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Addressing the Crimes of Torture and Enforced Disappearances in Latin America: Achievements and Challenges from a Human Rights Perspective

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Abstract: Latin American states suffered from widespread crimes of torture and enforced disappearances during the second half of the twentieth century. In the 1980s, the region has transitioned from ignoring international legal obligations, including human rights, to abiding by them. This paper assesses the role of international human rights law in shifting state compliance and state behavior in relation to crimes of torture and enforced disappearances in Latin America. To do so, the article refers to international and regional conventions, customary international law, as well as landmark court cases. It displays empirical evidence on how different international and regional systems have aided domestic efforts to address these two crimes. The main finding of this research is that the existing human rights system cannot sufficiently address gross violations of torture and enforced disappearances if it is left to either international or domestic forms of pressure. Instead, a complex interaction of treaties, case law, laws and state pressure at the international, regional and domestic levels are all necessary conditions to shift state behavior with respect to human rights.

Keywords: Human Rights, Crime of Torture, Enforced Disappearances, Latin America, International Law, Customary International Law.

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Introduction

The abuses committed by many Latin American dictatorships during the second half of the twentieth century included widespread cases of crimes of torture and enforced disappearances. These regimes disregarded compliance with international legal obligations to a large extent and the Cold War context prevented the international community from paying attention to the abuses committed in the region.[1] Nevertheless, since the 1980s, many of these states transitioned to democracy and shifted their behavior to abide by human rights norms. To complement existing literature on human rights and state behavior, I will specifically analyze what has been the role of international human rights law in shifting state compliance and state behavior with regards to the crimes of torture and enforced disappearances. To do so, I will draw on cases from Latin American

1 Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice* (Cambridge: Cambridge University Press, 2016), Second Edition, 382-83.

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countries. The reason to use this region is twofold. On the one hand, there was a similar shift of democratization throughout the region around the 1980s, this permitted many countries in the region to commit to the human rights system and address, somehow, massive human rights violations. On the other hand, there is wide documentation of both state-sponsored torture practices, as well as crimes on enforced disappearances. As a matter of fact, it was repressive Latin American regimes' widespread and systematic use of disappearances what made this crime part of the human rights vocabulary.[2]

This paper will have the following structure. Part I will contextualize both the crimes of torture and enforced disappearances. In doing so, I will revise international conventions and declarations, as well as regional conventions. Part II will look at customary international law (CIL) to understand the nature of both crimes. Looking at individual criminal responsibility is essential to understand to what extent can previous leaders be prosecuted for crimes of torture and enforced disappearances, trumping the international legal principle of state immunities. To exemplify the status of international criminal law vis-à-vis crimes of torture and enforced disappearances, this study will analyze the principles of *aut dedere aut judicare* (extradite or prosecute) and of universal jurisdiction. Part III will theorize on state behavior, looking closely at the effect that international and regional mechanisms have had on different Latin American states. Finally, Part IV will provide an in-depth analysis of the status of crimes of torture and enforced disappearances in Latin America. In doing so, first, a generalized case on anti-amnesty laws litigation will illustrate different patterns and interactions of international, regional and domestic mechanisms that helped shift state behavior in the region. Afterward, I will use country specific case studies to prove that state behavior does in fact change when international human rights law is adopted into domestic law.

Part I: Crimes of torture and enforced disappearances in international law

The crime of torture

The crime of torture has been practiced for many centuries and is now widely recognized and codified in international law.[3] Authoritarian and dictatorial regimes have been historically using torture to control and repress their population. To address this crime, different international and regional declarations and conventions, as well as domestic law and domestic courts have made torture illegal to the point of acquiring the status of peremptory norm. This norm is of an *erga omnes* character, which obligates states to either prosecute or extradite criminals in their jurisdiction. Furthermore, traditional

2 Ellen L. Lutz and Kathryn Sikkink, "International Human Rights Law and Practice in Latin America," *International Organization* 54, no. 3, (2000): 647-48.

3 See for instance Convention Against Torture (CAT), Inter-American Convention to Prevent and Punish Torture, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Optional Protocol to CAT

restrictions of extraterritorial jurisdiction are disregarded for *jus cogens* norms. In this case, individuals under the custody of a specific state can be prosecuted in that state, even if the violations were committed elsewhere and there is no connecting factor to the state exercising such extraterritorial jurisdiction.[4]

Besides from universal jurisdiction claims under international customary law, treaty law has been strong both at the international and regional level. At the global level, the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)[5] is the most authoritative convention regarding torture and provides the most widely accepted definition. Article 1 of CAT has several important constitutive elements of torture. First, there is an infliction of severe mental or physical pain or suffering. Second, there is an intent to cause harm. Third, there is a clear purpose in which torture is a means to an end. Lastly, there is an official involvement in the definition, meaning that CAT's definition excludes torture by non-state actors.[6]

At the regional level, the Inter-American Convention to Prevent and Punish Torture (IACPPT),[7] adopted in 1985 goes even further. It states under Article 3 that torture occurs when "physical or mental pain or suffering is inflicted on a person for purposes of criminal investigation… for any… purpose." It entered into force in 1987 and 18 parties, meaning over half of the Organization of American States (OAS) have ratified it. Equally to CAT, the IACPPT is only applicable when torture is conducted by agents of the state or with any connection to state actors. In addition to these two main conventions, there are two important treaties in relation to the prevention of torture: the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Optional Protocol to CAT.[8]

Enforced disappearances

Enforced disappearances are a way of instigating state terror and murder that was widely used in Nazi Germany, as well as throughout the military dictatorships in Latin America. This method permitted states to establish complete control over a person by rendering him or her invisible.[9] Furthermore, such disappearances are closely connected to torture and eventually the killing of state targets. As an example, in Argentina many victims

4 Olivier De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge: Cambridge University Press, 2014), Second Edition, 91-92.

5 United Nations, *Convention against Torture and Other Cruel, Inhumane, or Degrading Treatment or Punishment*, New York, (1984).

6 Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 358-59.

7 Organization of American States, *Inter-American Convention to Prevent and Punish Torture*, Cartagena, (1985).

8 The main purpose of the Optional Protocol is to monitor prisons. Article 1 of the optional protocol states that "the objective of the… Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment."

9 Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice,* 382.

were drugged and thrown from airplanes into the sea.[10] To counter this situation legally, civil society, lawyers and victims, mainly in Latin America, have raised the issue.[11] In a landmark case in 1988, the Inter-American Court of Human Rights (IACtHR), determined in Velásquez-Rodríguez v. Honduras that:

> The forced disappearance of human beings is a *multiple and continuous* violation of many rights under the Convention that the States Parties are obligated to respect and guarantee. The kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest [emphasis added].[12]

Disappearances hence entail the violation of multiple rights of the American Convention of Human Rights (ACHR) and most importantly, while the whereabouts of the disappeared are unknown, the state continues to violate that individual's rights. This judgment leads to a precedent in which the court established that parties to the ACHR had a positive obligation to prevent and respond to allegations of disappearances.

It was nevertheless until 1994 that the crime was first codified in the region. The Inter-American Convention on Forced Disappearance of Persons (ACFDP) was adopted, following the International Declaration on the Protection of All Persons from Enforced Disappearances of 1992.[13] At the international level, it was only in 2006 that the Convention for the Protection of All Persons from Enforced Disappearance (CPED)[14] was adopted, being signed mostly by Latin American and European countries. Article 2 of the CPED defines the crime as:

> The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[15]

These conventions on enforced disappearances have permitted the crime to count with a more legitimate claim and it has now been explicitly recognized as a crime against humanity.[16] The Rome Statute, which gave birth to the International Criminal Court (ICC) has codified crimes against humanity as part of its jurisdiction and it specifically mentions

10 Ibid., 382-83.
11 Louise Mallinder, "The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws," *International & Comparative Law Quarterly* 65, (2016): 650, doi:10.1017/S0020589316000166.
12 I/A Court H.R., Case of Velazquez Rodriguez, Judgement 29 July 1988, Series C No. 4.
13 Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice,* 384.
14 United Nations, *International Convention for the Protection of All Persons from Enforced Disappearance*, (2006), Paris.
15 Ibis., Article 2.
16 Ilias Bantekas and Lutz Oette, *International Human Rights Law and Practice*, 385.

enforced disappearances of persons as constituting this type of crime.[17]

Part II: Customary international law

With the end of the Cold War and thus, the end of a highly-polarized world order, the International Law Commission prepared a draft statute for an International Criminal Court as early as 1994. The main purpose of the draft was not to define the crimes to be prosecuted by the Court, but instead, that its jurisdiction should be on crimes defined in international treaties, along with crimes part of the Draft Code of Crimes Against the Peace and Security of Mankind, and those crimes considered part of CIL.[18] On July 17, 1998, the Rome Statute for a permanent international criminal court was passed by a vote of 120 in favor, seven against and twenty-one abstentions.[19] As previously mentioned, enforced disappearances are part of crimes against humanity in Article 7 of the Statute.[20] On the other hand, torture is part of the three out of the four crimes for which the ICC has jurisdiction on. Article 6, Genocide, implicitly includes torture when it includes as part of genocide "causing seriously bodily or mental harm to members of the group."[21] Articles 7 and 8, dealing with crimes against humanity and war crimes respectively explicitly mention torture as part of these crimes.

While the ICC was an important development for torture and enforced disappearances to become part of CIL, there have been several domestic and regional court decisions that have helped identified these crimes as part of CIL. At the domestic level, the landmark case of Filártiga v. Pena-Irala, regarding the kidnapping and torturing to death of Jose Filártiga's teenage son in 1976 is a clear example of the status of torture as *jus cogens.* In this case, Filártiga's lawyer invoked the United States' (US) Alien Tort Claims Act of 1789, granting federal courts "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States"[22] The court's decision held that in the 1970s, the torturer had the same status in CIL to that of the pirate and slave trader, *hostis humani generis.*[23] This case was an early example on how peremptory norms are used by domestic courts to justify their rulings.

Another example is the case of Spanish courts claiming jurisdiction for gross violations of human rights in Latin American dictatorial regimes, being the case of Augusto Pinochet the landmark case of universal jurisdiction. On his investigations on Operation Condor,[24]

17 United Nations, *Rome Statute of the International Criminal Court*, Rome, (1998), Article 7 (i).
18 Mateo Corrales Hoyos, "Including the Crime of Terrorism Within the Rome Statute: Likelihood and Prospects," *Global Politics Review* 3, no.1, (2017): 27-28.
19 Lucy Martinez, "Prosecuting Terrorists at the International Criminal Court: Possibilities and Problems," *Rutgers Law Journal* 34, no. 1 (2002): 15.
20 United Nations, *Rome Statute of the International Criminal Court*, Rome, (1998), Article 7 (i).
21 United Nations, *Rome Statute of the International Criminal Court,* Article 6 (b).
22 Ellen L. Lutz and Kathryn Sikkink, "International Human Rights Law," 646.
23 Ibid.
24 Operation Condor was a campaign of political oppression in Latin America during dictatorial regimes in the 1970s and 1980s. Condor's key members were the governments in Argentina, Chile, Uruguay,

Spanish Judge Baltazar Garzón issued an arrest warrant and a request for extradition of Pinochet when he arrived in London for medical treatment on October 1998. Here, the two House of Lords decisions denying immunity to Pinochet and allowing the extradition to proceed because "there was no former head-of-state immunity for certain international crimes, including torture,"[25] was an example of the state of torture in international law. The Spanish courts went even further than the interpretation given by the Two House of Lords in London. The Appeals Chamber of the Spanish Audiencia Nacional, composed of 11 judges affirmed jurisdiction over cases in Argentina and Chile (including the case of Pinochet) by not only crimes of torture but crimes of genocide as well.[26] Here, enforced disappearances were an essential part in the aim of these countries to destroy part of a national group.

The cases of both the United Kingdom (UK) and Spain courts are interesting because even if talking about universal jurisdiction, they looked at domestic statutory law to ground their decision. For instance, the UK looked at the implementing legislation of CAT to ground its jurisdiction over Pinochet.[27] As a result, Pinochet could be prosecuted for cases of torture committed after 1988, which was the year that the UK ratified the treaty, even if torture was part of CIL since long before that. In the case of Spain, the court focused on the inclusion of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide into domestic courts. To make the universal jurisdiction claim more justifiable, the Spanish cases first included a list of victims with Spanish citizenship or descendants of Spanish citizens who had been killed or disappeared. Once these cases were accepted for investigation, other cases with non-Spanish victims were added.[28]

This section has illustrated important developments of the crimes against torture and enforced disappearances in customary international law. At the international level, the Rome Statute has been an authoritative codification of widely accepted crimes that now enjoy the status of CIL. While torture constitutes an essential part of crimes of genocide, crimes against humanity and war crimes, enforced disappearances are only part (explicitly) of crimes against humanity. Domestically, European and US courts have made universal jurisdiction claims and have used the principle of extradite or prosecute to bring to their courts aliens committing crimes recognized as enemies of all mankind. Additionally, while torture has its developments more globally, the brutal dictatorships in Latin America were the main drivers to develop the crime of enforced disappearances into CIL.

Paraguay, Bolivia and Brazil. The operation consisted on tracking down political rivals (with socialist ideas) that had fled to neighboring countries and taking them back to their country of origin where they often faced torture and were disappeared.

25 Naomi Roht-Arriaza, "The Pinochet Precedent and Universal Jurisdiction," *New England Law Review* 311, no. 35, (2001): 312.

26 Ibid., 313.

27 Ibid.

28 Ibid., 314.

Part III: State behavior and international human rights law

Several political scientists have been trying to understand what drives state behavior when it comes to the protection of human rights. Thomas Risse and Stephen Ropp revised the "spiral model" of human rights change proposed by these two authors and Kathryn Sikkink in 1999.[29] In doing so, they explain that the spiral model has helped understand the way that states behave when claims of human rights violations appear. In authoritarian regimes, such as the dictatorships in Latin America, states first experience a state of repression. This stage features an informational vacuum that makes it extremely difficult for opposition groups to convince authoritarian leaders that they have anything to deny.[30] The second stage is denial, when transnational groups succeed in gathering sufficient information on human rights violations, an advocacy process can begin. In this stage, while local advocates are still weak, international human rights organizations and democratic states begin to name and shame, while the repressive state denies the accusations.[31] On stage three, tactical concessions are made by these regimes to get the international human rights community off their backs. These demonstrations vary from releasing political prisoners to signing international treaties.[32] Stage four of the spiral model is called prescriptive status, here, there is a well-defined set of state actions and associated practices such as treaty ratification, changing domestic laws, setting up domestic human rights institutions and referring to human rights norms in state administrative and bureaucratic discourse.[33] Finally, stage five refers to a state that has a rule-consistent behavior, in which there is a behavioral change and sustained compliance with international human rights.

Beth Simmons has gone further to explain which have been the drivers for states to modify their human rights behavior. She has argued that two 'century-long' trends have been crucial. First, the changing balance of power between civil society and state actors and the elaboration of state accountability in international law. Second, the spread of democratic forms of government and the reduction in transaction costs (communications, literacy) helped to empower the governed from the governments.[34] She has made a detailed account of the domestic mobilization of human rights and the option that treaty ratification gives to local civil society. Simmons asserts that a ratified treaty pre-commits the government to be receptive to rights demands. In other words, ratification is a process of domestic legitimation which raises the domestic salience of an international rule.[35]

29 Thomas Risse and Stephen C. Ropp, "Introduction and Overview," in *The Persistent Power of Human Rights: From Commitment to Compliance,* ed. Stephen C Ropp, Kathryn Sikkink and Thomas Risse (Cambridge: Cambridge University Press, 2013).
30 Ibid., 8.
31 Ibid., 6.
32 Ibid.
33 Ibid., 6-7.
34 Beth Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics,* (Cambridge: Cambridge University Press, 2012), 352.
35 Ibid., 144.

For both Risse and Ropp and Simmons, authoritarian states do change their behavior when they are named and shamed. Furthermore, the power of international treaties (in the case of human rights treaties) is not only for states to comply with their international legal obligations, but these treaties give power as well to domestic actors to make their states comply with ratified treaties.

Part IV: Fighting crimes of torture and enforced disappearances in Latin America

Anti-amnesty laws litigation

Amnesty laws enacted in Latin America first appeared in the context of repressive regimes in the 1970s and 1980s.[36] The main purpose of these laws was to shield human rights violators from investigation and prosecution permanently. These laws were set as compromises that were needed for a transition from dictatorial regimes to democracies. Nevertheless, this is not the only type of amnesties that have existed in Latin America. This section will review amnesty laws in different Latin American countries to exemplify how international human rights law has contributed to the shifting of state behavior in the region, addressing among others, crimes of torture and enforced disappearances.

There are three stages of amnesties in Latin America. The first stage, which came right before the enabling of amnesty laws was when civil society litigated for amnesty for political prisoners and exiles in the early stages of dictatorial regimes in the 1970s. This stage lead into the second stage, in which regimes would enact laws to prevent the investigation of state officials by negotiating political prisoners and exiles releases with amnesty for agents of the state. These type of amnesties, which took place in the late 1970s and 1980s, have been recognized by the Inter-American Court of Human Rights (IACtHR) jurisprudence as unconditional amnesties, in which, state officials were not investigated and prosecuted for any crime committed, including the most egregious crimes such as torture, enforced disappearances, extrajudicial killings and crimes against humanity.[37] Finally, the third stage of amnesties of Latin America is more recent, beginning in the late 1980s until the present and are those amnesties that form part of negotiations that bring a non-international armed conflict to an end.[38]

Since 1997, IACtHR began to consider amnesty cases presented to the Inter-American Commission of Human Rights (IACHR), the Court has developed a jurisprudence in which unconditional amnesties are inadmissible because they protect criminals of the most atrocious crimes. Nevertheless, the Court has sustained that limited amnesties can be necessary for states negotiating a peace agreement to end an internal armed conflict. In

36 Look for example at Chile's 1978 Decree-Law on Amnesty, Brazil's 1979 Amnesty Law and Argentina's 1986 Ley de Punto Final and 1987 Ley de Obediencia Debida.

37 Louise Mallinder, "The End of Amnesty or Regional Overreach?," 660.

38 Ibid., 649.

a 2001 landmark case, *Barrios Altos v Peru,* the Court sustained that:

> All amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law.[39]

The Court's interpretation was then referring to international human rights law to justify why such amnesties were violating such non-derogable rights.

In *Myrna Mack Chang v Guatemala* in 2003, the Court revised the 1996 National Reconciliation Act following Guatemala's peace agreement. The law, granted amnesty for conflict-related offenses, but excluded genocide, torture, and enforced disappearances.[40] While the Court did not define which were the limitations for an amnesty to be compatible with the ACHR, the Court did ask the state to refrain from extending the amnesty to enforced disappearances.[41]

Additionally to the jurisprudence of the IACtHR, treaty ratification in the region has increased steadily since the 1980s when states began to transition to democracy. After making the transition and willing to cope with their international legal obligation, all Latin American states, with the exceptions of Brazil and Suriname, either annulled their amnesty laws or limited the scope of interpretation. For instance, Argentina and Uruguay declared their amnesty laws unconstitutional, Peru annulled its amnesty laws after an IACHR judgment. For the case of Chile and Colombia, they both narrowed the interpretation of amnesty laws. For example, in the case of Chile, amnesty laws would only apply after investigations on a specific case were made.[42]

Latin American states have been moving somehow throughout the spiral model of human rights previously explained. I will use now the case of Chile to draw on how states improve their human rights record through this model. Since 1973, the regime in Chile instigated a state of repression in which the opposition was brutally suppressed. Here, there was a need for the transnational network, composed mostly of Chilean civilians living in exile and international non-governmental organizations to accuse the regime for such human rights violation. On stage two, the regime contested the validity of international human rights norms and made reference to sovereignty and the non-intervention principle. Stage three allowed for the state to make concessions. At this stage, Pinochet's regime even ratified the CAT convention in September 1988. After 1990 and

39 I/A CourtH.R., Case of Barrios Altos v Peru, Merits, Judgment March 14, 2001, Series C No, 75, para 41.

40 Louise Mallinder, "The End of Amnesty or Regional Overreach?," 662.

41 I/A Court H.R., Case of Myrna Mack Chang v Guatemala, Merits, Reparations and Costs, Judgement of 25 November 2003, Series C No 101, paras 276–277.

42 Louise Mallinder, "The End of Amnesty or Regional Overreach?," 659.

with the transition to democracy taking place, Chile accepted the validity of international human rights and adjusted its domestic law to be compatible with its international legal obligations. Furthermore, as previously explained, the interpretation of its amnesty laws has been narrowed.

State practices hence have been modified both by an interaction of international and domestic pressure. The next subsection will look at two specific cases dealing with torture and enforced disappearances to further clarify the influence that international and regional treaties and courts, added to pressure from stable democratic states have had on states behavior in the region.

Torture and enforced disappearances in Uruguay and Argentina

Uruguay offers an interesting example on the effect that international human rights law has on preventing torture. The country had one of the strongest democracies in Latin America until 1973, before the military took over. It had also a strong rule of law until then and it had a positive record when it came to complying with its international legal obligations. When the military regime in Uruguay came to power, it systematically engaged in far-reaching arrests, routine torture of prisoners, and complete surveillance of the population. Torture was rampant, in a survey of a sample group of 313 released prisoners conducted after Uruguay returned to democracy, there was only a small group of 1 to 2 percent who were not tortured during imprisonment.[43]

Prior to the dictatorship, Uruguay had ratified the International Convention on Civil and Political Rights (ICCPR) and its First Optional Protocol. When in 1976 the ICCPR entered into force, Uruguayan victims who had been used to seek effective remedies from domestic institutions transferred their complaints to the Human Rights Committee (HRC). The committee found Uruguay responsible for consistent treaty violations, including torture. At the regional level, Uruguayan victims appealed to the IACHR to investigate torture in Uruguay. Even if the government did not allow the IACHR to conduct on-site visits, the Commission did issue several reports in which it outlined the gross abuses of human rights taking place. By 1980, Uruguayans voted for the first time since the coup and ousted the military government's proposed constitution and by 1985 Uruguay returned to democracy.[44] The case of Uruguay is one in which torture, being a highly legalized norm with domestic acceptance was successfully reinforced through persistent international and regional pressure to the government.

Enforced disappearances were widespread throughout Latin America's dictatorial regimes. One of the countries with the most cases of disappearances was Argentina. Between 1973 and 1983 almost 9000 people were reported as disappeared.[45] The case was first brought to the world in 1976 by Amnesty International and Argentine political exiles.

43 Ellen L. Lutz and Kathryn Sikkink, "International Human Rights Law," 642.
44 Ibid., 644.
45 Ibid., 648.

Reacting to the increasing amount of information, the Carter administration together with other European governments denounced the violations of rights of the Argentinean regime. The US government specifically eliminated all military assistance to Argentina by 1978.[46] That same year, General Videla gained control of most of Argentina's government and began to change the country's image at the international stage. For instance, by December 1978, Videla authorized an on-site IACHR investigation. Without external pressure, it is unlikely that Argentina would have authorized such an investigation to take place.

The cases of Uruguay and Argentina provide examples of different mechanisms that can be used to exert pressure to change state behavior, and improve gross violations of human rights. The case of Uruguay illustrates how treaty ratification can empower local citizens and civil society. The entering into force of the ICCPR in 1976 was crucial to provide Uruguayan citizens access to an international treaty for which the state had an international obligation. On the case of Argentina, it was mostly political pressure exerted mainly by the US but also by other European governments. Key to the shift in its behavior was the US cutting its military support to the country. In both cases, the IACHR exerted pressure by issuing country-specific reports investigating torture and enforced disappearances. These reports helped these countries transition from a denial stage to providing tactical concessions. On the case of Uruguay, the tactical concession was to allow for a vote to take place regarding the military's proposed constitution. In Argentina, General Videla invited the IACHR to carry out an on-site investigation.

Conclusion

Torture and enforced disappearances happened rampantly in Latin America during the dictatorial regimes of the 1970s and 1980s. Throughout the paper I have provided evidence on different international and regional efforts to improve the situation. International conventions such as the ICCPR, CAT and the CPED have offered relevant sources for international human rights law to address these crimes. At the regional level, the legal system headed by OAS institutions has played an active role in investigating such crimes and has created a jurisprudence that recognizes both torture and enforced disappearances as *hostis humani generis.* Furthermore, the Filártiga and Pinochet cases discussed are clear precedents of both torture (explicitly) and enforced disappearances (implicitly) having a *jus cogens* status in international law. Such status was used in the US to justify the prosecution of Pena-Irala because torture even in the 1970s was of an *erga omnes* nature. The Pinochet case clarified the principle of universal jurisdiction and as the Two-Houses of Lords sustained, there is no former head-of-state immunity for crimes such as torture.

This paper is not aimed at generalizing causality, it intends instead to show empirical evidence on how have different international and regional systems aided domestic efforts

46 Ibid.

to address the widespread cases of torture and enforced disappearances in different Latin American countries. Both the more general anti-amnesty litigation case and the more specific Uruguayan and Argentinean cases show a pattern of a multilevel exertion of pressure that ended up in states changing their behavior. The most important finding that this paper makes is that the human rights system will insufficiently address gross violations as is the case of torture and enforced disappearances, if it is left merely to either international or domestic forms of pressure. Instead, a complex interaction of treaties, court cases, laws, and state and court pressure at the international, regional and domestic levels are all necessary conditions to improve state behavior with respect to human rights.

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