<u>Executive Summary of the Southern Cone Hearing</u>
Buenos Aires, Argentina
31 October - 1 November 2006

> *"All this memory is useful, not only to see the continuity, but also to predict and avoid the appearance of these emergencies, which come periodically to justify an authoritarian exercise of powers, violating all human rights. I wish the work of this Committee of experts will make the world conscious that the horrors of the past look too much like the horrors of the present, which is something that we cannot allow."*
> (Oral testimony by Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

From 31 October to 1st November 2006, the Panel, represented by Raúl Zaffaroni, Robert Goldman and Stefan Trechsel, held a sub-regional hearing in Buenos Aires. During the hearing, organised by the International Commission of Jurists in coordination with its Argentinean affiliate Centre for Legal and Social Studies *(Centro de Estudios Legales y Sociales)* (CELS), the Panel considered experiences in Argentina, Brazil, Chile, Paraguay and Uruguay ("The Southern Cone") during the 1970s and 1980s. Lawyers, human rights defenders, academics and Government officials addressed the Panel to assess the impact of measures taken under the guise of national security, and their impact on societies and the rule of law, and gross human rights violations. All participants explored the lessons learnt from those experiences for the current "fight against terrorism". The hearing also addressed contemporary challenges to countering terrorism in the region in light of past experiences, although participants agreed that terrorism is no longer a major threat in the region, except for specific circumstances such as the attacks on Argentinean soil in the 1990s. Finally, the Panel held private meetings with several members of the Argentinean Government.

1 <u>Lessons to be learnt from the Latin American experience</u>

A number of participants informed the Panel that after 9/11, there was a strong opposition in their countries to the adoption of new anti-terrorist legislation, partly because of lessons learnt from the period of the military dictatorships of the 1960s, '70s and '80s, including the broad powers concentrated in the Executive and serious violations of human rights. The period has left a legacy of thousands of victims, many of whom continue to fight against impunity and caused significant damage to the rule of law. They observed that in most countries, no special legislative measures had been taken since 2001 and existing criminal law was considered sufficient to punish any act that might be considered a terrorist act.

Many participants expressed serious concerns about the similarity between measures adopted in the name of the fight against terrorism by many countries around the world since 11 September 2001 and those implemented in the Southern Cone in the 1970s and 1980s. Among those measures, participants highlighted the establishment of clandestine detention centres, the use of torture to extract information and the extension of military jurisdictions to try suspected "terrorists" or "subversives". They expressed disappointment with the fact that the few States appeared to be heeding the lessons to be learnt from their experiences.

"Many of the current detentions –whether in Guantánamo or in other clandestine centres that are or were working until recently in Europe-, technically are nothing else than enforced disappearances, since the States and the people in charge of the disappearance deny having information about these detainees".
(Oral testimony by Gastón Chillier, Executive Director, CELS, Argentina, original in Spanish, translation by the ICJ)

"It seems ridiculous that the world knows through media that there are clandestine centres of detention where detainees of the supposedly preventive wars encouraged by the USA and other countries are systematically tortured, while in Argentina the conscience of what those kind of clandestine centres implied is being formalised. Justice has already recognised that conditions of life of clandestine centres constituted cruel, inhuman and degrading treatment and, at the same time, in its systematisation and combined effect, an imposition of torments, since they were designed to cause in an intentional manner pain and grave sufferings, both physical and mental, to the captives. These circumstances are very much like the circumstances that are known to happen in Guantanamo and other places of the world. It is not a coincidence that the military and members of armed forces of Latin America that executed the illegal repression were formed in the "Escuela de las Americas" under the instruction of North American militaries."
(Oral testimony by Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

"We do not support terrorism, but we do not accept either that the pretext of the fight against terrorism be used to justify violent aggressions, violation of rights, of dignity, of freedom of human beings (…) What happened during the twenty years of Brazilian dictatorship will be of enormous usefulness so that the population knows and never again succumbs to the false reasoning of those who, presenting themselves as defenders of liberty and fundamental freedoms of human beings, in reality look for satisfaction of their own ambitions or the obtaining of power to impose their intolerance. "
(Oral testimony by Dalmo de Abreu Dallari, Professor of Law, University of São Paulo, Brazil, original in Spanish, translation by the ICJ)

In relation to Argentina, and in the light of the experiences lived during the 1970s and 1980s, both Government and civil society representatives met by the Panel stressed that terrorism should be resisted within the ordinary legal framework and with strict respect for human rights and the rule of law. Their position was clear: the fight against terrorism is necessary, but it should respect international and domestic norms, including international human rights law, international humanitarian law and refugee law.

"The Argentinean position is that fighting terrorism is an imperative objective of the international community, and must be pursued while respecting national and international legality, i.e. within the framework of the National Constitution, the laws, and the international treaties signed by the Republic. This current position is related to the challenges of the present and the lessons of the past. (…) It is a lesson inherited from the past that departure from legality under the alleged pretext of threats to security inevitably leads to an ethical and practical degradation of the State and the society, to generalised chaos and to political, economical and social instability. "
(Oral testimony by Rodolfo Mattarollo, Under-Secretary for the Promotion and Protection of Human Rights, Ministry of Justice, Security and Human Rights, Argentina, original in Spanish, translation by the ICJ)

2 The "National Security Doctrine" and the Emergency Laws

2.1 The National Security Doctrine

There was a clear consensus about a number of similarities between security measures adopted in the Southern Cone during the dictatorships and counter terrorism measures adopted in other countries since 9/11, such as emergency laws becoming permanent, the role of military and special courts, broadly defined laws on apologia, and the practice of torture, enforced disappearances and renditions. Many speakers questioned whether the world has learnt the lessons so dramatically learnt in the Southern Cone. Martín Sbrocca, from the Institute for Legal and Social Studies (IELSUR), Uganda, considered that today's situation was a continuation of the "National Security Doctrine" and that the protection of humanity against terrorism was being seen as an open door to any kind of abuses.

The recurring theme during the hearing was the role played by the National Security Doctrine in providing the theoretical basis for all the exceptional measures and atrocities carried out during the Latin American military regimes. Speakers explained that this doctrine had formed the basis for the creation of a repressive system by the military, in which, in the name of security, fundamental rights and freedoms were massively violated, and the rule of law and the democratic system damaged.

According to participants, the National Security Doctrine incorporated French counterinsurgency concepts (used in Algeria and Indochina in the 1950s) and had been spread by the US through the training of Latin American armies in "the School of the Americas" in Panama. It had been progressively implemented in the Southern Cone in the 1960s. The theory was based on a bipolar vision of the world, in the context of the Cold War. Its foundation was the existence of a "permanent war" between the Christian West and communist East. In Latin America, this was seen as embodied by real or potential revolutionary communist insurrection within each country. As it was deemed to be a permanent and unconventional war, the usual rules of democratic states could not be maintained and nations had to adapt all their structures to face all the different manifestations of this insurrection.

Participants explained that destruction of the "internal enemies" and their supporters became the objective and the supreme goal of Latin American dictatorships. To eliminate this internal threat, responsibility for both internal (against "insurgency" and "communism") and external security had been vested in the military, who became the guardian of security, development, morality, and the "destiny of the western world." In this context, repressive practices were first used against armed movements; later they were used against left-wing groups, Marxist and non-Marxist; and finally against all groups suspected of political opposition. At that stage, anyone who proposed a substantial change to the existing social system or supported a different ideology was considered an enemy of the Government, and consequently, of the Nation. They were labelled as "subversives", "terrorists" or "communists". Martín Almada, a victim of the repression, explained the concept of subversion to the Panel by providing the copy of an official document saying: "Subversion, for a couple of years, is present in our Continent, sheltered by political and economical conceptions that are fundamentally contrary to our History, Philosophy, Religion and to the specific customs of our Hemisphere."

However, several speakers contended that although the main reasoning of military

governments when adopting repressive measures was the fight against "terrorism" or "subversion" to restore public order, the response in the Southern Cone had been disproportionate, especially given that wherever "subversive" groups existed had been dismantled or neutralised shortly before or immediately after the beginning of repression.

This was illustrated, for example, by Roberto Garretón, a Chilean lawyer, who stated that in **Chile**, Decree 77 of 1973 established that the Supreme Government had the obligation to extirpate Marxism from the country, since Marxist doctrine threatened values of freedom and Christianity, which were part of the national tradition. Similarly, Villagra Castro, representing the Corporation for the Promotion and Defense of People's Rights (CODEPU) from Chile, said that the enemy had been Marxist ideology, although the State called it terrorism.

"For the sake of the National Security Doctrine and to combat the so-called subversion, Uruguay became a State that systematically violated the minimum human rights standards contained in human rights and humanitarian conventions, as well as in the Uruguayan Constitution itself."
(Oral testimony by Jorge Pan, IELSUR, Uruguay, original in Spanish, translation by the ICJ)

"Human rights violations (…) were perpetrated in violation of international law and Paraguayan legislation, in terms of the right to life, the right to physical integrity, the right to live in one's own country and the right to a fair trial. Between the mid 1950s and 1989, they were systematically committed under the pretext of fighting internal subversion and international communism, in the context of the Cold War. With the unjustifiable argument of the "price of peace" (the term used by the system) and public security, a real State terrorism was committed."
(Oral testimony by Juan Manuel Benítez Florentín, Vice-President, Truth and Justice Commission of Paraguay, original in Spanish, translation by the ICJ)

"Another lesson of the violence of the military dictatorship, here and in other countries, is that authoritarian States use a supposed emergency and a supposed consensus inside the society to justify unlimited persecutions. This emergency has had different names or disguises: terrorism, subversion, external military threat, "Jewish question", plague, witchcraft or immigration. The logic of authoritarian governments consists in generating a consensus about who is the "other" who threatens the society. What is important is not the disguise, but the fact that it allows and justifies unlimited powers. Behind these supposed emergencies there are always economic interests or persecution of dissidents. This is what happened in Argentina during the military dictatorship. The supposed "subversive threat" justified the disappearance of all the political opponents, basically a whole generation who had tried to change the pre- established order, the 30,000 persons who disappeared."
(Oral testimony by Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

2.2 The war paradigm

The Panel learnt that, based on the existence of an "internal war" against subversion, all Southern Cone states had resorted to states of emergency. This notion of "internal war" had been the basis of the most hideous crimes committed during the military regimes, and created an environment of fear and complete oppression of those considered as enemy (i.e. the so-called "communists", "subversives" or "terrorists").

The existence of such war, participants added, had led to continuing states of emergency that did not respect the constitutional and legal procedures: under the pretext of maintaining order, the exception became the normal situation.

The Panel was told that the extraordinary powers of the executives and the unlimited actions of the armed forces under the states of emergency had opened the way to abuses and to the annihilation of the rule of law and the democratic system. Participants explained that military action had been legitimised in the region because the conflict was considered an "unconventional war" against an "unconventional enemy" located within the territory, which required the adoption of special measures. These measures were justified in documents such as the "Final Document on war against subversion and terrorism"[1], published by the Argentine Military Junta in April 1983.

For instance, lawyer Soledad Villagra explained that in **Paraguay** the state of siege had lasted 35 years, although the Constitution allowed it only for limited periods and under critical circumstances.

Participants from **Chile** explained that when the military overthrew the democratic Government on 11 September 1973, they passed Decree-Law N° 5 establishing a state of siege because of internal disturbance. The Decree also stated that given the situation prevailing in the country, "state of siege" should be understood as "state or time of war". This meant that the Code of Military Justice was applicable to all offences and crimes, although Military Justice was characterised by lower standards of due process.

Regarding **Argentina**, the representatives of CELS and the Argentine Team of Forensic Anthropology (EAAF) explained that the territory was divided into military areas or security zones, to ensure the military controlled the whole territory. They added that more than 600 secret detention centres functioned, usually in military or police premises.

The representatives of IELSUR said that in **Uruguay**, the state of emergency was declared in 1968 and extended until the end of the dictatorial period in 1985. Decree 277 of 1972 declared the state of "internal war" to fight "subversion", although the Uruguayan Constitution and legislation did not allow this. The state of emergency permitted the Government to give more powers to the military, while guarantees for human rights protections ceased to be applied.

"*The state of emergency in application in Argentina during this period, the derogation from the National Constitution and its guarantees, and their replacement by a statute without legitimacy, the shutting down of the National Congress, and the lack of independence of the Judiciary, together generated a context that allowed the State to create a plan to massively disappear people, including through the appropriation of minors.*"
(Oral testimony by Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

"*Dead people, disappeared people, people arbitrarily detained without a possibility to defend*

[1] Quote: "The Nation was in war (…), security and order did not exist. The period of selective killings was followed by a phase of indiscriminate terrorism, which produced victims in all sectors of the Argentinean Society (…) The particular nature and characteristics of this kind of surprising, systematic and permanent attack, obliged the State to adopt new procedures."

themselves, people whose possessions were appropriated, exiled people; it is very difficult to quantify the damage caused by the way in which the state of siege was applied in Paraguay."
(Written submission by Soledad Villagra, Lawyer, Paraguay, original in Spanish, translation by the ICJ)

3 Legal framework

The use of a war rhetoric and attitude in order to stop the advance of communism allowed the military regimes to take a series of legal measures seriously affecting rights and liberties. The participant from CELS explained that there had been a formal level of repression (as opposed to an extralegal level), which consisted in a series of legislative measures adopted to eradicate "subversion" and preserve national security, based on the argument that the Government was trying to "bring order".

The Panel heard that, in some countries, national Constitutions had been derogated or modified, while in others they were subordinated to the regulations of the military governments, as happened in Brazil. In this context, participants explained, governments had formally adopted legislation according to which all powers were concentrated in the Executive (including authorising detention and decisions on the form and place out of detention); punishments for terrorism related crimes were disproportionately toughened; wide powers were vested in the military (including the power to arrest and detain alleged "subversive" elements); military courts' jurisdiction was extended and they were empowered to try civilians; legislatures were closed down; the Judiciary was subordinated to the Executive; and opposition was silenced.

3.1 Crimes related to "terrorism"

Participants from almost all countries said that in the abovementioned context of exception, an extended legal framework of crimes with very severe sanctions was enacted in clear violation of the principles of the rule of law. They stressed that not only "terrorist", "subversive" and communist related acts had been criminalised, but also all related activities such as propaganda or apologia. Mr. Sbrocca from IELSUR explained that there was not a clear definition of "terrorism".

Participants from **Argentina** explained that law 20.840 had provided punishments for those who, "to achieve the finality of their ideological postulates, intend or recommend by any means to alter or suppress the institutional order and social peace of the Nation." It also punished those who carried out acts of divulgation, propaganda or dissemination, aiming at indoctrinating, instructing or making proselytism of such conducts.

Lawyer Soledad Villagra stated that in **Paraguay**, laws 294 (from 1955) and 209 (from 1970) had formed the normative framework for repression: they were both aimed at repressing any kind of "subversive" manifestation, including Marxism, communism or any other opposition that could threaten the Government.

According to the representatives of IELSUR, in **Uruguay**, the Law "National Security and Public Order" from July 1972 created a series of new crimes, including "subversive association", which consisted in associating "to propose changing by

direct acts the Constitution or the form of the Government by means not admitted by Public Domestic Law."

Moreover, the Panel heard that in some countries, the death penalty had been introduced on a permanent basis for crimes classified as "subversive". Lawyer Roberto Garretón explained that in **Chile**, Decree Law No. 5 modified existing laws on the internal security of the State and on control of weapons, increasing punishments and establishing the death penalty for crimes such as organisation of public militias, carrying firearms without authorisation, and clandestinely entering the country. In **Argentina**, Law 21.264 provided that all those who created a risk for persons or goods by arson, explosion or analogous means could be punished with prison for undetermined periods of time or by death.

"Terrorism is a method, not an ideology, and cannot be associated with any ideology. In this sense it is tremendously dangerous that ideological conducts are criminalised as pro-terrorism, sympathy with terrorism. "
(Oral testimony by Hiram Villagra Castro, Corporation for the Promotion and Defence of People's Rights (CODEPU), Chile, original in Spanish, translation by the ICJ)

The current situation in **Chile** was analysed by Roberto Garretón and Sergio Fuenzalida, from Center for Public Policy and Indigenous Rights, ARCIS University. They expressed great concern about the fact that a number of laws from the period of military dictatorship were still in force, including the antiterrorist legislation of 1984, the enshrinement of national security concerns in the 1980 Constitution and the jurisdiction of military courts to try civilians. They explained that the 1984 legislation (in its original version) treated terrorism as a political or ideological offence, but it was amended in 1991 to remove political connotations and to conceive terrorism as a type of violent crime against persons, defining terrorism as an "attack against life, physical integrity or liberty by means which produce or may produce indiscriminate harm, with the purpose of causing fear in a part of or all of the population." They also indicated that the list of offences that can potentially constitute crimes of terrorism was wide. They questioned the inclusion in this list of the crime of arson, which is not necessarily an attack against life, physical integrity or liberty.

Both Chilean participants expressed great concerns about the application of the 1984 Anti-Terrorism Act to members of the Mapuche indigenous community for attacks against property. Sergio Fuenzalida said that this was an example of a wrong use of such law, but added that since November 2004, responding to international pressure, certain Oral Trial Tribunals changed their views and absolved some of the indigenous people facing criminal charges under this act. He added that this law reflected the principle of "criminal law of the enemy", according to which the fact of belonging to a particular group in itself creates a presumption of culpability. They also noted that the government had proposed an amendment to this legislation that, if adopted, would exclude attacks against property from the list of terrorist offences.

3.2 Militarisation of justice

During the hearing, the Panel learned that as a consequence of the "war paradigm", justice was militarised in many aspects.

Several participants explained that the existence of the alleged "internal war" had allowed the functioning of military tribunals with wide competences, including trying civilians, regardless of whether the offences were covered by ordinary criminal codes or by Military Justice codes. Special military courts were established or the jurisdiction of the existing ones was enlarged to include "subversion" and "terrorism" related crimes. This displacement of jurisdiction in favour of military tribunals contributed to the weakening of the ordinary justice system.

According to the representatives of IELSUR, in **Uruguay**, the "National Security and Public Order" law from July 1972 put under military jurisdiction crimes that were previously under civilian jurisdiction, to allow the military tribunals to try civilians.

In **Chile**, in theory, the Supreme Court enjoyed supervisory powers over the military tribunals. Nevertheless, as lawyer Roberto Garretón explained, the Supreme Court yielded this power in the immediate aftermath of the coup when it declared that it had no competence to supervise the War Councils. This abdication of its supervisory role over the military courts was subsequently codified in the 1980 Constitution. The Panel heard that trials before these tribunals were summary wartime procedures, without respect for basic rules of fair trial and due process. For example, witnesses' identities were kept secret and there was no right to choose a private attorney.

Speakers also highlighted that, during the dictatorships, police and armed forces had been given extended powers over the civilian population. For instance, the Executive Director of CELS, Gastón Chillier, described how in **Argentina** the police and the armed and security forces had been given the power[2] to investigate "subversive" crimes, and to interrogate, arrest and obtain evidence through summary proceedings. He added that Law 21.460 had given them the power to detain and investigate persons suspected of crimes of "subversion" when they had "half proof" of their guilt, in clear violation of the presumption of innocence.

3.3 Administrative detention

During the hearing, the Panel learned that the legislation of Southern Cone states had allowed for administrative detention in times of emergency. However, participants said that the armed forces had not complied with the requirements under which such detentions had to be carried out; that the detentions had been applied arbitrarily, had not been limited in time, had not been controlled by the Judiciary and had been used to suppress the opposition. Furthermore, the Panel was told that clandestine arrests without any legal basis had been carried out in parallel with legally authorised administrative detentions.

For instance, Gastón Chillier, from CELS, explained that although art. 23 of the **Argentinean** Constitution allowed the President to detain people for short periods of time during an emergency, this power had been applied in a discretionary manner and without time limits. He stressed that detainees had been attributed direct links to terrorist organisations and that, on some occasions, even relatives trying to find out the whereabouts of the detainees were also arrested.

In **Chile**, said Roberto Garretón, the law had authorised detentions without charge and incommunicado imprisonment, and did not require the arrest to be performed in public nor the arresting officials to identify themselves, which paved the way for a

[2] Law 21.461

great number of enforced disappearances.

Participants also argued that such abuses were not adequately scrutinised by the Judiciary, and made reference to the ineffectiveness of the writs of *amparo* and *habeas corpus*. Speakers at the hearing argued that there were several factors contributing to such ineffectiveness, including the lack of will of judges and the denial of the detentions by governments.

Soledad Villagra, a lawyer from **Paraguay**, spoke about a ruling of the Supreme Court of Paraguay, according to which detainees did not have a right to *habeas corpus* in virtue of the state of siege in Asuncion. Felipe Michelini, **Uruguayan** Under-Secretary of the Ministry of Education and Culture, added that *habeas corpus* had been completely inapplicable because it had not been adequate to defend people's physical integrity, personal liberty and life. Lawyer Roberto Garretón explained that during the **Chilean** dictatorship, more than 10,000 *habeas corpus* and *amparo* remedies were submitted, and all of them were rejected.

4 Extralegal practices: "State terrorism"

Gaston Chillier, representative of CELS, explained that the second level of repression in the "fight against terrorism" had been the authorisation for the armed forces to commit atrocious crimes with total impunity. It was used in a systematic, clandestine and secret way, and was generally planned by intelligence services. It was later called "State terrorism", to clarify that it was an action of the State against its own civilian population. According to Rodolfo Mattarollo, Under-Secretary for the Promotion and Protection of Human Rights from the Ministry of Justice, Security and of Human Rights of Argentina, it was a "criminal plan structured from the highest spheres of the State." Victims from all countries detailed the ways in which this "State terrorism" operated. They explained that it was implemented by enforced disappearances, torture, appropriation of children, arbitrary detention and extrajudicial executions.

The representative of CELS, Gastón Chillier, told the Panel that some governments were arguing that 9/11 created a scenario of exception requiring exceptional measures but, in his view, today's practices in the framework of the "war on terror" were the same practices that amounted to "State terrorism" in the Southern Cone.

Several participants recognised that enforced disappearances was one of the most serious problems during the period of the military dictatorships. As Horacio Ravenna, Vice-president of the "Permanent Assembly for Human Rights" from Argentina, mentioned, it was used to pursue and eliminate persons considered suspicious, dissident or ideologically dangerous. This included not only the so-called "subversives" or "terrorists", but also anyone having links with them such as their relatives, friends and lawyers. Furthermore, Under-Secretary of Human Rights of Argentina Rodolfo Mattarollo mentioned that enforced disappearance, together with the silence of the authorities, constituted the principal instrument of the dictatorships to implement the systematic terror and to disarm any link of social solidarity. This practice, he further explained, was based on the National Security Doctrine as one of the means to suppress all the enemies of the system.

Participants explained that most acts of torture were carried out in clandestine detention centres located in different places of each State. Barnes de Carlotto, from Grandmothers of Plaza de Mayo, told the Panel that the Argentinean judiciary later

recognised that the conditions in clandestine detention centres amounted to cruel, inhuman and degrading treatment, since they were precisely designed to intentionally cause pain and suffering, both psychological and physical. The representative from CELS explained that it was proven that in Argentina, torture was applied in every single clandestine detention centre, and in several police detention centres. He said that on top of the physical torments, detainees were threatened and even obliged to listen to the moaning of others being tortured. The Panel was also told that doctors specialised in various disciplines put their knowledge to the service of committing acts of torture, executing detainees and assisting in to the births of babies in captivity.

Several participants explained that extrajudicial executions had been carried out mainly in clandestine detention centres, as well as using various methods, such as the so-called "death flights", which consisted of throwing groups of people from functioning aircrafts into the river. The representative of CELS considered paradoxical that, although the military modified the Constitutions and passed several repressive laws, they preferred using clandestine methods of repression. For example, the law allowing the death penalty was never applied, because opponents were killed clandestinely.

"The 70s and 80s have left terrible memories in Latin America, particularly in those countries that were ruled by military dictatorships or pseudo-democratic governments. Throughout the continent, armed and security forces carried out atrocities and violations against unarmed and defenceless populations. Torture, kidnappings and enforced disappearances took place in Latin America from North to South."
(Oral testimony by Marta Ocampo de Vazquez, Mothers of Plaza de Mayo – Línea Fundadora, original in Spanish, translation by the ICJ)

"The state of siege made it comfortable to take any preventive measures without accountability. It allowed [the armed forces] to arrest and detain indefinitely any person, man or woman, without accountability, without having to explain or justify."
(Oral testimony by Soledad Villagra, lawyer, Paraguay, original in Spanish, translation by the ICJ)

Appropriation of minors born in captivity illustrated the will of states to absolutely dispose of citizens' lives, said participants. The appropriation, they explained, was carried out either by adopting or by registering the child under a new name. Hundreds of appropriations were carried out in Argentina, and a small quantity in the other countries. The representative of Mothers of Plaza de Mayo, Ocampo de Vázquez, explained that these appropriations still have consequences today. In Argentina there are currently a number of judicial procedures investigating alleged appropriations. She regretted that only 85 of the more than 400 children appropriated have learned about the identity of their real parents, while the others may not even know about their situation.

"Maria Claudia was kidnapped in her house in Buenos Aires [when her husband was also kidnapped before being tortured and disappeared.] Maria Claudia did not have any political allegiance and was not even a trade union activist, but her only sin was to be seven months pregnant when she was arrested."
(Oral testimony by José Luis González, Lawyer, Uruguay, original in Spanish, translation by the ICJ)

All participants agreed that this regime of terror frightened the whole society. They highlighted that whenever people wanted to ask for justice, the Judiciary was not effective. Victims were afraid to claim a disappearance, as they could be arrested and assimilated to opponents, and their families and friends could also disappear. The same fear was shared by witnesses, who were afraid to report, and lawyers who were afraid of being involved in these cases.

But the Panel also had the opportunity to listen to the testimony of those who were not afraid to claim their rights. Marta Ocampo de Vázquez explained how Mothers of the Plaza de Mayo was formed. She said that from simple housewives, they became human rights defenders. They started looking for their own sons, but they later realised that they were looking for all those who had disappeared. She added that some mothers went through very difficult moments after opposing the dictatorship: they were imprisoned, prosecuted, kidnapped, disappeared, tortured and even killed.

> *"There was lots of fear, and also many complicities. Fear in the sense that many citizens thought that the instruments could be used against them, and consequently it was better to remain silent and look the other way; and complicity thinking that to apply these instruments to others was not a problem, because it was for the good intention of the anti-subversive and antiterrorist fight."*
> (Oral testimony by Felipe Michelini, Under-Secretary, Ministry of Education and Culture, Uruguay, original in Spanish, translation by the ICJ)

5 Regional Cooperation: the "Condor Plan"

If the National Security Doctrine was the predominant ideology of the military governments of the Southern Cone, the action of these governments were coordinated in a regional framework called "Condor Plan", a system of mutual cooperation between the dictatorships, first formulated by the Chilean Directorate of National Intelligence (DINA) and officially implemented by the governments in the region from October 1975. Martín Almada, one of the victims of this Plan, explained that the Plan operated through exchange of intelligence information between States to locate "subversive" or "terrorist" persons, as well as torture, execution, detention and clandestine transfer of political opponents to their countries of origin. It also allowed intelligence services and security forces of each country to operate in the other member States.

Martín Almada told his own story to illustrate the functioning of the Plan. In November 1974, after his studies in Argentina, he was kidnapped in Paraguay, where he was interrogated by a panel composed of military personnel from Argentina, Brazil, Chile, Uruguay and Paraguay, who questioned him about alleged connections with their home countries. In detention, he met a Paraguayan doctor who had been kidnapped in Argentina and transferred to Paraguay by Argentinean and Paraguayan police officers.

> *"Subversion has developed intercontinental, continental, regional and sub-regional commands, centralised to coordinate dissociating actions. The situation (…) does not know borders or countries, and the infiltration penetrates in all levels of national life. But countries that are being attacked politically, economically and militarily (from inside and outside their frontiers), are combating alone or, at the most, with bilateral understandings or simple "gentlemen's agreements". It is to face this psycho-political war that we have*

estimated that we should have in the International arena not a centralised command for internal action, but an effective coordination that may permit the appropriate exchange of information and experience with a certain degree of personal knowledge between responsible Chiefs of Security."
(Excerpt of the founding document of the "Condor Plan", submitted by Martín Almada, Lawyer, victim of the "Condor Plan", Paraguay, original in Spanish, translation by the ICJ)

"In Argentina 180 Uruguayan detainees disappeared, including children, showing once more the application of the Condor Plan among countries of the Southern Cone."
(Oral testimony by Marta Ocampo de Vazquez, Mothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

During the hearing, several participants drew a parallel between the "Condor Plan" methods and the current policy of "extraordinary renditions" which allows the transfer for interrogation of alleged terrorists to countries where they run substantial risk of being subjected to torture.

"It is important for this distinguished Panel to compare "Plan Condor's" practices with the ones occurring today under the justification of the fight against terrorism. Often people consider that the attacks of September 11 have created a scenario of exception, that needs to be answered through exceptional measures. And I believe that the Southern Cone experience demonstrates that the practices that are being committed today are the same already implemented in this part of the continent, precisely with the same justification: when one sees the associations between the United States and countries of Europe, Eastern Asia and the Middle East to accomplish "extraordinary renditions", one automatically thinks about the cooperation among the dictatorships of the Southern Cone at that time. That is what Plan Condor was: a regional strategy carried out jointly by countries to commit massive human rights violations."
(Oral testimony by Gastón Chillier, CELS, Argentina, original in Spanish, translation by the ICJ)

6 Impacts on fundamental freedoms

Several participants observed that the abovementioned repressive legal framework led to the suspension of a large number of fundamental rights and guarantees. Most of the submissions, both from civil society and governments, highlighted that the Latin American experience shows how the indiscriminate fight against terrorism has an impact not only on the "target population", but also on the whole community, since the rights and freedoms of all are affected.

During the hearing, several participants expressed great concern about the similarities between current measures adopted to fight against international terrorism and the erosion of the rule of law that occurred during the dictatorships.

Regarding freedoms of expression and information, Damián Loreti, Vice-Dean of the Social Sciences School, University of Buenos Aires in **Argentina**, explained that they were affected in four dimensions:

- Draconian legislation, such as law 22.285 from September 1980 considering illegal all TV programmes that did not follow the precepts of Christian morality, and allowed the Government to establish restrictions on broadcasting at any time;

- Factual circumstances including disappearances both of journalists and of people who spread their ideas;
- Restriction to the access to information, some being considered secret;
- Violation of correspondence and communications.

This contributed to create a climate of uncertainty and fear among those responsible for the communications and media. For example, Gastón Chillier and Damián Loreti recalled that in Argentina, newspapers had refused to publish the lists of disappeared persons.

The Panel also heard that governments had used the media to spread terror in the population. In **Chile**, right-wing newspapers were used to publish official statements, said Villagra Castro of Corporation for the Promotion and Defense of People's Rights CODEPU. Professor Dalmo Dallari explained that in **Brazil** the press had been used to promote fear of communism in the population.

"The excesses committed under the state of siege, the lack of independence of the judiciary and the wide police powers constituted the framework for human rights violations in Paraguay, such as lack of habeas corpus rights, incommunicado detention, torture and long arbitrary detentions."
(Oral testimony by Soledad Villagra, Paraguay, original in Spanish, translation by the ICJ)

"The country had already suffered, during other dictatorships in the 20th Century, from persecutions and failings of individual guarantees, and it could not learn from its own experience. That is why we are alarmed by the news coming from the first world regarding laws of exception for the prosecution of international terrorism. The guarantees of citizens and the protection of their privacy are confronted with the supposed necessity for the State to avoid future acts of terrorism, in some cases using clandestine detention centres for terrorism suspects and torture as the principal means of investigation."
(Oral testimony by Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

"*Due to the restrictions to the exercise of the profession of journalists and the human rights violations to which they were subjected, more than 500 journalists were forced to leave the country for political reasons, and the list of disappeared journalists was considerable.*"
(Oral testimony by Gastón Chillier, Executive Director, CELS, Argentina, original in Spanish, translation by the ICJ)

"The press was important to create in the population the fear of communism. It was said: with communism you will leave a part of your house for workers, you will have to divide your food with workers."
(Oral testimony by Dalmo de Abreu Dallari, Professor of Law, University of São Paulo, Brazil, original in Spanish, translation by the ICJ)

Participants also said that all kinds of political activities had been forbidden and in some cases even criminalised. Trade union rights had been suppressed. Various political and trade unions were declared illegal and dissolved, their premises closed and their property confiscated.

Finally, they added, the military had also interfered with universities and schools management, deciding on study plans and appointment of professors. The objective

was to remove professors who allegedly possessed subversive material that could be used to indoctrinate young people in the Marxist doctrine.

7 Impunity and amnesty laws

Participants agreed that even today, Latin American States are trying to discover the truth about the situations lived during the *de facto* governments. Several participants recalled that States have international obligations to investigate human rights violations and to penalise such violations. They affirmed that amnesty laws constituted a violation of these obligations, since they do not allow for the prosecution of perpetrators, leading to impunity and violating the right to truth. It was stressed that impunity had already been in place during the military regimes, not only through amnesty laws, but also through the secrecy of the actions, the existence of military tribunals and the complicity of the Supreme Courts.

With the return to democracy, extra-legal practices ended in the majority of the countries of the region, and legislations passed during the various states of emergency were derogated or repealed. Nonetheless, almost all countries adopted amnesty laws or Executive pardons during or immediately after the end of the *de facto* regimes. Soledad Villagra from **Paraguay** explained that the exception was Paraguay since no amnesty law was passed, but international obligations started to be respected only in 1990 when reparations laws were implemented. Many speakers expressed concern about the fact that in several countries, these laws were still in force and continued to be an impediment to the investigation and prosecution of those responsible for the crimes committed.

Horacio Ravenna, Vice-President of the Permanent Assembly for Human Rights of **Argentina**, told the Panel that impunity meant renouncing to criminal sanctions for the perpetrators of human rights violations, which in practice affected the entire society, since it institutionalised injustice.

Participants from Argentina and Uruguay explained that their governments were showing some improvement on the issue. In **Uruguay**, explained lawyer José Luis González, amnesty laws were being reinterpreted to allow prosecution. In **Argentina**, the Supreme Court declared the unconstitutionality of the emergency and amnesty laws in 2005. However, Manuel Garrido, General Prosecutor of Administrative Investigations in Argentina, added that the use of amnesty laws and presidential pardons had left too much time to elapse to conduct proper investigations, which gravely affected the right to truth.

8 The way forward

Finally, several participants recognised the importance of the Commissions of Truth. Benitez Florentín, Vice-President of the **Paraguayan** Commission of Truth, told the Panel that they constituted the best tools to investigate human rights violations committed by State officials or agents, to recover collective memory, uncover the truth, institute justice, and recommend reparations for the victims. This, he added, will allow the consolidation of a democratic State in an environment of enjoyment of human rights.

Argentine high-level government officials concluded that pain, indignation and frustration produced by terrorism should not lead anyone to believe that curtailing the respect for human rights would make the combat more efficient. This position,

they sustained, was strongly related to the relationship between today's challenges and the lessons learnt from the past. After the painful experience of State terrorism in the 1970s and the 1980s, it was essential to reaffirm the values of truth, justice and reparation in order to build a more peaceful, equitable and stable world for all.

> *"There is no valid "state reason" to continue hiding from relatives and society the truth about the whereabouts of our beloveds. The society as a whole is affected by this terrible crime and has the inalienable right to know the truth. (…) The objective is that future generations know and remember the tragedy lived in Argentina from 1976 to 1983, and do not repeat this black chapter of our history in our country or anywhere in the world."*
> (Oral testimony by Marta Ocampo de Vázquez, Mothers of Plaza de Mayo, Argentina, original in Spanish, translation by the ICJ)

9 Information about the Hearing

9.1 Agenda of the public Hearing (link)

9.2 Press release at the conclusion of the Hearing (link)

9.3 Participants at the public Hearing

Argentina

- Estella Barnes de Carlotto, Grandmothers of Plaza de Mayo (*Abuelas de Plaza de Mayo*);
- Haydée Birgin, Lawyer;
- Gastón Chillier, Executive Director, Center for Legal and Social Studies (*Centro de Estudios Legales y Sociales*) (CELS);
- Luis Fondebrider, Argentine Team of Forensic Anthropology (*Equipo Argentino de Antropología Forense*) (EAAF);
- Patricia Funes, Provincial Commission for Memory (*Comisión Provincial por la Memoria*);
- Manuel Garrido, General Prosecutor for Administrative Investigations, Anticorruption Office, Ministry of Justice, Security and Human Rights;
- Damián Loretti, Vice-Dean, Social Sciences School, University of Buenos Aires;
- Rodolfo Mattarollo, Under-Secretary for the Promotion and Protection of Human Rights, Ministry of Justice, Security and Human Rights;
- Marta Ocampo de Vázquez, Mothers of Plaza de Mayo;
- Hugo Omar Cañón, General Prosecutor before the Federal Chamber of Appeals of Bahía Blanca;
- Horacio Ravenna, Vice-president, Permanent Assembly for Human Rights (*Asamblea Permanente por los Derechos Humanos*).

Uruguay

- José Luis González, Lawyer;
- Felipe Michelini, Under-Secretary, Ministry of Education and Culture;
- Jorge Pan and Martín Sbrocca, Institute for Legal and Social Studies (*Instituto de Estudios Legales y Sociales de Uruguay*) (IELSUR)

Chile

- Alberto Espinoza, Foundation of Social Assistance of Christian Churches (*Fundación de Ayuda Social de las Iglesias Cristianas*) (FASIC);
- Sergio Fuenzalida Bascuñán, Center for Public Policy and Indigenous Rights, ARCIS University (*Centro de Políticas Públicas y Derechos Indígenas de la Universidad ARCIS*);
- Roberto Garretón, Lawyer; Hiram Villagra Castro, Corporation for the Promotion and Defense of People's Rights.

Paraguay

- Martín Almada, Lawyer, victim of the "Condor Plan";
- Juan Manuel Benitez Florentín, Vice-President, Truth and Justice Commission; Soledad Villagra, Lawyer.

Brazil

- Dalmo de Abreu Dallari, Professor of Law, University of São Paulo.

9.4 Government representatives met in private meetings

- Jorge Taiana, Minister of Foreign Affairs, Argentina;
- Alberto Iribarne, Minister of Justice, Argentina;
- Eduardo Luis Duhalde, Secretary of Human Rights, Ministry of Justice, Security and Human Rights, Argentina
- Rodolfo Mattarollo, Under-Secretary of Human Rights, Ministry of Justice, Security and Human Rights, Argentina.

9.5 Written submissions

Argentina

- Center for Legal and Social Studies *(Centro de Estudios Legales y Sociales)* (CELS), Facundo Capurro;
- Rodolfo Mattarollo, State Sub-Secretary for Human Rights, Ministry of Justice;
- Damián M. Loreti, Deputy Dean, Faculty of Social Sciences, University of Buenos Aires: "Legal breaches of freedom of expression between 1976 and 1983";
- Association of Grandmothers of Plaza de Mayo (*Asociación Abuelas de Plaza de Mayo*), Estela Barnes de Carlotto, President;
- Mothers of Plaza de Mayo (*Madres de Plaza de Mayo*), Marta Ocampo de Vásquez.

Brazil

- Dalmo A. Dallari, Professor, Faculty of Law, University of Sao Paulo.

Chile

- Roberto Garretón, Lawyer;
- Sergio Fuenzalida Bascuñán, Center for Public Policy and Indigenous Rights, ARCIS University (*Centro de Políticas Públicas y Derechos Indígenas de la Universidad Arcis*);

Uruguay

- Institute for Legal and Social Studies (*Instituto de Estudios Legales y Sociales del Uruguay*) (IELSUR).

Paraguay

- Soledad Villagra, Lawyer
- Martín Almada, Lawyer, victim of the "Condor Plan";
- Juan Manuel Benítez Florentín, Vice-President, Truth and Justice Commission of Paraguay.