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The Degree of Military Political Autonomy during the Spanish, Argentine and Brazilian Transitions

JORGE ZAVERUCHA*

The state of civil–military relations in the world,¹ especially in the Third World, is very well summed up by Mosca's statement that civilian control over the military 'is a most fortunate exception in human history'.²

All over the globe, the armed forces have frequently preserved their autonomous power vis-à-vis civilians. They have also succeeded in maintaining their tutelage³ over some of the political regimes that have arisen from the process of transition from military to democratic governments, as in Argentina and Brazil. Spain is a remarkable exception. Today, Spain, despite its authoritarian legacy,⁴ is a democratic country. The constituted civil hierarchy has been institutionalised, military autonomy weakened, and civilian control over the military has emerged.

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¹ By democratic civilian control over the military I mean the capacity of the duly constituted authorities (executive, legislative, judiciary) to limit and modify the armed forces' behaviour. Civilian control over the military, in this sense, means the capability of these democratic authorities to impose upon the armed forces their political will, either by disciplinary steps or through institutional arrangements, consequently curbing autonomous military power. In communist countries there is civilian control over the military through the communist party, but since this control is not democratic it is not considered here.

² See Claude Welch, *No Farewell to Arms? Military Disengagement from Politics in Africa and Latin America* (Boulder, 1987), p. 2.

³ Tutelage is an intermediary situation between democracy and dictatorship: The military neither repeatedly obeys civilian commands, as in a consolidated democracy, nor totally disregards civilian rulers, as in a military dictatorship. In other words, authoritarian enclaves persist within the state apparatus allowing the military to continue behaving with some autonomy.

⁴ Spain has experienced a long pattern of military intervention and a weak democratic tradition. In its last 150 years, Spain has witnessed about thirty *pronunciamientos*, an average of one coup every five years.

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Spain's newly founded democracy now appears quite similar to the older European democracies.

Not only Spain, but both Argentina and Brazil have also had a weak democratic tradition. However, the latter two countries have not succeeded in completing the transition to a democratic regime.⁵ Contrary to Spain, the contingency of a military intervention in the Argentine⁶ and Brazilian⁷ political process is still feasible, a fact which constrains everyday political life in these two countries. Indeed, both the Argentine and the Brazilian military authorities continue to behave autonomously vis-à-vis their constituted governments. These military authorities still predetermine some outcomes *ex ante*,⁸ given that they intimidate civilians. They can also determine some outcomes *ex post*⁹ outside the normal political process. In such a situation, the prospect of democratic consolidation is hampered, thus opening the possibility of a political setback.¹⁰

⁵ This article assumes that there are two transitions. First, from an authoritarian government to a democratically elected government that may or may not open the way to the second transition: from a democratically elected government to a democratic regime. Spain completed both transitions and controlled the military. Argentina and Brazil only completed the first one, and therefore have not controlled the military.

⁶ Raúl Alfonsín suffered three coup attempts while the present incumbent, Carlos Menem, has already experienced one.

⁷ Recently the Brazilian media reported that the army was about to buy new uniforms without fulfilling the correct bureaucratic procedures in a transaction worth about \$80 million. Rumours spread that the Minister of the Army, General Carlos Tinoco, was in a shaky position in the cabinet. He then publicly warned that unlike his civilian fellows, military ministers are not easily ousted. 'Tinoco diz que militares não são "fritados"', *Folha de São Paulo*, 31 Oct. 1991.

⁸ In 1988, on the eve of the Congress Constituent voting on both José Sarney's five-year mandate and on presidentialism, the military threatened intervention, both if Sarney's mandate were shortened, and if parliamentarianism were approved. Thereafter, for the first time since the *Constituinte's* inception all 559 constituents turned up to vote and they thereupon approved presidentialism and an extension to Sarney's tenure.

⁹ On 26 June 1991, the Brazilian Congress rejected Provisional Act 296 that granted a 20% wage increase. The Ministries of the Army and the Air Force (but not the Navy) decided to go ahead and disregard Congress. Caught by surprise, President Collor asked the Chief of the Armed Forces Staff about the veracity of the report about his Ministers' decision. The President was informed that the Ministers argued that they had either to raise wages or to put up with insubordination in the barracks. Both the President and Congress decided to ignore this insubordination. Jorge Zaverucha 'Do Mito da Supremacia Civil à Realidade: Collor e os Militares,' *Cadernos de Conjuntura do IUPERJ*, no. 44 (Sept. 1991), p. 25.

¹⁰ Lack of a consolidated pattern of civil-military relations should not be confused with lack of explicit military intervention. Although Venezuela has not suffered from a military coup for more than thirty years, the military has recovered part of its scope for autonomous behaviour. According to Aguero, 'the military has managed to remain somewhat protected from outside public control by developing, with the compliance of party elites, a buffer zone that deters the prompt investigation of irregularities, excesses in the use of force, or outright corruption'. Felipe Aguero, 'The Military and

On the one hand, we face a situation where in Argentina, former President Raúl Alfonsín tried to establish civilian control over the military, but failed. Nonetheless, civilians were able to organise and articulate positions contrary to the military's viewpoints¹¹ as in the case of the trial of the former military junta by a civilian court, something unprecedented in Latin American history.¹² Although Alfonsín's successor, Carlos Menem, has apparently appeased the *carapintada* group, he has not put too much effort into abolishing authoritarian 'pockets' within the state apparatus.

On the other hand, in Brazil, former President José Sarney and Congress did almost nothing to control the military¹³ and similarly President Collor seems uninterested in removing the main authoritarian enclaves from the state apparatus.¹⁴ On 23 July 1991, Collor approved Complementary Law 69 that among other things granted the Armed Forces the status of guardians of law and order, as in the authoritarian constitution of 1967.¹⁵

Although the military still behaves autonomously in Argentina and especially in Brazil, we shall distinguish between different degrees of tutelage, and consequently of military prerogatives. The higher the

Democracy in Venezuela', in L. Goodman, J. Mendelson and J. Rial (eds.), *The Military and Democracy: The Future of Civil-Military Relations in Latin America* (Lexington, 1990), pp. 267-70. Once it is recognised that Venezuela is not a consolidated democracy, the 1992 February coup attempt should not surprise us.

¹¹ In Brazil, however, the 1988 Constitution bowed to the military's interests. Nowadays, most political parties no longer discuss the role of the armed forces in Brazilian society. Therefore, not many new proposals stemming from Brazilian political parties should be expected at the constitutional review of 1993, despite the fact that the 1988 Constitution left the authoritarian military apparatus almost intact.

¹² In Brazil, the military still enjoys a privileged jurisdiction even for common crimes. Recently in a small city in the state of São Paulo, a girl eleven years old was raped by four civil policemen and one military policeman. Parallel investigations are being held by both police forces, and if the indicted are found guilty they will be judged under two different legislations: civil and military. José Amado de Faria Souza, 'Um crime, duas penas', *VEJA*, 15 Jan. 1992.

¹³ For example, whereas in Argentina the National Security Law (NSL) was abolished, it effectively persists in Brazil. Today, in theory, crimes against national security should go before the civil jurisdiction rather than being brought for trial before military courts. The 1988 constitutional article 109-IV asserts that federal judges have the authority to both prosecute and judge political crimes. However, in practice, given that there is no legislation that deals with political crimes in Brazil, the National Security Law is still the one that regulates political crimes.

¹⁴ In July 1991, Congress vetoed a wage increase for the military that had been proposed by the executive. Collor's response typifies the tutelage game. He had two alternatives: either (a) to support the Congress decision and eradicate some of the military's autonomous power; or (b) to ally with the military against Congress. Collor preferred the second option.

¹⁵ This very important law was approved without any major discussion in Congress.

military tutelage over the political authorities, the greater the military prerogatives and, consequently, military autonomy increases because democratic control is weakened.

This article argues that Spain and Brazil¹⁶ are at opposite poles regarding the degrees of military autonomy vis-à-vis civilian authorities, and that Argentina is located in an intermediate position sometimes resembling the Spanish situation and sometimes the Brazilian one. It develops on this comparison by analysing nine items, as follows:¹⁷

Military prerogatives

(1) Peak intelligence agencies controlled by a military chain of command. Weak civilian review boards

During Franco's regime, Spain had eleven intelligence services.¹⁸ Obviously, in a democratic regime these services had to be controlled. Indeed, Adolfo Suárez infuriated the military when through Royal Decree 2723/2 of 2 November 1977, he sponsored the creation of a central intelligence service, *Centro Superior de Información de la Defensa* (CESID). The CESID was supposed to centralise the intelligence flow of information and to work closely with the Joint Chiefs of Staff (JUJEM).¹⁹ As time passed by, the CESID deviated from its original purposes, and started to report to the armed forces rather than the government. Indeed, Royal Decree 726/27 of March 1981 provided that the CESID should also help the armed forces to perform the missions assigned to them by article 8 of the 1978 Constitution.²⁰ But after the failed coup attempt of 23 February 1981, the new Prime Minister, Leopoldo Calvo Sotelo, and his Minister of Defence, Alberto Oliart, attempted to tame the CESID. Thus, ministerial Order 135/30 September 1982 curtailed military influence over the CESID by decreeing that CESID's main duty was to supply the Prime Minister's information needs.

Under the Felipe González administration, the drive to separate CESID from autonomous military power continued. Royal Decree 135/1984

¹⁶ The Brazilian transition resembles the Chilean one. A good account on how President Patricio Aylwin's government survives on sufferance from the military can be found in Brian Loveman, '¿Misión Cumplida? Civil Military Relations and the Chilean Political Transition', *Journal of Interamerican Studies and World Affairs*, vol. 33, no. 3 (1991), pp. 35–71.

¹⁷ Besides item no. 8 all others were suggested by Alfred Stepan, *Rethinking Military Politics: Brazil and the Southern Cone* (Princeton, 1988), pp. 94–7.

¹⁸ Jesus Ynfante, *El Ejército de Franco y de Juan Carlos* (Madrid, 1976), p. 24.

¹⁹ Carlos Fernández, *Los Militares en la Transición Política* (Barcelona, 1982), p. 190.

²⁰ Ministerio de Defensa, *Memoria de la Legislatura (1982–1986)* (Madrid, 1986), p. 75. Article 8 states that 'the mission of the armed forces, as constituted by the army, the navy and the air force is to guarantee Spanish sovereignty and independence, the defence of its territorial integrity and the constitutional order'.

established the CESID as organically dependent upon the Defence Minister, but functionally subordinated to the Prime Minister. Moreover, the Prime Minister established that the CESID was his intelligence service, and his alone, even though it depended organically on the Defence Ministry.²¹ Furthermore, Parliament fully exercised its surveillance role over CESID's activities. It became routine in Spain for the Defence Minister and the Director-General of the CESID to attend sessions of the Parliamentary Defence Committee.²² Indiscriminate use of the intelligence service apparatus to regulate internal affairs was terminated in democratic Spain. The Francoist mentality concerning vigilance against the 'internal enemy' was systematically uprooted.

In Argentina, President Alfonsín deserves credit for demilitarising the *Secretaría de Inteligencia y Defensa del Estado* (SIDE) but he lacked a strategy for building a reliable intelligence service. Unhappy with SIDE's performance, Alfonsín re-established an old agency, the *Central Nacional de Inteligencia* (CNI), created in 1971 by the former President General Alejandro Lanusse, without developing a clear plan for controlling the intelligence apparatus.²³ The CNI board (five civilians and six military) was supposed to control the flow of intelligence information but, oddly enough, it was headed by SIDE's secretary, Facundo Suárez. Thus from its inception it has been unclear which of the two agencies was mainly responsible for intelligence matters. The intelligence services were also handled pusillanimously by the major political parties.²⁴ Radicals and Peronists diverged on whether SIDE or CNI should be the senior intelligence agency. Seeing that they could not reach an agreed decision, they wrote vaguely in article 15 of the April 1989 Defence Law that the highest intelligence body would furnish strategic information. To make matters even worse, article 45 of the law practically negated article 15. It postponed any changes in intelligence matters until a new law could be enacted within 365 days.²⁵ The due date expired, nothing was done, and this matter is no longer on the political agenda of the Argentine Congress.

²¹ *Ibid.*, p. 77.

²² *Ibid.*

²³ The following eleven intelligence agencies still persist in contemporary Argentina: CNI, SIDE, Ministry of the Economy, Ministry of Foreign Affairs and Religion, Ministry of the Interior, Joint Chiefs of Staff, SIFA (air force), SIN (navy), SIE (army), Navy Prefecture and National Gendarmerie.

²⁴ For example, the army's intelligence unit, Battalion 601, was left untouched and, consequently, continues to behave autonomously vis-à-vis not only the government but also the rest of the military. David Pion-Berlin, 'Between Confrontation and Accommodation: Military and Government Policy in Democratic Argentina', *Journal of Latin American Studies*, no. 6 (1992), p. 556.

²⁵ Mercedes Botto, 'Gobierno y Parlamento: Proceso de Toma de Decisiones sobre la Política Militar en la Transición Democrática Argentina (1983/89)', unpubl. article, CEDES (Buenos Aires), 1989, p. 51.

In Brazil, the former President, José Sarney, maintained the military-controlled *Serviço Nacional de Informações* (National Intelligence Service, SNI) which was not accountable to Congress. His elected successor, Fernando Collor de Mello, abolished the SNI and created in its stead the *Secretaria de Assuntos Estratégicos* (Secretariat for Strategic Affairs, SAE) headed by a civilian. It may be suggested that Collor's decision to abolish the SNI was more a personal concern than a deliberate institutional move to curb the intelligence forces' autonomy. Collor was enraged when he found out that the SNI had compiled a dossier against him, because as a presidential candidate he had bitterly attacked the Sarney government. Yet SAE still imitates SNI's tradition of political espionage. For example, SAE's main secretary informed Collor that the Workers' Party was intending to denounce the existence of stockpiled grain that had gone rotten. Collor then dispatched a group of authorities to the state of Mato Grosso where they immediately disclosed that fifteen thousand tons of grain had indeed been spoiled.²⁶ The media also reported that SAE's agents were monitoring the *Sem-Terra* (landless) Movement in the south of Pará state. In 1991 SAE secretary, Pedro Leoni Ramos, proposed to Congress a project that would regulate the activities of the intelligence services. However, this project oddly exempted from Congressional surveillance the intelligence forces of the Federal Police; the Military Police – *Polícia Militar-2* (Military Police-2); and of the three armed forces – the *Centro de Informações do Exército* (the Army's Information Centre, CIE); the *Centro de Inteligência da Marinha* (the Navy's Information Centre, CIM); and the *Secretaria de Inteligência da Aeronáutica* (the Air Force's Intelligence Secretariat, Secint) as if those forces did not come under the government jurisdiction.²⁷

Although Collor courageously abolished the SNI, he did not touch the core of the problem. Collor allowed the SNI's records to be transferred to the *Centro de Informações do Exército* (the Army's Information Centre, CIE), the army's intelligence service. Furthermore, he allowed his first head of the armed forces, Chief of Staff, General Jonas de Moraes Correia Neto, to create a structure parallel to that of the SAE.²⁸ Therefore, abolishing the SNI does not mean that the intelligence apparatus is under democratic control. In August 1991, a journalist denounced Collor for spending US\$65 million of his secret budget on nuclear research, and for salary payments to former members of the SNI.²⁹ It should also be seen as a

²⁶ *Veja*, 25 July 1990.

²⁷ Guilherme Evelin, 'Projeto restringe a espionagem', *O Estado de São Paulo*, 1 Dec. 1991.

²⁸ Francisco Vianna, 'O general de capuz', *Senhor*, 16 May 1990.

²⁹ Congress approved Collor's budget arguing that it was unauditible since it was 'codified'. Rather than demanding transparency from the executive, the legislation gave up its right to control intelligence activities. Mario Rosa, 'Governo tem conta secreta de US\$65 milhões', *Jornal do Brasil*, 4 Aug. 1991.

matter of consequence that Collor awarded the *Ordem do Rio Branco* to Colonel Mario da Gama, who was in charge of wire-tapping operations during Sarney's tenure.³⁰

As we have seen, not only the President but also the Brazilian Congress has been associated with the persistence of practices that escape the routine mechanisms of public control and that divert the flow of intelligence information. Former federal deputy Paulo Guedes presented a project proposing the creation of an agency that would control government activities, but Congress disregarded his suggestion.³¹ In May 1990, another federal deputy, Fabio Feldman, requested that Senate president, Mauro Benevides, create a commission in order to monitor nuclear activities.³² Congress ignored Feldman's proposal and, although he has maintained his campaign, so far Congress continues mute.³³

(2) Cabinet participation by military officers on active service

No active-duty military officer participates either in the Spanish cabinet³⁴ or the Argentine one.³⁵ In Brazil, however, President Sarney allowed the participation of six active-duty officers in his cabinet: the ministers of the army, the navy and the air force, the head of SNI, the military household and the armed forces chief of staff. President Collor revoked ministerial status for the three last-named military personnel, but he maintained the ministers of the army, the navy and the air force in his Cabinet.³⁶

(3) Absence of a Defence Ministry

Until July 1977, Spain lacked a Defence Minister. Then Adolfo Suárez decided to create a Defence Ministry and appointed General Manuel Gutiérrez Mellado to head it.³⁷ In April 1978, Suárez reshuffled his cabinet. He replaced Gutiérrez Mellado by a civilian, Augustín Rodríguez Sahagún. Since then, all Defence Ministers have been civilians.

There is a Ministry of Defence in Argentina, and Alfonsín strengthened

³⁰ *Veja*, 19 June 1991.

³¹ Etevaldo Dias, 'Congresso deve fiscalizar lado secreto do governo', *Jornal do Brasil*, 5 Aug. 1991.

³² The Army, the Navy and the Air Forces are working in parallel projects aiming to obtain enriched uranium. The Army wants to enrich uranium using graphite, the Air Force is trying lasers, and the Navy is using centrifuges. *Veja*, 25 Sept. 1991.

³³ 'Deputado Quer Comissão Para Fiscalizar Verba Secreta', *Jornal do Brasil*, 8 Aug. 1991.

³⁴ Prime Minister Calvo Sotelo (1981–2) led the first Spanish government since 1939 not to include a single military officer. His practice has been followed by Felipe González.

³⁵ Neither Raúl Alfonsín nor Carlos Menem has allowed a military presence in their cabinets.

³⁶ By Sept. 1992 Collor had already changed all the members of his original cabinet except the three military ministers.

³⁷ Gutiérrez Mellado was a liberal who was helping Suárez to establish civilian control over the military. Not surprisingly his appointment was not well received by Francoist officers.

its position when he clarified the chain of command. Alfonsín abolished the commanders-in-chief posts but created three chiefs of staff, and above them he placed the Joint Chief of Staff. The Minister became not only the highest military authority but also the main person responsible for military planning. This drive had two main purposes: (1) to ensure that the President of the nation became the only Commander-in-Chief of the armed forces; (2) to avoid any further Malvinas/Falkland type mistakes, where the lack of a unified military command was a factor. Therefore, the Argentine Minister of Defence has become the person who represents the President, and he has to deal directly with the Joint Chiefs of Staff rather than with the commanders in chief. In the past they frequently thought themselves to be more important than the Minister of Defence because they were commanders, like the President of the nation.

There is no Defence Ministry in Brazil. Neither Sarney nor Collor attempted to create one. Even Congress thinks that this is a meaningless matter. During the 1988 constitutional debates, the creation of this Ministry was proposed to the Subcommittee of Defence of the State and Society. But the head of that committee, Deputy Ricardo Fiúza, rejected such an attempt. He argued that a Ministry of Defence was a danger to democracy because it could become a super-ministry, and besides that he 'was more concerned about having a military power in everyman's hand than having a civilian power in military's hands'.³⁸ In other words, Fiúza, afraid that a non-conservative candidate could win the presidential election, and consequently that the Ministry of Defence could fall into the wrong hands, preferred to sacrifice civilian control over the military by hampering the creation of the Defence Ministry. The fear of having his interests harmed by other civilians made Fiúza play the military card.³⁹

(4) Lack of a legislative routine of detailed hearings on defence matters

The strengthening of defence matters was a constant concern of Spanish political leaders. In July 1980, Parliament approved the very important Organic Law 6. This law established the basic criteria that would regulate national defence and military organisation. Among other things, it established that the legislative branch would control the administrative actions of both the government and the military.

In June 1981, Parliament approved another important law that also helped to implement civilian control over the military. Organic Law 4 clarified and regulated juridical concepts such as state of alarm, emergency,

³⁸ Brazilian Congress, Comissão da Organização Eleitoral Partidária e Garantia das Instituições, Subcomissão de Defesa do Estado, da Sociedade e de Sua Segurança, Report, 11 May 1987, p. 29.

³⁹ In January 1992 Fiúza became Collor's new Minister of Social Action.

and siege.⁴⁰ Parliament made very clear that even in case of extreme necessity, only the government or Parliament had the right both to appoint and to dismiss the military authorities that would be needed to uphold order. The law, with all its juridical intricacies, had the purpose of creating enough constitutional constraints to deter the military, given unusual conditions, from breaking previous constitutional commitments.

The Organic Law of January 1984 institutionalised the Spanish legislative routine of hearings on defence matters. Among other things, it introduced the following cases: (a) only with the Prime Minister's authorisation was the Defence Minister entitled to perform some of the Prime Minister's duties related to defence and military policy; (b) Parliament was the body that must approve defence laws and budgets. It became the body that was to declare war and to make peace; it must authorise international military treaties or accords. Besides that, Parliament had the right to debate the general lines of defence policy and approve the budget for armament programmes.

Argentine politicians on the other hand, instead of showing concern for building a new institutional framework that could have enabled a better control on defence matters, attempted to advance their short-term interests at the expense of the democratic regime. Sham parliamentary control over the intelligence services indicated the absence of a legislative routine on defence affairs. For instance, during Alfonsín's tenure, Peronist deputy José Luiz Manzano presented a proposal for parliamentary control over the intelligence services. At that moment the Radicals had a majority in the Lower Chamber but they did not endorse the proposal. Towards the end of 1989, Radical deputies, who by then had lost their majority in the Lower Chamber, decided to revive Manzano's proposal. Given the fears that the Senate would veto an attempt to transform such a proposal into law, the deputies proposed a parliamentary committee only within the province of the Lower Chamber.⁴¹ However, to avoid major resistance from the politicians, the text excluded from the commission's power a key element: budgetary control of the intelligence services.⁴²

As in Argentina, a legislative routine on defence matters is absent in Brazil. During Sarney's government, parliamentary committees barely exercised any oversight over the military authorities. During Collor's tenure, however, there is a better interaction between the military and the congress. Nonetheless, it was not until one year after Collor's

⁴⁰ For juridical differences see Pedro Villalón, *Estados Excepcionales y Suspensión de Garantías* (Madrid, 1984), pp. 107–18.

⁴¹ Throughout Alfonsín's tenure and even now, the Senate has been perceived as being much more sensitive to military viewpoints than the Lower Chamber.

⁴² Julio Blanck, 'Proyecto de Control Parlamentario,' *Clarín*, 27 Nov.–3 Dec. 1989 (international edition).

inauguration, and due to a random case that the first military authority, Army Minister, General Carlos Tinoco, appeared before a review committee. In April 1991 General Tinoco explained to Congress the hostilities that army troops had taken part in on the Amazonian frontier with Colombia. However Congressional inertia over the control of the military persisted. For instance, when Navy Minister, Admiral Mário César Flores, addressed a review by parliamentary commission on the Brazilian nuclear programme, he stated that the Navy could not abide by the law that protected the Brazilian computer and electronics industry because 'if we were to comply with this law, we could not fit out a corvette like *Inhaúma*'.⁴³ Congress did not take any stance against the ministry. However, if a common citizen is caught bringing forbidden electronic or computer components into the country he is fined and may go to jail.

(5) Police and paramilitary organisations under the armed forces' control and active-duty military officers commanding local police forces

Debates about the separation of the *Fuerzas del Orden Público* and the armed forces, i.e. between the military's internal and external roles, were vigorously pursued in Spain. For example, the Conservative leader, Fraga Iribarne, did not like the idea that the police would be detached from the military, since it would then be harder to call on the armed forces to control internal social unrest. However, the 1978 Constitution severed Franco's police from the armed forces and created the *Fuerza y Cuerpos de Seguridad*. Indeed, the process of transforming old agents of repression into guardians of a democratic order was not easy. More remained to be done. In 1979, Suárez renamed the *Policía Armada* and equipped their members with new uniforms. The Armed Police had been in charge of political repression, and they used to wear grey uniforms that resembled those of the Nazis.⁴⁴ The government replaced the dull grey uniform with smarter brown ones and the *Policía Nacional* (National Police) was born.⁴⁵ Suárez realised that he needed to make more substantial changes if he wanted to lay the foundation of a modern urban force. Indeed, the old police skeleton remained now with new uniforms: no personnel were replaced, and the new police force lingered on as a paramilitary organisation led by army officers. So next he completely severed the police from the military. To establish a professional code, where they could see themselves as policemen rather than as soldiers, the police officer corps

⁴³ *Veja*, 19 June 1991.

⁴⁴ The Spanish for grey is *gris*. Therefore, some Spaniards called the Armed Police the '*Gristapo*'.

⁴⁵ Robert C. Hudson, 'Democracy and the Spanish Police Forces', *The Police Journal*, no. 59 (1975), p. 56.

would have to be drawn from the civilian population rather than from the ranks of the armed forces.⁴⁶

Narciso Serra, Felipe González's Minister of Defence, carried on Suárez's previous moves to demilitarise the police forces. Serra specified that police officers should be trained in their own academies, and the government should recognise police unions. Besides that, in 1983, he sponsored the merger of the *Cuerpos Superior de la Policía*, the plainclothes police force, with the National Police under the new title of *Cuerpo Nacional de la Policía*. With this move, Serra increased the number of civilians in the new police force. By the next year, 1984, for the first time, police forces were absent from the Armed Forces Day Parade.⁴⁷ The *Guardia Civil* demanded a solution of its own. The 1980 Organic Law 6 articles 38–9 established that during peacetime the Guard depends on the Ministry of Interior, when it is needed to keep order and public security, but the Guard reports to the Minister of Defence if he wants the force to perform military activities such as manoeuvres. In time of war, however, the Guard depends solely on the Minister of Defence. Traditionally, the Guard has been seen as a reactionary force. Its members used to live in isolated barracks, where they exerted their authority over the countryside, the strongest bulwark of Francoism. In November 1986, for the first time in 150 years, Serra appointed a member of the socialist party, Luis Roldán, to command the Guard. Serra's plan was to create one civil police force and one militarised (but not military): one similar to the Police Nationale and French Gendarmerie. Unlike the Franco era, a Guard could now become a soldier or a policeman, but neither a soldier nor a policeman could become a Guard.⁴⁸

In Argentina, both the National Gendarmerie and the Naval Prefecture became independent paramilitary organisations rather than extensions of the armed forces. However, they were not placed under the control of the Ministry of Interior, but under the control of the Ministry of Defence, both in peace- and in war-time. Neither are the police forces under military control. Therefore, Alfonsín took a clear stance: the armed forces and the paramilitary organisations and police forces should remain separated.

Whereas both Spanish and Argentinian transitional governments attempted to sever the police from the armed forces, the Brazilian one took a different course. For the first time in Brazil's history, the 1988 Brazilian Constitution recognised military policemen and fire fighters as military employees (article 42). Given that military policemen are

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, p. 58.

⁴⁸ This explains why Serra granted the right of unionisation to the police forces, but not to the Guards.

forbidden to create unions and to strike, any wrongdoing is to be judged not by common law but under the military penal code. Besides that, the Constitution created a conflict of jurisdiction. While article 22-XXI establishes that the Federal Government, through the Army Ministry, can legislate about mobilising and calling up the military police, another article (144-IV) states that although the military police forces and fire fighters are extensions of the armed forces, they are answerable to state governors. Therefore, the military policeman has two patrons: the state governor who pays his wage, and the Army which controls his armament supply through the *Inspetoria Geral da Polícia Militar* (IGPM) besides coordinating police operations. In case of social unrest, the military policeman may choose either to follow the state governor's authority, or to join specific army units scattered throughout the country whose function is to incorporate the military policemen.

(6) The military have played a major role in setting the standards for promotion patterns

The Spanish Parliament discusses extensively which officers deserve to be promoted, and then recommends them to the executive for further approval.

In Argentina, the President of the Republic cannot promote officers to the rank of General without the Senate's consent. The importance of having a strong upper chamber was mainly felt at the beginning of Alfonsín's tenure. The armed forces had to bargain not only with the President, but also with the Senate, about the promotion of some officers who were linked with the dirty war. In some cases, Alfonsín was ready to turn the page, but some senators did not agree to reward those who had violated human rights.⁴⁹

The Brazilian Congress does not have any power vis-à-vis promotion to the rank of General and above. The 1988 Constitution in its article 84/XIII states that the President of the Republic is the one responsible for promoting the top brass. In practice the armed forces present a promotion list and the President rubber-stamps it.⁵⁰ Such presidential behaviour helps to strengthen the institutional linkage between the military and the President rather than with the legislature. In view of this,

⁴⁹ For example, on 19 June 1985, the Senate approved 175 out of the 178 promotions proposed in the army and navy's lists. Colonel Francisco D'Alessandri, Lieutenant Colonel Julio César Durand and Captain Roberto Pertusion were vetoed. *La Nación*, 20 June 1985.

⁵⁰ The most recent case was the promotion of General José Luiz Lopes da Silva, the officer who, on 9 October 1988, led thirteen hundred soldiers from the army and military police in storming the Volta Redonda steel mill to crush a legal strike. Three workers were killed. Jorge Zaverucha, 'A Promoção', *O Estado de São Paulo*, 20 May 1992.

the Brazilian armed forces must be seen as an extension of executive power to the detriment of the legislature.

(7) Military personnel unlikely to face judgement by civilian courts

The 1978 Spanish Constitution (article 117) established the principle of a single jurisdiction for both civilian and military offences.⁵¹ This article, with a deep significance for civilian control over the military, gave the military courts authority solely in cases linked to breach of discipline, desertion, spying, indecent attitudes etc. Therefore, those who participate in coup attempts would automatically be sent for trial by a civilian court. In the same spirit, the Organic Laws 12 (November 1985) and 13 (December 1985) regulated discipline in the armed forces and the terms of the Military Penal Code. Violations within military jurisdiction, or any behaviour that may hamper the constitutional performance of the armed forces, would fall under the Military Penal Code. However, offences such as involvement in a coup, or lack of respect towards civilian authorities, would bring the military before a civilian court.⁵² The best proof that the military may be sent for trial by civilian courts was provided following the failed coup of 23 February 1981. Although for the first time in recent Spanish history a military court punished military persons for crimes against civilians, the government decided that these punishments were too soft. Therefore, it appealed to civilian courts who gave a tougher punishment to the plotters.

On 14 February 1984, the Argentine Congress enacted Law 23,049 to reform the Military Code of Justice. For the first time in Argentine history, military jurisdiction over common crimes committed by military personnel engaged in military activities was abolished. Therefore, coup attempts and human rights violations committed by military persons would henceforth be brought to a civil jurisdiction. This was the law that allowed the Videla junta to be sent for trial and convicted by a civil court.⁵³

In Brazil, the principle of single jurisdiction for civilians and military is absent. This situation impedes the establishment of civilian control over the military, as the Volta Redonda affair exemplifies. In October 1988,

⁵¹ It is worth remembering that during the Moncloa Pact of October 1977, the government and all political parties represented in the Parliament agreed, among other things, to reform the code of military justice. Felipe Aguero, 'The Assertion of Civilian Supremacy in Post-Authoritarian Contexts: Spain in Comparative Perspective', unpubl. PhD diss., Duke University, 1991, p. 186.

⁵² Ministerio de Defensa, *Memória de la Legislatura (1982-1986)* (Madrid, 1986), p. 279.

⁵³ The law established that common crimes committed by the military in the past would be reviewed by military courts, but the government had the right to appeal. That right was soon activated. Given that the military courts were taking too much time to bring the military to trial, the government transferred these cases to a civil court.

workers acting within the law came out on strike at the Volta Redonda steel mill. The military were called to curb the strike, and three workers were killed during the resulting clashes.⁵⁴ Thereafter thirteen military persons were summoned to testify at a civilian inquiry. However, General Gonçalves refused to allow his men to be prosecuted by a civilian court. Although the Minister of Justice, Oscar Dias Correia, opposed General Gonçalves' stand, former President Sarney did not support his Minister's view. By remaining passive, President Sarney contributed to the discredit of those institutions that he claimed to have protected so diligently at the start of the strike. Another example of how the absence of a unified jurisdiction embitters civil–military relations came on the last day of 1988, when a boat by the name of *Bateau Mouche* sank in the harbour of Rio de Janeiro. Besides being overcrowded with tourists celebrating the New Year at sea, the boat failed to meet basic safety rules. While similar cases of shipwreck frequently occur in Amazonian rivers without any backlash, this time the boat carried well-known members of Rio society. Consequently, pressure was applied to find out who was responsible for such a tragedy. Then the *imbroglio* began. The Governor of Rio de Janeiro, Moreira Franco, ordered the civil police to open an inquiry. The Navy Minister, Admiral Henrique Sabóia, stated that this inquiry lacked a legal basis.⁵⁵ Given that the licencing of tourists boats is a responsibility of the navy rather than of the Minister of Transportation, Admiral Sabóia believed that only the Maritime Tribunal was entrusted to judge cases concerning either civil or military vessels. There were strong suspicions that the boat sank because of the navy's security negligence and in particular due to corruption at the time the boat was inspected before departure. Yet the Navy Minister strove to monopolise the investigations.⁵⁶

(8) Potential for military autonomy during internal disturbances⁵⁷

In Spain the risk that soldiers used to curb social unrest might behave as a military rather than as a civilian force is practically nil. Although the King

⁵⁴ The Minister of the Army, General Leonidas Pires Gonçalves, honoured four military policemen, who jointly with army tanks took part in the raid, with one of the highest military distinctions, the peacemaker medal. *Jornal da Tarde*, 21 Feb. 1989.

⁵⁵ Jorge Zaverucha, 'Civil–Military Relations During the Process of Transition: Spain, Argentina and Brazil', unpubl. PhD diss., Univ. of Chicago, 1991, p. 254.

⁵⁶ Indeed, ten military men were sent for trial by a military tribunal, rather than by a civilian one.

⁵⁷ This refers to the Mansfield Doctrine that was used against rioters in October 1831 in Bristol, England. The doctrine stated that soldiers could be used in civil disorders, but only if they were used as civilians. That is to say, if a military person's actions in the course of a riot had exceeded the powers with which he was invested, he might be punished not by a court-martial but upon an indictment in a civilian court. The idea

is the Commander-in-Chief of the armed forces, Parliament decides when the military should intervene internally, and Parliament controls any such intervention.

In Argentina, after more than four years of discussions, the National Defence Law was approved by Congress on 13 April 1989. It stressed the external role of the armed forces, but also allowed for the possibility of their use in case of an 'internal aggression', without defining what aggression means. This vagueness should have been apparent only three months earlier on 23 January 1989, when the military garrison of La Tablada was attacked by a leftist group: the military interpreted the armed action as an 'internal aggression' against the armed forces. Indeed, on 10 March 1989 Alfonsín's government even enacted Decree 327, which violated the concurrent Defence Law. In article 15 it said that questions relative to the internal politics of the country must not in any circumstances be dealt with by the military intelligence organisations. However, the new decree also authorised the President to call upon the armed forces to fight against terrorism and, if necessary, to appoint a military chief to command the operation, without detailing the legal framework under which the military would operate. For instance it was unclear whether the military commander would be subordinated to the local civil authority, or vice versa. In case of a breach of the law, it was not stated whether the military would be accountable to civilian or to military justice. President Menem also faltered on the issue of the internal role of the armed forces. Although his Defence Minister, Humberto Romero, stated that the Constitution had already furnished Menem with enough power to call for military internal intervention, the President behaved differently. On 26 February 1990, after a new wave of urban looting, Menem, through Decree No. 392/390, made explicit what Alfonsín had left implicit: the armed forces could intervene without strict civilian surveillance in case of internal disorder.

The Brazilian situation is very similar to the Argentine one. As the Volta Redonda affair has shown, civilian authorities are not even able to monitor *ex post* military intervention in internal politics. Hoping to avoid new cases like this one, some deputies negotiated with the military over Complementary Law no. 69 that was ratified by President Collor on 23 July 1991. (There had been no major congressional discussion of this law.)

is to avoid the impression that the commencement of the riots had precipitated a military government or that any part of the laws of the Constitution had been suspended or dispensed with. David Engdhal, 'Soldiers, Riots and Revolution: The Law and History of Military Troops in Civil Disorders', *Iowa Law Review*, vol. 57, no. 1 (1971), pp. 33-5.

Its purpose was to regulate the armed forces' organisation, and to specify under what conditions they could be used. It said nothing about the army's deployment⁵⁸ and it maintained the armed forces' role as guardians of law and order. Such a prerogative is absent from any truly democratic constitution. In other words, the military retained the potentiality of becoming an independent enforcement body during internal unrest.

(9) Military control over specific areas of economic activity (aeronautics industry, navigation, aviation, etc.)

Neither in Spain nor in Argentina are economic activities under the military domain.⁵⁹ In Brazil, however, the military's participation in civil economic activities is direct and active. For example: The *Comissão Brasileira de Atividades Espaciais* is subordinated to the Army's Chief of Staff;⁶⁰ the *Departamento de Aviação Civil* is controlled by the Air Force rather than by the Minister of Transportation;⁶¹ and the licensing of the merchant fleet and leisure boats⁶² is granted by the navy.

Conclusion

Table 1 allows us to perceive more clearly that Brazilian and Spanish prerogatives are at opposite poles. In all nine prerogatives where 'No' appears in the Brazilian column 'yes' appears in the Spanish one. Argentina, however, is in an intermediary situation. In six prerogatives she differs from Brazil and, consequently, resembles Spain. In the other three prerogatives, Argentina looks very much like Brazil.

Although quantitatively Argentina is closer to the Spanish case, the three most difficult military prerogatives remain to be abolished, that is to say, the lack of parliamentary control over the intelligence forces, the lack

⁵⁸ The majority of the army's troops remain stationed close to urban centres, rather than at the Brazilian borders. For instance, the Vila Militar, one of the biggest garrisons in the Southern Cone, is located in Rio de Janeiro where there is no space for tank manoeuvres.

⁵⁹ During the Franco era, areas of military participation included the control of the merchant marine, meteorological agencies and civil aviation. Felipe Aguero, 'The Assertion of Civilian Supremacy in Post-Authoritarian Contexts: Spain in Comparative Perspective', unpubl. PhD diss., Duke University, 1991, p. 119.

⁶⁰ The 1988 Brazilian Constitution neglected this issue; therefore, there is not a clear differentiation between civil and military activities in space.

⁶¹ This situation constitutes an incentive to clientelistic practice. The São Paulo Airline, VASP, which is in competition with two other Brazilian airlines to obtain new international routes, depends on Ministry of Air Force approval. In May 1991, VASP decided to assist its patron. On air force salary slips the following was printed: 'the retired and inactive are receiving their salary payment receipts, at home, courtesy of VASP'. *Folha de São Paulo*, 13 June 1991; *O Estado de São Paulo*, 13 June 1991.

⁶² Collor's Minister of Economy was fighting against tax evasion, and considered asking the navy to furnish a list of yacht owners.

Table 1. *Military Prerogatives of Brazil, Argentina and Spain*

	B	A	S
(1) Peak intelligence agencies controlled by a military chain of command. Weak civilian review boards	Y	Y	N
(2) Cabinet participation by military officers on active service	Y	N	N
(3) Absence of a Defence Ministry	Y	N	N
(4) Lack of a legislative routine of detailed hearing on defence matters	Y	Y	N
(5) Police under overall direct command of military; most local police chiefs are active-duty military officers	Y	N	N
(6) Military have played a major role in setting the standards for promotion patterns	Y	N	N
(7) Military personnel unlikely to face judgement by civilian courts	Y	N	N
(8) Potential for military autonomy during internal unrest	Y	Y	N
(9) Military control over specific areas of economic activity (aviation, aeronautics industry, navigation, etc.)	Y	N	N

of a legislative routine on defence matters and the potential for military autonomy during internal unrest, lead us to conclude that the core of Argentine and Brazilian civil-military relations are very similar.

Therefore, from the military prerogative perspective we may conclude that Spain completed its transition to a democratic regime because it repealed the military's autonomous behaviour, and the military reliably obeys civilian commands.

On the one hand, Brazil finished the first transition with the election of a President, but the second transition, from government to a democratic regime, is still a long way off. Civil-military relations did not advance, and practically nothing substantial was done to curtail military prerogatives. Indeed the military continues openly challenging the constituted civilian authorities. Leaders of the democratic transition opted out of confronting the military over its scope for autonomy. In those rare cases when the Executive and Legislature tried to impose their will the military threatened to disrupt the transition and so the civilians simply resigned themselves to the continuation of military prerogatives.

On the other hand, the Argentine transition has succeeded in abolishing part of the military's scope for autonomous behaviour. But, given that the core of the military's autonomy remains intact and some authoritarian enclaves still resist any civilian monitoring, we may conclude that this transition remains a complex and perhaps lengthy process, before it succeeds in consolidating democratic civilian control over the military.