



WORKSHOP

Forty years on from Operation Condor

Justice without Borders

Main Conclusions

The so-called Plan or Operation Condor was a secret network of intelligence and counterinsurgency set up by the dictatorships of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay in the 1970s in order to illegally detain, torture, and, very often, murder political opponents all across South America, turning that region into a borderless area of terror and impunity. Condor emerged from informal bilateral forms of cooperation among the armed and security forces of Argentina, Paraguay, Chile and Uruguay since at least 1972. Condor was later formally created at a meeting of intelligence and security forces organised by the Chilean National Intelligence Directorate (DINA) and held in Santiago, Chile, between November 25 and December 1, 1975. Between 1975 and 1981, Plan Condor facilitated the perpetration of disappearances, kidnappings and murder of hundreds of political leaders, activists and refugees. The transnational repressive coordination completely disregarded all principles of international law on refugees and the long custom of protecting exiles in South America.

1 Rationale behind the Workshop

The year 2015 marked the fortieth anniversary of the Plan Condor founding meeting. At that juncture, it became important to reflect on the steps taken and progress made in South America to try to shed light on the crimes perpetrated by the repressive coordination of the dictatorships. In addition to that, the next five to ten years will be key in order to move ahead in the criminal investigation of those very crimes. Time is of the essence.

For all these reasons, in addition to the [conference](#) organised on December 17, 2015, to evaluate the status of criminal trials looking at Plan Condor crimes in Chile and Argentina, a workshop was also held the following day with the participation of academics, lawyers, judges, prosecutors, public policy experts and members of civil society. The key objective was to identify and discuss the obstacles -both legal and factual- which delay or prevent the investigation of transnational crimes and generate together potential strategies and tools to be implemented on a regional level to overcome them, thus favouring accountability in the near future.

The starting point for the workshop debate was the Plan Condor trial in Buenos Aires and the Operation Condor lawsuit in Chile. The main goal was to discuss the problems and challenges specifically associated with the investigation of Condor crimes. If in the 1970s the countries of this region were able to work together through Plan Condor to coordinate their repressive policies to jointly carry out atrocities, nowadays it is fundamental to develop public policies on a regional level in order to repair and redress those same crimes. The following questions and topics were considered at the workshop:

- What were the major obstacles that have delayed or obstructed accountability?
- What are the challenges and difficulties for judicial operators in Chile who have to investigate a crime committed in Argentina? Or vice versa?
- What tools do judges, lawyers and prosecutors require to conduct effective and efficient investigations into wrongdoings committed outside their own country?



2 Summary of Judicial Proceedings relating to Plan Condor in Argentina and Chile

ARGENTINA

In Argentina, there are currently two judicial proceedings investigating the repressive coordination among the South American dictatorships:¹ (a) the lawsuit that is investigating operation Condor since 1999, known as “**Plan Cóndor**”, and (b) the one relating to a secret detention centre where Argentine and Uruguayan security forces operated from, known as “**Automotores Orletti**,” from the name of the detention site.

The proceedings that have made most progress are now at the trial stage since March 5, 2013, before Federal Criminal Tribunal 1 in Buenos Aires. The sentence to be passed will be the first tackling the transnational coordination as a whole. The trial encompasses three parts of the Plan Condor lawsuit and one part of the Automotores Orletti investigation. Here are some of the key features of the current trial:

- **Total of 174 victims:** 65 relate to Automotores Orletti, while 107 are victims of operation Condor and 2 are victims in both lawsuits. The victims are citizens of the majority of the countries that composed Operation Condor: Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay;
- **Total of 27 defendants:** as of today, only eighteen are left in the trial; four were exonerated due to ill health, while five passed away during the trial, including former dictator, Jorge Rafael Videla. Of the original twenty-seven defendants, twenty-six were Argentinian and one Uruguayan.² Among the twenty-six Argentinian defendants, twenty-four belonged to the Army, one to the Navy and one was a civilian intelligence officer, charged in the Automotores Orletti part of the trial. The only foreign defendant is a retired officer of the Uruguayan army, Juan Manuel Cordero, extradited from Brazil in 2010.
- **Crimes:** illegal detentions and torture as well as the creation of a joint criminal enterprise.

A portion of the Condor lawsuit continues to be probed in the pre-trial stage at the Federal Criminal Tribunal 7 and the Criminal Federal Prosecutor 10. This investigation includes 193 defendants for their responsibility in the cases of 382 victims (348 being investigated for the first time and 34 already being looked at in the current trial). The total number of victims of Operation Condor under judicial investigation in Argentina reaches a total of 457 cases. The cases include victims from Argentina, Bolivia, Chile, Paraguay, Peru and Uruguay, and also citizens from Brazil, Germany and Spain.

CHILE

Currently, Judge Mario Carroza Espinosa is investigating the Operation Condor lawsuit; before that, it had fallen upon Judges Juan Guzmán and Víctor Montiglio.³ The lawsuit is divided into two judicial proceedings:

- **Rol 2182-98 CÓNDROR** (with **12 victims:** Correa Arce, Rüter Enrique; Fuentes Alarcón, Jorge Isaac; Hernandez Zazpe, Juan Humberto; Jaccard Siegler, Alexei Vladimir; Muñoz Velásquez, Luis Gonzalo; Pessa Mois, Matilde; Ramirez Herrera, Ricardo Ignacio; Soto Galvez, Hernan; Stulman Bortnick, Jacobo; Tamayo Martinez, Manuel Jesus; Valladares Caroca, Julio Del Transito; Velasquez Mardones, Hector Heraldo; and **68 agents being prosecuted**);
- **Rol 2182-98 CÓNDROR BIS** (**11 victims:** Biedma Schadewaldt Patricio Antonio; Campos Cifuentes Jose Alejandro; Carreño Araya Cristina Magdalena; Claudet Fernandez Jean Ives; Cordano Lopez Humberto; De La Maza Asquet Jose Luis; Elgueta Diaz Luis Enrique; Enriquez Espinoza Edgardo; Magnet Ferrero Maria Cecilia; Oliva Troncoso; Víctor Eduardo; Quinchavil Suarez Luis; and **no agents being prosecuted**).

¹ *La Judicialización de la Operación Cóndor*, Informe de la Procuraduría de Crímenes contra la Humanidad, Buenos Aires, noviembre de 2015

² Six other defendants belonging to the Uruguayan Army and Police cannot be prosecuted in Argentina since they are currently serving time in prison in Uruguay.

³ We would like to thank Dr Paulina Zamorano Valenzuela from the Human Rights Programme in Chile for providing this information on the lawsuit.



The original lawsuit was recently split to speed up the investigative process in relation to those victims for whom a criminal act has been proven as well as the participation of those responsible, and to continue to separately investigate the cases of those victims whose return to Chile could not yet be determined. During the investigation, it has been proven that some victims (Héctor Heraldo Velásquez Mardones, Alexei Vladimir Jaccard Siegler, Ricardo Ignacio Ramírez Herrera Matilde Pessa Mois, Jacobo Stoulman Bortnick, Rüter Enrique Correa Arce) were forcefully returned to Chile against their will from Argentina.

The main crime investigated in the lawsuit is enforced disappearance; for this reason, the criminal prosecution focused on investigating the crime of kidnapping. However, in the case of those victims whose bodies have been found and identified, the defendants are facing trial for murder.

On February 16, 2016, the judge in the case proceeded to [the trial stage](#) and began the prosecution of **seven instances of kidnapping** of Héctor Heraldo Velásquez Mardones, Alexei Vladimir Jaccard Siegler, Jorge Isaac Fuentes Alarcón, Luis Muñoz Velásquez, Juan Humberto Hernández Zaspé, Manuel Jesús Tamayo Martínez y Julio Del Transito Valladares Caroca; and **five cases of murder** of Ricardo Ignacio Ramírez Herrera, Rüter Enrique Correa Arce, Matilde Pessa Mois, Jacobo Stoulman Bortnik and Hernán Soto Gálvez

3 Workshop Discussion

After a brief introduction by Dr. Francesca Lessa, we split into two groups of 10 each. The discussion in each group was led by project consultants Lorena Balardini and Marcos Kotlik, PhD students in law at the University of Buenos Aires. In each group, the discussion was framed around three key areas:

1. *Juridical Construction of Operation Condor Transnational Crimes;*
2. *Necessary Resources to investigate Operation Condor Transnational Crimes;*
3. *Access to Evidence and Communication among Judges, Prosecutors, Lawyers and Civil Society.*

The key goal for each group was to come up with specific recommendations that could facilitate the investigation of Condor transnational crimes.

Regarding the first theme, the *Juridical Construction of Operation Condor Transnational Crimes*, the discussion revolved around questions relating to the existence of criminal and procedural codes developed and suited to the prosecution of specific and isolated criminal acts, but not crimes of a systematic nature, as well as the difficulty of investigating state institutions that became criminal actors. In particular, the following topics were discussed in detail:

- a. *The existence of procedural legislation unsuitable to these types of trials.* It was particularly highlighted how, in Chile, due to the application of the old criminal code to investigations into the crimes of the dictatorship, that this caused significant delays to the whole process because very long periods for investigation are permitted.
- b. *Judges are in charge of several proceedings at the same time.* This issue likewise triggers delays to the investigative process, especially in Chile where the judge plays a key role both in the investigative process and the trial stage. A possible solution discussed was the creation, within the tribunals, of dedicated and specialised teams for lawsuits relating to crimes against humanity; the teams would be composed of high-ranking tribunal officials with knowledge of the topic and could devote themselves exclusively to those cases in order to speed up proceedings.
- c. *Need to rethink and establish clear criteria to decide when, why and how to separate or group together cases.* Lawsuits for crimes against humanity tend to include hundreds of victims as well as numerous perpetrators. In light of this, it becomes necessary to identify organising criteria (for instance time periods, place(s) of detention, defendants, victims, etc.) in order to accelerate proceedings and avoid excessive complexity. In this respect, the experience in both Chile and Argentina with existing trials for crimes against humanity should be studied in depth to incorporate lessons learnt from past practices that could allow for the replication of successful organising criteria, while setting aside those that generated problems. It is important for judicial operators involved at different stages of the trial process to be aware of this issue and develop good practices relating to the organisation of judicial proceedings, since that has direct repercussions on how the trial proceedings unfold and their eventual outcome.



- d. Properly identifying Condor cases. In Argentina, for instance, all cases of foreigners illegally detained in the country are categorised *prima facie* as potential victims of Plan Condor. In reality, however, not all foreigners were victims of the repressive coordination. In Chile, on the other hand, the investigation was not systematised and thus, there are victims of Condor being probed in other trials such as those relating to clandestine detention centres such as Villa Grimaldi. The participants discussed the need to identify criteria that would allow a decision on whether a specific case can be categorised as Condor. **Three possible criteria** are: (a) exchange of information between countries on the victim(s); (b) the participation of foreign agents in the criminal act(s); and (c) the forceful return of the victim(s) from the country of detention to their country of origin. ***If any one of these three criteria is met, it can be considered as a Plan Condor case.***
- e. Legal categories of crimes that do not precisely match the type of crime investigated. Some difficulties emerge when dealing with the investigation of international crimes from the point of view of the deployment and application of domestic criminal categories, since the latter fail to capture the magnitude of what happened or take into account all its constitutive elements. For example, if enforced disappearances are investigated as common kidnappings and then, when the remains of the victim are identified, the investigation focuses on murder, significant elements of the crime may be omitted by such a focus. From a legal point of view, these crimes can be included as crimes against humanity or under another category of international crimes and, thereby, avoid other types of questions. However, this type of qualification should not divert attention from the criminal investigation, which should count with all the necessary resources, techniques and possibilities needed for the investigation of situations displaying greater complexity than ordinary crimes. As for the resolution of practical and theoretical complexities associated with the qualification of these crimes, the continuous exchange of experiences among legal professionals of different States is also key.
- f. Need to establish the overall context of Plan Condor. Several of the workshop participants stressed that it would be important to generate a common framework for understanding the Plan Condor, following the model of Argentina's lawsuit 13/84, the Trial of the Military Commanders. The lawsuit 13/84 proved that, during the dictatorship from 1976 to 1983, there existed in Argentina a systematic plan of torture and forced disappearance of persons. This finding was then utilised as a starting point for all the trials that followed and which no longer had to prove the existence of such a plan, but rather dealt with specific atrocities committed and the individuals responsible for them. It would be useful to have a similar framework on the existence of Plan Condor as a systematic plan within which specific crimes against victims and defendants can then be prosecuted once the overall context has been firmly established.

With regard to the second topic, ***Necessary Resources to investigate Operation Condor Transnational Crimes***, the discussion focused on questions relating to the importance of establishing interdisciplinary teams to successfully investigate these types of crimes with the participation of historians, forensic specialists, psychologists and document analysts). In particular, these issues were tackled:

- a) Lack of continuity and communication. This seems to be particularly relevant when different judges and judicial operators take part at various stages of the trial process. This situation has resulted once again in delays, since, for example, in many instances in the case of Chile, the arrival of a new judge has meant that the investigation started again from the beginning.
- b) Scattering of resources within the judiciary and the public prosecutor's office. Participants from Chile drew attention to how, within the judiciary, there was no effort to coordinate or organise human rights trials. In 2010, there was an attempt to draw attention to the issue and the response at the time was that judges had to retain their independence. While protecting judicial independence was never under question, the lack of organisation and coordination triggered a situation in which resources, judges, as well as knowledge, were spread out thinly and the available resources were not used efficiently.
- c) Need to work with multidisciplinary teams. Several of the participants emphasised how working with multidisciplinary teams was key to the success of investigations into past human rights violations. It is necessary to work together with other professionals beyond just lawyers, to include historians, forensic experts, psychologists, and document analysts. This approach was successfully employed in the Plan Condor trial in Argentina with an agreement with historians from the University of Buenos Aires.





In relation to the third and last topic, *Access to Evidence and Communication among Judges, Prosecutors, Lawyers and Civil Society*, the following issues were debated in detail at the workshop:

- a) *Accessing archives*. The inability to gain access to the entire collection of documents known as the Archives of Terror, in Paraguay, that contains key official papers about Plan Condor was particularly emphasised, together with the possibility of gaining access to other archives, both military and otherwise, from across the region. Some participants remarked how some state institutions and other bodies wish to retain control over the documentation that is requested and later submitted and how this has a negative impact on the trials;
- b) *Dispersal, the volume and analysis of evidence*. The existence of numerous judicial proceedings in each country and across the region means, in practice, that evidence is spread out all over. In addition, as some of the Argentine participants highlighted, the difficulty often lies not so much in finding evidence, but rather, its sheer volume, which makes it hard to easily identify what could be used in a specific trial and identify new leads that may emerge from pre-existing evidence. Frequently, the evidence is not organised according to specific criteria that would make its analysis easier. The analysis of information requires States to invest resources and develop specific policies on how to work and manage existing sources of information and evidence, such as for example a policy to digitise documents and create indexes of the existing information to permit a quick survey and an easy incorporation of this evidence into criminal trials.
- c) *Delays in official international requests*. To obtain evidence and proof of crimes committed wholly in or in part in the territory of nearby countries. The international requests, which often go through the foreign ministries, are extremely slow to be resolved and this seems to be out of sync with existing technologies which should favour a free-flowing and smooth interchange of information among countries. These delays are unreasonable if we take into account the technology that is available today.

4 Next Steps

After the group discussion, there was a concluding plenary session. The following **three recommendations** were agreed, with the objective being to push ahead with the investigation and eventual prosecution of Condor cases:

1. The creation of *teams dedicated exclusively to the investigation of human rights lawsuits*: these could be established within tribunals, the public prosecutor's office or other actors involved in the criminal proceedings. In light of the complexities surrounding these cases, in addition to personnel from the office in which they are to be established, they will also be multidisciplinary, with the participation in particular of historians and document analysts to support the analysis of archival evidence and documents, and possibly psychologists with regard to the treatment of victims and witnesses;
2. The need to establish *channels ensuring a smooth flow of information* that emerges during investigations. Owing to the difficulty of accessing and obtaining information for transnational crimes and the delays to international official requests, the following proposals were developed:
 - i. *Draft new agreements or improve existing ones* to facilitate cooperation among countries on these topics:
 1. With regard to the existing *Memorandum Of Understanding Between The Republic Of Argentina And The Republic Of Chile On The Exchange Of Documentation To Clarify Serious Human Rights Violations*, dated May 2014, it was suggested that a **60-day deadline** be established for submitting the documents requested in a digital format to facilitate the exchange of information.
 2. Draft new agreements directly between the actors involved in the judicial process (for example between the Human Rights Programme of Chile and the Public Prosecutor Office of Argentina) to ensure a smoother and more efficient exchange of information between those actors that directly investigate the crimes, without having to go through the foreign ministries. Those agreements will generate channels for direct





communication between judges and prosecutors that will permit the easy flow of information and evidence, as well as of specific evidence discovered during investigations, together with their formal incorporation in criminal proceedings.

- ii. Establish an **official database or repository at the regional level** that could contain documents and information produced in each country and could be used in the trials to avoid the current delays associated with international requests for information. This tool could be built on a web platform that could be accessible from any terminal. In an initial stage, information and documents contained in specific case files could begin to be shared, while in a second phase, systematic criteria will be generated to contribute to the analysis of the information. Subsequently, specific permits and users will be identified to ensure access without compromising sensitive information. At this stage, it will be important to discuss the type of information to be recorded and the degree of confidentiality to protect and guarantee personal data of those involved in the trial process.
3. Setting up **mechanisms to generate a common framework on Plan Condor**, such as, for instance, a regional truth commission or working group.

