



UCBMUN XXI



Trial of the Juntas: Defining Justice after the Dirty War

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Head Chair Welcome Letter

Dear Delegates,

It is with great pleasure that I welcome you to the Legal Committee at UCBMUN XXI! I am thrilled to be serving as this year's legal chair after participating in last year's legal committee as a delegate. I am a junior studying Political Science and presumably something else as a minor at Berkeley. I have been in MUN for about two years and in my free time I enjoy hanging out with my cat. My other campus activities include working as an open source investigations research apprentice at the Human Rights Lab at Boalt Law School, and as an editor for the Rhetoric Undergraduate Journal at UC Berkeley.

This year's legal committee will take a close look at tensions within Argentina's internal state as well as applicable military and civilian law following the Dirty War. As judges of the Cámara Court and using your judicial philosophies, it will be up to you to discern relevant and factual information on a variety of platforms, from questioning and speeches to written inquiry and unmoderated debate. You will primarily be determining the extent to which historical precedents establish how assigned responsibility of the Dirty War flows between military generals and officers. I am especially looking forward to seeing how the positions of each judge influence the written decision at the end of the conference.

Your legal staff and I are excited to see how political affiliations and loyalties provoke intense, exciting debate.

Best of Luck,

Dana Levine

Chair, Legal Committee

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Crisis Director Welcome Letter

Dear Delegates,

My name is Troy Worden and I eagerly looking forward to serving as your Legal Director for UCBMUN XXI. I am a third-year undergraduate at UC Berkeley, where I study both English and Philosophy. I plan on practicing civil law after attending law school (which means I should be studying for the LSAT at the time of writing this letter). I am also a Bay Area native: I was born in Berkeley and have lived thirty minutes away in the City of Pittsburg for my entire life. My MUN career spans five-and-a-half years, from my Sophomore year of high school to now. Last year I served as Legal Staff for Legal Committee at UCMUN XX, which was a tremendous success.

My chief intellectual interests consist of ethics, aesthetics, and the intersection of philosophy and literature more generally. Any time I have to myself, when not occupied by reading of the aforesaid sorts or indulgence in classical music and art history, is currently spent on politics: I am an active member of the Berkeley College Republicans and contribute to multiple conservative publications on topics as diverse as free speech, classical liberalism, traditionalism, nationalism, and populism.

I believe this year's legal committee will be especially intriguing to all of us, owing to my own personal interest in jurisprudence and the germaneness of the far-right in contemporary political discourse. I have the utmost confidence that you will do your best in making this Legal Committee one to remember!

Troy Worden
Legal Director, Legal Committee
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Camara Court:

The Cámara is the set of civilian courts in Argentina, comprised of judges appointed by the President with approval by the Senate. The Cámara Federal de Apelaciones is the federal Court of Appeal for the lower courts and will handle cases of national significance, the junta trials included (Speck).



The Camara Court has typically handled civilian crimes; the Trial of the Juntas will be the most significant case the Court will hear to date not only for the historical significance of the Dirty War but also because the crimes are technically crimes committed by a military regime. In this trial, the Camara will function as both a judge and a trier of fact, determining not just the outcome of the trial but also the credibility of

the witnesses that will be put forth. The Camara faces the difficult task of forming a cohesive argument for the theory of guilt while taking into account historical context and Argentinian standards of law (Speck).

The Dirty War

Overview

The Dirty War, also known as La Guerra Sucia or el Proceso de Reorganización Nacional, was a campaign to wipe out left wing political opponents carried out by the deadly military dictatorship that ruled Argentina from 1976-1983. During the War, an estimated 30,000 citizens “disappeared” – captured by the government and never seen again. These disappeared citizens have been coined “los desaparecidos”.



The Foundations of the Dirty War

The Dirty War was the product of difficult political and economic times in Argentina, leading to a military overthrow of the

President Isabel Perón. Isabel Perón was the wife of previous President Juan Perón; upon his death, she came into power as the world's first female President. Juan Perón's presidency had been plagued by economic troubles worsened by the 1973 oil embargo and disease that ruined Argentina's beef industry (History). Thus in the wake of his death, Isabel faced inflation of over 300%, the anger of labor unions, and political violence between left and right wing factions (Haas).

Leftist guerilla groups threatened to take over the territory in the country. Despite her attempts to fix the nation's problems by introducing new Cabinet members and pay off foreign debts, Argentina's affairs escalated to the brink of anarchy as Perón was forced to declare a state of siege in 1974. Her reliance on López Rega, the Minister of Public Welfare, further angered the country when he was sent into exile for poor governance. She shook off military officers' persistent advice to resign, and as things continued to worsen, she was

captured in March of 1976 by Air Force officers, ousted from power, and held under house arrest for the next five years. A right-wing military junta regime was instituted, led by Lieutenant General Jorge Rafael Videla. It is important to note that Argentina had reached a state of emergency, and this military overthrow was met with widespread public support. Many civil liberties and freedoms had been suspended under the siege, and the junta only had to escalate these tactics to fight leftist subversion. The junta closed the National Congress, banned trade unions, took over state and local governments, and declared nationwide censorship. Under Videla's instruction, the junta set up secret detention camps across the country where suspected political dissidents would be imprisoned and tortured. Left-wing guerrilla groups that first established prominence in the 1960's became more active under the increasing brutality of the regime. Argentina essentially fell under a reign of terror, in which citizens faced extreme censorship, curfews, and the seemingly ubiquitous secret police (Haas).

Detention Centers:

One of the most famous detention camps was the ESMA detention center in Buenos Aires, which had previously been the Navy Mechanics School. ESMA was the largest imprisonment camp in which an estimated 5,000 people were detained and only 200 detainees survived (Lormand). ESMA was notorious for conducting “death flights”, in which tortured detainees were



stripped, bagged, and dropped from planes while unconscious into the Atlantic Ocean. There was evidence of cooperation between military officers and the Roman Catholic Church regarding these death flights, in which bishops sanctioned the killings of civilians and had allegedly coined the death flights as a “Christian form of death”.

In ESMA and other detention camps, the disappeared and detainees included children, women, Uruguayans, foreigners, students, journalists, suspected left-leaning politically active citizens, lawyers, and former cabinet ministers. They were often detained and tortured to provide information on political dissidents or as punishment for filing habeas corpus petitions on behalf of loved ones who had previously been taken

by the junta; another segment of los desaparecidos includes the children of pregnant mothers in these camps. Children that had been born in these detention camps were often taken from their mothers and given to be raised by loyal families and friends of the military. This practice of illegal adoptions spurred the creation of Las Madres de la Plaza de Mayo and Las Abuelas de la Plaza de Mayo. These two groups are comprised of women who had lost children or grandchildren in the Dirty War and were the main forces that first drew international attention to the growing disappearances in Argentina. They protested in the Plaza de Mayo every Thursday from the time of the Dirty War up until 2006 (ADST).



The Unraveling of the Juntas:

As the Dirty War campaign ensued at its brutal pace, Argentina and the military regime became unstable as civilian unrest and opposition grew. General Roberto Viola took over power from Videla in 1981 but had trouble handling the operations of the country while controlling the military's allies. As the economy spiraled downwards and public opposition to the military grew stronger, he was in turn replaced by Lieutenant General Leopoldo Galtieri. Galtieri was similarly displaced after his poor strategic decision to invade the Falkland Islands and was succeeded by General Reynaldo Bignone. Bignone attempted to make amends with the public, allowing political parties to conduct their activities normally and hold general elections. As the Dirty War slowed to a halt,

the military hurried to erase evidence of the crimes they had committed.

Argentina finally reached a period of relative stability when President Alfonsín from a major left-centric political party won the election of 1983. He reinstituted democracy and moved to prosecute members of the junta, including Videla, Viola and Galtieri, providing the basis for the Trial of the Juntas in 1985 (ADST).

Legacy of the Dirty War:

The Dirty War was plagued by horrific human rights abuses and one of the darkest periods of Argentinian history. The consequences of the Dirty War are still being felt by the population today; families of the disappeared are still trying to find their lost loved ones and clandestine right-wing groups still loyal to the junta regime have attempted to sabotage trials of the military junta and their subordinates. These far-reaching effects of the Dirty War ought

to be considered by judges of the Cámara Court when they formulate how to proceed

with the Trial.



Leftist Guerillas:

During the Dirty War and throughout their Trial, the juntas have repeatedly justified their actions due to the severe internal state of affairs in Argentina, and that those desperate times “necessitated a suspension of all constitutional guarantees.” As such, it is important to consider the role of leftist guerillas in Argentina’s internal crises that precipitated the Dirty War.

The growing strength and radicalization of workers’ organizations began after Juan Perón and his wife Isabel’s time in power in which they greatly improved relations between the

military and the working class, spurring a political ideology called Peronism that

avored the empowerment of workers.

As politicians began to adopt work policies and laws that favored longer work days and decreasing wages, young workers began to use violence and sometimes terrorism as a means to make themselves heard and achieve their goals. In the late 1960’s, their cause was further bolstered by the support



of youth from the urban middle class who also found themselves economically frustrated and politically disillusioned. The movement only became stronger after President Onganía “purged” the University of Buenos Aires of leftist sympathizers in 1966. Afterwards, student hardliners banded with extremist labor organizations to create the leftist guerillas who were dedicated to restoring Peronism “by whatever means necessary”. These guerillas often clashed with the military, taking responsibility for assassinations, bombings, ransom operations, attacking military bases, and occupying small towns. From 1969 to 1971 it is estimated that they spearheaded over a thousand attacks (Argentina).

The Trial: Core Legal Issues

The Trial of the Juntas commenced on December 9, 1985. Nine generals and officers were accused of homicide, torture, human rights abuses, and falsifying public documents in their attempts to cover up Dirty War crimes. The junta members’ high rank as well as the nature of their crimes set the stage for one of Argentina’s most contentious trials. The Cámara Court will need to prove its ability to handle society-wide crimes and be able to deliver justice to a country divided into accomplices and victims of the Dirty War.

Some key legal issues that the Cámara ought to consider when forming its final judgment and opinion are as follows:

- Defining criminal authorship
- How to allocate responsibility in a military hierarchy
- The extent to which responsibility flows from superiors to subordinates, and vice versa
- The role of historical and geographic precedents and contexts

Allocation of Responsibility & Criminal Authorship

The prosecution maintained that the responsibility of the crimes committed ought to fall on all the members of the accused on a collective basis. This allocation of guilt would open the way to allow the prosecution to give all the heads of the Navy, Air Force, and Army similar sentences even though the members of the Navy and Air Force were not as involved in the Dirty War crimes. However, the laws and political statements made by the junta government emphasized the unity of the juntas, suggesting an equal level of complicity in the Dirty War. Differentiating between these two conflicting accounts and determining the fair distribution of responsibility among the accused will be one of the main challenges the Cámara will face (Speck).

The junta members have been accused of facilitating and executing the Dirty War crimes, such as organized mass kidnappings and murders. While the orders came from the top of the military, the actual execution of the crimes came from lower level officers and military subordinates. Thus, the Cámara needs to consider how to allocate guilt and the responsibility of these crimes within the context of a military hierarchy. Should top military officers be held accountable for all the actions of their subordinates, and can these subordinates be held responsible for their actions?

Military subordinates would not have been able to perform these operations without significant “logistic support, cooperation from civilian authorities, and most importantly, assurance of impunity.” However, little concrete evidence exists of the Cámara being in complete control of their subordinates since orders were often given orally to maintain secrecy. Due to this, the Cámara would need to rely on other means of evidence or testimony if it holds the top military commanders accountable for all the actions of subordinates (Speck). The Argentine Código Penal provides some guidance as to how to handle crimes committed within a hierarchical military structure; it recognizes lower level roles

such as “accomplice” or “instigator” and allocates lighter punishments. Article 77 designates the term “military” to “any person who reviewed military status at the time of the act in accordance with the organic law for military personnel (Miller).”

Theories of Criminal Authorship:

One of the most crucial points that the Cámara will need to address is the concept of criminal authorship; essentially, who can be considered the main instigators and perpetrators of a crime and how much punishment should be allocated based on the role that the perpetrators played? There are three core theories regarding the concept of criminal authorship that are rooted in Roman-Civil law.

Subjective theory considers every individual who participates in a crime with an intention to be a perpetrator ought to be punished as such, while those who did not have an intent to perpetrate shall be punished only as an accomplice. The *formal-objective theory* denies authorship or perpetrator status to individuals who do not commit some of the crime. The *mediate authorship theory* considers those who “exercise control over the commission of a crime” as the main authors of the crime (Speck).

While the Court doesn’t necessarily need to use these theories, they provide a

framework through which the Court can view the allocation of guilt in this case. Should the heads of the military junta be held accountable for the actions of independent individuals down the chain of command, or does the presence of independent actors absolve the junta heads from having to be blamed for not controlling all the crimes committed by officers?

Responsibility in Military Hierarchies:

The doctrine of command responsibility “allows military and civilian leaders to be held liable for the criminal acts of their subordinates.” The doctrine encompasses two different forms of liability. The first is direct or active command responsibility – this occurs when the leader or superior actively tries to commit a crime; for example, he/she could ordering subordinates to do something unlawful. Active command responsibility was defined in the legal articles that came out of the International Criminal Tribunal of the Former Yugoslavia Statute as well as the International Criminal Tribunal of Rwanda. They state that “a commander who engages in positive acts to encourage his subordinates to commit crimes will be found to have planned, instigated, ordered, committed or

otherwise aided and abetted in the planning, preparation, or execution of a crime (Martinez)” The second type of command responsibility is the most well known interpretation and can be equated to “indirect” or “passive” command responsibility (Martinez). Providing concrete evidence of a commander directly trying to order subordinates to commit a criminal act can be difficult to produce; thus this second form of command responsibility is considered a very significant and “distinct theory of liability” in the legal field. Indirect command responsibility can be classified as “culpable omissions of commanders or superiors (Martinez).”

Theories of command responsibility arose from international humanitarian law. More



specifically, the current international precedent of “an affirmative duty on military commanders to prevent war crimes” came from the Hague Conventions of 1907. The

key point that is most debated amongst legal scholars concerning command responsibility is the mens rea requirement. Discussions focus on “whether a commander must have actual knowledge of the violations committed by his subordinates to be derivatively liable for them, or whether he may be found guilty of crimes of which he had no actual knowledge.” If the commander doesn’t need to have knowledge, he/she can be found guilty based on a lack of preventative action, such as “recklessness, gross negligence, or ordinary negligence (Martinez)”.

Another main area of contention is the requirement of a superior-subordinate relationship when assigning criminal responsibility. Currently, the relationship is defined as one of ‘effective control’, in which there exists the “material ability to prevent and punish the offenses.” The extension of this relationship is contingent on the fact that “where such leaders exercise a level of control over subordinates comparable to that exercised by military commanders, the nominal distinction between a military hierarchy and some other sort of hierarchy (such as a police hierarchy) should not be dispositive” (Martinez).

These theories of command responsibility and their accompanying legal complications are frameworks and areas of debate that

the Court should think about and utilize when making their arguments in committee.

Affirmative Defenses:

The junta members have claimed certain affirmative defenses to justify their behavior and form the heart of what the Cámara Court will need to respond to and determine their legitimacy. An affirmative defense is a defense in which “the defendant introduces evidence, which, if found to be credible, will negate criminal or civil liability, even if it is proven that the defendant committed the alleged acts.” Example of affirmative defense is self-defense, insanity, and entrapment (Cornell). The defenses utilized have been detailed below, along with an interpretation and explanation of the defense.

1.) Necessity

“The Argentine Código Penal grants a defense of necessity to “one who causes an evil in order to avoid an imminent, greater evil for which he is not responsible.” Legal scholars interpret this defense to require that the accused have no other reasonable means to avoid the greater evil, and that the evils and means adopted be judged from the point of view of the accused at the time he made his choice.”

2.) Obedience to the law:

The Peronist government had previously announced that “the Armed

Forces ... will proceed to carry out whatever military and security operations are necessary to destroy the activity of subversive elements in the entire national territory." Thus, the junta defense argues that the statement from the prior legitimate governing entity sanctions any consequential actions the military took during the Dirty War (Speck).

3.) *Self defense or defense of others:*

The self-defense definition in Argentina is as follows:

"Who act in self-defense or rights, provided that the following circumstances concur:

- a.) unlawful aggression
- b.) Need rational means employed to prevent or repel it;
- c.) Lack of sufficient provocation on the part of defenders"

The juntas argued that leftist terrorism necessitated an aggressive reaction from the military in order to protect themselves and the country (Miller, Haas).

International Precedents:

Since formulating a concept of responsibility in a military hierarchy is one of the most difficult legal decisions the court will need to make, the following are previous international cases that involved a military trial in

civilian courts. The judgements and opinions that the courts made on these cases can provide a framework or a method through which to think about how to allocate responsibility and guilt in a military hierarchy – the Cámara should remember that these are still international cases so some of the law interpretations may be different, but the general ideas and notions can still be applied across different international laws. The following are excerpts from the legal documents of several international criminal trials:

Nuremberg Trials:

In the Nuremberg Trials, the Tribunal said that "the fact that any person acted pursuant to order of his Government or of a superior does not free him from responsibility for a crime, but may be considered in mitigation." In the past, the Tribunal would hold a subordinate responsible for his/her actions "because these acts were ordered did allow the subordinate to use a defense of duress or mistake". To counter, the International Military Tribunal has instead asserted that



“commanders of war crimes or those who were complicit and negligent must be held to account” (Speck).

United States Law:

U.S law has evolved over time in regards to criminal responsibility in military hierarchies. In an early Supreme Court case, the Court said that “it can never be maintained that a military officer can justify himself for doing an unlawful act by producing the order of his superior. The order may palliate, but cannot justify.” This parallels the legal parameters set up in the Nuremberg Tribunal in which “superior orders only serve to mitigate”. However, in instances where the proof of superior orders is not “manifestly illegal”, the responsibility shifts to the defendant/subordinate that he/she knew or “should have known that the orders were illegal”. During the Vietnam War, command responsibility came to mean that the “commander is also responsible if he was negligent to war crimes in the process under persons subject to his control”, which translates into proving that the commander either gave illegal orders or had knowledge of subordinates committing illegal acts. In other words, “negligence in failing to inform oneself is not sufficient enough to convict” (Speck).



Latin American Law:

In Latin America, the precedent has been that “when a subordinate commits a crime under a superior's orders, the former is free of guilt, and liability falls entirely on the latter.” Essentially, the subordinate that obeys orders “lacks necessary criminal intent” and cannot hold the guilt. In fact, most Latin American civilian (nonmilitary) criminal codes “continue to list hierarchical obedience as a reason for negating the imputability of criminal guilt” (Speck).

The Cámara court will be one of the few civilian courts that judge military officers based on human rights abuses during a state of internal emergency and unrest. International precedents include the Nuremberg Trials of Nazi officers and the trials of Lieutenant Calley and Captain

Medina for My Lai in Vietnam, among several others.

The Trial of the Juntas is still a unique case when compared to these precedents. In many similar cases, the officers of trial were either members of the defeated and being tried by victors or were being tried based on international law. In the Trial of the Juntas, the junta are considered the winners of the Dirty War in the public imagination. Furthermore, the Cámara is expected to apply the national laws that were in place during the time that the junta members were in power. Similar to other international cases of this magnitude, the Court must also decide whether or not it wants to judge the junta's legitimacy as a governing body or if it wants to stay within the bounds of a standard criminal trial and judge the accused as civilians.

Argentinian Law:

The following section provides certain relevant legal excerpts or facts from Argentine law that the Court may find helpful in developing background information and forming a well-informed opinion. Note that the excerpts from Argentinian penal codes have been translated from Spanish and thus, the diction may not be completely precise.



Argentine Constitution During War:

The Argentine Constitution generally recognizes and places limits on military power “even during a state of siege”, reserving powers of war to Congress as well as maintain that rules of wartime conduct are detailed in the Código Penal and the Código de Justicia Militar. Several international treaties that have been signed by Argentina also recognizes limits on the conduct of war and treatment of prisoners. On the other hand, amendments and new laws passed by Argentina’s government have also “put large sections of the country under military government, extended military jurisdiction, proclaimed a state of seige, and empowered the military authorities to legislate in areas under their control” (Miller).

Argentine Código de Justicia Militar:

The Código de Justicia Militar is the military justice code that the Argentine military is obligated to abide by.

Article 514- "Due Obedience"

"When a crime has been committed by executing a military order, the superior who gave it shall be held solely responsible, and the subordinate shall be considered an accomplice only when he has committed excesses in carrying out the said order" (Ministry).

Argentine Código Penal:

The Código Penal is the civilian penal code that all Argentine citizens need to abide by.

Article 34 – "Civilian Responsibility"

"Those who take part in the execution of a crime or lend the author or authors aid or cooperation without which it could not have been committed, will suffer the punishment established for that crime. The same punishment will fall on those who directly cause another to commit the crime."

Below are excerpts listed from the penal code in Argentina.

"TITLE I

APPLICATION OF THE CRIMINAL LAW

ARTICLE 1.- This code shall apply:

1 ° .- For offenses committed or whose effects should occur in the territory of the Argentine Nation, or in the sites that are subject to their jurisdiction;

2 ° .- for crimes committed abroad by agents or employees of the Argentine authorities in carrying out its charge.

ARTICLE 2 ° .- If the law in force at the time of the offense is different from that which exists at the time of the judgment or in the intermediate time, always apply the more benign.

If during his sentence would be dictated a more benign law, the penalty shall be limited to the established by that act. In all cases of this article, the effects of the new law will operate in its own right.

ARTICLE 3 ° .- In the computation of the preventive detention will be noted separately the law most favorable to the defendant.

ARTICLE 4 ° .- The general provisions of this code shall apply to all offenses by special laws, as these would not have otherwise.

TITLE II OF THE PENALTIES

ARTICLE 5.- The penalties that this code sets are the following: detention, imprisonment, fine and disqualification.

ARTICLE 6.- The term of imprisonment, perpetual or temporary, will comply with compulsory labor in the establishments for the effect. The inmates may be employed on public works of any kind with such that they are not hired by individuals.

ARTICLE 7.- The men weak or sick and the aged sixty years that merit detention, will

suffer the sentence in prison, and shall not be subject only to the class of special job that determine the direction of the establishment.

ARTICLE 8 - minors and women will suffer the sentences in special institutions.

ARTICLE 9.- The term of imprisonment, perpetual or temporary, will be with compulsory labor, in establishments other than those intended for the inmates.

ARTICLE 10.- When the imprisonment not exceeding six months may be detained in their own homes the decent women and older people of sixty years.

ARTICLE 11.- The product of the work of the sentenced to detention or imprisonment shall apply simultaneously:

1o. To compensate for the damage caused by the offense that fails to comply with other resources;

2o. The provision of food according to the Civil Code;

3o. To defray the costs causes in the establishment;

4o. To form an own background, you will be given to its output.

ARTICLE 12.- The detention and imprisonment for more than three years are as inherent in the absolute disqualification, by the time of the sentence, which may last up to three more years, if so resolved the court, in accordance with the nature of the offense. Also Import the deprivation, for the

duration of the penalty, of parental authority, the administration of the property and the right to dispose of them by acts inter vivos. The prisoner shall be subject to the guardianship established by the Civil Code for the incapable (ICLA)."

"TITLE VII

CRIMINAL INVOLVEMENT

ARTICLE 45.- those who take part in the execution of the act or pay the author or authors with an assistance or cooperation without which it would not have been committed, they will have the maximum punishment for the crime. In the same penalty shall incur the that determined directly to another to commit it.

ARTICLE 46.- to cooperate in any other way to the execution of the act and those who provide aid later serving earlier promises to the same, shall be punished with an appropriate penalty for the crime decreased by one third to one half. If the penalty is life imprisonment, shall apply detention of fifteen to twenty years and if it be from life imprisonment, shall apply prison for ten to fifteen years.

ARTICLE 47.- If the particular circumstances of the case it is apparent that the accused of complicity did not want to cooperate but in fact a less severe than that committed by the author, the penalty shall be applied to the accomplice only by reason of the fact that promised run.

If the act is not consummated, the worth of an accomplice should be determined in accordance with the provisions of this article and to the title of the attempt.

ARTICLE 48.- The relationships, circumstances and personal qualities, which would have the effect of lowering or exclude the penalty, but will have no influence on the author or an accomplice to those who apply. Nor will influence those whose effect is aggravate the penalty, except the case in which they are known by the participant.

ARTICLE 49.- will not be considered participants in the crimes committed by the press to the people that only enrolled to the author of the written or recorded material cooperation necessary for its publication, distribution or sale.”

“The penalty of the participant, dissociating themselves from the others, they will endeavor so that the victim regain the freedom, without which such a result would be the consequence of the achievement of the purpose of the author, will be reduced by one third to one half.

Article 143. - Shall be punished with imprisonment or imprisonment from one to three years and special disqualification by double time:

1o. The official who retained a detainee or prisoner, whose looseness has because enacting or run;

2o. The official who entertain unduly the detention of a person, without making it available for the competent judge;

3o. The official who acts unduly to a detainee;

4o. The head of prison or other penal establishment, or to replace, which received some reo without witness of the final judgment in which has been imposed the sentence or the donning of the establishment in places other than those listed to the effect;

5o. The warden or employee of the prisons of detainees and security that receives a prisoner without an order from the competent authority, except in the case of flagrante delicto;

6o. The competent official that taking news of an illegal detention omits, who refrains from ruling or refuses to make Caesar or to give an account to the authority that must be resolved.

ARTICLE 144. - Where, in the cases of the previous article attend any of the circumstances listed in subparagraphs 1, 2, 3 and 5 of article 142, the maximum of the custodial sentence shall be increased to five years.

Article 144 bis. - Shall be punished with imprisonment or detention of one to five years and special disqualification for twice the time:

1. A public official who, with abuse of their functions or without the formalities prescribed by law, to deprive any of your personal freedom;
2. The official who play an act of service committed any vexation against persons or apply them illegal harassment;
3. The public official who imposed the prisoners to save, severities, vexation, or unlawful use.

If you attend any of the circumstances listed in subparagraphs 1, 2, 3 and 5 of article 142, the imprisonment of their liberty shall be of detention or imprisonment of two to six years.

ARTICLE 144ter.- 1. Shall be punished with imprisonment or imprisonment from eight to twenty-five years and absolute disqualification and perpetuates the public official who imposed to people, legally or illegally deprived of their freedom, any kind of torture.

1. It is immaterial whether the victim is legally in charge of the official, sufficient that this note on the power of fact.

Same penalty shall be imposed on individuals who carry out these facts.

2. If with reason or occasion of torture should result in the death of the victim, the sentence of imprisonment shall be imprisonment or life imprisonment. If it causes some of the injuries laid down in

article 91, the sentence of imprisonment shall be imprisonment or imprisonment of ten to twenty years.

3. By torture means not only the physical torture, but also the imposition of psychological suffering, when they have sufficient gravity.

Article 144 -

-Will be liable to imprisonment for a term of three to ten years in advance of the official forgot that prevent the commission of any of the facts of the previous article, when it had competence to do so.

-The penalty shall be from one to five years in prison for the officer who by reason of their functions take knowledge of the commission of any of the facts of the previous article and, lacking the competence referred to in the preceding paragraph, denounce within twenty-four hours before the official, public prosecutor or judge. If the officer were a medical doctor will also be imposed, in addition, special disqualification for the exercise of their profession by double time of imprisonment.

-The penalty provided for in subparagraph 1 of this article the judge that, taking knowledge by reason of its function of any of the acts referred to in the preceding article, not conducting a summary or not divulge the fact to the competent judge within twenty-four hours" (OAS).

States of Emergency and Rule of Law:

Perhaps the state of siege and overthrow of the government by the military can appear to be extreme and unwarranted if compared to modern Western models of democracy. However, there exists a widely held belief in Latin America that orderly legal procedures and restraints on government power are luxuries dispensable in times of national stress. The extreme right and extreme left of Argentina often agree in this belief. Historical evidence points to the fact that states that are facing terrorist insurgencies will often “suspend the normal rule of law” and give the military “full authority to arrest, detain, search, and harass insurgents within a civilian population” (Criddle). One of the clearest examples of this is Colombia, in which emergency suspensions of constitutional law are more frequent than not. ‘Emergencies’ such as the one that Colombia faces and that the Argentinian junta claimed to fight against are often described by political scientists as a “constitutional black hole”, in which the suspension of normal rules of law and order in a country are incredibly risky and controversial (Gifford). They can be warranted and necessary, but at what cost? As John Locke has defined it, prerogative is “the power to act according to discretion for the public good, without the prescription of the law and sometimes even against it.”

Lockian thought deems that this prerogative be necessary in certain crises and the concept of having “temporary, delegated dictatorship to save the constitution” is actually a prevalent cornerstone of traditional republican thought. This concept is weighed against the fear that this temporary dictatorship could be used as a precedent to abolish and infringe upon constitutional freedoms. These competing schools of thought are things that the Court will need to take into account when considering the validity of the juntas’ claims about their prerogative to institute a military takeover, and whether or not they truly served to protect “majority interests” (Gifford).

Related to the rule of law, human rights, and state of emergency is a prominent legal theory called the fiduciary theory. While the Cámara is under no obligation to use or apply this theory, it provides an outline through which judges can evaluate the legitimacy of Argentina’s claim to a ‘state of emergency’ and the tactics that the junta responded with, as well as the relevance of those tactics to Argentina’s inner turmoil.

The fiduciary theory focuses on the limits of legitimate state action. It can “provide guidance to international and regional tribunals charged with adjudicating those limits, even during emergencies.” The fiduciary theory claims that some judicial

interpretations of international law “unnecessarily restrict states’ ability to safeguard legal order”. For example, it points to a statute established by the European Court of Human Rights (ECHR) that a public emergency must “concern [a state’s] entire population” in order to be considered a state of emergency. The fiduciary model would instead prefer that countries be able to deviate from human rights obligations when needed in order to cope with any instability that might “threaten the state’s capacity to maintain legal order.” At the same time, the fiduciary theory also seeks to limit the potential for a complete disintegration of human rights during suspension of rule of law. It would require that states “provide or facilitate more robust public notification, justification, and contestation” if a state of emergency is declared. It still upholds the accountability of states to their citizens. In order to strike this balance, the fiduciary theory articulates the principle that “any emergency measures must comport with the principle of moral equality and must be strictly necessary to reestablish legal order” (Criddle). It acknowledges that ‘genuine’ public emergencies can exist that threaten the state’s “institutional capacity to guarantee secure and equal freedom” and necessitates a suspension of normal constitutional law. For example, the

fiduciary principle would allow for a state to “employ administrative detention without prompt presentation to a judicial tribunal if ordinary judicial administration had been interrupted” during a military insurrection. This detention however could not be “arbitrary” or be justified only on the basis of protecting others’ freedom (Criddle).

Transitional Justice:

Another school of thought that has emerged in political science relates specifically to the political changes that occur when transitioning out of oppressive, authoritarian regimes and the rule of law associated with these changes, called ‘transitional justice’. It’s defined as the “conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes” (Haas, Speck). The term has been applied in the context of the Nazi war crime trials at Nuremberg and has been used to characterize “the legal components of the political transitions in many Latin American countries emerging from military dictatorships, in Eastern European countries abandoning communism, and in South Africa’s passage from apartheid to multiracial democracy.” Transitional justice articulates the “reestablishing the rule of law, entrenching democratically accountable

institutions, promoting societal peace and reconciliation, deterring future violations, and providing a measure of redress to victims” (Haas, Speck). The ramifications of transitional justice include important questions that the Court ought to take into consideration when deciding on appropriate retribution and future steps for Argentina: will the high-profile punishments of junta members promote peace and reconciliation or will it mobilize groups sympathetic to the junta? Other legal mechanisms that can be employed in transitional justice can include “truth commissions, amnesties, lustration, reparations, and civil proceedings seeking monetary damages.” For example, South Africa granted amnesty to those who made full, public confessions, and the country also established a Truth and Reconciliation Commission to anticipate attempts to criminally prosecute all participants in apartheid. Public trials such as the one that the Court will oversee this time essentially set the tone for how the country will transition from its Dirty War crisis, and how it will treat those who were active participants in the War. The most prominent example of the use of a criminal trial as a method of transitional justice is the Nuremberg Trials. The Nuremberg trials have been condemned by some as an “illegitimate show-trial exemplifying victor’s justice”; however, the trial also displays how

such trials can promote “modern, liberal transitional justice goals” (Speck). The trial emphasized universal human rights as the norm and as taking precedence over domestic law, invalidating the Nazi regime based on violations of these human rights laws. The Nuremberg trials also focused on the notion of individual responsibility. “Even where the crimes of the prior regime were supported by a large percentage of the population, either through their active help or through passive acquiescence, the Nuremberg model fixes liability on key leaders in order to exonerate the rest of the population.” The trial served to establish ‘individual responsibility’ over ‘collective assignment of guilt’. However, whether or not this same concept can be applied in all such criminal trials remains to be seen, and is something that will be up to the Cámara Court to decide.

In order to ensure that the trials do not disintegrate into political ‘show-trials’, the politics, tone, and legal arguments of the trial are incredibly important and can become a way for countries to heal and transition from oppressive regimes and periods of political turmoil. If the trial is perceived as illegitimate or seen as a way to scapegoat, it may instead draw out tensions in the country. What transpires during these trials is also seen as a way for the country to conceive its own history – these types of

trials, especially following periods of political turmoil, “will inevitably be viewed as providing a forum in which competing historical accounts of recent catastrophes will be promoted. . . . and judgments likely will be viewed as endorsing one or another version of collective memory” (Martinez). Thus, the Cámara Court is charged not only with assigning guilt and retribution but also deciding on what will be Argentina’s ‘broad, historical narrative’.

The Development of Joint Criminal Enterprise:

An important and relevant concept in criminal law that the Cámara may find useful or applicable in their ruling is the concept of the ‘joint criminal enterprise’ articulated at the Yugoslav Tribunal. During the tribunal, the Appeals Chamber asserted that “broadly speaking, the notion of common purpose encompasses three distinct categories of collective criminality.” Their rubric is detailed below (Martinez).

“1. Perpetrators act pursuant to a common design and share the same criminal intention. For example, to be found guilty of murder the prosecution must prove that the common plan was to kill the victim, that the defendant voluntarily participated in at least one aspect of this common design, and that the defendant intended to assist in the

commission of murder, even if he did not himself perpetrate the killing.

2. Second, the prosecution must demonstrate “systems of ill-treatment.” An example of this would be concentration camps. “The prosecution need not prove a formal or informal agreement among the participants, but must demonstrate their adherence to a system of repression. To convict an individual under this category, the prosecution must prove the existence of an organized system of repression; active participation in the enforcement of this system of repression by the accused; knowledge of the nature of the system by the accused; and the accused’s intent to further the system of repression.

3. The third category is broad and can be ambiguously construed, encompassing “criminal acts that fall outside the common design.” The prosecution may convict someone even if they are not part of a ‘common plan’ as outlined in Category 1 but participate in acts that are a “natural and foreseeable consequence of the effecting of that common purpose” (Martinez).

Further Court Considerations:

Prior to this Trial, the junta submitted an amnesty law that was rejected by the Argentine Supreme Court. The Cámara should consider first establishing in the trial as well as for the public its jurisdiction over

the case. The Cámara will need to consider the above nuances in the case, accounting for the context of Argentina's internal state, the hierarchical structure of the military, and the tensions between military and civilian law. These all add a layer of complexity in how the court can allocate guilt and responsibility of the Dirty War.

Special Notes Regarding Committee:

Committee Guidelines:

This committee will be run as a specialized body with certain crisis-like elements. We would like this to be a dynamic committee, so delegates can expect periodic updates relating to the case and topics of debate provided by the legal staff. Legal staff will not be accepting any directives, communiques, press releases, or other forms of notes that extend beyond points of clarification. While this committee will evolve over the course of conference, delegates can still expect everything to operate under the structure of a regular trial.

Judge Profiles:

A few days prior to the start of the conference, each delegate will be emailed a judicial philosophy detailing any political affiliations, legal opinions, or loyalties that will influence the opinion of your judge. The dais will be observing how closely and consistently delegates stick to their judicial

philosophies throughout the conference, and how they utilize their philosophies in their legal arguments. We understand how some positions may have unpopular opinions among judges, and we are excited to see how delegates work with these roles to reflect what could have occurred during the actual trial.

Role of Legal Staff:

Points of clarification may be written to the legal staff to seek clarification on anything in the evidence packet that is unclear. Information gathered from crisis from points of clarification may be shared with the rest of the committee at your discretion. The staff will assume the roles of various witnesses as well as the prosecution and defense counsel. They will not be accepting any questions in note form directed to any counsel or witness; you will have the opportunity to ask questions during witness questioning and cross examination.

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