The right to truth and the state of amnesty laws in Argentina

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Abstract

My presentation will focus on the prevalence in Latin America during the 1970s and 80s of gross and systematic violations of human rights. Gross violations are defined as: massacres of civilians, extrajudicial executions, forced disappearances, assassinations, torture, rape and sexual assault, indefinite arbitrary detention, cruel and inhuman treatment and punishment. The failure in the 1970s and 80s to bring the perpetrators to justice resulted in both de facto and de jure impunity in many countries in the hemisphere. De facto impunity was the result of the failure to investigate and sanction those responsible and de jure impunity was the result of the adoption, by civilian leaders of amnesty laws for the military for gross violations of human rights, or their agreement to accept an amnesty that was adopted by the previous military dictatorship (countries that adopted amnesty laws include Argentina, Brazil, Chile, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Peru, Suriname and Uruguay).

The Inter-American Commission on Human Rights, in 1992, declared the Argentine amnesty laws incompatible with Argentina’s obligations under the human rights instruments of the inter-American system, inasmuch as they curtailed and ultimately extinguished the criminal proceedings involving the egregious human rights violations that occurred during the de facto government. Decisions of the Inter-American Commission are considered “recommendations” and not legally binding on a State. It was not until 2001, with the Inter-American Court’s decision in “Barrios Altos”, a case involving Peru, in which the Court called upon Peru to render without effect its amnesty laws, that a legally binding decision on the matter was issued. The Court subsequently issued similar decisions in cases involving Chile, Uruguay and Brazil. The Argentine Supreme Court, notably, in 2005, did away with Argentina’s amnesty laws based on the Inter-American Court’s decision in the Barrios Altos case, so the Argentine case never came before the Inter-American Court.

Advances have been made in doing away with de facto and de jure impunity and trials of military leaders for human rights violations have taken place in Argentina and other countries in the hemisphere. Argentina has emphasized the importance of the “right to truth” for family members of victims to learn the fate of the thousands of persons who disappeared during the military dictatorship and also the identity of the children of the disappeared who were sequestered and adopted generally as part of a criminal enterprise. Despite the prosecution of Argentina’s military leaders, very little “truth” has been learned about the fate of the “disappeared” and their children. In the US over 90% of criminal proceedings are not decided by jury trials but by plea bargaining. It is submitted that plea bargaining with a high-ranking member of the military might be a more effective way of learning the truth about the fate of the victims of these human rights crimes.