223 & 227.

80. Fred Lopez, *Bourgeois State and the Rise of Social Democracy in Spain*, in RONALD H. CHILCOTE, *TRANSITIONS FROM DICTATORSHIP TO DEMOCRACY* 17 (1990).

81. See generally CONSTANTINE TSOUCALAS, *THE GREEK TRAGEDY* (1969). See also Kourvetaris, *The Role of the Military in Greek Politics*, 8 *INT'L REV. HIST. & POL. SCI.* 91 (1971); see generally RICHARD CLOGG & GEORGE YANNOPOILOS, *GREECE UNDER MILITARY RULE* (1972), R. ROUFAS, *INSIDE THE COLONELS' GREECE* (1972) and RICHARD CLOGG, *A SHORT HISTORY OF MODERN GREECE* (1979).

82. Harry Psomiades, *Greece: From the Colonels' Rule to Democracy*, in *FROM DICTATORSHIP TO DEMOCRACY* 252-55 (J. Henz ed., 1982); S. Hadjiyannis, *Democratization and the Greek State*, in CHILCOTE, *supra* note 80, at 131, 132-39.

to barter for an amnesty, but to no avail. Karamanlis initiated a series of decrees aimed at both redress and setting Greece on the road to democracy. All political prisoners were released. Over 100,000 civil servants who had served between 1967 and 1974 were either disciplined, transferred, or dismissed. The Military Police were stripped of the authority that had made them a dreaded instrument of the dictatorship.<sup>83</sup>

In late October 1974, the five ringleaders of the 1967 coup, including Papadopoulos, were arrested. A few days later, they were officially charged with high treason<sup>84</sup> along with 44 former officers. Their trials received widespread radio, television, and press coverage and highlighted the gross human rights abuses of the 1967-74 era. Eighteen of the military leaders were convicted with sentences ranging from substantial time in prison to death. To avoid any possibility of creating martyrs, the death sentences were immediately commuted to life imprisonment.<sup>85</sup>

Other trials followed that were more controversial.<sup>86</sup> Offenders who had "turned state's evidence" escaped prosecution. Some who were convicted were set free after paying modest fines or were given suspended sentences. No compensation, except reinstatement in jobs where possible, was provided for the victims of torture.

Nevertheless, the Greek experience stands in sharp contrast to that of most other countries that have made the transition to democracy. The Karamanlis government brought to justice those most responsible for the gross human rights abuses of the Colonels' rule.<sup>87</sup>

### 3. Eastern Europe

The recent transition from dictatorships to elected civilian rule in Eastern Europe resulted from increasing economic hardships, bankrupt ideology, and the loosening of the Soviet grip on the region. One of the questions now facing the new governments is how best to deal with past human rights abuses.<sup>88</sup> Two examples serve to illustrate the problems.

#### a. East Germany

The East German communist regime collapsed in 1989. Erich Honecker, the former dictator who is charged with responsibility for the deaths of more than 200 persons shot while trying to escape across the border to West Germany, and former state security (Stasi) Minister Erich Mielke, were scheduled for trial. The 78-year old Honecker was, however,

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83. Psomiades, *supra* note 82, at 255.

84. *Id.* at 255.

85. AMNESTY INTERNATIONAL, *TORTURE IN GREECE: THE FIRST TORTURERS' TRIAL*, 1975 (1977).

86. Psomiades, *supra* note 82, at 265.

87. *Id.*

88. Paul Taylor, *Human Rights Accords, Once Dead Letter, Flourish in E. Europe*, REUTER LIBR. REP., Nov. 13, 1990.

spirited out of Germany in March 1991 in a Soviet military aircraft, ostensibly for medical treatment.<sup>89</sup> Mielke, age 83, is said to be senile.<sup>90</sup> On May 21, 1991, Willi Stoph (the former prime minister), Heinz Kessler (the former defense minister), Fritz Streletz (the former secretary of the National Defense Council), and Hans Albrecht (another Council member) were also arrested for their participation in adopting the shoot-to-kill order in 1974.<sup>91</sup>

Beyond these former leaders, the major question confronting the new united German government is how to deal with the more than 100,000 former Stasi agents and the much larger number of persons who collaborated with them in violating human rights in East Germany.<sup>92</sup> According to the newspaper *Der Morgen*: "There is only a vague hope of more trials against those who ruled East Germany close to bankruptcy, ignored human rights and almost succeeded in robbing the 17-million-strong population of its dignity."<sup>93</sup>

#### b. Romania

Romania held its first multiparty parliamentary and presidential elections in fifty years in May 1990, five months after Nicolae Ceausescu's rule was overthrown in what appeared to be a popular revolt. In fact, coup plans had been in the works for more than a decade. When nationwide demonstrations began in December 1989, Ceausescu loyalists within the Romanian Army, who had been firing on the demonstrators, suddenly switched sides on December 21, and backed the National Salvation Front (F.N.S.). Days later, after Ceausescu's execution, the bulk of those responsible for past human rights abuses — the specialized paramilitary police force known as the Securitate — laid down their weapons. It was obvious that a deal had been struck so that the military and Securitate would not be held accountable.<sup>94</sup>

Although the government of President Ion Iliescu has conducted show trials of Ceausescu's son and brother (a former general) and some former Securitate leaders, it is clear that nothing more will be done to bring to justice to those responsible for past human rights abuses. In fact, had Iliescu been unable to suppress the June 1990 demonstration in

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89. John Tagliabue, *4 Ex-Officials of East Germany Arrested*, N.Y. TIMES (Nat'l ed.), May 22, 1991, at A3, col. 4.

90. Christian Burckhardt, *First Former East German Leader Goes on Trial*, REUTER LIBR. REP., Jan. 19, 1990.

91. Tagliabue, *supra* note 89.

92. Allen Kinzer, *Germany's New Custodian of Stasi Secrets Insists on Justice*, N.Y. TIMES, Jan. 20, 1991, at A12, col. 1.

93. Burckhardt, *supra* note 90.

94. Paul Hockenos, *Romania a Year Later: The Winter of Our Discontentment*, THE NATION, Jan. 7, 1991, at 14.

Bucharest's University Square, the military and Securitate would probably have reasserted themselves in the name of law and order.<sup>95</sup>

### C. *East Asia*

The Asia/Pacific region is the only part of the world without a regional human rights charter.<sup>96</sup> One reason may be the size and diversity of this region. Another reason, particularly applicable to East Asia (China, Japan, and Korea), is the legacy of Confucianism, which tends to both deemphasize individual rights and stress harmony rather than compulsion.<sup>97</sup>

#### 1. South Korea

South Korea's recent experiment in moving from authoritarian rule to democracy has not included a major examination of past human rights abuses. Roh Tae Woo, a former general and confidant of former dictator Chun Doo Huan, was elected president in 1987, in Korea's first free election; since then this Asian nation of some forty-two million has resisted a return to military rule.<sup>98</sup> Major problems nonetheless remain.

Critics cite continuing human rights violations, particularly infringements on student and labor organizations. They also note that the pervasive internal security apparatus and the laws that supported three decades of oppression under military rule are still in place.<sup>99</sup> Roh's October 1990 "war on crime" has brought charges of human rights abuses by both Amnesty International and Asia Watch.<sup>100</sup>

Roh's government has acted to redress some past human rights transgressions, but with a rather obvious attempt to balance the punishment of past misdeeds against a desire to counter demonstrations against Roh's leadership. In one recent case, Kwon In-sok, who was sexually abused by a police detective after her arrest in 1986, was awarded forty million won (\$58,000) and the police detective was sentenced to five years in jail.<sup>101</sup> Yet in another incident involving the pre-1987 detention of labor activist Kim Keun-tae, despite the fact that the government itself provided evidence of torture, the case against the four accused police officers remains on hold.<sup>102</sup>

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95. *Id.*

96. See generally Jon M. Van Dyke, *Prospects for the Development of Intergovernmental Human Rights Bodies in Asia and the Pacific*, in *NEW DIRECTIONS IN HUMAN RIGHTS*, 51, 52 (E. Lutz, H. Hannum & K. Burke eds., 1989).

97. *Id.* at 56.

98. Fred Hiatt, *S. Koreans Reflect on Changes: Nation Marks Third Anniversary of Start of Democratization*, *WASH. POST*, June 29, 1990, at A29.

99. *Id.*

100. *Id.*

101. *S. Korean "Sex Torture" Victim Opens Labour Office in Seoul*, *REUTERS LIBR. REP.*, Feb. 13, 1990.

102. David E. Sanger, *Crackdown in a 'Freer' Korea Puzzles Opposition*, *N.Y. TIMES*,

## 2. Philippines

Human rights violations were a central issue giving new momentum to the "People Power" revolution that ousted dictator Ferdinand Marcos in February 1986. President Corazon Aquino acted immediately to release all political prisoners and to establish a Presidential Committee on Human Rights to investigate past abuses. A new constitution was drafted that insured the dignity of every human and guaranteed full respect for human rights.<sup>103</sup>

Primarily because of the fragility of the Aquino government, however, little has been done in the Philippines to bring to justice those responsible for past human rights transgressions. The Aquino government's main contribution has been to support civil suits in the United States against Marcos family members for the human rights crimes perpetrated during the Marcos era.<sup>104</sup>

### IV. "UNIVERSAL" FORUMS FOR REDRESSING HUMAN RIGHTS ABUSES

The mixed pattern of national responses to human rights abuses described above indicates that some back-up or fail-safe systems are needed to buttress each nation's ability to redress the abuses that occurred during the previous authoritarian regime. If international law does indeed require that all serious violations of physical integrity be punished,<sup>105</sup> then the mechanisms of international law should be called upon to assist this process. Although these mechanisms are still in a primitive and evolving state, they can serve to reinforce national resolve and assist where the nation may feel inadequate to address the task.

#### A. *The Global Forum — The Human Rights Committee, Geneva*

More than fifty nations have now ratified the Optional Protocol to the International Covenant of Civil and Political Rights,<sup>106</sup> which allows citizens to bring complaints against their own government. The Human Rights Committee consists of eighteen experts elected by those nations that have ratified the Covenant, and they are now actively evaluating complaints and issuing opinions concerning the alleged human rights abuses. Some of their opinions have addressed major human rights abuses, and they have already established interpretive norms on the

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Aug. 3, 1990, at A2, col. 1.

103. Ben Cohen, *Warning: Joining the Bar is Hazardous to Your Health*, FAR E. ECON. REV., Nov. 3, 1988, at 80-81; *The New Constitution of the Philippines*, 38 THE REVIEW, INT'L COMMISSION OF JURISTS 12 (1987).

104. Cohen, *supra* note 103. See *In re Estate of Ferdinand E. Marcos Human Rights Litigation*, MDL No. 840 (1991) (a class action suit on behalf of all the victims of torture and murder in the Philippines during the Marcos martial law era; trial is scheduled for August 1992).

105. See *supra* notes 5-12 and accompanying text.

106. ICCPR, *supra* note 8.

meaning of many of the provisions of the Covenant.

One of the first decisions of the Committee in 1979, for instance, dealt with torture in Uruguay and the Committee concluded that torture and other inhumane treatment had occurred.<sup>107</sup> During this early period, the Committee established the rule that if a nation did not respond to the Committee's request for information about a complaint, "the Committee may consider such allegations as substantiated in the absence of satisfactory evidence and explanations to the contrary submitted by the State party."<sup>108</sup> Once a complaint is received, therefore, the burden shifts to the government to respond to it, and if the government provides only vague or conclusory comments the Committee will accept the allegations as true.

Another early case involved the summary execution of fifteen prominent citizens by the Suriname government in 1982. The Committee ruled that this action had violated their right to life and ruled that the government had a duty to compensate the families of the victims.<sup>109</sup> Although the Committee does not have the power to enforce its rulings, it is expected that the courts of each contracting party to the Covenant will enforce them.

These and the many similar opinions that the Human Rights Committee is issuing should provide a strong framework for providing redress for human rights abuses, and should reinforce the obligation of each nation to protect human rights.

### B. *The Regional Forums*

Three regional human rights conventions are now operational in Europe, the Western Hemisphere, and Africa.<sup>110</sup> Each allows individuals to bring complaints, and nations can also bring complaints against other nations in some circumstances. The most dramatic case relevant to redressing abuses is the case brought by Denmark, the Netherlands, Norway, and Sweden against Greece during the period of the Colonels.<sup>111</sup> The European Human Rights Commission established a Subcommission to examine the merits of the case, but after some initial cooperation the Colo-

107. Uruguay Human Rights Case, 16 U.N. CHRONICLE 66 (July-Oct. 1979). *See also*, e.g., Case of Hiber Conteris, Communication No. 139/1983; CCPR/C/25/D/139/1983 (July 23, 1985) (concluding that Uruguay had violated the complainant's human rights through extreme ill-treatment during periods of confinement).

108. Hiber Conteris, *supra*, note 107.

109. Communications Nos. 146/1983 and 148-54/1983; CCPR/C/24/D/146/148-154/1983 (April 4, 1985).

110. European Convention for the Protection of Human Rights and Freedoms, *supra* note 8; American Convention on Human Rights, *supra* note 8; African Charter on Human and Peoples' Rights, *done at Banjul*, June 27, 1981, *entered into force* Oct. 21, 1986, O.A.U. Doc. CAB/LEG/67/3 Rev. 5 (1981), *reprinted in* 21 I.L.M. 59 (1982).

111. The Greek Case, 12 Y.B. EUR. CONV. ON HUM. RTS (1969) (Eur. Comm'n on Hum. Rts). *See* James Becket, *The Greek Case Before the European Human Rights Commission*, 1 HUM. RTS. J. 91 (1970).



nels refused to allow the Subcommittee members to visit certain notorious prisons. The Subcommittee and then the full Commission prepared a report condemning Greece, and the Committee of Ministers was prepared to vote on a proposal to suspend Greece from the Council of Europe in December 1969 when Greece walked out of the meeting and then withdrew from the Council and the European Convention. European banks withdrew financing from Greece; because of the economic hardships and the invasion of Cyprus described above,<sup>112</sup> the Colonels were overthrown and democracy returned.<sup>113</sup> The new government then prosecuted the abusive military leaders in the most successful example of a full redress.

In the Inter-American system, the *Velasquez Rodriguez Case*<sup>114</sup> states that affirmative obligations exist to investigate human rights abuses and make a full accounting. This decision establishes a strong precedent and indicates that the Inter-American Human Rights Commission and Court will be vigilant in trying to ensure that human rights abuses are properly redressed.

### C. *The Domestic Forums of Other Nations*

Another useful way to redress human rights abuses is to bring civil suits against the abusers if they should seek asylum or a safe haven in another country. In the United States, these actions have been successful in recent years under the Alien Tort Claims Act,<sup>115</sup> which provides jurisdiction for aliens suing for torts committed in violation of international law. Suits brought by victims of torture and murder and their families against human rights abusers from Paraguay,<sup>116</sup> Argentina,<sup>117</sup> and the Philippines<sup>118</sup> (for abuses that have occurred in those countries) have led to verdicts in favor of the victims and their families. Collecting judgments remains a challenge, but the principle appears to have been firmly established that U.S. courts will provide a forum for human rights cases if personal jurisdiction can be obtained over an alleged abuser.

### D. *Other Remedies*

Extra-legal remedies are also possible, although they present risks of

112. See *supra* note 82 and accompanying text.

113. FRANK NEWMAN AND DAVID WEISSBRODT, *INTERNATIONAL HUMAN RIGHTS* 478-79 (1990).

114. See *supra* note 11 and accompanying text.

115. 28 U.S.C. § 1350. See also Torture Victim Protection Act, Pub. L. No. 102-25, CONG. REC. H11244 (signed into law March 12, 1992).

116. *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

117. *Forti v. Suarez-Mason*, 672 F. Supp. 1531 (N.D.Cal. 1987) and 694 F.Supp. 707 (N.D.Cal. 1988).

118. *Trajano v. Marcos*, Civ. No. 86-0207 (May 13, 1991)(award of \$4.5 million to the family of a young man tortured and killed, against Imee Marcos).

destabilizing the legal system. Kidnappings<sup>119</sup> have occurred, as in the Eichmann situation where Israeli agents entered Argentina and spirited the administrator of the death camps back to Israel for trial.<sup>120</sup> Although Israel was scolded for this act by the U.N. Security Council, Argentina did not object with any vigor, and Israel's assertion that it could assert universal jurisdiction over Eichmann's heinous crimes has been accepted. The United States' actions in Panama in December 1989 which led to the seizure of General Manuel Noriega are similar in some respects. The United States justified its entry as necessary to protect vital national interests and to free Panama from the burdens of an authoritarian dictator.<sup>121</sup>

The concept of "humanitarian intervention" has become increasingly recognized, although it remains highly controversial.<sup>122</sup> When, if ever, do human rights abuses justify intervention by one or more countries into another to free the citizens of that country? Although few commentators are willing to give a green light to this type of activity because of its susceptibility to abuse, examples can be found of this type of intervention and it is frequently met with general approval.

#### V. CONCLUSION

The momentum toward freedom and the protection of individual and group rights has been steadily increasing in recent years, and it appears as if we may be on the threshold of an era in which the goal of universal respect for human rights is at hand. To hasten the movement toward this important goal and to secure the gains that have already been made, it is useful to identify and punish in a full and formal manner those government officials who have abused their positions of power by seriously violating the physical integrity of their citizens. A strong argument can be made that international law already requires such an accounting, and even if it does not such prosecutions can be justified as necessary to deter future misconduct and ensure that the historical record of the past misconduct is accurate.

Most new democracies have, however, been unwilling or unable to embark on this path. Except for Greece, the efforts to redress the human rights abuses have been disappointing. It is necessary for the international community to assist newly emerging democracies so that they do not have to shoulder the entire burden of punishing the members of the authoritarian regime that previously governed. International and regional

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119. See generally Recent Development, *The Domestic and International Legal Implications of the Abduction of Criminals from Foreign Soil*, 26 STAN. J. INT'L L. 573 (1990); and *United States v. Alvarez-Machain*, No. 91-712 (argued before the Supreme Court April 1, 1992).

120. *Attorney General of Israel v. Eichmann*, Israel, Supreme Court 1962, 36 INT'L L. REP. 277 (1968).

121. See *supra* note 70 and accompanying text.

122. See Ved Nanda's article in this issue.

human rights bodies can assist greatly by adjudicating disputes and clearly articulating the rules that govern these situations. National courts of other nations should also be receptive to providing jurisdiction for civil suits.

Redressing human rights abuses is not a matter of vengeance, but one of simple justice. The victims deserve the dignity of a full redress, and the commitment to a rule of law and democratic principles can be greatly strengthened by this process. The process of developing and strengthening international and regional human rights mechanisms should greatly assist the achievement of this goal.

