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# The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America

Ellen Lutz\* and Kathryn Sikkink\*\*

## I. INTRODUCTION

During the Falklands/Malvinas War of 1982, the British captured Argentine Navy Captain Alfredo Astiz. Non-governmental human rights organizations accused Astiz, a notorious figure during Argentina's "dirty war," of involvement in the disappearance of two French nuns, the arrest and killing of a Swedish girl, and the interrogation, torture, and disappearance of hundreds of Argentines at the Naval School of Mechanics in Buenos Aires.<sup>1</sup> After his capture, France and Sweden asked to question Astiz concerning their nationals, and the British transported him to London for that purpose. Astiz, availing himself of the protections afforded by the Geneva Convention on Prisoners of War, refused to answer. Although there was substantial evidence against him and the Geneva Conventions do not shield prisoners of war from prosecution for human rights crimes, neither country sought his extradition, nor did Britain entertain trying him in the United Kingdom.<sup>2</sup> Instead, he was repatriated to Argentina.

Seventeen years later, the British government arrested Chilean General and former President Augusto Pinochet on a Spanish extradition warrant for torture and other human rights crimes. This time, the British courts assiduously considered the jurisdictional issues posed by the Spanish request and determined that the Spanish courts had jurisdiction to try Pinochet for crimes committed in Chile over a decade before. Although British authorities ultimately allowed Pinochet to return to Chile, finding that he was too incapacitated to stand trial, the events in Europe had

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1. Tina Rosenberg, *Children of Cain: Violence and the Violent in Latin America* 79-141 (William Morrow 1991).

2. Nigel S. Rodley, *The Treatment of Prisoners Under International Law* 125-27 (Clarendon 2d ed 1999).

important political repercussions in Chile that are now rippling across Latin America and the rest of the world. Taking a lesson from Spain, a Netherlands court has determined that under a theory of universal jurisdiction it can try former Surinamese military dictator Desi Bouterse for human rights crimes committed in Suriname in 1982.<sup>3</sup>

From a political point of view, it would have been easier to try Astiz in 1982 than Pinochet in 1999. Astiz was a mid-level naval officer of a country then at war with Britain. Trying him for human rights violations would have given substance to the British government's rhetoric about the repressive nature of the Argentine regime. Pinochet was a former head of state and current senator-for-life of a country that had supported Great Britain during the Falklands/Malvinas War. This Article examines what changed between 1982 and 1999 that made Pinochet's arrest in Britain possible. We address two main questions: (1) why, in the last two decades of the 20th century, was there a major international norms shift towards using foreign or international judicial processes to hold individuals accountable for human rights crimes; and (2) what difference have foreign judicial processes made for human rights practices in the countries whose governments were responsible for those crimes.

#### A. THE IMPETUS FOR THE "JUSTICE CASCADE"

We argue that the surge of foreign judicial proceedings was neither spontaneous, nor the result of the natural evolution of law in the countries where the trials occurred. Rather, it was the result of the concerted efforts of small groups of activist lawyers who pioneered the strategies, developed the legal arguments, often recruited the plaintiffs and/or witnesses, marshaled the evidence, and persevered through years of legal challenges. These groups of lawyers resemble an *advocacy network*, in that they are interconnected groups of individuals bound together by shared values and discourse who engage in dense exchanges of information and services.<sup>4</sup> The transnational justice network was atypical, however, because its membership was confined to a handful of groups of lawyers with appreciable technical expertise in international and domestic law who systematically pursued the tactic of foreign trials. In this sense, the transnational justice network resembles what political scientists call an *epistemic community*—a network of professionals engaged in a common policy enterprise with recognized expertise and competence in the particular domain and an authoritative claim to policy-relevant knowledge in that issue or domain.<sup>5</sup> In other ways, however, the transnational justice network differs from a typical epistemic community. According to the epistemic community literature, states turn to epistemic

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3. Marlice Simons, *Dutch Court Orders an Investigation of '82 Killings in Suriname*, NY Times 12 (Nov 26, 2000).

4. Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* 2 (Cornell 1998).

5. Peter Haas, *Introduction: Epistemic Communities and International Policy Coordination* 46 Intl Org 1 (1992).

communities in situations of complexity and uncertainty for information to help them understand the situation and their interests. But states did not turn to the transnational justice network for expertise in a situation of complexity. Instead, the transnational justice network independently pursued justice for human rights violations often in the face of governmental indifference or recalcitrance. The transnational justice network thus blends characteristics of advocacy networks and epistemic communities. Like advocacy networks, it is motivated by shared principled ideas. Like epistemic communities, it is a network of professionals with recognized expertise and competence, and an authoritative claim to policy relevant knowledge.

The transnational justice network did not operate in a vacuum. It was part of a broader human rights advocacy network working in the context of a broad shift in international norms towards greater protection for human rights.<sup>6</sup> At times, key members of the transnational justice network were simultaneously leaders in the broader human rights network.

In a previous article we explored what prompted Latin American states to shed dictatorial regimes that routinely engaged in serious human rights abuses and replace them with elected regimes that for the most part comply with fundamental international human rights norms. We concluded that this transformation was best explained by a broad norms shift between the late 1970s and the mid-1990s that led to increased regional consensus concerning an interconnected bundle of human rights norms, including the norms against torture and disappearance and the norm for democratic governance. The popular, political, and legal support and legitimacy these norms now possess is reinforced by diverse legal and nonlegal practices fashioned to implement and ensure compliance with them. We found this transformation to be consistent with what legal scholars at the University of Chicago, describing rapid, dramatic shifts in the legitimacy of norms and action on behalf of those norms, call a “norms cascade.”<sup>7</sup>

There are not yet precise definitions or standard ways of showing the operation of a norms cascade.<sup>8</sup> Because most of the work on norms cascades has been done by legal theorists interested in domestic norms, there have not been efforts to model what

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6. See Ellen L. Lutz and Kathryn Sikkink, *International Human Rights Law and Practice in Latin America*, 54 *Intl Org* 633, 654–57 (2000).
  7. Cass R. Sunstein, *Free Markets and Social Justice* 36–38 (Oxford 1997); Randal C. Picker, *Simple Games in a Complex World: A Generative Approach to the Adoption of Norms*, 64 *U Chi L Rev* 1225 (1997); see also Martha Finnemore and Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 *Intl Org* 887, 902–04 (1998).
  8. See Sunstein, *Free Markets and Social Justice* at 32–69 (cited in note 7); Picker, 64 *U Chi L Rev* 1225 (cited in note 7). Picker presents a fascinating computer simulation model of norms cascades, but also does not define or show how norms cascades operate in the real world. See also Finnemore and Sikkink, 54 *Intl Org* at 902–04 (cited in note 7).

an international norms cascade would look like. We suggest that norms cascades are collections of norm-affirming events. These events are discursive—they are verbal or written statements asserting the norm. We are careful to define a norms cascade as something different from changes in actual behavior, because we are interested in exploring the impact that norms have on behavioral change.

In Latin America during the last two decades of the 20th century there was a rapid shift toward recognizing the legitimacy of human rights norms and an increase in international and regional action to effect compliance with those norms. The “justice cascade” has occurred in the context of that larger human rights norms cascade. This phenomenon can be likened to the aftershock of an earthquake. While its genesis is the larger norms transformation, its independent impact is significant and produces its own set of consequences. Moreover, those consequences are not limited to Latin America. They are reverberating internationally and contributing to a transformation in international norms reflected in the creation of such new international bodies as the International Criminal Court (“ICC”), and changing popular and political expectations regarding the treatment of perpetrators of human rights abuses in other parts of the globe, including greater judicial acceptance of the principle of universal jurisdiction.

The justice norms cascade is being operationalized through a series of norm-affirming events including the decisions of foreign courts to try cases involving violations of international human rights, the active participation of non-governmental organizations (“NGOs”) and governments in the process of establishing the ICC, and the willingness of states to ratify the ICC treaty. Even cases like *Pinochet*, in which a foreign court recognized the legitimacy of a third country’s jurisdiction but ultimately did not take steps to ensure the trial of the perpetrator, can be seen as norm-affirming events.

## B. HOW FOREIGN JUDICIAL PROCESSES HAVE IMPACTED HUMAN RIGHTS PRACTICES IN LATIN AMERICA

The transnational justice network operates by enabling individuals whose access to justice is blocked in their home country to go outside their state and seek justice abroad. This dynamic is similar to the primary mechanism of other transnational advocacy networks. Foreign court rulings against rights-abusing defendants have the effect of putting pressure “from above” on the state where the rights abuses occurred. Increasingly, this pressure serves to open previously blocked domestic avenues for pursuing justice. Looking at other advocacy networks, Keck and Sikkink have called this dynamic a “boomerang pattern”—domestic activists bypass their states and directly search out international allies to bring outside pressure on their states.<sup>9</sup> Thus,

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9. Keck and Sikkink, *Activists Beyond Borders* at 12 (cited in note 4).

to understand the domestic impact of transnational justice network activity, we must look at the interaction of both domestic and international judicial and political processes. *Pinochet* is a model for this type of complex interaction. For domestic political reasons, almost all human rights trials were blocked in Chile prior to Pinochet's arrest in Great Britain. But the decision of the British House of Lords that Spain had jurisdiction to try him for human rights abuses had the effect of opening judicial space for the human rights trials now underway in Chile.

Such boomerangs have not worked in all the cases we explore in this Article. The domestic impact of foreign judicial processes has depended on other factors as well—specifically in the amount of publicity those processes received, the parallel development of more general international human rights law, the receptiveness of domestic legal and political systems in the target states, and a change over time in regional attitudes with respect to human rights. In order to document these conclusions, we turn to a chronological description of key foreign human rights cases, and examine their evolution and impact. First, we briefly contrast our theoretical approach with alternative theoretical explanations.

## II. ALTERNATIVE THEORETICAL APPROACHES TO EXPLAIN THE EMERGENCE AND EFFECTIVENESS OF A JUSTICE NORMS CASCADE<sup>10</sup>

The approach adopted here is an “ideational” approach to the emergence and effectiveness of justice norms. An ideational approach suggests that the origins of many international norms lie not solely in preexisting state or societal interests but in strongly held principled ideas (ideas about right and wrong). These ideas are fundamental for shaping a state's perceptions both of its interests and its identity, which in turn determine state policies. Ideational theorists view the international system as a society made up not only of states, but also of non-state actors that may have transnational identities and overlapping loyalties. In such a society, states change their behavior not only because of the economic costs of sanctions, but because of changing models of appropriate and legitimate statehood, and because the political pressures of other states and non-state actors affect their understanding of their identity and their standing in an international community of states. International law and international organizations are the primary vehicles for expressing community norms and for conferring collective legitimation. Human rights norms are particularly important because a good human rights performance signals to other members of the society that the state belongs to the community of democratic states.<sup>11</sup> In the language

10. This section draws on some ideas from a forthcoming review article by Hans Peter Schmitz and Kathryn Sikkink, *Human Rights and International Relations Theory*, in Walter Carlsneas, Thomas Risse, and Beth Simmons, eds, *Handbook of International Relations* (forthcoming Sage 2002).

11. This is the approach in Thomas Risse, Stephen Ropp, and Kathryn Sikkink, eds, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge 1999); Kathryn Sikkink, *The Power of Principled*

of international relations theory, human rights practices have become “constitutive” of the identity of a democratic state.

The ideational perspective assumes that the institutionalization of human rights norms independently influences state actors to comply with them. In this sense it resembles the “managerial” approach to norm compliance discussed by such legal theorists as Thomas Franck and Abram and Antonia Chayes.<sup>12</sup> We maintain that state actors are drawn towards the rhetorical acceptance of human rights norms not only by virtue of their intrinsic appeal, or as the result of discussion and jawboning at international conferences, but also because active human rights pressures and sanctions by state and non-state actors contribute to processes of socialization and emulation. Ideational theorists are still grappling to satisfactorily explain which norms are most likely to be intrinsically appealing to states, and under what conditions are they likely to have an influence. This Article continues to explore these issues.

The main alternatives to the ideational approach are the realist approach associated with the work of Stephen Krasner, and a “republican liberal” approach put forward by Andrew Moravcsik.<sup>13</sup> Realists argue that international norms emerge and gain acceptance when they are embraced and espoused by the hegemon.<sup>14</sup> Conversely, realists argue that powerful hegemonic states can block any progress on human rights. This theory has some initial plausibility for explaining the justice cascade when we consider that the earliest foreign human rights trials began in US courts. But it does not explain why the US cases have been less effective, while the cases in Spain (clearly not a hegemon) have been much more effective. Nor does this approach explain why certain human rights initiatives proceeded when hegemons were followers, not leaders, or when hegemons actively opposed them. Consistent with the realist approach, US leadership was important for setting up the international tribunals for Rwanda and the former Yugoslavia. But the process of establishing the ICC treaty is going ahead in the face of active US opposition. Finally, realist theorists do not provide a convincing explanation for why and when hegemonic states are willing to begin pursuing human

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*Ideas: Human Rights Policies in the United States and Western Europe*, in Judith Goldstein and Robert Keohane, eds, *Ideas and Foreign Policy: Beliefs, Institutions, and Political Change* 139–72 (Cornell 1993); Keck and Sikkink, *Activists Beyond Borders* (cited in note 4).

12. See Thomas M. Franck, *Fairness in International Law and Institutions* (Clarendon 1995); Thomas M. Franck, *The Emerging Right to Democratic Governance*, 86 *Am J Intl L* 46 (1992); Abram Chayes and Antonia Handler Chayes, *The New Sovereignty: Compliance with International Regulatory Agreements* (Harvard 1995). For a survey of approaches, see Harold Hongju Koh, *Why Do Nations Obey International Law?*, 106 *Yale L J* 2599 (1997).
13. These three approaches are also discussed by Andrew Moravcsik, *The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe*, 54 *Intl Org* 217, 225–26 (2000).
14. Stephen D. Krasner, *Sovereignty, Regimes and Human Rights*, in V. Rittberger and P. Mayer, eds, *Regime Theory and International Relations* 139–167 (Oxford 1993); John G. Ikenberry and Charles Kupchan, *Socialization and Hegemonic Power*, 44 *Intl Org* 283–315 (1990).

rights norms, when they did not do so before. What triggered US court willingness to consider international human rights cases in the 1980s and 1990s? Why was Britain willing to find Pinochet extraditable to stand trial for human rights crimes in 1998, but not willing to take action with respect to Astiz in 1982?

When liberal theory is used to explain the adoption of human rights norms, regime type is a crucial factor. Moravcsik argues that states accept binding human rights treaties mainly as a means of political survival—for example, newly democratizing states are most likely to ratify legal human rights instruments to protect still unstable democratic regimes from opponents who might attempt to overthrow them. He provides convincing evidence from Europe that the earliest supporters of binding human rights treaties were newly democratizing states, while the more well-established democracies initially failed to support the treaties, or even worked to weaken them. Hence, Moravcsik argues, the emergence and evolution of human rights institutions is mainly a function of newly democratic governments' perceptions of domestic threat, rather than the result of outward-projected activities by the established and most powerful democracies in the international system. Where realists emphasize coercion, liberals claim voluntary, self-interested, and rational behavior of state actors in accepting long-term limits to sovereignty.

Evidence from the Americas does not clearly confirm the liberal or realist theories. In the Americas, established democracies (except for the United States) have supported regional and global human rights systems from the start.<sup>15</sup> But after the regional wave of re-democratization between 1978 and 1991, the newly democratizing countries rapidly ratified international and regional human rights treaties. We do not know with certainty what motivated them. Along the lines of liberal theory suggested by Moravcsik, it is likely that part of the motivation was the need to protect their democracies against the danger of being overthrown. However, these ratifications were also intended to signal the countries' newly reestablished democratic identity and their reentry into the community of democratic states. In some cases domestic policy makers who believed in the human rights ideals were the driving force behind the ratifications. Thus, the record provides evidence for both liberal and ideational perspectives. Realism also is relevant to the Americas. US foreign policy was extremely active in promoting its own vision of human rights and democracy throughout the region. Though that policy was often contradictory and inconsistent, the United States has exercised active hegemonic leadership with regard to human rights in the region.

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15. Costa Rica, Colombia, Uruguay, and Canada ratified early the Optional Protocol to the International Covenant on Civil and Political Rights; and Costa Rica and Venezuela were the first two countries to accept compulsory jurisdiction of the Inter-American Court.



### III. EVENTS CONTRIBUTING TO THE JUSTICE CASCADE

#### A. THE US CASES

The practice of “borrowing” foreign judicial systems to seek justice for past human rights abuses began in the United States in 1979 with the path-breaking *Filartiga v Peña-Irala*,<sup>16</sup> and the family of cases that followed. The US cases differed from the later Spanish cases in that they were civil instead of criminal, and they required as a basis for jurisdiction that the defendant be physically present in the United States. An interconnected group of lawyers pursued these cases, each learning from and building upon previous efforts.

Since the mid 1970s, human rights NGOs in Chile, Argentina, Guatemala, and elsewhere, to the extent their governments allowed them to operate at all, dedicated themselves to protesting and documenting human rights violations and ensuring that the evidence they uncovered was protected. This served multiple functions. It served as a clearinghouse of information that domestic attorneys could use when demanding information about the whereabouts of a disappeared person or seeking the release of a political prisoner. It preserved a record that could one day be used to hold perpetrators accountable and ensure that history was accurately recorded. Finally, it aided international human rights groups by providing accurate evidence of violations that they could use when appealing to other governments and inter-governmental organizations to exert pressure to stop the violations. Latin American human rights advocates actively cooperated with international human rights organizations to ensure that governments and international organizations used the provided information for this purpose.

As awareness of human rights violations in Latin America filtered north, human rights lawyers in the United States sought ways to help heighten pressure on Latin American governments. A creative group of lawyers at the New York-based Center for Constitutional Rights (“CCR”) uncovered a little used jurisdictional statute called the “Alien Tort Claims Act” which provides: “The district courts shall have original jurisdiction of 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.”<sup>17</sup> In 1979, these lawyers got their first opportunity to test whether this jurisdictional basis could be used to sue a foreigner in a US court for money damages for violations of human rights that occurred abroad. The plaintiffs, Dr. Joel Filartiga and his daughter Dolly, filed suit in federal district court for the torture and murder of their seventeen-year-old son and brother Joelito. The defendant, Americo Norberto Peña-Irala, was the former Police Inspector of Asunción, then illegally residing in New York. The Filartigas alleged that he kidnapped and killed Joelito to pressure Dr. Filartiga to end his political activities.

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16. *Filartiga v. Peña-Irala*, 630 F2d 876 (2d Cir 1980).

17. 28 USC § 1350 (1994) (originally drafted in 1789).

The Second Circuit Court of Appeals decision in *Filartiga* broke new ground. It declared that torturers, like pirates and slave traders before them, were “enemies of all mankind” who could be tried wherever they were found.<sup>18</sup> After the Second Circuit rendered its ruling in 1980, Peña-Irala was deported and defaulted. The district court awarded the *Filartigas* \$10 million in compensatory and punitive damages to “make clear the depth of the international revulsion against torture” and in the hope that it would deter other would-be torturers from engaging in similar conduct.<sup>19</sup>

The success of *Filartiga* provided US human rights lawyers with a new avenue for striking back at perpetrators of human rights abuses and the means to offer some satisfaction to individuals who had suffered. A network of US lawyers mobilized to take on these cases and before long the nuances of the legal theories first raised in *Filartiga* were being tested in the courts. Many of the lawsuits involved victims and perpetrators of human rights abuses from Latin America. The cases we discuss here are representative of this trend.

In January 1987, human rights advocates discovered Carlos Guillermo Suarez-Mason, former Commander of Argentina’s First Army Corps, living clandestinely outside of San Francisco, California. The First Army Corps had jurisdiction over the city and province of Buenos Aires and was purported to be responsible for as many as half of all disappearances, deaths, torture, and prolonged arbitrary detentions during Argentina’s dirty war during the mid- to late-1970s. Immediately three overlapping teams of lawyers, including lawyers working on behalf of CCR, Americas Watch, and the American Civil Liberties Union of Southern California, filed suit in US federal court in San Francisco. Their clients were half a dozen Argentine victims who were tortured, imprisoned, or disappeared during Suarez-Mason’s rule. Although three separate lawsuits were filed, the pro bono lawyers coordinated their litigation strategies (one lawyer, Juan Mendez, the Executive Director of Americas Watch, was part of the legal team in each of the three cases) and default judgments were entered against Suarez-Mason in all three suits.<sup>20</sup> One case set an important legal precedent: until that time, federal courts had been willing to find defendants liable for torture and murder, but were reluctant to find that “disappearances” were “torts . . . in violation of the law of nations.” In a moving self-reversal, District Judge Jensen concluded in *Forti v Suarez-Mason* that there existed a “universal and obligatory international proscription of the tort of ‘causing disappearance.’”<sup>21</sup> Like Peña-Irala,

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18. *Filartiga*, 630 F2d at 890 (cited in note 16).

19. *Filartiga v Peña-Irala*, 577 F Supp 860, 866 (E D NY 1984).

20. *Forti v Suarez-Mason*, 672 F Supp 1531 (N D Cal 1987); *Martinez Baca v Suarez-Mason*, No C-87-2057 (N D Cal April 22, 1988); *de Rapaport v Suarez-Mason*, No C-87-2266 (N D Cal April 11, 1989).

21. *Forti v Suarez-Mason*, 694 F Supp 707, 711 (N D Cal 1988). The Court ruled that this tort had two essential elements: “(1) abduction by state officials or their agents; followed by (2) official refusals to acknowledge the abduction or to disclose the detainee’s fate.” *Id.*

Suarez-Mason, after failing to defeat the court's jurisdiction, refused to defend himself in the US civil litigation. Each of the plaintiffs received a six-figure default judgment that included compensatory and punitive damages.

In June 1991, nine Guatemalans and one US citizen filed suit in the US district court in Boston against former Guatemalan Minister of Defense General Hector Gramajo. Gramajo was served with process while attending his commencement from the John F. Kennedy School of Government at Harvard University. This case was spearheaded by the CCR in cooperation with the Lowenstein International Human Rights Clinic at Yale Law School and El Rescate Legal Services in Los Angeles. The plaintiffs, Kanjobal Indians and a missionary who worked with them, alleged they were forced to flee Guatemala as a direct result of abuses inflicted upon them or their families by Guatemalan military forces who ransacked their villages and brutalized them. Some of the plaintiffs were subjected to torture and arbitrary detention. Others were forced to watch as family members were tortured to death or summarily executed. One plaintiff's father disappeared. The plaintiffs maintained that in his roles as Vice Chief of Staff and Director of the Army General Staff, commander of the military zone in which the plaintiffs resided, and Minister of Defense, Gramajo was personally responsible for ordering and directing the implementation of the program of persecution that caused their suffering. Gramajo refused to defend himself and voluntarily returned to Guatemala. A default judgment of \$47.5 million was entered against him in 1995.

## B. THE EUROPEAN CASES

Latin American human rights advocates also collaborated with their counterparts in Europe to apply outside pressure on their governments to bring rights violators to justice. In Europe they did this, not by filing civil lawsuits, but by pushing European courts to criminally try, in Europe, alleged perpetrators of rights violations that took place in Latin America. This was possible for two reasons. First, many European countries, unlike the United States, recognize the passive personality basis for criminal jurisdiction in which a state may exercise criminal jurisdiction over anyone who injures one of their nationals, no matter where the crime occurred. Second, the Southern Cone countries were populated by Spaniards, Italians, and others of European descent, and many of these European countries recognize as nationals their children and even subsequent generations. As a result, transnational justice network lawyers were able to convince European judges that they had jurisdiction to criminally try Latin American perpetrators of rights abuses for the torture, disappearance, or murder of their nationals.

The most prominent early case of this type involved Alfredo Astiz, alleged to be responsible for the torture and presumed murder in Argentina of two French nuns, Alice Domon and Leonie Duguet, among other crimes. Their lawyers, supported by human rights advocates that were part of the transnational justice network, pressed a

French court to take up his case. In March 1990, that court tried Astiz in absentia for these crimes, found him guilty, and sentenced him to life in prison. This, apparently, was the first time a French court had convicted a foreigner in absentia for crimes committed against its citizens on foreign soil. France then asked Argentina to extradite Astiz. Consistent with its legal position that Astiz was protected from trial for the nuns' deaths by the *Punto Final* measure,<sup>22</sup> and by its across the board refusal to submit its citizens to stand trial abroad for crimes committed in Argentina, Argentina refused. But by doing so, Argentina jeopardized its relations with France. France objected, in 1995, when the Argentine Naval Command announced that Astiz was to receive a promotion, and that promotion was stopped. In 1996, before Argentine President Carlos Menem went to France to present Argentina's credentials to join the Organization for Economic Cooperation and Development, Astiz was removed from active duty with the Argentine Navy.<sup>23</sup>

In 1998, the normally press-averse Astiz, who though "retired" from the Navy remained under military discipline and enjoyed full privileges including a pension, access to health care, and the right to wear a uniform, gave an interview to *Tres Puntos*, an Argentine periodical.<sup>24</sup> In the interview he described his actions in kidnapping during the dirty war and boasted that he did his duty and felt no remorse. He also bragged that the Navy was protecting him and ensuring his comfortable retirement, and he threatened journalists who wanted to know more about the fate of the disappeared that he and his former colleagues were "trained to kill." Responding immediately, the naval command placed him under a sixty day arrest; when President Menem proclaimed that he had brought the Navy into disrepute, Astiz was sacked. He also was criminally charged for offenses including justifying crime, attacking the constitutional order, and threatening behavior, though after a trial in early 2000 he was sentenced to a mere three month suspended sentence.

France was not the only European country interested in trying Astiz. Sweden sought him for the murder of one of its nationals, Dagmar Hagelin, a teenager who was arrested and murdered in Buenos Aires, probably as a result of mistaken identity, and put out an international warrant for his arrest. Spain also sought his arrest.

Astiz's case was included in an orchestrated effort by Argentine exiles living in Spain to convince a Spanish court to file criminal complaints against Argentine military junta leaders for human rights crimes in Argentina between 1976 and 1983. On March 28, 1996, an association of Spanish prosecutors (*Unión Progresista de*

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22. The *Punto Final* Law, adopted by the Argentine legislature in late 1986, set a sixty day limit on the filing of new criminal complaints against anyone for crimes committed during Argentina's dictatorship. *Americas Watch, Truth and Partial Justice in Argentina: An Update* 48 (April 1991).

23. *Menem bids on OECD Status*, *Latin America Regional Reports: Southern Cone* (March 14, 1996).

24. Gabriela Cerruti, *Interview with Alfredo Astiz*, *Tres Puntos* (Marko Miletich, trans), reprinted in *Harper's* 25 (April 1998); *Astiz speaks out of turn about killings, Menem sacks officer for damaging navy's image*, *Latin American Regional Reports: Southern Cone Report* (Feb 3, 1998).

*Fiscales*) formally triggered proceedings before Spain's "National Audience" Investigatory Court for alleged crimes against humanity including genocide and terrorism. *Izquierda Unida*, the third largest political party in Spain, working with SERPAJ, the Argentine human rights NGO headed by Nobel laureate Adolfo Perez Esquivel, filed a subsequent private criminal action (*acción popular*). On June 28, 1996, Judge Baltazar Garzón asserted that his court had jurisdiction to investigate the Argentine case.<sup>25</sup>

Around the same time, Chilean exiles in Spain adopted a similar strategy and filed the first of two cases against the Chilean military junta. That case similarly was succeeded by a private criminal action by private groups and individuals including the Salvador Allende Foundation, the *Unión Progresista de Fiscales*, and a number of Chilean citizens. On July 25, 1996, Judge Manuel Garcia Castellon accepted jurisdiction over the Chilean case and began an investigation.<sup>26</sup>

In October 1998, upon learning that Pinochet was in England, the *Unión Progresista de Fiscales* asked Judge Garzón to request the opportunity to interrogate Pinochet about his role in "Operation Condor," a multinational intelligence network that operated in the Southern Cone in the 1970s that was implicated in the disappearance and killing of Argentine dissidents. When the United Kingdom refused to allow the interrogation without an arrest warrant, Judge Garzón formally requested Pinochet's extradition to Spain. Around the same time, the *Agrupación de Familiares de Detenidos y Desaparecidos de Chile* (Chilean Group of Relatives of Detained and Disappeared People) requested that Pinochet and other junta members be charged with genocide, terrorism, and torture. With Pinochet as the nexus, the Spanish judicial system consolidated the Argentine and Chilean cases before Judge Garzón, whose case was the former in time. On October 30, the National Audience affirmed Spain's jurisdiction over the Argentine and Chilean cases and, on November 3, Judge Garzón issued a request of extradition against Pinochet. Garzón's 285-page indictment against Pinochet was issued on December 10, 1998. In it he charged Pinochet with genocide for designing and implementing a plan, coordinated down to the smallest detail, to eliminate a sector of the Chilean population. He also charged Pinochet with terrorism and torture.<sup>27</sup>

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25. F. Javier Leon Diaz, 'The 'Pinochet Case,' *From the Spanish Perspective* (on file with authors); Richard J. Wilson, *Spanish Criminal Prosecutions Use International Human Rights Law to Battle Impunity in Chile and Argentina*, available online at <<http://www.Derechos.org/koaga/iii/5/wilson.html?pinocchet+extradition>> (visited Mar 25, 2001), originally published in *ACLU Intl Civ Lib Rep* (Jan 1997).

26. *Id.*

27. *Id.*

### C. TRANSNATIONAL JUSTICE NETWORK STEPS TO STRENGTHEN THE PRINCIPLE OF UNIVERSAL JURISDICTION

The transnational justice network did not limit its work to bringing cases in foreign courts. It also was pro-active in pushing for changes in international law that would strengthen its capacity to bring cases. Jurisdiction in the US civil cases discussed above was founded not on a treaty but on customary international law and narrow US jurisdictional statutes. But by accepting jurisdiction, the US courts effectively declared that states had at least a permissive right to assert universal jurisdiction over human rights crimes that violated customary international law. While reliance on the universality principle of jurisdiction had been used in the past for such acts as piracy, slave trading, and violence against ambassadors, *Filartiga* (albeit a civil lawsuit) was the first case to apply the principle in a non-wartime human rights case.

Prior to the late 1970s, international norms proscribing the most heinous war crimes, crimes against humanity, and genocide were well established as a matter of customary international law and were embedded in widely ratified treaties. These treaties underscored both the criminality of these acts and the legal principle that persons alleged to have committed these crimes, by virtue of the fact that they are crimes against the international community, can be tried by any state whenever the alleged offender is found within that state's territory.<sup>23</sup> Factors such as where the acts occurred, the identity of the victims, or the extent of contacts with the forum state are not barriers to the principle of universal jurisdiction.

As a matter of practice, universal jurisdiction was rarely relied on as a basis for trying persons accused of heinous human rights crimes. Countries that tried persons accused of war crimes or crimes against humanity usually had more traditional bases for asserting jurisdiction to do so: the acts occurred on that state's territory (territorial basis for jurisdiction); the defendant was a national of the trying state (the nationality principle of jurisdiction); or the victim was a national of the trying state (the passive personality principle of jurisdiction).<sup>29</sup> The most prominent exceptions were the Nuremberg Trials after World War II<sup>30</sup> and the Adolf Eichmann trial in Israel, in

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28. Consider the Convention on the Prevention and Punishment of the Crime of Genocide, 78 UNTS 277 Art 6 (1948). Note that Article 6 of the Genocide Convention provides that "persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction" but commentators and courts have interpreted this provision as one that does not exclude the universal basis of jurisdiction, at least on a permissive basis. See Rodley, *The Treatment of Prisoners* at 102 (cited in note 2).

29. See generally, Jordan J. Paust, et al, *International Criminal Law: Cases and Materials* 95-107 (Carolina 1996).

30. *Demjanjuk v Petrovsky*, 776 F2d 571, 581-83 (6th Cir 1985).

which, in addition to the universal basis of jurisdiction, the Israeli court relied on a uniquely Israeli basis for jurisdiction: crimes against the Jewish people.<sup>31</sup>

By the late 1970s, the principal international human rights treaties, including the ICCPR, the American Convention on Human Rights, and the European Convention on Human Rights were in force. These treaties prohibited conduct such as summary execution, torture and other cruel, inhuman or degrading treatment or punishment, prolonged arbitrary detention, and so forth, and required ratifying states to take measures to ensure that victims of such acts had enforceable remedies. But they did not specify the criminal elements of these acts nor did they require states to try persons alleged to be responsible for them. The transnational justice network, led by lawyers working under the auspices of Amnesty International, many of whom also were involved in the human rights lawsuits described above, pushed hard for the adoption of additional international treaties that would define, criminalize, and clarify the full scope of states' obligations with respect to violations of many of the rights protected generally under these treaties. They won early support from key European governments that collaborated with the NGOs to press for their adoption, and lobbied other states to support provisions binding ratifying states to treat such conduct as criminal.

In the most pronounced example, during the drafting the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the transnational justice network and its government supporters pushed hard to ensure that the treaty required states to criminalize torture and establish jurisdiction to try torturers, not only under traditional bases of jurisdiction, but also under the universality principle of jurisdiction. The latter proved to be one of the most controversial proposals before the working group assigned by the United Nations Human Rights Commission to prepare the treaty, and it was not until the working group's final session in 1984 that the matter was resolved.

The transnational justice network prevailed and the text of the treaty, which was adopted by the General Assembly in December 1984, provides, "Each State Party shall [. . .] take such measures as may be necessary to establish its jurisdiction over such offenses in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him."<sup>32</sup> The Organization of American States ("OAS") took this same approach to universal jurisdiction the following year when it adopted the Inter-American Convention to Prevent and Punish Torture. The subsequent wide ratification of these treaties contributed to fortifying the means for states to try or extradite individuals responsible for torture or similar heinous crimes.

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31. Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* 5 (Penguin rev and enl'd ed 1994).

32. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, 24 ILM 535, Art 5 para 2 (1985).

The turning point for application of the universality principle of jurisdiction came in *Pinochet* when Judge Garzón asserted Spain's competence to try Pinochet on the principle of universal jurisdiction for certain international crimes recognized under Spanish law. Because of the double criminality rule,<sup>33</sup> and the fact that British law does not give British courts as broad a jurisdiction over international crimes as Spanish law affords Spanish courts, the House of Lords was unwilling to extradite Pinochet for all the crimes for which he was indicted by Judge Garzón. But, relying on Britain's implementation of the Convention Against Torture, a treaty to which both Britain and Spain are parties, the House of Lords determined that Pinochet could be extradited to Spain to stand trial for torture that had occurred in Chile.<sup>34</sup>

#### D. REGIONAL EVENTS THAT CONTRIBUTED TO THE JUSTICE CASCADE

While the cases described above and a handful of other human rights cases were proceeding through US courts, events in Latin America were not stagnant. The unprecedented wave of repression and human rights abuses that inundated the region in the 1970s and 1980s gave way by the early 1990s to the restoration of electoral democracy and human rights improvements in a majority of countries in the region. This transformation was interwoven with increased regional consensus and adherence to international and regional instruments that codified states' obligations to protect human rights and ensure democratic participation in government. Between 1976 and 1978 the most important international human rights treaties relevant to Latin America—including the ICCPR and the American Convention on Human Rights—entered into force. Probably in response to pressure from the Carter administration and the international bandwagon effect accompanying these treaties' entry into force, a handful of Latin American countries ratified the major human rights instruments between 1977 and 1981. But after 1985 ratifications surged. This can only be explained by the occurrence of a genuine norms shift that rippled through the region. Torture, disappearance, extrajudicial executions, and government violations of other basic civil and political rights were no longer regarded as legitimate tactics of regimes trying to preserve national security. Instead, they came to be viewed as crimes.

Argentina carried the idea of criminal responsibility the farthest when it tried nine former junta members for human rights crimes during the 1976-83 dictatorship. In Argentina, and elsewhere, this produced a clamor for amnesty or other forms of immunity from prosecution from military personnel and others who were responsible

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33. Under this rule, which is embedded in most international agreements addressing the subject of extradition, a person cannot be extradited to stand trial for a crime that is not recognized by the state to which the request for extradition is submitted.

34. *R v Bow Street Metro Stipendiary Magistrate and Others, ex parte Pinochet Ugarte*, 1 AC 147 (House of Lords 1999).



for such past crimes and their supporters. In many cases these officers believed they were shielded from prosecution by self-amnesty laws that they passed prior to leaving power. In others, the question of amnesty did not arise until negotiations leading to civilian rule. In both cases, military officers threatened to topple fragile new democracies if protection from judicial sanctions was not ensured.

Throughout the region, amnesty laws impeded prosecutions, but did not squelch demands for justice. To the contrary, these demands grew louder with the passage of time and the consolidation of democracy throughout the region. Military threats to undermine democracy unless individual officers were protected from prosecution had the unintended consequence of contributing to a regional norms shift with respect to electoral democracy. In most Latin American countries, a return to military rule was politically unacceptable. Thus, while elected governments acquiesced to demands for legal protections from prosecution for those responsible for past rights abuses, governments, individually and collectively, focused on ways to shore up democracies so that they would be able to resist threats to popular electoral sovereignty. At the national level, many newly elected governments downsized military forces and rapidly promoted unimplicated junior officers who saw their role as serving a democratically elected regime; senior officers who participated in prior military regimes were retired.

At the international level, states cooperated through the OAS to adopt specific norms promoting democracy. In 1991, the OAS General Assembly adopted a resolution on democracy in the Americas called the Santiago Commitment to Democracy and the Renewal of the Inter-American System.<sup>35</sup> The OAS General Assembly also established a process for convening an ad hoc meeting of the region's foreign ministers in the event of any sudden or irregular interruption of democratic governance by a member state.<sup>36</sup> The following year, members of the OAS strengthened this regional commitment to democracy when they amended the OAS Charter with the Protocol of Washington. That Protocol provides that two-thirds of the OAS General Assembly may vote to suspend a member state whose democratically elected government has been overthrown by force.<sup>37</sup> The Santiago Declaration and the Protocol of Washington have provided the procedural basis for many regional actions supporting democracy in Latin America during the 1990s.

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35. Resolution adopted at the Third Plenary Session (June 4, 1991), reprinted in Viron P. Vaky and Heraldo Muñoz, *The Future of the Organization of American States* 103–106 (Twentieth Century 1993).

36. AG/RES 1080 (XXI-0/91), Representative Democracy, Resolution adopted at the Fifth Plenary Session (June 5, 1991), reprinted in Vaky and Muñoz, *The Future of the Organization of American States* at 107–08 (cited in note 35).

37. 1-E Rev OEA Documentos Oficiales OEA/Ser.A/2 Add 3 (SEPF), signed December 14, 1992, entered into force September 25, 1997.

## E. INTERNATIONAL EVENTS PROPELLING A DEMAND FOR JUSTICE

Internationally, events were changing as well. The Cold War ended and with it the potential for proxy wars in Latin America and elsewhere diminished. Broader international consensus in favor of liberal democracy was accompanied by a greater international political willingness to allow institutions like the OAS and the United Nations to achieve agreement on how to respond to new crises than had been possible during the Cold War. In the case of Haiti, the United Nations Security Council broke new ground when, at the behest of the United States, it approved Resolution 940 which called on member states to “use all necessary means to facilitate the departure from Haiti of the military leadership.” This was the first time the Security Council legitimized the use of force in defense of democracy.<sup>33</sup>

Haiti turned out to be the exception. Lacking an international military force or the funds necessary to recruit state military forces to serve the interests of international peace on behalf of the United Nations, the UN Security Council often found itself searching for alternative measures, short of the use of troops, to intervene to stop bloodshed or inhumanity. One such measure was the establishment of criminal tribunals for the purpose of trying individuals responsible for such crimes.

In 1993, in response to widespread and systematic murder, rape, and “ethnic cleansing” of civilians in Bosnia, the UN Security Council, acting under the peace enforcement provisions of the UN Charter (Chapter VII), established the Ad Hoc Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“ICTY”). Eighteen months after the establishment of the ICTY, the Security Council established a similar court to prosecute genocide and other systematic, widespread violations of international humanitarian law in Rwanda (“ICTR”). Although both tribunals got off to rocky starts, as of October 2000 the ICTY was actively prosecuting 38 of 65 indictees accused of atrocities in connection with the conflict in the former Yugoslavia, had sentenced four, and acquitted one. The ICTR had convicted eight and had forty-three others in detention. As judicial institutions, the ICTY and ICTR are increasingly respected for their independence and their decisions are setting international precedents concerning some of the most important legal questions of our time. For example, in 1998 the first conviction by an international tribunal of an individual charged with genocide occurred when the ICTR found Jean-Paul Akayesu, the political leader in Rwanda’s Taba commune, guilty of genocide. The tribunal further held that rape and sexual violence constitute genocide if committed with the specific intent to destroy a targeted group.

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38. Robert A. Pastor, *More and Less than it Seemed: The Carter-Nunn-Powell Mediation in Haiti, 1994*, in Chester A. Crocker, Fen Osler Hampson, and Pamela Aall, eds, *Herding Cats: Multiparty Mediation in a Complex World* 507–525 (US Inst of Peace 1999)

The institutionalization of the two ad hoc tribunals reinvigorated international interest in establishing a permanent international criminal court. After the Nuremberg Trials, the newly formed United Nations took up the task of planning for a permanent international criminal court to try war criminals and perpetrators of human rights. But the Cold War, and its attendant stalemate at the United Nations, disrupted serious efforts in this regard. Renewal of these efforts in the mid-1990s was spearheaded by a coalition of actors including the lawyers who had worked on the human rights litigation in US courts, NGOs, such as Human Rights Watch, the Lawyers Committee for Human Rights, and Amnesty International, that had long pushed for trials of perpetrators and other forms of accountability in the wake of gross violations of human rights, and governments, particularly in Europe, that had internalized the international justice ethic. Such a court would redress the chief complaint concerning the two ad hoc tribunals—that they were arbitrary because they were created in response to events in two countries, whereas no similar court was available to prosecute those responsible for similar tragedies elsewhere.

In the summer of 1998, the United Nations sponsored an international diplomatic conference in Rome to draft a statute for an International Criminal Court (“ICC”). In Rome a group of some sixty “like minded” countries and hundreds of NGOs propelled the process and achieved consensus or compromise to achieve a comprehensive 128-article statute. Several Latin American states, including Argentina, Brazil, Chile, Costa Rica, and Venezuela were among the key players in the “like minded” group; Argentina and Venezuela played particularly active roles.

A treaty enabling states to participate in the ICC is now open for signature; the ICC will be created once sixty nations ratify it. The Rome Statute describes in extensive detail every aspect of the ICC’s operation and functioning, but further refinement is ongoing. As of January 1, 2001, 139 countries had signed and twenty-seven had ratified the treaty.

The Rome Statute is a major accomplishment that provides a workable starting point for a court that could make a lasting difference. Objectively, its success will be measured by the number of states that ratify the treaty and join the Assembly of States Parties, the adequacy of funding provided to ensure that once it is established it is a viable court, and by the degree to which, because it exists, those who hold power and would abuse that power by committing terrible abuses of human rights, are deterred by the knowledge that they will be held accountable law for their crimes in an international court of law. Subjectively, it already is a success. The Rome Statute underscored international commitment to the rationale for universal jurisdiction—that some crimes are crimes not only against the people and states in which they occur, but against the international community as a whole. This, in turn, boosted the confidence of national judiciaries to prosecute or respond favorably to other country’s requests to extradite persons accused of human rights crimes, no matter where those crimes took place.

#### IV. THE IMPACT OF THE US AND EUROPEAN CASES ON THE VICTIMS AND IN THE COUNTRIES WHERE ABUSES OCCURRED

Turning now to the impact of the US and European cases on the victims and in the countries where the human rights violations occurred, we examine two types of impact: (1) direct impact on individuals; and (2) indirect impact altering societal or institutional perceptions or practices. Direct impact fosters change in how actors who care about or are involved with these issues feel and act. For senior political leaders it is reflected in what policies they call for or promote. For military or police officials and others involved in perpetrating past abuses, it is reflected in the level of contrition they display, as well as their attitudes about future involvement in the political arena. For human rights organizations it is measured in their sense of how much progress has been made on the human rights front. For victims and their families, it is measured by the degree to which they feel that justice has been served and the extent to which it enables them to leave the past in the past and move forward with their lives.

Indirect impact occurs where foreign trials have an effect on political processes and institutions in the country where the abuses occurred that in turn have implications for perpetrators and victims of human rights abuses. These can be either perceptual changes, which occur when non-governmental actors are emboldened to seek political change as a result of an external judicial process, or actual changes in institutional practice effected by governmental organs in response to external events.

In the United States, the transnational justice network lawyers dedicated hundreds of hours of volunteer time to the civil lawsuits discussed above. They received substantial support from all the leading international human rights organizations. Their efforts led to US federal court judgments on behalf of the plaintiffs. But other than having the defendants declared "enemies of all mankind," or the equivalent, the plaintiffs received little direct benefit. Moreover, the impact on the human rights situations in the countries where the abuses occurred was minor.

In Paraguay no court was willing to enforce the default judgment awarded in *Filartiga*, thus the family was never compensated. A decade after the decision, Dolly Filartiga told a newspaper reporter that "little has changed in her native Paraguay . . . [and that] she still dares not return for fear of reprisal because of her role in exposing Joelito's murderer."<sup>39</sup>

Little changed in Paraguay during the years Peña-Irala was in the United States. Paraguay still endured the dictatorship of General Alfredo Stroessner, who held power from 1954 to 1989. Torture and prolonged arbitrary detention of opponents of the regime were routine occurrences throughout the Stroessner years, and all efforts to develop democratic institutions and civil society were stifled. In an interview, Dr.

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39. Kenneth R. Clark, *Murder in Paraguay: HBO Docudrama Tells Frustrating Tale of Family's Fight for Justice*, Chicago Tribune C15 (April 18, 1991).

Filartiga stated that his case made very little impact in Paraguay and did not lead to an improvement in human rights there. "Here, nothing happened. They didn't even know about [the Filartiga case]. They treated me as an anti-Paraguayan. No information on the case was published. Here it was all a dead-end street."<sup>40</sup> Former US Ambassador to Paraguay Robert White reported some nervousness at the highest levels of the Paraguayan government after the decision was rendered: "After the case was decided in favor of Dr. Filartiga one of the people closest to General Stroessner told me that I just had to do everything possible to get this decision reversed. . . . [N]o Paraguayan government figure would feel free to travel to the United States if this judgment was upheld because . . . they would feel that they would be liable to arrest."<sup>41</sup> But even if nervousness in fact inhibited the travel plans of key Paraguayan political figures, it did not alter their behavior in Paraguay, nor did the lawsuit have any impact on human rights policies or practices in the country. The Filartiga family got some sense of justice when a foreign court pronounced Peña-Irala liable, but this satisfaction was overshadowed by the complete lack of response in Paraguay.<sup>42</sup>

Similarly in the lawsuit against Suarez-Mason, none of the plaintiffs collected on their judgments. The plaintiffs in one of the lawsuits, Deborah Benchoam and Alfredo Forti, are still attempting to collect on their judgments in Argentina, but so far have been unsuccessful. Two of the *Rapaport v Suarez-Mason* plaintiffs, the widowed mother and sole surviving sibling of a disappeared youth, reported that the suit's most significant benefit was family reunification. Before the lawsuit, the elderly mother was denied permission to travel to the United States to visit her exiled daughter because US Immigration and Naturalization Service ("INS") officials feared that she would remain and become a burden on the United States. Only after the district court judge ordered her appearance in connection with the case did INS relent and grant her a visa.

But unlike Peña-Irala, Suarez-Mason returned to a political climate in Argentina that was fundamentally different from when he commanded the First Army Corps in Buenos Aires. After the armed forces' humiliating defeat in the Falklands/Malvinas War in 1982, and the restoration of democracy the following year, judicial accountability for past human rights abuses became a national obsession. Revulsion at the abuses perpetrated by the military on thousands of Argentine citizens during the dirty war created sufficient political space for newly elected President Raul Alfonsin's government to try nine former junta members in 1985; five were convicted and sentenced to time in prison.

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40. Interview with Dr. Joel Filartiga, Asunción, Paraguay, January 2, 1996 (on file with authors).

41. Richard P. Claude, *The Case of Joelito Filartiga in the Courts* 328,336, in Richard Pierre Claude and Burns H. Weston, eds, *Human Rights in the World Community: Issues and Action* 336, 328-339 (Pennsylvania 2d ed 1992).

42. Filartiga interview (cited in note 40).

Among the leaders of Argentina's military dictatorship, Suarez-Mason was among the most radically anti-democratic, anti-Semitic, and anti-communist. In 1984, before President Alfonsín had secured legislation to try his predecessors for human rights abuses, a federal judge issued a warrant for Suarez-Mason's arrest in a case involving the disappearance of a scientist in 1978. Suarez-Mason, who announced he would not be a scapegoat, immediately left the country. No other Argentine military officer fled Argentina rather than face trial and, for doing so, he was held in contempt by his military comrades-in-arms. When he refused to appear before the court, they stripped him of rank and expelled him from the Army. After human rights activists discovered that he was living in the United States and filed civil lawsuits against him, the government of Argentina requested his extradition to stand trial for hundreds of human rights crimes. Extradition for thirty-nine murders was approved and he was returned to Argentina where he immediately was arrested. Because of his military seniority and the early date on which charges were brought against him, he was not subject to either of two amnesty measures introduced in the latter years of the Alfonsín administration to appease military officers who were hostile to continued trials for rights abuses during the dirty war—the due obedience law and the *Punto Final*. But criminal proceedings against him languished and in December 1990 he benefited from the second of two pardons offered by President Menem to military officers who remained indicted or convicted of human rights crimes during the dictatorship.

Suarez-Mason's encounters with the Argentine judicial system did not end with his pardon. In December 1996 he was charged by an Argentine court with making an anti-Semitic remark in violation of Argentine law and \$1,500 of his assets were frozen.<sup>43</sup> In December 1999 he was arrested again for human rights crimes, this time for the theft of children of Argentina's "disappeared," suppression of their identities, illegal custody and concealment.<sup>44</sup> Meanwhile, in December 1997, Spanish judge Baltasar Garzón, the judge who indicted Pinochet, indicted Suarez-Mason for the disappearance of Spanish citizens in Argentina. He also was convicted in absentia by an Italian court for kidnapping and murdering eight Italian citizens during the dirty war.

By publicizing Suarez-Mason's whereabouts, the US civil litigation had the direct impact of prodding the Argentine government into seeking his extradition and continuing judicial proceedings against him in Argentina. But his case was exceptional. Although the military opposed trials of military officers for their conduct during the dictatorship, they did not oppose trying Suarez-Mason because of his cowardice in fleeing the country, which they regarded as an act of dishonor. Yet, the fact that by the time he was pardoned he had not yet been tried is evidence of political

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43. *Ex Military Chief Charged for Antisemitic Comments*, Agence France Presse (Dec 4, 1996).

44. Marcela Valente, *Rights—Argentina: Arrests of Military Officers Continue*, Inter Press Service (Dec 6, 1999).

ambivalence about trying him and how little indirect impact his case had on political decision-making at the time.

For the *Gramajo* plaintiffs, the process similarly has been frustrating and has stirred up painful memories. They have not been compensated nor have they experienced any sense that justice has been done. Their only satisfaction is knowing that Gramajo was found liable by a US court.<sup>45</sup> The lawsuit apparently has had an impact on General Gramajo. In the early 1990s, Gramajo was particularly well regarded in some US political circles; they saw him as a key mediator between the Guatemalan military and the country's political sector.<sup>46</sup> A *Washington Post* article in 1992 claimed that many expected Gramajo to win the next presidential elections in Guatemala in 1995.<sup>47</sup> But the tide turned quickly. A month before the court's decision was handed down, then-US Congressman Robert Torricelli accused the Central Intelligence Agency ("CIA") of being implicated in human rights abuses in Guatemala. A week before the court issued its decision, the Clinton administration decided to cut off covert CIA aid to Guatemala, which had continued despite Congress' 1990 decision to end military aid. In that week's edition of *The Nation*, US journalist Allan Nairn specifically accused Gramajo of being one of the "CIA's men" in Guatemala.<sup>48</sup> Gramajo defended himself in a Guatemalan radio broadcast by asserting that he worked "with the CIA" and not "for the CIA."<sup>49</sup> On the heels of these events the US court found that "plaintiffs have convincingly demonstrated that, at a minimum, Gramajo was aware of and supported widespread acts of brutality committed by personnel under his command resulting in thousands of civilian deaths. . . . [and that he] refused to act to prevent such atrocities."<sup>50</sup>

After this confluence of bad publicity, Gramajo's cordial relations with influential political groups in the United States were severed. Apparently in response to the lawsuit, US military officers distanced themselves from him and the US government withdrew his invitation to speak at a military conference in Miami.<sup>51</sup> Possibly due to this loss of external sponsorship, his political fortunes in Guatemala also faded. He received a tiny fraction of the presidential vote in the 1995 elections and since that time human rights activists in Guatemala and the United States have

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45. Telephone interview with Alice Zachmann, December 22, 2000 (on file with authors).

46. *Human Rights Causes Row between the US and Guatemala*, in *Latin American Regional Reports: Mexico and Central America Report* (March 29, 1990).

47. Shelley Emling, *Guatemala's Possible Future President*, *Wash Post (Foreign Journal)* A13 (Jan 6, 1992).

48. Allan Nairn, *CIA Death Squads*, *The Nation* 511-13 (April 16, 1995).

49. Fabiana Frayssinet, *Guatemala: Gramajo Case Sheds Further Light on CIA Intervention*, *Inter Press Service* (April 18, 1995).

50. *Xuncax v Gramajo*, 886 F Supp 162, 172-73 (D Mass 1995).

51. Colum Lynch, *US backs away from Guatemala general*, *Boston Globe* 9 (April 15, 1995).

lost sight of him. He plays no role in public life in Guatemala and nothing about him appears in the news.<sup>52</sup>

The impact of the European cases turned out to be more significant. The turning point was *Pinochet*. Although most of those indicted or charged with human rights crimes have, until now, evaded punishment, momentum for such trials has built and more and more cases are moving forward. The Argentine and Chilean cases before Judge Garzón, though initially brought on behalf of only a handful of victims, have swelled to include hundreds, and international arrest warrants have been issued for dozens of former junta members and military officers from those two countries.

In Italy, a criminal case against Suarez-Mason, Omar Santiago Riveros, and five other Argentine military defendants for the murder of eight Argentines of Italian descent including one infant went to trial after a sixteen-year investigation. On December 6, 2000, after a fourteen month trial, the Court found all seven guilty. Suarez-Mason and Riveros were sentenced, in absentia, to life imprisonment; the remaining defendants were each sentenced, in absentia, to twenty-four years in prison.<sup>53</sup>

Another Italian judicial proceeding occurred with respect to retired Argentine Army Major Jorge Olivera. Olivera was arrested in August 2000 while in Rome with his wife celebrating their silver wedding anniversary. His arrest was based on a French warrant charging him with participation in the kidnapping, torture, and disappearance of Marie Anne Erize Tisseau, a French citizen who lived in Argentina during the dictatorship. Olivera's defense attorney produced Erize's death certificate, which prompted the Italian court to conclude that the crimes with which he was charged could not be tried in Italy. Consequently, Italy was barred from extraditing him to France. Olivera was released and immediately returned to Argentina. Upon his return, Argentina charged him with forging the documents that won his release.<sup>54</sup>

The impact of the European cases has even reached Latin America. In August 2000, Mexico arrested retired Argentine Navy Captain Miguel Cavallo as the plane on which he traveled from Mexico City to Buenos Aires stopped to refuel in Cancún. In November 1999, Spanish Judge Baltasar Garzón filed charges against Cavallo for torturing Thelma Jara de Cabezas, a Spanish woman living in Buenos Aires in the late 1970s, and the murder of Monica Jurequi and Elba Delia Aldaya, two other Spaniards. Judge Garzón issued an international warrant for his arrest. Cavallo was in Mexico because an Argentine company he heads had obtained a contract to operate Mexico's newly privatized National Registry of Vehicles. The Mexican newspaper *Reforma* received complaints from Mexican drivers about arcane vehicle registration

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52. Zachmann Interview (cited in note 45).

53. *Tribunal Penal de Roma*, Sentence of Dec 6, 2000.

54. *Ex-Argentine Officer Charged with Forgery for Papers That Won Him Jail Release*, Deutsche Presse-Agentur (Sep 23, 2000).



requirements, and asked its correspondent in Buenos Aires to investigate. The reporter uncovered Cavallo's past and the international warrant for his arrest, and *Reforma* passed the information on to Mexican authorities. Cavallo is now in jail in Mexico awaiting the outcome of Spain's request for his extradition.<sup>55</sup>

## V. NATIONAL RESPONSES IN LATIN AMERICA TO INTERNATIONAL EVENTS PROPELLING THE JUSTICE CASCADE

In Chile, the arrest of Pinochet appears to have lifted psychological, political, and juridical barriers to justice by weakening the powerful forces blocking such trials in Chile since the return to democracy. International pressures bolstered by routine retirement and replacement in the Chilean judiciary and military have yielded a more liberal judiciary and a younger, less implicated military officer corps. The longer Pinochet's detention in Britain continued, and the more legal decisions that accumulated justifying his arrest, the more significant the domestic impact appeared to be. While political and military leaders, and human rights organizations and victims, disagreed about whether Pinochet should be tried at all, most agreed that if he was tried the trial should take place in Chile. This consensus was founded on both ideological and practical concerns. Although temporarily weakened during the dictatorship, Chileans have a long tradition of pride in their judicial system, which has a reputation for impartiality, fairness, and effective administration of justice. They also have a high level of national pride and confidence in their capacity to solve domestic problems without external interference. In addition, Chileans agreed that the fairest trial would occur where all the witnesses and evidence were located, and where people of Chile, of all political persuasions, could closely observe the proceedings.

Since Pinochet's arrest, twenty-five Chilean officers have been arrested on charges of murder, torture, and kidnapping. In an interview, Defense Minister Edmundo Perez Yoma discussed a "new attitude" emerging among the military high command: "You deal with it or it will never go away. You have to confront it—that's the changed attitude."<sup>56</sup> In July 1999, Chile's Supreme Court upheld a lower court decision that the amnesty law was no longer applicable to cases in which people had disappeared. Until the bodies of the victims were located, the crime was not murder but kidnapping, meaning the crime was a continuing event beyond the 1978 amnesty deadline.

When British authorities allowed Pinochet to return to Chile after determining that his ill health prevented him from standing trial, many feared that these legal advances in Chile would be reversed. But, despite a hero's welcome, and his surprising vigor on the Santiago tarmac, New York Times reporter Clifford Krause's description

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55. Bruce Zagaris, *Mexico Detains Argentine on Spanish Extradition Request for "Dirty War" Atrocities*, 16 Intl Enforcement Law Rep 960 (Oct 2000).

56. Clifford Krause, *Chilean Military Faces Reckoning for its Dark Past*, NY Times 1 (Oct 3, 1999).

of Pinochet as “a real nowhere man” most accurately reflects his current position.<sup>57</sup> His return sped up negotiations between military and civilian officials on a human rights accord that created a mechanism to uncover what happened to approximately 1,200 people who disappeared during Pinochet’s dictatorship. On June 5, 2000, a Santiago appeals court ruled, by a vote of thirteen to nine, that Pinochet could be stripped of his lifetime immunity from prosecution and could be tried for the disappearance of at least nineteen people in October 1973. Two months later, the Chilean Supreme Court affirmed the lower court’s ruling. In December 2000, Pinochet’s case was once more in the news: a Chilean prosecuting judge ordered Pinochet to stand trial for human rights crimes.

The European cases against the Argentine military officers had the unanticipated effect of spurring change in Argentina’s willingness to try human rights cases. The decision by the Argentine government to imprison Admiral Massera and General Videla pending trial apparently was a preemptive measure in response to the Spanish judge’s international arrest warrants.<sup>58</sup> Argentina has even extended its judicial reach transnationally; albeit in a case in which the events took place in Argentina. In November 2000, a former Chilean secret police agent was sentenced to life in prison in Argentina for his role in the assassination of former Chilean General Carlos Prats and his wife, Sofia Cuthbert. Prats was Chile’s Army Commander in Chief during the administration of Salvador Allende and fled to Argentina when Allende was overthrown. Prats and his wife were killed in a car bomb in Buenos Aires on September 30, 1974. The Argentine court has formally requested the extradition of Pinochet to stand trial in Argentina for his role in the Prats murder. The first judge to receive the extradition request in Chile recused himself citing “pressure from the right.”<sup>59</sup> A new judge was appointed and is considering arguments concerning Argentina’s request.<sup>60</sup>

The Spanish court cases have raised the hopes of human rights activists throughout Latin America that justice for rights abuses in their countries is possible. Following the lead of Argentine and Chilean human rights activists, Guatemalan Nobel Peace Prize winner Rigoberta Menchu filed a case in the Spanish court against three former Guatemalan presidents and military leaders, Romeo Lucas García, Oscar Mejía Victors, and Efraín Ríos Montt, currently president of the Chamber of Deputies, and five lower ranking officials, for murders and other crimes that she asserts amount to genocide against Guatemala’s indigenous Mayan population. Lawyers for the defendants have counterattacked by filing a suit against Menchu in

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57. Clifford Krause, *Pinochet at Home in Chile: A Real Nowhere Man*, NY Times 12 (Mar 5, 2000).

58. Interview with Dr. Martín Abregu, Director of the *Centro de Estudios Legales y Sociales* (“CELS”), Buenos Aires, July, 1999 (on file with authors).

59. *Former Chilean agent sentenced to life in prison*, Agence France Presse (Nov 21, 2000).

60. *Judge rejects Pinochet’s defense against extradition*, UPI (Dec 1, 2000).

Guatemalan courts charging her with treason, sedition, and violation of the constitution for filing charges in a foreign court. In December 2000, the Spanish court dropped the indictments saying the case should be brought before the courts in Guatemala, but left open the possibility that the Spanish courts could provide jurisdiction if the political pressure or legal restrictions impede the case from going forward there. Guatemala never had a blanket amnesty law as did Chile and Uruguay, nor a statute of limitations for human rights violations that effectively served as an amnesty as did Argentina. Thus numerous human rights cases have moved forward in Guatemalan courts, but because these cases are plagued by death threats and intimidation of witnesses, political interference, and scores of procedural flaws, few have led to convictions.

Meanwhile, *Pinochet* and the efforts of Menchu to bring former Guatemalan dictators to account in Spain have contributed to an aura of contrition among Guatemala's senior policymakers. In August 2000, Guatemalan President Alfonso Portillo admitted government responsibility for atrocities committed during the country's thirty-six-year civil war and pledged to investigate massacres, prosecute those responsible, and compensate the victims. Moreover, in a show of good faith, President Portillo signed an agreement with the Inter-American Human Rights Commission ("IACHR") that affirms Guatemala's institutional responsibility for war crimes and empowers the IACHR to monitor the actions of the Guatemalan government in light of its new promises to redress those past wrongs.<sup>61</sup> In December 2000, the Inter-American Court found that the Guatemalan government had killed Efraim Bamaca Velasquez, a rebel leader, and the husband of human rights activist Jennifer Harbury. It is still too soon to know the impact of the Inter-American Court's decision on domestic legal processes in Guatemala.

Elsewhere on the continent, hopes are rising that more trials of high-ranking officials accused of human rights abuses will occur. In June 2000, Congressman Marcos Rolim, who heads the Human Rights Commission in Brazil's Chamber of Deputies, asked President Fernando Henrique Cardoso to strip former Paraguayan dictator Alfredo Stroessner of his political asylum. Once it is lifted he plans to ask Brazilian prosecutors to charge the former dictator with human rights violations during his nearly thirty-five-year rule in neighboring Paraguay. Congressman Rolim agreed that his trial in Paraguay would be preferable but argued that in light of the recent failed military coup and the continuing ties many current political actors in Paraguay still have to Stroessner, a trial in Paraguay could generate further political unrest. In his view, "Brazil, by giving asylum and protection to Stroessner, has

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61. Jan McGirk, *Guatemalan Leader Admits Civil War Atrocities: Human Rights President Promises To Compensate Those Who Lost Relatives at the Hands of Military Government During Bloody 36-Year Conflict*, *The Independent* 12 (Aug 11, 2000).

responsibility for his destiny."<sup>62</sup> In December 2000, a Paraguayan court requested Stroessner's extradition from Brazil to stand trial for the 1977 disappearance of Paraguayan physician Agustin Goiburú, who was living in exile in Argentina when he disappeared in 1977.

In Haiti, democratically elected President Aristide's return was accompanied by a clamor for justice encouraged by Aristide and his successor, President René Préval. In November 2000, a court tried fifty-eight former military leaders and other lesser players in the 1991 coup that drove President Aristide from power. The case focused on the April 1994 massacre at the Raboteau shanty town in the coastal city of Gonaïves in which approximately a dozen people were murdered and thrown into the sea, and many other residents were beaten or had their houses burned. For Haitians, although the trial focused on one human rights criminal event, it was symbolic of all the human rights crimes that occurred during the three-year Cedras regime. In the first phase of the trial, sixteen former soldiers and their henchmen who were arrested in Haiti were convicted; six others were acquitted. The convicted soldiers were sentenced to life imprisonment; the others received sentences between four and nine years. In the second phase, thirty-seven senior military officials, including former coup leader Raoul Cedras who in return for giving up power received a comfortable exile in Panama, were convicted of premeditated voluntary homicide and sentenced in absentia to life imprisonment.

Latin American countries also have enthusiastically supported efforts to establish the ICC. As of December 2000, Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Ecuador, Haiti, Honduras, Mexico, Panama, Paraguay, Peru, and Uruguay had signed the ICC treaty and were taking steps towards ratification. Three countries, Belize, Venezuela, and Uruguay, had ratified it. The Latin American embrace of an international court to try perpetrators of human rights is closely linked with the region's determination to promote and protect democracy, and countries' recognition that the rule of law and an effective independent judiciary are crucial elements of any functioning democracy. Contrary to Moravcsik's liberal republican theory, both old and new democracies in the region have moved quickly to sign and ratify the treaty. The Rome Statute gives preeminence to national judiciaries and state sovereignty by limiting the ICC's jurisdiction to situations where a state that has jurisdiction is unable or unwilling to investigate the matter, or to prosecute it if the outcome of an investigation determines prosecution is appropriate.<sup>63</sup> Thus in supporting the establishment of an international criminal court, Latin American democracies feel no

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62. *Trial Sought for Long-Ruling Dictator*, St. Petersburg Times 10A (June 10, 2000) (quoting Brazilian Congressman Marcos Rolim).

63. Rome Statute of the International Criminal Court, Art 17, available online at <<http://www.un.org/icc>> (visited Mar 25, 2001).

threat to their sovereignty because criminal cases over which their national tribunals have jurisdiction will not end up before a world court.

## VI. A CAUTIONARY TALE

Through the process of “borrowing” foreign judicial systems to seek justice for past human rights abuses, the justice network and human rights victims have had to face the limits of the process they have sought so fervently. The “successful” US civil cases, that produced little more than symbolic benefit for the plaintiffs, were prescient shadows of what could occur.

In November 2000, jurors in a federal court in Miami, Florida absolved two El Salvadoran generals, José Guillermo García, who was El Salvador’s Minister of Defense, and Carlos Eugenio Vides Casanova, former director of El Salvador’s National Guard, of civil liability for the abduction, rape and murder of four American churchwomen by National Guardsmen in 1980. Five enlisted National Guardsmen were convicted in El Salvador in 1984 of the crimes and were sentenced to thirty-years imprisonment. During their criminal trials, they asserted that they had acted on superior orders.

After listening to many days of testimony concerning the violence, chaos, and gross violations of human rights during El Salvador’s twelve-year civil war, the jury concluded that the situation was so chaotic and command so decentralized that the generals lacked sufficient command over and control of their troops to be responsible for their conduct. The verdict, which was rendered after only eleven hours of deliberation, dismayed family members of the four churchwomen who had presented days of testimony about human rights abuses during the civil war that claimed 75,000 lives.

Trial observers asserted that the trial was closely watched by military officers in El Salvador, Guatemala, and elsewhere who were concerned that although they received amnesties they could yet be prosecuted.<sup>64</sup> During the trial, prosecutors in El Salvador sought to reopen the case of six Jesuits who were slain, along with their housekeeper and her daughter, in 1989. They were rebuffed by a Salvadoran court which ruled that the prosecutor’s request was “without legal substance.”<sup>65</sup> It bears noting that neither El Salvador nor Guatemala have yet signed the ICC treaty.

The lesson of the El Salvador case is that even the fairest trial does not always result in the outcome the transnational justice network seeks. Courts can achieve justice only to the extent the evidence to secure a conviction or civil finding of liability is available. Unfortunately, in human rights cases the evidence needed to support a

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64. David Gonzalez, *Trial of Salvadoran Generals in Nuns’ Deaths Hears Echoes of 1980*, NY Times A8 (Oct 21, 2000).

65. *New Charges Barred in Salvador Killings*, NY Times A12 (Oct 24, 2000).

judgment in a court of law often is controlled by those involved in human rights abuses who have reason to destroy it or otherwise ensure that it is never produced for use against them. Sovereignty concerns also may play a role. Thus, even if a government is willing to investigate, prosecute, or allow human rights trials to proceed in its courts, it may be unwilling to cooperate with a foreign court to accomplish the same purpose. Evidence also may be diluted by non-political factors such as the passage of time, the death of key witnesses, insufficient resources, or even immigration decisions that restrict the ability of parties to be present to press their claims in foreign courts.

Moreover, judicial systems are human institutions; individual attitudes and biases can insinuate themselves into even the fairest of processes. In the Salvadoran generals' case, jurors interviewed after the conclusion of deliberations said that notwithstanding the evidence to the contrary presented by the human rights NGOs representing the plaintiffs, they were persuaded that the generals had done what they could to curb abuses given the tumult of the era and a lack of resources to conduct effective investigations or to discipline their troops.<sup>65</sup>

## VII. CONCLUSION

We have argued that a justice cascade is underway in Latin America today. This norms cascade was the result of the concerted efforts of a transnational justice advocacy network, made up of connected groups of activist lawyers with expertise in international and domestic human rights law. The justice cascade, in turn, is part of a larger human rights norms cascade in Latin America, and its success is very much connected to the larger progress of human rights and democracy norms and practices in the region. This explanation primarily reflects an ideational theory of international relations, that stresses the effects of ideas and norms on social life. We do not expect ideas, in and of themselves, to have a compliance pull. Rather, we argue that ideas are influential because of the actions, pressures, and sanctions of state and non-state actors aimed at promoting human rights norms. Aspects of both "liberal" and "realist" approaches are also relevant to understanding the justice cascade. Some of the most enthusiastic supporters of the justice cascade in Latin America have been newly democratizing states that are concerned about the stability of their new democracies. The position of the hegemonic US government at times plays an important role in supporting the justice cascade. Backtracking on human rights by the new US administration would, without doubt, slow down or even temporarily stall its progress. But, contrary to realist thought, lack of support from the hegemon will not decisively block the justice cascade, as the progress on the ICC Statute's ratification in

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66. David Gonzalez, *2 Salvadoran Generals Cleared by US Jury in Nuns' Deaths*, NY Times A3 (Nov 4, 2000).

the region suggests. A full explanation of the justice cascade must include attention to the power of the principled ideas that undergird it, and the activism of states and NGOs that support and sustain it.

Although we do not yet know the full scope and extent of the justice cascade in Latin America, there is no doubt that a significant norms transformation has occurred, and that the process is ongoing. Twenty years ago trials of human rights perpetrators in foreign courts had little domestic impact on either individuals or policy. The victims got little more than the nominal benefit of having a judge—albeit a foreign judge in a foreign court—declare that the person they blamed for their suffering was indeed legally responsible. Today the domestic response to extra-national trials and international efforts to establish an international criminal court is transforming the behavior of political leaders and military and police officers, heightening victims' and victims' family members' sense that justice is being served, and even changing the agendas of human rights organizations. Because of positive governmental responsiveness, many human rights NGOs in Argentina, Chile, and other Latin American countries are able to turn their attention to human rights issues other than the quest for justice for past human rights abuses. In some countries, policy and institutional changes have occurred in all branches of government, from courts, which have found ways to obtain jurisdiction over perpetrators of past abuses, to legislatures and executive branches of government. The latter have legislated or decreed human rights polices aimed at redressing past abuses, or have stood aside when their national judiciaries have moved ahead with judicial proceedings against past perpetrators.

The certainty that these events constitute a justice cascade and not merely opportunistic reaction to isolated external events is reinforced by the pervasive change in values in the region. Certainty also is evident in the willingness of governments to act to ensure its continuation, such as taking steps to prosecute past perpetrators when there was no immediate likelihood of their trial in a foreign court, as Haiti did, or signing an agreement with the IACHR to monitor compliance with promises to prosecute and redress past abuses, as President Portillo of Guatemala did. Thus the move towards justice is driven as much by policymakers' changing principles as by their pragmatic concerns, as the ideational approach would suggest. But pragmatic concerns are not absent here. The transnational justice network has used a "boomerang" dynamic similar to that used by other transnational advocacy networks. Domestic human rights groups have cooperated with international groups of lawyers to bring pressure from outside to bear on their governments and their courts. Where they have succeeded, it probably is a blend of principle and pragmatism that leads governments and militaries to conclude that if they are going to face trials, it is preferable to face them in their own country than abroad.

The consequences of this justice cascade are far reaching. With respect to the perpetrators, even if they never face punishment, or even trial, they are finding themselves "landlocked." Even where their own government is willing to protect them

from the reach of foreign courts, they dare not travel abroad for fear that the country they travel to will extradite them to a country seeking to try them. This pressure is felt not only by those who know they are under indictment, but those who have reason to fear they might be indicted abroad.

The much bigger casualty seems to be the amnesty decrees that past Latin American dictators gave themselves before leaving office, or post-dictatorship democratic regimes gave their predecessors in exchange for their allowing democracy to flourish by not seizing power again. Old amnesties are not bearing up well against current national sovereignty concerns. Latin America's democracies care deeply about their international reputations and seem prepared to sacrifice former perpetrators' immunity if the alternative is an infringement of sovereignty resulting from having their former political leaders tried in a foreign court. No Latin American country, particularly those with rapidly consolidating democracies, wants to foster the perception that its courts lack the competence, capacity, or independence necessary to effectively try its own nationals. Moreover this view is shared not only by elected governmental officials, but by the armed forces that previously had insisted on amnesties, and by the non-governmental human rights organizations that consistently has demanded trials.

Still, there is plenty of evidence that in Latin America the justice cascade is far from complete. In countries that have not yet faced the possibility that foreign judiciaries will try their nationals, policy-makers have had far less enthusiasm for trials even though they find the *Pinochet* precedent worrisome. Thus Uruguay has taken steps to restrict the foreign travel of its nationals who were implicated in past abuses of human rights, while at the same time stepping up other initiatives, such as the establishment of a national commission to investigate the disappearances of Uruguayan nationals during the period when Uruguay and its neighbors all lived under military regimes. Even in countries where internalization of the justice cascade is more advanced, it is far from fully realized. Thus in Argentina, where there has been substantial progress with respect to conducting trials, there is far less movement when it comes to executing judgments for civil damages in human rights trials that occurred abroad. The inability of most plaintiffs to collect damages on their judgments suggests that the application of the rule of law to achieve justice for victims in non-criminal cases has not yet been swept up by the justice cascade.

We conclude that in Latin America, while the justice cascade is in progress, the extent of its realization in each country depends on numerous factors including: (1) the degree of consolidation of that country's democracy and legal system, (2) whether that country has directly faced the possibility that one of its former senior political figures would be tried abroad, (3) the amount of publicity and support foreign judicial processes have received, (4) the intensity of the determination of domestic human rights advocates and victims, amply supported by their international counterparts, to pressure their government to realize justice for past wrongs, (5) the degree to which each country feels it will bear some embarrassment or other international consequence



for not conducting trials that is not outweighed by domestic political pressures exerted by the supporters of those it would try, and (6) the extent to which those now in power have internalized the justice norm and believe that trying past perpetrators is the right thing to do.

The consequences of the justice cascade, including its manifestation in Latin America, reach far beyond the region. Earlier we noted some of the efforts being taken by European states to bring to justice those from other countries responsible for egregious past violations of human rights. But the norms cascade is beginning to penetrate non-European regions as well. In February 2000, a group of Chadian rights activists and victims convinced a Senegalese court to indict former Chadian dictator Hissene Habre and four collaborators. Habre has lived in luxurious exile in Senegal since 1990, and Senegal was the first country to ratify the ICC treaty. Political events in Senegal have subsequently waylaid the process. In April, Senegal's new president, Abdoulaye Wade, appointed Habre's main attorney as his special legal adviser, and, in June, President Wade abruptly removed the judge who had indicted Habre from the case. In July a new judge found that Senegal did not have jurisdiction for the torture charges brought against Habre and dismissed the case. Meanwhile human rights activists in Chad, invigorated by the possibility that Habre might be prosecuted, filed suit in Chadian courts against their torturers. Chadian President Deby, sensitive to the international exposure his country is receiving as a result of Habre's indictment in Senegal, and to the heightened efforts of domestic human rights advocates to achieve redress for past crimes, met for the first time with human rights victims and told them that "the time for justice has come." President Deby promised them he would fire all former officials still serving in government who were involved in past abuses. He also promised that he would reopen the files of an investigatory commission that documented some 4000 killings and other human rights crimes during the Habre regime. The Commission's findings had been locked away by the Deby government and until now ignored.

While we cannot predict how widespread the justice cascade will be or how deeply it will penetrate, we can suggest some benchmarks that will help observers measure the depth of that penetration. Objective indicators include: (1) the number of trials held in countries where human rights abuses took place, (2) legislative changes in those countries that allow trials where none were permitted before, and (3) judicial decisions by domestic courts and perhaps by international bodies such as the Inter-American Court of Human Rights, that certain crimes are not included in amnesties. Subjective indicators include: (1) the career trajectories of individuals accused of human rights abuses, (2) the level of satisfaction of human rights victims involved in both foreign and domestic lawsuits or who were victims of or witnesses in criminal trials of human rights perpetrators, and (3) policy changes (and even political conversations about policy changes) relating to the prosecution of those responsible for human rights abuses in countries that have not yet been impacted by the possibility of a foreign human rights trial of one of their nationals. Studying these

indicators over time will enable researchers to more fully evaluate the domestic impact of foreign human rights trials.

