

PROSECUTING PINOCHET:
THE ROLE OF SOCIAL MOVEMENTS IN POLITICAL CHANGE

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ABSTRACT

This thesis analyses the Pinochet case –the arrest of former Chilean dictator Augusto Pinochet in London with a request for extradition to Spain to be tried for his responsibility in the torture and death of numerous individuals during his term in power, from 1973 to 1990-- in its relation to human rights social movements and advocacy groups. Building on Sydney Tarrow's social movements theory and a social constructivist framework for the understanding of change in the international sphere, I argue that the Pinochet case can be seen as both a cause and a consequence of human rights social movements activity.

Pinochet's arrest served on the one hand as what Tarrow calls a political opportunity for human rights social actors to get mobilized and participate in the transformations occurring in Chile. It created changes in the political and judicial spheres of power which were until then very closed to their demands for truth and justice in the cases of unresolved human rights crimes. Since the 1990 democratic transition, and until the extra-territorial arrest of Pinochet, the military junta had remained very influential in Chile and had never been put under judicial scrutiny for human rights violations perpetrated during the dictatorship.

Yet on the other hand, human rights social movements --increasingly transnational in their organization and activity-- have contributed in the last half of the 20th century to the building of an international human rights regime which made Pinochet's arrest possible. I use a social constructivist framework to analyse the role of social movements as initiators of international normative change. By introducing norms and ideas about the need to protect human rights across borders, human rights social actors have helped to reshape the shared understanding of state sovereignty and national interest among international actors as to encompass the idea of human rights. They have contributed to set in place the legal tools which allowed the extra-territorial prosecution of a former dictator.

Social movements theory and social constructivism are combined in this study to analyse the power of social movements in the process of political change. They illustrate how, in the Pinochet case, social movements contributed to create the opportunity which they used for further mobilization and activism.

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INTRODUCTION

Chile began a transition from authoritarian rule to democracy in 1990. In 1988, dictator Augusto Pinochet accepted the results of a national plebiscite which indicated that 56% of Chileans wanted the end of his regime and the return to democratic and civilian rule. He thus stepped down from power in 1990, but tightly controlled from above the transition from military rule to what would be a limited democratic regime.¹ Pinochet was interested in maintaining political stability and avoiding any serious attempt at retaliation by new civilian leaders against the architects of the dictatorship and the perpetrators of violent repression. He wanted to ensure that the new democratic order be built on a constitutional legacy of his making. Democratic political forces, grouped in the *Concertación por la democracia*, accepted the conditions set by the military for a peaceful transition, and remained prisoners of a political constitution which was fundamentally tutelary and very difficult to alter.

The political arrangements set in place in 1990 were based on the 1980 Constitution drafted by the Pinochet regime. Although various constitutional reforms were proposed by the *Concertación* in 1989 and adopted in a plebiscite preceding the 1990 transition—allowing to remove fundamental non-democratic dispositions concerning the concentration of powers in the hands of the executive and the restriction of basic political rights of citizens, for example—Chile's democracy remained tainted by authoritarianism in many ways. Undemocratic practices such as the nomination of senators and magistrates by the President, were not eliminated. The military kept a power almost parallel to that of the civilian government. In fact, presidents in Chile have no control over the armed forces, since they cannot remove military leaders and senior officers from their ranks after their nomination. For example, Pinochet remained commander of the armed forces even at the restoration

¹Pinochet himself called the new regime a "protected democracy". See Loveman (1991), p. 36.

of democracy. Civilian leaders could not try military officers for their role in the political repression carried during the dictatorship, since Pinochet had adopted an amnesty law in 1982 to self-pardon all military officers responsible for crimes committed from 1973 to 1978, the most violent years of his regime. Adding to these undemocratic practices, the Constitution left by the military was meant to be almost unalterable. A Chilean President envisaging constitutional change, after 1990, had to assure himself of a very high majority of support in both Chambers, which was nearly impossible as senators nominated during the military regime were likely to block any significant attempt at reform. In sum, the army remained almost unaffected in the Chilean democratic transition and set in place rigid barriers to any further constitutional changes, in order to “ensure the permanence of the military’s revolution”².

The transitory arrangements set in place by the military proved to be enduring. The constitutional and political orders established by Pinochet before his stepping down from power outlasted the social and political opposition that was to continue to rise after the return to civilian rule in 1990. In effect, social actors concerned with the question of achieving justice in the cases of unresolved gross human rights violations perpetrated during the previous regime, as well as political actors interested in freeing Chile from authoritarian enclaves present within the constitution, were among the many in Chile affirming that the democratic transition was yet to be completed. But facing a very closed and rigid institutional structure that was still strongly dominated by the military, their potential to achieve change was very limited.

This incapacity to achieve the change requested by a part of the Chilean society, was combined with a certain desire to leave the past behind and move progressively towards political stability. For political actors across the spectrum, this was the preferable solution. It was for the left

²Ensalaco (1994 bis), p. 412.

a way to dissociate from the Allende years, identified by their opponents as the initiator of the political crisis that followed. For the right, it was rather a way to dissociate from the dark heritage left by Pinochet's harsh repression. Constitutional, political and social status quo in Chile, as determined by the military legacy, was thus either unsuccessfully contested, on the one hand, or tolerated as a lesser evil, on the other hand.

However, important political, legal and constitutional transformations are now under way in Chile, ten years after the restoration of democracy. Yet these transformations came as a consequence of an event which occurred outside the country's national borders. On October 16, 1998, Augusto Pinochet was arrested in Britain following a request for extradition to Spain. The process was initiated by Spanish judge Baltasar Garzón, on the basis of Pinochet's responsibility in numerous deaths and "forced disappearances" of Spanish citizens and of other individuals during his term in power, from 1973 to 1990. While the Pinochet regime was responsible for the deaths of more than 3,000 individuals, neither Pinochet nor the military officers under his command had been indicted and much less condemned for their participation in human rights violations.

Pinochet's international arrest and detention --the "Pinochet case", as I will call it in this study-- offers a fascinating example of a trigger element that initiated numerous reactions, certainly legal and political, but also social and cultural, at national, regional and international levels. Especially in Chile, the case considerably affected the social, political and legal orders. It initiated important transformations which could help free Chile from its military and authoritarian political legacy. The Pinochet case is an important example of how political structures set in place during a regime transition, even if deemed stable and enduring by political actors within domestic borders, can in fact be significantly altered by events initiated outside national spheres of jurisdiction.

This study will analyse the Pinochet case in its relation to human rights social movements and advocacy groups, both at domestic and international levels. Pinochet's arrest has certainly shed light on the increased power that these social actors hold and use to achieve political change, even when they lack the direct access to political institutions. Human rights social movements, in Chile but also elsewhere in the world, were essential in gathering evidence to support the case against Pinochet. They created and maintained social mobilization in Chile, London and Madrid, mostly, but in other areas as well, which ensured constant international awareness about the controversial case. Although other actors were also implicated in the legal and political battle surrounding the Pinochet case, I choose to focus here on social movements as they were a key element in the international legal battle against Pinochet, a battle that suddenly started to shake many foundations of Chilean's political and social arrangements left in heritage by the military.

An analysis of social movements' role and reaction in the Pinochet case is important in the perspective of comparative politics and democratization studies, as social movements must be understood and analyzed as an integral part of the civil society which contributes to reinforce or sometimes weaken the democratic culture necessary for the durability of democratic regimes.³ Such an analysis is also important in an international relations perspective, as understanding the power and role of social movements and advocacy groups can contribute to an explanation of changes occurring within the international sphere and affecting sovereign states in their own domestic political arrangements.

In this study, I argue that Pinochet's arrest can be seen as both a cause and a consequence of human rights social movements's activities. On the one hand, Pinochet's arrest served as a direct

³ See Peeler (1998) and Torres Rivas (1993) on the importance of understanding social movements in order to fully grasp the complex social and political arrangements in place in newly emerging democracies in Latin America.

opening in the political opportunity structure in Chile, that is an opening in the institutional arrangements that constrain social and political actors in their behaviour and decision-making. Openings in the political opportunity structure create room for actors such as social movements, which do not benefit from an institutionalized role that would allow them to regularly contribute to the political process, to intervene and bring their own input into the political decision-making sphere. In our case of interest, the international arrest of Pinochet served as an opportunity for human rights movements and advocates to get directly involved in the political and judicial transformations occurring in Chile and more broadly within the international sphere, and advance their struggle to obtain truth and justice. On the other hand, the former dictator's arrest was made possible because of existing treaties and conventions which are part of the international human rights law. Social movements and transnational advocacy groups directly helped to build and consolidate an international human rights law over the years, by introducing to state agents new norms and ideas about the need to protect human rights within the international sphere.

In this perspective, the Pinochet case speaks directly to two theoretical approaches which I wish to use as a guideline for the analysis of Pinochet's arrest as both a cause and a consequence of social movements' activities. The first approach is the social movements theory as elaborated with a strong structural paradigm by Sydney Tarrow. The second is the social constructivist approach to international relations. These two approaches come from a common sociological tradition and can contribute to the understanding of social movements and advocacy groups as a non-traditional source of power and influence (as opposed to political, institutional or military power, for example). Increasingly international in their organizational structures and activities, social movements are able to construct, defend and promote moral principles such as human rights that can directly influence the domestic and international intersubjective structure in which political actors and policy-makers

evolve. Especially when presented with an opening in the political structure such as the arrest of Pinochet, social movements are able to build on this opening to further influence their environment and contribute to legal and political change as we can still observe in Chile but also in other countries, almost two years after the beginning of the international legal battle against a former dictator.

Sydney Tarrow's analysis of the conditions under which social movements will arise, increase or stay repressed⁴, will be used in the first chapter to highlight how the Pinochet case, to use Tarrow's terminology, can be seen as the opening in the political opportunity structure that allowed greater enthusiasm, mobilization and activity among human rights social forces. Chilean human rights social movements had until Pinochet's arrest been confronted to a domestic political structure closed to their demands, even with the return to democracy in 1990. These movements were asking that the truth be revealed concerning the fate of the 3,000 disappeared during the dictatorship, and that the military be tried for its role in those disappearances. With Pinochet still occupying influential positions in Chile, as commander of the Armed Forces until 1998 and subsequently as senator for life, the transition to democracy was made without any significant effort to bring justice to the numerous victims of human rights abuses during his dictatorial rule. While Pinochet's trial in his home country was improbable because of the political and legal structures in place, the consequences of his arrest by an external instance created immediate and concrete openings in the domestic and international political spheres, for social movements to increase in activity and participate in the legal processes and political changes under way.

Tarrow's framework will be broadened as to encompass a transnational theorization and understanding of the social effervescence surrounding the Pinochet case. The dividing line between

⁴See Sydney Tarrow, *Power in Movement. Social Movements and Contentious Politics*, Cambridge: Cambridge University Press.

domestic and transnational social movements proves to be very thin and sometimes non-existent, especially concerning human rights issues. It is necessary to encompass transnational social forces in an analysis of the reaction of social movements towards a political opportunity already very international in nature. The reaction of human rights movements was strong not only in Chile but in many countries in Latin America and other parts of the world, even if Pinochet's arrest was a political opportunity was more directly addressed to Chile.

Social constructivism is the other theoretical approach which will be used in the second chapter for a better understanding of the power of social movements as initiators of political, legal and social change. Certainly, important transformations are well under way in Chile, as will be assessed, following the former general's arrest which represented as argued an incredible political opportunity for human rights social movements. But how can we analyse the legal and political conditions that made the Pinochet case happen in the first place? What international developments concerning the protection and defense of human rights made his arrest by an external instance possible? And what was the role of social movements and human rights advocates in creating those developments? The constructivist approach can contribute to the analysis of change in the international sphere, as it considers social and political agents and the intersubjective structure in which they evolve as mutually constructed and constantly reinforced and recreated by social interactions and practice. This differs from a neorealist appreciation of the international world, for example, where all states are considered as having equal characteristics and interests, evolving within a structure that they cannot influence. In the constructivist framework, change is possible if initiated by agents that contribute to the recreation of the structure.⁵ The constructivist approach is

⁵The constructivist framework has been particularly developed by Alexander Wendt in his many articles and most recent book, *Social Theory of International Politics*, Cambridge: Cambridge University Press. It has been linked to theories of social movements in Keck and Sikkink, *Activists Beyond Borders. Advocacy Networks in International Politics*, Ithaca and London: Cornell University Press.,

sensitive to the input that other social agents, apart from states, can have in the reproduction of the international structure. It can thus contribute to our understanding of social movements and transnational activists as initiators of normative change encouraging the protection of human rights across borders, since the end of World War II. Step by step, an international human rights regime was constructed, setting in place the various norms and treaties that allowed the extra-territorial prosecution of Pinochet.

Particularly when organized around principled ideas of human rights and human dignity, social movements have been, since their emergence, significant agents of transformation within political and social spheres. While their power is more discursive than institutional (they have the power to propose a different discourse, approach problems with a different angle and encourage political actors to do so as well, but they lack the institutional resources needed to concretize such a discourse into policies, for example), their role is nonetheless crucial in the evolution of norms and ideas that are recreated by, and themselves create, political and social practices.⁶ Human rights social movements have been at the centre of the evolution of changing norms and attitudes by which political actors, statist and non-statist, have conceived, defended and promoted a human rights regime within the international system.

The emphasis on social movements, and the use of two theoretical frameworks that have a strong sociological paradigm, is important as it highlights the limits of other mainstream theories that neglect social movements and transnational social actors in their analysis of the evolution of political phenomena. For example, the literature on democratic transition and regime consolidation, especially as elaborated by Juan J. Linz and Alfred Stepan in their book *Problems of Democratic*

⁶Neil Stammers, in "Social Movements and the Social Construction of Human Rights", *Human Rights Quarterly*, 21, 980-1008, draws an interesting analysis about the transforming power that social movements carry and perpetuate.

Transition and Consolidation, generally concentrates on the domestic political conjuncture of authoritarian countries (the constitutional order, the role of political parties, the bureaucratic institutions in place) in order to explain their different transition paths and the challenges awaiting their new democratic regimes. The fact that social movements continue to struggle for further political change and greater democratization after the transition, as happened with human rights social movements in Chile, and the fact that these actors can benefit from an international opportunity to materialize their demands, as happened after Pinochet's arrest, indicates the relevance of analysing the Pinochet case with the social movements angle. In the same sense, a mainstream approach to international relations such as the neorealist theory, which limits itself to the analysis of states as equal actors determined by an exogenous international anarchical structure, might miss out on the important insights that the social constructivist approach brings to the understanding of international change. By considering norms and ideas, as well as the influence they can have on states identity and behaviour in the international sphere, constructivists can better grasp the tangible consequence that normative change has on particular international institutions such as state sovereignty.

Social movements theories together with social constructivism can contribute to the understanding of the Pinochet case as a causal and consequential event in its relation with social movements and transnational social advocates. But this conjunction can also greatly contribute to the understanding of political and social phenomena in general. The openings that each approach has towards the other have already been explored in other studies. In particular, Margaret E. Keck and Kathryn Sikkink argue, in their book *Activists Beyond Borders*, that the separation between comparative politics and international relations must be rejected if one wants to grasp the complex interactions among social actors who create the intersubjective structure in which all social and

political activity takes place. Keck and Sikkink believe that the understanding of social actors's identities, interests and actions is a concern for both social movements theories and social constructivism in international relations. Much is gained when an analysis can draw from both these approaches.⁷ In the same line of thought, Neil Stammers has explored the links between social constructivism and social movements theories, in order to understand the power of social movements as initiators of political change. Stammers believes that social movements have contributed to the construction of human rights as an idea, a principle that now strongly influences political arrangements in the present international intersubjective structure.⁸

This study will thus be divided in two chapters. Chapter one will apply the social movements theory to the Pinochet case, to understand the arrest of the former dictator as the political opportunity which served to increase social mobilization and activity in Chile and in other parts of the world as well. Chapter one thus includes an analysis of the evolution of human rights social movements since their emergence in the 1970s in Chile, as well as a discussion on their increased role in contributing to the judicial and political transformations put under way following the arrest of Pinochet. In the second chapter, I draw a constructivist explanation of the changing norms concerning the protection of human rights brought about in the international sphere in the second half of the 20th century. I analyse the role that transnational social movements and advocacy groups had in the construction of human rights as a binding principle for sovereign states. Progressively, an international human rights regime was set in place, and I situate the Pinochet case in this perspective. This second chapter includes a analysis of the legal tools used to arrest the former dictator in London, and a discussion on the trial that he might face now in his home country.

⁷See Keck and Sikkink, pp. 4-6.

⁸See Stammers (1999) and (1999 bis).

CHAPTER I:

PINOCHET AND THE POLITICAL OPPORTUNITY FOR SOCIAL MOVEMENTS

After their transition to democracy, countries of the Southern Cone undertook in the late 1980s and early 1990s a process of reconstitution, not only of their democratic political institutions and national economies, but also of their civil societies, profoundly marked by the repression of previous military regimes. In Chile, the country of interest in this study, popular opposition forces and social movements played an important role in helping to shape the new democratic political arena. But while social movements were one of the main actors in the transition to and the consolidation of a democratic regime, they lost impetus afterwards as greater electoral opportunities for opposition were created, allowing many of their demands to be met. Also, paradoxically, as neoliberal measures and democratic regimes did not seem to fulfill their promises of prosperity¹, there was a growing disenchantment of civil society and a relative lull in social forces' activities. Nevertheless, controversial issues, such as those related to human rights violations during past repressive regimes, continue to inspire and mobilize social forces, with important benefits for civil society and democratic consolidation.

While acknowledging the fact that an important facet of Chilean social movements, organized around the working class and concerned with popular participation and social equality, has lost its strength and is redefining its position in new democracies, this can only falsely lead to the conclusion of the overall apathy of civil society in this country. One of the most spectacular types of social movements to have gained in strength, in Chile but also in many Latin American countries, is related to the defense of human rights. These movements developed in the years of transition to democratic regimes, but emerged during the authoritarian regimes themselves, when

¹Borón (1996); Schmitter (1993); Stokes (1993).

families of disappeared, tortured, kidnaped and killed “opponents” of the regime wanted to know what had happened to their beloved ones and wanted to see those responsible of violations of human rights arrested and judged for their crimes. Although emerging in very risky conditions since the participants, as well as their friends and relatives, were themselves facing possible arrest, torture, disappearance, and death², these social movements strongly reacted to the sudden increase of the military junta’s abusive power, and succeeded in raising international awareness about the situation under way in their countries. Then, as the transition to democracy was completed, they had to reposition themselves on the political scene and reconsider the targets of their demands for truth and justice, as it became difficult for the new democratic governments to respond for the crimes committed, or to judge the authoritarian leaders that were leaving power.³ The human rights movements in Chile are clear examples of social mobilization that reflects the continuous preoccupation for democratic issues by the population, particularly by the relatives of the victims of atrocities committed by previous repressive regimes.

Since October 1998, following the arrest of former Chilean dictator Augusto Pinochet, there has been a considerable increase in the attention given to human rights issues, and directly related to this, rising social mobilization surrounding the same issues. Before tracing down the origins of human rights social movements in Chile and analyzing their increased activity since the Pinochet case, it is important to define the main concepts being used in this study, namely social movements and their usual behavior as social and political actors.

²Loveman, (1998), p.480.

³Respuela, Sofia (1996), p.202

1.1 Emergence and Development of Social Movements:

The importance of a Political Opportunity

Sydney Tarrow's framework usefully asks "Under what conditions does power in movement arise, or stay repressed", and poses that changes in political opportunities are the prime causal factor for the development and evolution of social movements.

Tarrow defines social movements as "collective challenges, based on common purposes and social solidarity, in sustained interaction with elites, opponents, and authorities"⁴. This definition can be well applied to human rights movements in Chile: these movements took form with the sustained collective action of people who believed in a common cause, and decided to challenge the system by demanding justice for those whose human rights were scorned in previous regimes.

The collective action that lies behind all social movements is important in Tarrow's analysis. It is used by people lacking the usual access to institutions and that want to voice their new or unaccepted claims. Social movements voice their demands in a way that is challenging to the structure in place and often contentious since they do not benefit from institutional resources and therefore tend to use disruptive ways of affirmation, such as social protest, massive lobbying, or sensational public mobilization, when confronting a more powerful opponent.

But collective action cannot by itself explain the creation and the sustained activity of social movements. Three major research traditions on the study of social movements have developed over the years. Each adopts different standpoints and has proven to raise very interesting questions that are at the centre of major research work in social movements studies in particular, but in the field of comparative politics in general as well.⁵ A first research tradition emphasizes the culture of each

⁴Tarrow (1998), p.4

⁵See Lichbach (1997).

movement.⁶ Individuals taking part in collective action usually do so by solidarity, and create an affirmative identity in their struggle against precise opponents. Culture, understood as the beliefs, the values, the norms and symbols that are carried by social movements, can become in some occasions intimately related to the mobilizing power that movements need to create in their struggle against a more institutionally powerful opponent.⁷ A second methodological approach analyses the rational behind social movements and suggests that movements arise and are successful when social entrepreneurs benefit from important resources and thus develop an incentive to join collective action. Individuals manage for example to form around already-existing social networks, sets of learned conventions of contentious politics that are part of a society's public culture and that

⁶The emphasis on culture to explain the emergence and development of social movements was first and foremost developed by European scholars, such as Touraine and Melucci, with the analysis of the "New Social Movements" of the 1960s that did not seem to be struggling for political power like labour or socialist movements had in the past, but were rather defending and evolving within new cultural frames. While culture has somewhat been forgotten in the passage of "hard" theories of rational choice, social scientists remain sensitive to the cultural aspect of social movements.

In the introduction of their book *The Cultural Analysis of Social Movements*, Johnston and Klandermans put culture at the very centre of the analysis of the emergence and dynamics of social movements. They believe that social movements must be understood in the context of the interesting paradox that exists between the stability of a society's culture (the symbols and values attributed to a society and shared by its members are likely to change and vary over a very long period of time), and the continuous evolution of social movements, that want to change this culture and emerge within its "cracks and fissures".

Culture, in their analysis, can help understand social movements in two interrelated ways. The first is to look at culture in a "systemic" way, as an external reality that sets acceptable and feasible patterns of actions for members of a society. This conception of culture as an external system then provides a frame of possibilities and constraints for the emergence of collective social action. But this systemic culture must be combined with a "performative" conception of culture that looks at the internal culture of social movements, at the ways that a such subcultures can be used to render a situation intelligible for actors that are part of it. Then, in the explanation of the rise and development of social movements where citizens organize to confront the dominant culture, this subculture must be analysed as a tool for movements leaders, a set of shared symbols and values that they will use to construct social action and mobilization. The culture of a movement encourages solidarity, and traces the boundaries of mobilization. By emphasizing common rituals and beliefs, and by having a common opponent, an identity is constructed within the movement. This identity is particular to every movement, cannot be generalized, and must be fully understood and analysed in order to make intelligible the success of this movement.

⁷Swidler (1995), p. 31.

determine the forms under which mobilization will be organized.⁸

While Tarrow considers the importance of already-existing social networks of organization as well as ideological and cultural discourses that form the boundaries of all social struggle, he argues from a structuralist point of view that it is “changes in political opportunities and constraints that create the most important incentives for initiating new phases of contention”⁹. It is the structure of the political environment, and the opportunities and constraints that emerge within it, that can allow social organizations to evolve from a potential to a mobilized force. These opportunities or constraints can range, for example, from a sudden shift in the political alignments that allows to identify allies among the elites, to an institutional reorganization that creates openings in the access to spheres of decision-making for social actors.¹⁰ While it can be argued that all political process

⁸The rational explanation was elaborated in the “Resource Mobilization Theory” (RMT), in part advanced as an answer to Mancur Olson’s analysis of *The Logic of Collective Action* (1965) that was pointing to the fundamental “free-rider” problem of participation in collective movements: these movements provide a common good and thus individuals are not likely to join them if they can benefit from the efforts of the others. The RMT, as principally elaborated by John D. McCarty and Mayer N. Zald, emphasizes the social and material resources that are behind the organization of social movements, and that can explain their emergence, the “how” behind the mobilizing process of individuals into collective action.

Central focus in such an analysis is in the self-interest that individuals find in the organization of collective action. This self-interest must not be considered in selfish terms only, as it can be in an altruistic manner that people will find interest to participate in a movement. Thus, a rational perspective poses that there is already enough grievance and dissatisfaction into a society to create a movement or a subculture of collective action. Accordingly, a cultural explanation is not satisfactory, in that it forgets about the problem of the free-rider and cannot fully explain what motivates rational actors to initially join collective action. The theory rather concentrates on the aggregation of social (such as labour, leaders) and material (such as money) resources with organizational basis (such as networks, links with media) of social movements to explain their emergence and mobilizing power. The larger the resources and the organization, the more likely the movements are to be successful and affect the structure of a society, thus bringing rewards to individuals and diminishing the costs of initially undertaking collective action.

⁹Tarrow (1998), p.7.

¹⁰Tarrow insists on the primacy of the structural factor in his analysis of social movements, but he nevertheless gives room in his framework to rational and cultural factors of explanation. In a joint article with McAdam and Tilly, he argues for the convergence of these three different approaches in the study of social movements, for a complete understanding of their emergence and dynamics. The three authors try to reconcile the structural approach, based on the presence of a political opportunity, with the rational choice perspective that emphasizes the resources and organizational networks available to the movements, and the cultural approach, of a much more post-modern tone, that focuses on the socially-constructed cultural identities that allow individuals to organize around symbols and defend common beliefs, in collective action. The authors insist on the openings that every approach has towards one another, but nevertheless affirm the primacy of the

is in some fashion linked to the presence of structural opportunities, the particularity with social movements is that they do not benefit from a constant institutional power that other political actors can use to be influential. Yet, social movements can become very powerful when using political opportunities, breaches in the political process, to raise their claims and demands in order to influence policy-makers.

Tarrow's structural framework speaks well to the dynamics and evolution of human rights social movements in Chile. The arrest of Pinochet from an external instance created an incredible opportunity for Chilean social movements which had been facing closed political and judicial structures since the restoration of democracy in Chile in 1990. A look at the initial emergence of these movements, and their evolution over the years, highlights the importance of the structural paradigm as elaborated by Tarrow. Social movements acquire their power when they can benefit from political opportunities that allow them to concretize social grievances into concrete political change.

1.2 Organizing Human Rights Social Movements in Chile:

From Authoritarianism to Democracy

In Chile as well as in other Latin American countries, social mobilization surrounding the issue of human rights developed as a reaction to the increased human rights violations perpetuated by the military regimes. In this sense, according to Mara Loveman's analysis of human rights movements in the Southern Cone during the authoritarian ruling, Tarrow's framework is useful in

structural interpretation, since it is the "terrain where these three approaches may best be integrated". In this sense, the structural analysis's concept of political opportunity can very well take into account and be enriched by rational and cultural elements. For example, the authors argue that an opening in the opportunity structure changes the cost-benefit balance of incentives to join a collective action, which reaches a rational choice explanation. Furthermore, it is likely to encourage political entrepreneurs to focus on certain cultural identities to mobilize citizens, which then also gives voice to a cultural explanation profitable.

the analysis of the eventual mobilizing power that human rights movements gained during the passage from a repressive to a democratic regime, and more recently after the arrest of Pinochet. But the very first emergence of these high-risk movements can be examined with a cultural lens. In a time of repression where social activists risked their own lives in raising opposition voices against the regime, a cultural analysis becomes necessary to understand how early movements formed. Recruitment was made in social networks where individuals were for the most part intimately implicated in the struggle for human rights, having been affected by the repression, or knowing someone who had suffered from it. The solidarity found in these intimate groups helped for the construction of an affirmative identity for individuals who came to believe in the importance of defending human rights and protecting the victims of political repression.¹¹

In Chile, human rights violations started soon after the military coup led by General Pinochet in 1973. In fact, the most repressive episodes of the Pinochet regime occurred between 1973 and 1978. But the response of social movements was quick to follow. A particularity in the Chilean case, which distinguishes it from similar developments in Argentina for example, is that the first wave of movements and organizations was not initiated by family members of the victims, but rather led by individuals not directly affected by the crimes, who were trying to support victims and their relatives within a broader network of moral opposition to the regime. At the head of these networks was the Catholic Church. The Church was very quick in intervening and in organizing committees for help and refuge for the victims, in the months following the 1973 coup. Later on in the organization of opposition to the regime, the *Vicaria de la solidaridad* (Vicariate for Solidarity) was founded, in 1976, with the objectives of organizing protection and help for the victims. It is from

¹¹ Loveman (1998) provides a very explicit and useful analysis of the emergence of human rights social movements in Chile and Argentina during military regimes, of which we recall here and in the next paragraphs some important elements for our analysis.

those active Catholic networks that emerged the first social movement organized by relatives of the victims, in 1974. The *Agrupación de Familiares de Detenidos Desaparecidos* (Grouping of Disappeared Prisoners' Relatives) served as an organizational model for further human rights social movements in Chile but in other Latin American countries as well.¹² The *Agrupación de Familiares de Detenidos Desaparecidos* is still very implicated in the quest for answers to the unresolved cases of disappearances. It is one of the main human rights social movements in Chile, and has been very active in voicing demands for truth and justice, since the arrest of Pinochet.

Early human rights social movements benefitted to a certain extent from the international support of advocacy networks implicated in the defense and promotion of human rights. Particularly the Church, through its international links such as the World Council of Churches, was able to raise international awareness and tried to put pressure on the Pinochet regime, but with concrete repressive consequences for many of its members.

After 1978, human rights violations, although still frequent, were less systematic and arbitrary. A significant number of human rights and anti-regime associations created by victim's relatives arose at that time, and continued their activism until the end of the military regime. Peaceful in nature, those groups were nonetheless acting in very risky conditions, as their members were one of the main targets of intelligence services and military forces. Among them were the *Agrupación de Familiares de Ejecutados Políticos* (Grouping of Political Victims's Relatives), the *Servicio de Paz y Justicia* (Service for Peace and Justice, with a Christian orientation, for the defense of democracy), the *Comisión Nacional Pro Derechos Juveniles* (National Commission for Juveniles Rights), *Comisión Chilena de Derechos Humanos* (Chilean Commission for Human Rights) and *Comisión Nacional contra la Tortura* (National Commission Against Torture). These numerous

¹²Comisión chilena de derechos humanos, p. 83.

domestic organizations were able to create a network which was soon to have international repercussions. Transnational organizations such as Amnesty International started to be more involved in the struggle for human rights in Chile at the end of the 1970s. Amnesty created a Chilean section that worked in close relation with other movements in order to gather information and promote the protection of human rights and the abolition of torture and death penalty.

The organization of relatives of victims and of people directly affected by the repression into human rights social movements was thus continuous in Chile during the dictatorial years. At the transition to democracy, there already existed a web of organizational relationships and a known and understood “repertoire of contention” (a set of contentious activities used for social struggle), that movements’ leaders could rely on to further mobilize social forces around symbolic and valued issues. Although closed structures and institutional obstacles were to diminish the hopes for change over the years following the democratic transition, as will be assessed in the paragraphs to follow, at the arrest of Pinochet those networks were still present and constituted a strong basis on which movements leaders could rely on. In fact, human rights social movements that had arisen in the Pinochet years were crucial in maintaining the issue of human rights alive in Chile, albeit a generalized desire, for some political actors, to leave the past behind. As the repression during the military regimes was still recent in collective memory and had been brutal, human rights social movements continued their social struggle, in the hope to achieve justice. Victims’ families, as well as the oppressors, were still alive and could relate to the atrocities committed.¹³

Human rights social movements in Chile faced the problem of redefining their role as their home country began a democratization process, in 1989. Movements and networks of support led by families of the victims, such as the *Agrupación de Familiares de Detenidos Desaparecidos*,

¹³Respuela (1996), p.201

remained the most important human rights associations in years of democratic transition. While they had been fighting to support the victims and their families, obtain and spread information, raise awareness about the human rights violations and try to gain solidarity at the international level, they were now repositioning themselves in new political and institutional structures. Social forces had to determine the scope of their role in a new democratic regime. This new role became that of demanding for justice and truth in the cases of human rights violation. As civil and military spheres of the Chilean society negotiated the transition to democracy and civil rule, human rights social movements continuously asked for justice for all in order to see the military be accountable for human rights crimes.¹⁴

The new democratic government remained very much constrained in its actions when faced with the problem of recognizing the military culpability and judging them for their role in the brutal acts of torture, deaths and disappearances. In 1990, newly elected president Patricio Aylwin authorized and supported an official investigation to shed light on the numerous cases of disappearances among opponents of the previous regime and on other crimes committed during the dictatorship. Given the structure of the political institutions, however, the Chilean Truth and Reconciliation Commission (Rettig Commission) had very limited punishing powers. It led to successful investigations on numerous cases of disappearances, and helped to gather evidence and confirm the implication of the military in the kidnapping and murder of individuals, relieving their families of the administrative labyrinth they had to face when searching for information regarding the faith of their relative. But the Rettig Commission was very restrained in its success, and only a limited number of cases were resolved (641 out of 3400 cases¹⁵), leaving numerous cases still open.

¹⁴Jelin (1994), pp.38-39.

¹⁵Ensalaco, Mark (1994) p. 659; Brysk, Alison (1994), p.686.

While Aylwin's democratic governments had sufficient reasons, due to the large number of crimes against humanity committed during the Pinochet regime, to intent punishing actions against the military junta, such a process was impossible because of the political structure set in place at the transition. The Chilean truth commission was thus limited to investigate and advise military officers to respect human rights while doing their security duties in the future.¹⁶ In Argentina, for example, a similar truth commission led to different results. It went as far as to prosecute and trial military officers for their responsibility in the massive arrests, torture, murders and disappearance cases.¹⁷ The institutional and political balance of power situation was different in Chile, where the military forces tightly controlled from above the transition to democracy. In Argentina, by contrast, the military forces were largely discredited following their moral and physical failures in the Malvinas War of 1982, and had no real influence in the transition process, new democratic coalitions being far ahead with popular support and institutional power.¹⁸

The Chilean human rights social movements, after having strongly supported their government's initiatives to shed light on human rights crimes, had to continue their struggle within institutional structures that were thus quite impenetrable to their demands. The lack of an opening in the political and constitutional structures, as set in place at the transition, was the main obstacle for human rights movements to succeed in their demands for truth and justice. The question of brutal human rights violation, it seems, was to be left unsettled by domestic political forces in Chile, in order to maintain political stability and build a strong democracy without having to dig up ghosts from the past.

¹⁶Enlasaco, Mark (1994), p.668.

¹⁷Pion-Berlin, David (1993), p.105.

¹⁸Pion-Berlin, David (1993), pp.111-115.

1.3 The Political Opportunity: Arresting Augusto Pinochet

Augusto Pinochet, former dictator and Commander of the Armed Forces, and Senator to life in Chile, was arrested in London on the basis of crimes of genocide, torture, disappearances and international terrorism committed during the dictatorship era in Chile, and as part of a wider international cooperation, between 1976 and 1983 in Argentina.¹⁹ This represented a substantial change in the Chilean political opportunity structure as defined in Tarrow's framework, that would give further mobilizing power to human rights social movements.

1.3.1 Human Rights Social Movements' Reaction in Chile:

Shedding Light on Human Rights Abuses

The reaction of Chilean social forces implicated in the defense of human rights to Pinochet's arrest was immediate. Seen as the first occasion that Pinochet was likely to be judged for his leadership role in the brutal repression during the years of his dictatorship, his arrest and detention were received with joy and relief from human rights movements in Chile. Families of the victims and movements such as the *Agrupación de Familiares de Detenidos Desaparecidos* cheered at the idea that Pinochet would at last be paying for his crimes, and showing satisfaction and gratefulness for the procedures intended by the Spanish judge.²⁰ These groups thought that justice, in this case, had to win even if it was at the detriment of the sovereignty of the state.

In effect, Pinochet's arrest also encouraged the emergence of numerous movements in support of the former General. Some of these movements were organized by conservative and pro-

¹⁹ The further analysis of the "Pinochet case" is mainly based on secondary sources gathered, among others, in *Latin American Weekly Reports*, *The Economist*, and the Spanish newspaper *El país*, which, in its Internet edition (<http://www.elpais.es>), presented a full coverage of the theme, under the rubric of "Temas abiertos". The cited sources are identified with the date and title of the articles.

²⁰ *El país*, Oct. 18, 1999, "La policía británica arresta al general Pinochet en una clínica de Londres".

Pinochet coalitions that were defending the Senator's integrity and diplomatic immunity. Others, primarily within the Chilean government itself, were not necessarily defending Pinochet but rather evoking the interference with the Chilean national sovereignty that such a process, seen as an unacceptable act of colonialism, signified.²¹ But as argued by human rights movements and advocacy networks, the amnesty laws adopted in 1982 by the military government itself and the non-autonomy of the judicial system, were two obstacles in the conduct of an impartial judgment of Pinochet in Chile. This paradoxical situation created a commotion within the Chilean government and especially within the ruling coalition. Some leftist parties agreed in principle with the necessity to judge Pinochet for his responsibility in massive human rights abuses, but nevertheless felt ambiguous as the process was intended by a foreign instance. But in the end, leftist coalitions became important allies to human rights movements following Pinochet's arrest. In effect, the political parties of these coalitions had historically defended human rights issues, but were now in a position to negotiate further developments in human rights legislation in Chile, as an exchange for their support of the government's attempt to demonstrate to international actors its ability to judge human rights criminals within Chile's domestic borders. In this sense, leftist coalitions became important negotiators and promoters of human rights issues, affirming that they would be ready to support the return of Pinochet under the conditions of diminishing the importance of the military institution within the judiciary system, and of abolishing the amnesty bill of 1978 that was keeping the military criminals under a protected glass.²²

Chilean social movements in defense of human rights got organized and mobilized during the process by which the English Lords were to decide of Pinochet's possible extradition to Madrid.

²¹*El país*, Oct. 18, 1998, "El ejército recurrirá al arresto de Pinochet".

²²*El país*, Nov. 28, 1998, "La izquierda chilena intenta aprovechar la crisis para avanzar en las reformas democráticas".

Human rights movements were joined by other spheres of the civil society such as the working unions and were able to mobilize the population, from the beginning of the process until the return of Pinochet to Chile, in organizing vigils, manifestos, mass manifestations, all demonstrating their approval of the Spanish initiative that was seen as a step towards justice, truth and greater democracy.²³

Aside from these initial euphoric reactions, social movements were able to play a more direct role in the transformations occurring in Chile. Increased domestic and international attention was given to human rights issues following the international arrest of Pinochet. The Pinochet case created numerous unforeseen political and judicial developments, in which human rights social forces got directly involved as they were faced for the first time with a situation where political and legal actors in Chile were sensible to their social claims, and more open to their demands for change.

The developments concerning the unresolved human rights violation cases concerned mainly two processes, in which human rights movements and advocates became directly involved. On the one hand, the government attempted for the first time a reconciliation process by organizing encounters between representatives of the military forces and of human rights movements (the so-called *mesa de dialogo*), in an attempt to address unresolved cases of human rights violations.²⁴ On the other hand, the government also intended serious reforms within the judiciary system in order to improve its autonomy and credibility in order to justify Pinochet's return to Chile to international actors.

²³*El país*: Oct. 23, 1998, "Londres no interferirá en el proceso a Pinochet"; Oct 28, 1998, "Cuarenta organizaciones presentan un manifiesto contra la impunidad"; Oct 29, 1998, "Vigilas en España contra Pinochet"; Nov 25, 1998, "Más de 3000 personas manifiestan en Chile a favor del proceso contra Pinochet"; Oct. 17, 1999, "Santiago celebra el aniversario de la detención de Pinochet".

²⁴*El país*, Aug.7, 1999, "Primera reunión del Ejército chileno con abogados de las víctimas de la dictadura de Pinochet"; Sept.1, 1999, "La mesa sobre los crímenes de la dictadura se vuelve a reunir en Chile"; *The Economist*, Oct. 16, 1999, "Life without Pinochet", p.36.

The *mesa de diálogo* created in August 1999 was the first opportunity given to human rights lawyers representing the victim's families to engage in formal talks with representatives of the armed forces and of the government, to discuss cases of unresolved disappearances during the Pinochet era.²⁵ Even during the Rettig Commission investigations, which lacked sufficient legal power to achieve justice in cases of human rights violations, the military had never before shown such sign of good will to shed light on unresolved criminal acts that had occurred during the dictatorship. In accepting to participate in the *mesa de diálogo* process, the military representatives did not acknowledge the responsibility of the armed forces in the perpetration of those crimes however, and only suggested that they were ready to help find information about the pending cases. But such a collaborative attitude from the armed forces nonetheless indicated a significant transformation in Chile. In fact, the military had previously repeatedly denied having any information concerning the unresolved disappearances. Their attitude changed as increased pressure brought about by the international trial of Pinochet started to threaten other officers' immunity. Retired military officers were more inclined to reveal information in the hope that it would save them from judicial reprisals. Moreover, some provisions in the *mesa de diálogo* process allowed individual officers to reveal information anonymously.²⁶

Human rights social movements and activists saw the creation of the *mesa de diálogo* and the unprecedented good will of the military as a direct consequence of Pinochet's arrest. But their participation in those talks was divided, as some activists refused to take part in what they saw as a diluted way to perpetuate the immunity of the military. In particular, the main organization of

²⁵ *El país*, Aug. 7, 1999, "Primera reunión del Ejército chileno con abogados de las víctimas de la dictadura de Pinochet"; Sept. 1, 1999, "La mesa sobre los crímenes de la dictadura se vuelve a reunir en Chile"; *Latin American Weekly Report*, August 31, 1999, "Formal talks on fate of disappeared", p. 400.

²⁶ *Latin American Weekly Report*, August 31, 1999, "Formal talks on fate of disappeared", p. 400.

victim's relatives, the *Agrupación de Familiares de Detenidos Desaparecidos*, refused to join the dialogue, as it was skeptical of the military's good will. The military was in effect considerably changing its traditional attitude concerning unresolved human rights crimes. Until August and the creation of the *mesa de diálogo*, it had indicated that it was ready to lose some influence in the political sphere, in exchange for the dropping of charges in human rights crimes for all military officers (including Pinochet) who served in the 1973-1990 government. As the *Agrupación de Familiares de Detenidos Desaparecidos* did not want such a trade-off to happen, its members preferred to continue to struggle by collaborating to the judicial developments under way in Chile.²⁷

In effect, the judicial sphere was for the first time showing significant openings to human rights organizations, in terms of its efficacy and neutrality in the achievement of justice. Following the arrest of Pinochet, the Eduardo Frei government's constituent coalition encouraged for the first time serious reforms within the judiciary system to increase its autonomy from the military. The government wanted to prove to the international community that Chile was capable of judging human rights criminals, in order to justify the return of Pinochet to Chile.²⁸ Some judicial decisions taken thus came about with surprising objectivity. For example, the Supreme Court ruled in August 1999 that the trial of five retired army officers, for their alleged participation in the disappearance of 19 people in 1973, was legal and could take place, as "disappearance" was a continuing offense until information on the whereabouts of the victim was revealed. On this basis, the amnesty law of 1978 was not applicable for these officers.²⁹ In another case, numerous retired officers were brought

²⁷ *Latin American Weekly Report*, August 31, 1999, "Formal talks on fate of disappeared", p. 400; September 7, 1999, "Military agree to begin talks, but relatives of disappeared hold little hope", p.7; *El país*, Aug.4, 1999, "Los familiares de los desaparecidos no dialogarán con el Ejército"; Aug. 23, 1999, "Las víctimas de la dictadura chilena creen que se busca una ley de punto final"; *The Economist*, Sept. 18, 1999, "Pinochet's legacy to Chile", p.36.

²⁸ *The Economist*, Oct. 16, 1999, "Life without Pinochet".

²⁹ *Latin American Weekly Report*, August 31, 1999, "Formal talks on fate of disappeared", p. 400.

under judicial scrutiny for their alleged participation in the so-called Death Caravan --a sinister security operation that traveled all over Chile after the 1973 coup to execute opponents to the new regime-- and their responsibility in numerous kidnappings, a crime not protected by the amnesty law. In all these cases, social movements and in particular the *Agrupación de Familiares de Detenidos Desaparecidos* brought continuous informational support to Chilean magistrates. As many of the cases concerned victims which had disappeared following the alleged crime, the *Agrupación de Familiares de Detenidos Desaparecidos* was essential in contributing to gather sufficient incriminating evidence concerning the role of the military junta in perpetuating the alleged crimes. Over the years, the *Agrupación de Familiares de Detenidos Desaparecidos* had maintained constant awareness for new information and testimony from key individuals. They benefitted from the support of a large network of activists who possessed direct knowledge about the pending cases of disappearances.

International allies also accelerated the finding of information on human rights crimes. The United States administration declassified in July 1999 secret documents on human rights abuses in Chile, following an order of President Bill Clinton. Clinton also ordered the US Department of Justice to cooperate with Spanish Judge Garzón in his efforts to extradite Pinochet to Spain, while the former general was still detained in London. While these documents did not reveal the extent of the CIA participation in the September 1973 coup that brought Pinochet to power, they nonetheless encouraged human rights organizations in their domestic and international struggle for truth and justice.

The *mesa de diálogo*, albeit pessimism from the *Agrupación de Familiares de Detenidos Desaparecidos*, showed promising results. In June 2000, the participants in those meetings revealed that the army had officially accepted to investigate and give all available information concerning the

pending cases of disappearances to the government.³⁰ In a historical document, the armed forces recognized for the first time the very existence of the people, mainly opponents to the regime, who had been detained and never been seen again, between 1973 and 1990. Such a step forward was made possible as it was decided that the investigations among military officers and their voluntary confession could be protected by the professional secret. Although the official representatives from the governments assured that this process would not interfere with judicial processes simultaneously under way against some individuals, human rights movements, and especially the *Agrupación de Familiares de Detenidos Desaparecidos*, continued to think that such an arrangement was interfering with justice, and conducive to a type of *punto final* settlement.³¹

At this point, it is difficult to assess to what extent the revelations made by the military will be significant and whether it will allow some individuals to walk free and unpunished, thus interfering with the judicial processes under way. While the victims' relatives do want to know the fate of their beloved ones, their goal is nonetheless the achievement of justice, which can only come from the judicial sphere. But the efforts of human rights activists have been valuable in both the *mesa de diálogo* and the judicial developments, either in encouraging greater transparency from part of the military, or in bringing informational support to help incriminate military officials. For example, relatives of disappeared conducted a study on the role of military and DINA (Pinochet's secret security forces) agents in the disappearance of Chilean opponents to the regime, and made it clear in their findings that those agents had already given testimonies on the crimes that they

³⁰*El país*, June 14, 2000, "El ejército chileno se compromete a localizar a los desaparecidos durante la dictadura de Pinochet".

³¹In Argentina, the Menem government adopted in 1989 a *Ley de Punto Final*, granting general pardon to military officials who had been condemned for crimes committed during the dictatorship. Menem adopted this law to avoid the increasing military discontentment concerning the trials of high-ranking officials.

perpetrated, and thus still remembered clearly the whereabouts of the disappeared.³² Such release of information was certainly adding pressure to the armed forces, who could no longer keep their traditional attitude of denial.

1.3.2 Human Rights Social Movements' Reaction in Latin America and the world:

Part of a Transnational Mobilization process

The political opportunity structure is not only relevant for the formation of the movements, but also for their further development and expansion. This part of Tarrow's framework is important for a broader analysis of the transnational mobilization surrounding the Pinochet case, and the openings that it created in various countries even though the arrest of Pinochet was not a direct opening in their own domestic political structure. In effect, Tarrow argues that movements can improve their own opportunities, and contribute to creating new ones as well, bringing other social actors into their social struggle. The power of social movements, in this sense, comes from the indeterminacy of their possible outcomes and the challenge that such solidarity, with its possible cascade-effect diffusion, can represent for political elites. The successful movements, argues Tarrow, are the ones led by individuals or organizations that not only have been able to isolate the proper cultural symbols around which people will mobilize, but that also have been able to combine three powerful components: challenge to elites, uncertainty of the results, and solidarity engaging in further disruption.³³

Tarrow also analyses the tendency, in an era of globalization, towards the transnationalization of social movements. He suggests that the political opportunity at the heart of the creation and

³²Latin American Weekly Report, June 22, 1999, "Disappeared: data is available", p. 278.

³³Tarrow (1994), p.100.

dynamics of movements tends to evolve from arising within a national to a transnational structure. National states do no longer seem to manage and constrain collective action, as an incredible amount of technological and communicational resources seems to facilitate the international diffusion of movements. All of these factors contribute to the formation of a web of new transnational movements, but also of other forms of cross-borders manifestations of the organization of civil society, that can be very useful in this analysis. Indeed, social movements theories gain much in broadening analytical frameworks to a transnational level³⁴, as greater interconnections in the international sphere facilitate exchanges and cooperation, and bring further power to social movements as agents of change.

One of these transnational social forces are advocacy networks, seen by Tarrow as groups of “relevant actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services”³⁵. These advocacy networks (or groups or organizations, as I sometimes identify them in this study), particularly active in human rights-related issues, are analytically different from social movements since they lack the principal characteristic of the latter in not being exposed to the same political opportunity in every country. But they are nevertheless a very powerful force in social change, and should be studied according to the effect that their transnational activism has on domestic politics, since they themselves can provide, according to Tarrow’s analysis, a potential opportunity for social movements to further develop within and across the domestic frontiers of nation-states.

³⁴McCarthy (1997) gives an overlook of the current progress and possible gains to be made by “internationalizing” general theories of social movements and applying the various paradigms (such as framing process, cultural identities, political opportunity structure, resources mobilization) to the realm of the transnational dimensions of social movements activity.

³⁵Tarrow (1998), p.188. In my sense, Tarrow is not very clear as to where to draw the line between transnational *movements* and *networks* (or organizations). I believe that transnational human rights actors constitute *networks* that are not necessarily *sustained movements*, but that can respond to political opportunities as movements do.

Keck and Sikkink offer a thorough analysis of transnational advocacy networks, in terms of their capacity to achieve change in policy spheres.³⁶ They define advocacy networks in the same fashion as Tarrow, as “voluntary, reciprocal and horizontal patterns of communication and exchange [...which...] promote causes, principled ideas and norms”³⁷. Advocacy groups can be formed by an amalgam of non-governmental organizations (domestic or international), social movements, media representatives, or individual advocates, who all unite their resources for a collective struggle, in the name of an idea or a principle in which all believe. In the case of human rights, such networks have formed principally as domestic social forces were in a direct struggle with the state (often the principal responsible for human rights violations) and thus had to bypass domestic institutions to seek international allies. Today, human rights transnational movements and advocacy groups represent the largest portion of all transnational social movements, with close to 200 different organizations.³⁸ As there is an increased growth in international contacts between all spheres of the society, ideas such as the defense of human rights can travel more easily, and reach people in all parts of the world. The greater awareness creates a sufficient incentive, in some cases, for individuals or organizations to join a network and protest for change.

Social mobilization and dynamic developments organized by human rights activists following the arrest of Pinochet was not restrained to Chilean borders. Latin American and international human rights social movements also responded to the opportunity of Pinochet's arrest to raise further awareness on their own domestic human rights situation, or simply join their voices in support of

³⁶I will return in greater detail to this analysis in the second chapter, when I analyse the role of transnational social movements and advocacy groups in initiating change in the international sphere.

³⁷ Keck and Sikkink (1998), p.8.

³⁸In Smith (1997). Smith especially notices the rapid expansion of the number of countries in which human rights transnational organizations have active members. This indicates an increased global integration of social forces, and a better access to information.

Chilean movements. In Argentina for example, where individuals had also suffered from Pinochet's repressive measures through the international terrorist association *Plan Cóndor*, human rights movements gained in effervescence and scope following his arrest. Movements such as the *Madres de Plaza de Mayo* (Mothers from Plaza de Mayo), one of the most important human rights movements in Argentina which was created in the mid 1970s, were strongly in favour of the judicial process undertaken against Pinochet, seeing it as a step forward in the direction of greater justice and democracy. Important Argentinean human rights actors, such as peace Nobel Prize winner Alfredo Pérez Esquivel, joined social forces in Chile to cheer and approve the extradition process, seeing Garzón's initiative as the result of the long struggle of all human rights movements and organizations.³⁹

It could be argued that these manifestations from Argentinean movements were related to the fact that Pinochet was not only arrested for his crimes committed in Chile, but also for his implications in the Argentinean's repression.⁴⁰ But I rather argue that these manifestations of Argentinean national human rights movements can be explained within the context of the global mobilization process undertaken not only in countries of the Southern Cone where human rights are still strongly defended by organized movements, but also in various parts of the world, where social forces mobilized to claim Pinochet's culpability and approve of his arrest.

In effect, as well as in Chile, where there has been increased mobilization from social movements, signs of satisfaction towards the trial of Pinochet could be observed in Argentina, and in many other Latin American and European countries. Various international human rights organizations such as Amnesty International and Human Rights Watch organized manifestations,

³⁹ *El país*, Nov. 27, 1998, "Críticas en América Latina y debate entre los juristas".

⁴⁰ As linked with the "Condor Project".

petitions and marches, in sign of approval of the actions intended by Garzón. These organizations were strongly in favour of the arrest of Pinochet, and highly supportive of his possible extradition to Spain to be judged, believing that justice, in this case, had to be put above the sovereignty of the state. Social mobilization was thus noticed in Argentina, but also in France, Switzerland, Great Britain, Spain, where protesters, in a festive ambience, were celebrating and approving the possible trial of Pinochet.⁴¹ International support groups also joined in the writing of a public statement, where they affirmed the universal character of the crimes tolerated and dictated by Pinochet, and thus claiming the validity of the extradition process ordered by Garzón to submit the former dictator to universal justice processes.⁴² Groups such as Human Rights Watch were strongly encouraging the trial of Pinochet by Spain, and presented documents and reports to the Chamber of the Lords where they were emphasizing the corruption and inadequacy of Chilean institutions.⁴³ In affirming that “human rights do not have boundaries”, these transnational movements were giving a strong support for the process intended against Pinochet, but also contributing to global mobilization, and raising the general awareness of all human rights violations in past dictatorships in Latin America in general.

There was thus a larger, global social response to the arrest of Pinochet. Very soon, the political opportunity that was addressed to the Chilean national structures seemed to encourage judicial developments elsewhere in Latin America. In Argentina, judges decided to reopen cases of military officials responsible for human rights crimes. Following the *Punto Final* law, these cases had been closed and the individuals already condemned had been granted amnesty by the Argentine

⁴¹ *El país*, Oct. 20, 1998, “La humanidad contra Pinochet”.

⁴² *El país*, Oct. 27, 1998, “Manifiesto de políticos, ONG y sindicatos a favor del juicio”; Oct. 28, 1998, “Cuarenta organizaciones presentan un manifiesto contra la impunidad”.

⁴³ *El país*, Jan. 25, 1999, “Un informe entregado a los lores descarta que Pinochet pueda ser juzgado en Chile”.

government, as a way to put past behind and ensure stable civilian-military relations. But in the midst of all the international attention given to Garzón's initiatives, numerous judicial developments occurred in Argentina. In November 1999, Argentine judge Claudio Bonadio reopened investigations on 15 disappearance cases. Human rights social activists and victims's relatives got directly involved in those investigations, traveling to the United States and to Brazil to gather incriminating information. In March 1999, cases related to "baby-snatching" (the kidnapping of arrested women's newborn babies and their "adoption" by military families) started to be more closely investigated by Argentine magistrates. Social movements such as the *Madres* and *Abuelas de Plaza de Mayo* (Mothers and Grandmothers from Plaza de Mayo) had been asking for public investigation and trials for baby-snatching cases during many years, and were able to bring essential information concerning many of those cases.⁴⁴ Eventually, the reopening of Argentine cases became international as well. In November 1999, judge Garzón spread his initial list of arrest and extradition to 98 Argentinean military officers implicated in cases of disappearances of Spaniards citizens during the dictatorship.⁴⁵ Although these accusations represented less of a drastic judicial development than in the Chilean case, since some of the military officers included in Garzón's list had already been tried by the Argentinean democratic government, the impact of such an initiative was still significative in Argentina, where human rights movements had continued to ask for justice after domestic trials that had not gone far enough.

In Uruguay, the human rights question had since 1989 been resolved in the same fashion as in Argentina, that is with a law granting general pardon for military officials. But in the footsteps

⁴⁴New development seemed possible in Argentina since these crimes were not included in the previous 44amnesty leys of President Menem, as argued by Argentinean judges. *The Economist*, February 27, 1999, "Argentina, Justice at last?", p.34.

⁴⁵*The Economist*, November 6, 1999, "Argentine Political Crimes", p.34

of the Pinochet case, the human rights issue resurfaced in the political sphere. During the November 1999 electoral campaign, presidential candidates started to use the issue to gain popular support. Although the 1989 immunity law forbade judicial prosecution against military officials, presidential candidate Tabaré Vázquez promised to initiate investigations to gather information on the fate of the disappeared.

In Bolivia, the human rights movement *Asociación de Familiares Desaparecidos* (Association of Disappeared's Relatives) gathered information and incriminating evidence regarding the responsibility of former dictator and currently elected President Hugo Banzer in the death of 118 individuals during his years in power, from 1971 to 1978. The movement activists presented the information to judge Garzón, hoping to benefit from the judicial developments under way in Spain to see justice achieve in their home country as well.

The influence of the Pinochet case seems to have reached Africa as well. In Senegal, former President of Chad Hissen Habre was charged with criminal offense on February 4, 2000, for acts of torture and barbarity committed against thousands of his political opponents.⁴⁶ Inspired by Garzón's battle in Spain, Habre's possible trial represents the first instance in which a former African leader could be judged in another country for human rights crimes.

As it was the case in Chile, where substantial change in the political and judicial institutions is underway, important transformations came about in other countries following the Pinochet case, very often as a consequence of social movements activity and greater mobilization. Those developments were not the direct result of the arrest of Pinochet, but rather seem to have been brought up to the surface in the process of transnational social and political effervescence caused by this initial political opportunity. This is not a departure from the initial framework, since Tarrow

⁴⁶BBC News Files, Feb 4, 2000, "Africa's Pinochet charged in Senegal".

emphasizes the capacity of movements to benefit from an initial political opportunity, but also to develop and create their own opportunities subsequently. When adding the role of transnational organizations to this structural interpretation of the continuous development of opportunities once a movement is under way, we can see how Argentinean, Bolivian or other social actors have taken the opportunity offered by Pinochet's arrest to further bring awareness on the human rights situation in their home country.⁴⁷

In sum, human rights social movements in Latin America and in other parts of the world have also mobilized, following Pinochet's arrest. They have used this opportunity to further push for their demands, cheer for the cause, voice their opinions and in doing so, have contributed to create new opportunities. This has led to further institutional change and more openings in the judicial and political structures of various countries.

1.4 Transnational Networks and Social Mobilization

The reaction in countries other than Chile, where the arrest of Pinochet was not a direct opening in the political structure, is part of a larger transnational process of social mobilization around the issues of human rights that have gained in scope after the arrest of the former dictator.

Although distinct national social movements and advocacy groups were not facing the same political and judicial structure on a domestic level, and thus could not benefit to the same extent from the political opportunity offered by the arrest of Pinochet, they became increasingly active and gained in mobilization, and have managed to put under way considerable judicial and political institutional changes. Transnational organizations have been crucial in raising awareness and organize manifestations in many cities not directly affected by the Pinochet case.

⁴⁷*El país*, Nov. 25, 1999, "América Latina después de Garzón".

The international social effervescence created by the arrest of Pinochet corresponds very well to Tarrow's analysis of transnational advocacy networks. These play a very important role in the creation of opportunities and the rise of mobilization that helps to the development of social movements within and across domestic borders. Organizations such as Amnesty International and Human Rights Watch have links with national social movements, and have worked towards the creation of new opportunities by bringing their political agenda to the awareness of political allies, thus contributing to create a snowball effect after the initial arrest of Pinochet.

Transnational social organizations and networks are becoming more influential for social movements in general, but especially in the human rights sector, where they are the largest and certainly one of the most influential transnational movement industry.⁴⁸ These organizations, if we continue to adopt Tarrow's framework, are not movements *per se*, since they do not benefit from the same national political opportunities. But as we can see in the Pinochet case, they are essential in providing resources to national and international mobilization, and in successfully accessing intergovernmental institutions, building the basis for more opportunity openings.⁴⁹ They use their channels and links to give movements resources, protection (in case of regime repression, as it has happened in the early emergence of the movements considered in this study), and crucial information on the possibilities of influencing state policies.⁵⁰

The influence of international allies in the struggle for human rights issues has always been significant in the Southern Cone, but they have been particularly apparent in the development

⁴⁸Smith (1997), p.47. In her study, Smith raises the number, dating from 1993, of 168 transnational human rights organizations, that are then more numerous than other organizations, environmental or anti-nuclear, for example.

⁴⁹Smith (1997), pp. 42-43.

⁵⁰Brysk (1993), pp. 260-261, 274.

following the arrest of Pinochet, in two interrelated ways. The first is the international nature of the actors implied in the trial and extradition of the former dictator. The fact that Pinochet risked a trial outside national borders creates a precedent very significant for human rights organizations. It created a solid step in the institutionalization of an international human rights regime.⁵¹ Further on, main transnational human rights organizations, such as Amnesty International and the Human Rights Watch, were present all along the judiciary process against Pinochet. In fact, Amnesty International played a fundamental role in this process, as it was allowed, with the same level of authority than the Chilean government, to intervene in the Pinochet trial during which the English Lords were to decide of his extradition to Spain.⁵² The second way in which transnational actors have been present is in their active role in the organization of manifestations, at the international scale, to raise awareness of human rights issues, and bring them to the attention of political actors. In direct interventions and statements to the Spanish actors and English Lords, or through the organization of manifestations and acts of support for the trial process, these networks have shown the importance of sustained action at the international level. They have taken action within what seems to be an always growing global civil society that is concerned and accepts to mobilize for issues in which it is not directly involved, but in which it nevertheless believes enough to take affirmative action.

In sum, surrounding the Pinochet case, transnational organizations have played a crucial role. First in monitoring mobilization in various countries of the world in support of the procedures directed against the former general, and second in directly participating in the judicial and political

⁵¹For organizations such as Human Rights Watch, the Pinochet case represents “a permanent advance in the cause of human rights”. It has led to further actions against exiled or travelling officials who have committed human rights crimes. (Human Right Watch Press Release, March 3, 2000). The second chapter will be devoted to a more extensive discussion on this regime.

⁵²*El País*, Jan. 14, 1999, “Los lores autorizan a Amnistia Internacional y a Chile para intervenir en el juicio de Pinochet”.

procedures and negotiations concerning the legality, political legitimacy and moral implications of the extradition of Pinochet to Spain. More generally, they have contributed to the subsequent development of political opportunities in raising the need to trial past military criminals in various countries.

Conclusion

The framework elaborated by Tarrow and explained in the first part of this analysis speaks well to the development of social movements surrounding the "Pinochet case". The arrest of Pinochet represented a direct political opportunity for the Chilean social movements where the military junta had never been judged nor condemned for its implication in human rights crimes. In opening up judicial and political spheres in Chile, the arrest contributed to increase the mobilizing power of social movements, as well as giving them the opportunity to contribute to political and social changes under way. Moreover, transnational organizations have contributed to the development of movements in Chile but also in other areas of the world. In those countries the initial opportunity was less relevant, but transnational mobilization and global awareness have contributed to multiply opportunities and make change possible. To the power of social movements as initiators of change, we turn in the second chapter.

CHAPTER II:

SOCIAL MOVEMENTS AND CHANGE IN THE INTERNATIONAL SPHERE

Undeniably, human rights social movements benefited from the opening in the Chilean and international political structure to further demand for justice in cases of gross human rights violations, following the international arrest of Pinochet. But what explains the former general's arrest? What has changed in the international environment to enable such an extra-territorial detention and possible trial? What was the role of human rights social movements and advocacy groups in bringing about those changes?

The constructivist approach directly addresses the question of change in political and social structures, in particular in the international sphere. In linking this approach to earlier remarks on social movements, it is possible to grasp the full role of human rights social forces in the development of an international human rights regime that allowed for the Pinochet case to be possible. International regimes are formal agreements recognized by states as having binding validity, concerning a certain issue.¹ Regimes are not formally institutionalized. There is currently no authority surpassing sovereign states which can reinforce, for example, the international human rights law. But there exists however agreements and conventions concerning the protection of human rights which have been adopted by states and are important and efficient in altering state calculations in their actions and interests. Although some domestic changes are now obvious in Chile, the transformations that allowed for the Pinochet case to begin were undoubtedly international in nature, and strongly influenced by transnational social actors.

¹As defined by Keohane (1993).

2.1 A Social Constructivist Explanation of International Change

Social constructivism, as a theoretical approach to international relations, contributes greatly to the understanding of the interactions taking place between states as social actors and the structure in which they evolve. Constructivists suggest that the international structure is determined and shaped by the shared understandings and meanings that states, as social actors, can attribute to it. Once established, this intersubjective structure is reproduced by social practice: it creates stability and expectations, thus reinforcing both itself and the actors evolving within it. States are important units within the structure, but constructivists also confer a great role to the shared norms, ideas and values that can influence states in their identity, and thus influence their interests and behaviour towards other actors.

The concept of human rights, and the responsibilities that it involves for political actors, is one of those ideas and norms present in the international sphere. Considered irrelevant to the conduct of international affairs fifty years ago², this concept has evolved as to become an important consideration for states in the drawing of their national interests. Social constructivism offers theoretical insights on the power of social movements and international advocacy groups in influencing policy-makers and in bringing about such normative international change. In the Pinochet case, the simple possibility of the arrest of a former Chilean head of state by a foreign entity indicates profound transformations in the shared meanings that international actors attribute to the principle of state sovereignty. Moreover, it underlies the evolution of the notion of states national interest as to encompass moral issues such as the protection and defense of human rights. Since the 1648 Treaty of Westphalia, international relations have been organized around the principle that states are sovereign entities evolving within an international structure where there is no higher

²As will be later assessed in the second part of this chapter, human rights as an internationally shared concept appeared in the years following World War II.

authority. The principle of state sovereignty carries a correlative duty of non-intervention in the internal affairs of other sovereign states, and the idea of human rights was until the second half of the 20th century not considered as applicable to international scrutiny, in this context. But constructivists refuse the idea that self-help and non-intervention are principles that must necessarily emerge from the anarchical structure, without possible modification on the shared understanding that they hold for states. Social movements and advocacy groups have been major actors in the drawing of new international norms and principles that have changed the conception of state sovereignty since 1945, concerning the human rights question. First I look at the constructivist assessment of change in general, and I later turn to the role of social movements in this transformation process, particularly as it has been seen in the building of international human rights norms and principles. A discussion on the Pinochet case itself, and the international human rights norms used in his extradition hearings, will follow.

2.1.1 The Circle of Identities and Interests

Constructivists assume that social actors' identities are the starting point of a chain of interactions which reinforces and reproduces the social and political structures. An identity is a stable conception of the self that an actor acquires in the process of social interactions. In the international relations perspective, constructivists pose that states acquire an identity when evolving within a social structure that they themselves create and reinforce through social interactions and practices. The international structure certainly influences states behaviours, but it is in turn malleable and formed by states own interactions. Constructivists are in this sense interested in the input that state agents, as cultural beings, can have in the conduct of international politics in being

sensible to existing ideas and norms that are introduced in the social sphere. They reject the idea that all states are identical and restrained in their actions by an exogenous structure.

States, like other social agents, will develop a social identity at the first contact with other social actors, and will reinforce this identity in the process of interactions with other states. Engaged in further interactions, states will reproduce their identity, the identity that they attribute to the others, and by the same token, the structure itself. Once states determine their identity, they can have a comprehensive appreciation of the world and thus draw their national interests.³ Interests create a link between a state's identity and its actions in the international arena, for a state must first know who it is before knowing what it wants. Identities and interests are thus complementary, the former determines the latter, and they cannot be analysed separately.⁴

Once established, the intersubjective structure creates order, expectations and shared knowledge about states, their role, and the order established between them: it engages states in the conduct of social practices that reinforce the entire systemic structure as well as their individual identity.⁵ It helps states to determine their behaviour with other social agents in the international structure. States thus engage in a process where the reaction of the others will both confer legitimacy to their interests, and reinforce their identity in the international sphere.⁶

³ A national interest is a social construction that emerges out of identities, norms and ideas as assessed by state agents. See Weldes (1996), p. 280, 282.

⁴ Wendt (1999), p. 231.

⁵ Hopf (1998), p. 276.

⁶ Weldes (1996), p. 303.

2.1.2 The Power of Social Movements as Initiators of Change

How, then, is change possible? How can a state change its identity, draw different interests and engage in different behaviour that will contribute to change the structure, if the structure constantly contributes to reinforce the initial identity of social actors?⁷ Constructivists assume that there can be variations among states identities, and that this creates the basis for change in the international sphere. If, for example, the first interactions among states are aggressive and establish a structure where self-help and autonomy are the norm for future interactions, this does not eliminate the possibility for a state to develop a cooperative identity, and change its interests and behaviour towards other states, and encourage the setting in place of new structural patterns. For constructivists, international change is initiated by states when redefining their identity, changing their interests and further behaviour, and eventually transforming the overall intersubjective meanings that constitute the structure.⁸ Constructivists do not deny that a structural transformation in the international sphere is difficult, as states' identities are not malleable in every historical circumstances and moreover, they have a tendency to become stronger as they are internalized and reproduced over a long period of time. But a problem remains, however, in the constructivist assessment of international change: there seems to be a missing element as to what can initiate an identity change for states, considering that states constantly reproduce their identity in social interactions.⁹

⁷Wendt (1992), p.401; believes that identities always come before interests, which can ultimately pose a problem for the possibility of change in the circle of reinforcement of the intersubjective structure. See note 9.

⁸The discussion on the constructivist assessment of change is principally inspired by Wendt (1999) and Wendt (1994).

⁹In an essay entitled "How does change come about in the international sphere. The articulation of identities and interests in the constructivist approach", I have argued that some of the constructivist approach's assumptions concerning change remain problematic. The question arises as to the degree to which constructivism really offers more hope than neorealism for the possibility of change in the international structure. Surely, the structure has a "duality" aspect as it determines social action and yet it is recreated by it,

Social movements, as carriers of the ideas and principles that could influence a state's identity and further interests, become complementary to a constructivist understanding of transformations in the international world. In effect, for constructivists, norms, ideas and practices form an integral part of the intersubjective structure in which states evolve. From the first interaction between social actors, there is a specific culture that is established and that creates expectations and predictable patterns of behaviour for future contacts. Constructivists thus recognise that states are after all formed by humans who, as cultural and social beings, are able to consciously signal, interpret and respond to the meanings of different social acts.¹⁰ In a global era where various international institutions, organizations and communities that abide by transnational legal and moral principles acquire increasing influence, constructivists recognize the important input that these social agents have in the reproduction and transformation of the international structure. These actors can bring about ideas that deconstruct the shared conceptions of institutions such as state sovereignty, and propose new meanings of those institutions, as to encompass for example the protection of

hence the possibility for transformation. But in order for that transformation to happen, constructivists assume that the change must take place at the identity level, since identities are the first link in the chain of creation and reproduction of the intersubjective practices that give meanings, simultaneously, to actors and the structure. Although constructivists pose that the voluntary capacity of actors to undertake change should not be underestimated, a fundamental contradiction nonetheless arises: for change to be undertaken, actors must change their identity, yet they can only acquire this identity in the conduct of social interactions. If the present interactions continually reinforce their initial identity, incentive for change must necessarily come from another source. While constructivists believe that this source lies in the endogenous identities of states, this is untenable as it creates a circular argument that would ultimately make social and international change impossible.

The articulation established between identities and interests, in the constructivist approach, seems to lie at the core of this theoretical dilemma. Whereas constructivists suggest that identities always determine interests, and that both are endogenous to the international structure of states, it seems that to understand change as it occurs in intersubjective structures -that is, with a redefinition of a state's national identity-, we must conceive that in some instances, interests necessarily exogenous to the established social interactions, bring incentives for change to states, are the "catalyst" in the redefinition of identities. This paradox does not mean that the directive link between identities towards interests is fundamentally misconceived. Indeed, in some instances of stability or continuity in the practice of world politics, evidence shows that states are effectively likely to engage in actions that follow specific interests determined by their internalized cultural and social identity.

¹⁰Ruggie (1998), p. 856.

human rights. The doctrine of internationally protected human rights is in this sense a hard critique of the traditional understanding of sovereignty which had led to principles of non-intervention in other states' internal affairs.¹¹ For states that are receptive to the ideas of human rights advocates, the protection of human rights at home and abroad has become relevant to the articulation of their national interest, engaging them in international behaviour that contributes to create new expectations, and slowly transform the overall structure.

In the constructivist explanation of international change, social movements can be seen as powerful agents which contribute to change by initiating it. Social movements, in their struggle for the protection of human rights for example, are constantly pushing for new ideas and principles to be understood by political actors which have the power to institutionalize those principles into laws and norms. Whereas states are involved in a continuous process of reinforcement of old identities and old structural understandings, social movements have the self-conscious and self-reflective capacities to question old principles and ideas present within the structure, and demand for new ones to be adopted.¹² Especially in an era of globalization, where transnational movements and advocates can benefit from larger political opportunities which affect the lives of much more individuals, social forces have an increased role to play in the reconstruction of international political and social frames of reference for policy-making.¹³

Transnational social movements and advocacy groups are thus important in the international sphere, where states are not the only relevant actor. They of course have serious limitations, as they

¹¹As established in Keck and Sikkink (1998), chap. 3.

¹²Kick and Sikkink (1998) argue that advocacy networks, as social actors, have the power to shape new areas of politics and thus participate in the social reproduction and transformation of frames of meanings and practices.

¹³Stammers (1999) offers an interesting analysis of power of social movements in the process of globalization.

do not benefit from sources of power in the traditional sense of the term (politico-military). But they nevertheless increasingly contribute to international change, by directly influencing state identities and behaviour. The goal of most of these groups is effectively to transform behaviour of states and of international organizations by pushing forward new norms and perceptions into social practices. As understood in the constructivist framework, once states change their own self-perception and their discursive positions on certain issues such as human rights, then change can also be expected in the overall structure that influences policy-choices.¹⁴

Keck and Sikkink argue that the fundamental tools of transnational social networks in contributing to this international change are the diffusion of information and the bringing of social pressure to their ideological and institutional opponents.¹⁵ By raising media attention, creating public debates, and organizing mass mobilization which can be disruptive for states, networks strategically use their discursive power. Since they are engaged in struggles related to controversial issues where information can be limited and filtered by governments, they are especially useful when able to combine the release of new information that can be shaming for their opponent, with the targeting of most powerful actors which could be receptive to their claims for the necessity of change. Indeed, Stephen Krasner has argued that the most important and successful steps in the development of an international human rights regime, for example, has been accomplished when a great power had interest in promoting change and had accepted to take over the battle to institutionalize this change and give it legitimacy.¹⁶ Quite rightly, transnational advocates and movements can push for change, but can only be successful when their demands are endorsed by

¹⁴Keck and Sikkink (1998), p. 3.

¹⁵See Keck and Sikkink (1998), pp.18-24.

¹⁶See Krasner (1993) on this particular question, and the Rittberg volume for a more general discussion on regime theory in international relations.

sovereign states, which still constitute the main actors of the international system. Transnational networks and social movements nevertheless remain essential, as a constructivist analysis of change has shown. Networks are crucial for the initial conception of transformations, and for the social mobilization that eventually influences policy-makers and guides them in the reconsideration of their identities and interests.

2.2 The Evolution of Human Rights in the International Sphere

The “Pinochet case” speaks directly to the validity of human rights as a universally accepted moral doctrine. Human rights international law, formed of an amalgam of principles, conventions or declarations to which states can agree to adhere, provides the moral and legal framework necessary to protect human rights even when their violation trespasses national borders. The conventions or treaties forming international law benefit from legal and regulatory statuses because of the binding nature they acquire when sovereign states sign them.¹⁷ But in few instances before the Pinochet case had the legal tools present in the international human rights law been used with such political will to allow such a spectacular extra-territorial judicial prosecution.¹⁸ The Pinochet case created a precedent in the sense that it is not the international community that undertook legal procedures against a state, but rather magistrates of one state who brought an action against one individual, former head of state. This shakes the protective ground of other individuals responsible for human rights violations who have until now been protected by impunity or amnesty laws on a national basis. The reinforcement of an international human rights regime over the years shows the capacity of states to cooperate in the international arena even in the absence of an overarching

¹⁷Donnelly (1993), p. 8.

¹⁸Wilson (1999), p. 930.

regulating authority. Even if we were to adopt a realist perspective and accept that states, and especially great powers, take action in moral issues such as human rights protection only when it is in their own interests, we can nonetheless argue that these actions in return create precedents in the international society, and every step helps to put in place a stronger regime of protection of human rights.

2.2.1 Human rights international law and state sovereignty

Since the end of World War II and the creation of the United Nations, there have been explicit and increasing efforts to construct an international regime of protection and enforcement of human rights.¹⁹ Human rights advocacy groups were certainly a crucial actor during the many steps of the building of an effective international human rights regime. The process can be dated back to the mid 1940s. World War II was a crystalizing event that helped raise international awareness about the need to protect fundamental rights that would apply universally and inalienably to human beings --a concern that was new to the conduct of diplomacy and international affairs.

Human rights are generally defined in terms of limits on the scope of power and authority that can be exercised upon individuals. They include the right not to be tortured, arbitrarily imprisoned, or caused to disappear²⁰, which are particularly relevant in our case of interest. Although they are protected under numerous bilateral or regional treaties and agreements, human rights are defined as multilateral binding norms and principles in two main bodies, the Universal Declaration of Human Rights and the International Human Rights Covenants.²¹

¹⁹Krasner (1993), p. 165.

²⁰Peeler (1998), p.100.

²¹Donnelly (1993), p. 57.

Initially, human rights were considered only in the context of armed conflicts and were embodied within the humanitarian law. Human rights abuses would be punished as war crimes by war tribunals, such as the Nuremberg and Tokyo Tribunals in 1945. These tribunals established important precedents in defining warfare crimes against humanity and including them as part of customary law. However, they were dissolved without establishing the effective and permanent institutions needed to assure the international reinforcement of human rights on a regular basis and in other circumstances than intra-state warfare.

Over the years, part of the difficulty to establish and reinforce an international human rights law has rested in the organization of the United Nations itself, which protects two fundamental principles that are potentially contradictory. They are the principle of state sovereignty protected by the UN Charter on the one hand, and the principle of protection of basic human rights as defined by the Universal Declaration of Human Rights adopted in 1948, on the other hand. Thus, while the Charter protects the right of states to be sovereign over their territory and to manage their own internal affairs, the UN created the normative basis for the idea that the international community has the duty to ensure the protection of human rights. In annexing a declaration of human rights to the Charter, the United Nations was imposing on its members some obligation to respect these rights, and was from the same token internationalizing human rights, taking it away from a strictly domestic jurisdiction.²² States participated in the drawing of the human rights language which would be outlined in the Charter, but were cautious in doing so as they did not want to affect their sovereignty. It is foremostly transnational advocates, non-governmental organizations coming from different social milieus such as the church, trade unions or peace movements, which were determining in

²²Buergenthal (1997), p. 706.

struggling to secure numerous human rights proposals into the Charter.²³ In lobbying for the elaboration of an international human rights Charter, they ensured that human rights became a principle of legitimate international concern.

The internationalization of human rights allowed to put in place authoritative standards of international norms regarding those rights. The Charter was in effect promoting human rights rather than establishing efficient organizations to protect them. The concept thus remained vague and further institutionalization was needed to render such a normative principle legally applicable even in the absence of overarching international authority. From 1960 to the end of the Cold War, considerable work was achieved to elaborate mechanisms and institutions that would allow greater protection of human rights. Thus, there was the creation of a UN Commission for Human Rights that had the mandate to monitor human rights violations in particular countries. Along with the setting up of special missions of investigations about alleged violations, treaty-based institutions were also created, such as the American or the European Convention on Human rights.²⁴ The period from the 1960s to the early 1990s corresponds to the institutionalization of human rights. Although human rights activists had been determinant in the drawing of the Charter, it is during this institutionalization period that they truly became influential. Increasing activism of non-governmental organizations and human rights advocacy networks was at the heart of the human rights enforcement campaigns which guided states in the elaboration of the normative principles that form the international human rights law today.

²³Keck and Sikkink (1998), p. 86.

²⁴Buergenthal (1997), p.710; Donnely (1993), pp. 11-14.

2.2.2 Social Movements and Advocacy Networks: Struggling for a Human Rights Regime

In effect, a direct consequence of these developments in universal normative issues has been to enhance the possibilities of non-state actors to act on the international scene and to have a considerable influence in the drawing of multilateral human rights policies. The universalization of a human rights doctrine following the World War II atrocities showed that states had an interest in protecting human rights. Advocates and social movements used this opportunity to increasingly question accepted practices (on the division of domestic and international civil security, for example) and propose significant transformations to replace them. While it is rightly argued that states remain the main actors in international relations, it is also undeniable that human rights advocacy groups or transnational social movements have had an enormous role to play in bringing forward empirical evidence concerning gross violations of human rights to state leaders and in orienting them in the elaboration of policies for the protection of human rights. Normative change was difficult to undertake for states as it required a questioning of the practices constantly reinforced by a structure of self-help in the international system. Human rights advocates, on the contrary, had the desire to modify the understanding of state sovereignty so that states could collaborate in the institutionalization of norms on the international protection of human rights.²⁵

The first human rights advocacy organization to gain international recognition was Amnesty International, created in the early 1960s. Amnesty International developed tactics that would give the organization credibility and influence towards policy-makers. Amnesty made numerous efforts to raise awareness of human rights violations, by making public an increasing number of gross human rights violation cases. It also concentrated on creating a strong sense of identification between the public and the victims, by insisting on urgent cases and making regular

²⁵This discussion on the self-reflective nature of advocacy networks is inspired by Keck and Sikkink.

conscientiousness public campaigns.²⁶ These tactics encouraged greater social mobilization in the countries directly affected by human rights violations, but in other countries as well. Amnesty International literally served as a training centre for many human rights activists, and in its footsteps the number of human rights organizations and social movements expanded considerably in the 1970s and 1980s. As there was greater awareness for the issue on an international level, encouraging participation in those advocacy organizations and social movements, so too was there sufficient human rights crimes in numerous countries to justify the creation of numerous domestic organizations and networks. Transnational human rights networks emerged as increasing conscious links were taking place among and between all the various actors engaged in this moral struggle.

The main task of human rights advocates in contributing to the building of a human rights regime, was to bring forward evidence of human rights crimes to influent actors within policy-making circles. Human rights advocates became increasingly involved in the 1970s with various organs of the UN and of some national governments which focussed on the promotion of human rights. In this time period, human rights advocates coming from non-governmental organizations began to meet regularly with officials from the UN Commission on Human Rights and of various countries to discuss possible strategies. Transnational social forces were able to use their discursive power when engaging in spheres of discussion, to raise particular issues of concern and suggest solutions for change. Movement members and advocates implicated in the transnational struggle had the advantage of having links with activists in various countries who were close witnesses of human rights crimes. Advocates thus often benefited from information that governments lacked, and could more accurately suggest policies and indicate what concrete actions need to be done to stop human rights abuses.

²⁶Keck and Sikkink (1998), p. 88.

Particularly in Latin America, human rights organizations were crucial in raising awareness of gross human rights violations in numerous countries submerged by the authoritarian wave of the 1970s. In 1979, the American Convention on Human Rights was formed by the Organization of American States, and was given an increased role in promoting human rights in the Latin American region. In this case as well, the strengthening of the role of the ACHR was in part the result of human rights advocacy networks and activists' continuous pressure and ability to bring about disturbing evidence of human rights crimes.

Interestingly, the situation in Chile was decisive in the creation of an important human rights network in the Latin American region. Following the military coup of 1973, numerous Chileans, often in exile, created links between various social activists and policy-makers abroad, using their personal stories to encourage the reinforcement of human rights movements at an international level, but also domestically. As opposed to other countries such as Argentina where human rights violations were rather secret, the scale of repression and violence in Chile was more easily measurable through the media, which contributed to the quick and important domestic social mobilization. The first association of victims' relatives in Chile, the *Agrupación de Familiares de Detenidos Desaparecidos*, served as an example for numerous other similar social movements in Latin American countries.²⁷ As their countries undertook democratic reforms, those movements concentrated on the fight for justice for victims of repression during authoritarian rule. The major problem was certainly that of political immunity, so frequent in Latin American countries where the military establishment steps down from power but often remains very influential and thus can manage to avoid future trials. Immunity gives military forces the guarantee to avoid accountability for human rights crimes, and thus places them above the law. This situation is problematic in

²⁷*Nunca más en Chile*, p. 83; Keck and Sikkink, p. 90-92.

countries where democratic structures are still weak and in the process of being fully shaped.²⁸ Immunity reduces considerably the capacity of new civilian and democratic governments to try past criminals, even if such a process should inevitably take place where gross and systematic violations have occurred, according to international law. In effect, since the concept of statehood implies security for the citizens, states have an international responsibility to investigate and punish human rights violations as enshrined in the Universal Declaration of Human Rights, and explicitly enforced by numerous treaties and agreements. Some of these treaties have a regional focus, such as the Inter-American Commission on Human Rights, which explicitly poses the affirmative duty of states to protect human rights and bring justice in the case of their violations, even after a regime transition or a government change.²⁹ But armed with weak democratic institutions, as is the case in Chile, some of these new governments cannot accomplish this task. The international community, of course, is not forced to take affirmative action because of the lack of international authority reinforcing the international regime on human rights. This is what makes the Pinochet case so interesting, since it creates a precedent for other similar cases where dictators and other military officials have went unpunished, and where the international community had hesitated to intervene.

Since the end of the Cold War and the de-ideologization of global moral issues, a new model of international justice has emerged for human rights. This new model no longer distinguishes between the dichotomy of international and national conflicts, which was relevant for a humanitarian law but insufficient to successfully protect human rights under all circumstances. This new step brings about fundamental change in the international system, since it allows states to cross the borders of other sovereign states to intervene in matters that the international community now

²⁸McSherry (1992), p.464.

²⁹Kokott (1993), p.158.

considers as being of concern for global peace and security.³⁰ It is only since the end of the Cold War that the institutions previously set in place have been given effective weight and substance. In effect, although sovereign states were ready to establish international institutions promoting human rights, they were not so cooperative when they had to concretely use those institutions against their ideological allies, in the context of the Cold War. The transition towards democracy in many former communist countries in the 1990s, and the opening up of the political and ideological conflict which had been refraining most attempts at universal reinforcement of human rights principles, changed this situation. International human rights law started to be reinforced and developed in order to be applicable to precise national cases. The 1993 Vienna Declaration on Human Rights established that all human rights were of legitimate concern for the international community, it rejected any international-domestic division in these matters, or a cultural relativism that could excuse particular state behaviour.³¹ The next step was to establish that external intervention was sometimes needed to protect human rights and to accomplish justice when states were not capable of punishing previous governments for human rights violations because of amnesty laws of domestic impunity, such as was the case in Chile. This has led to the creation of *ad hoc* International Tribunals, for concrete cases of massive human rights violations in Rwanda and in former Yugoslavia for example, giving the international community power of jurisdiction over humanitarian crimes committed in these sovereign territories. This was a crucial step in international justice, since not only was the state held responsible of discrimination or criminal acts against its citizens, but individuals themselves could now face justice for their past crimes.

³⁰Schabas (1997), p. 515.

³¹Buergenthal (1997), pp.713-715.

The creation of an international human rights law and its normative consolidation have then been an ongoing process in the last half of the 20th century.³² While social forces have been crucial in the consolidation of such a regime and in the transformation of the concept of state sovereignty that allowed it, it must not be denied that such actors have their limits. They were successful when benefiting from periods of increased concern about human rights violations among political spheres, when the ideas and new norms that they brought about were well received by statist actors. They thus managed to change conception of states national interests, and include the defense of human rights in the international sphere as an integral part of these interests. Only this was a giant step, as it would have been considered an odd idea until the late 1970s. The protection of human rights in the international sphere undeniably corresponds to a weak regime of cooperation among states, since there exists no effective permanent enforcement of the numerous conventions, nor is there any overarching authority that examines systematically every violation case.³³ Rather, the international community and the powerful states that most have the capabilities and the influence to act, chose to do so after taking many factors into consideration.

But the human rights international law nonetheless exists, and has been slowly reinforced over the years. Adding to each other, small steps have given increasing legitimacy as well as the institutional and legal tools to the international community to intervene in other states' affairs when there is evidence of systematic human rights violations. While it can be argued that this process was initially instrumental and served other states in their promotion of a preconstructed conception of

³²Such developments in human rights international law are in contradiction with, and pose a direct threat to states' sovereignty. But various interesting theories have examined this question and established that in some cases, the states might not meet the requisites to claim sovereignty and benefit from the international rights and privileges that go along with it. Brown (1992), mentions in chapter 5 of his book many interesting new normative approaches to international relations and in particular to the question of state sovereignty and the moral dilemmas that arise from it.

³³Charvet (1997), p.47.

justice or world order, the process nonetheless seems to have become irreversible, as it is not only pursued by states, but by other transnational actors that play an increasing active role in raising public awareness and mobilizing people for their cause.

2.3 The Arrest of Pinochet: International law and Personal Will

Garzón ordered the arrest of Pinochet on the basis that he was one of the most important individuals responsible for the leadership and coordination with other political leaders of a massive plan of illegal arrest, detention, torture, and murder of numerous ideological opponents to his regime. Among these opponents were Spanish citizens and individuals from different nationality. According to these facts, Garzón evoked the application of various norms, statements, resolutions and conventions adopted by the international community that affirm the obligation of all states to prosecute the perpetrators of these crimes and deny them the diplomatic immunity, thus making possible the arrest of Pinochet in England.³⁴

The tools necessary for a state or the international community to bring an individual to justice for his responsibility in past human rights violations are present in international law, but rarely before had they been used with such political will and under so much international attention as in the Pinochet case. Although public attention was oriented towards judge Baltazar Garzón's spectacular initiative in October 1998 requesting the arrest of Pinochet, Garzón and other Spanish magistrates such as Manuel García Castellón had been working on the case of Southern Cone military officers for almost two years, bringing together testimonies of Spanish victims of dictatorships both in Chile and in Argentina along with other evidence of the responsibility of the military junta in the crimes perpetuated. Their task was essentially to combine Spanish and

³⁴ *El país*, adapted from the complete reproduction of the "Texto de solicitud de Garzón pidiendo la detención de Pinochet".

international law, and examine the extent to which Chilean and Argentine military officials could be persecuted outside domestic territorial borders.³⁵ Although Spanish law would not allow a trial *in absentia*, and considering that it was rather unlikely that a former dictator would voluntarily submit himself to a trial in Spain, the judicial process was nonetheless initiated, with the goal of at least building a strong legal structure and giving the victims the opportunity to be heard publicly.³⁶

These investigations were undertaken in the Spanish *Audiencia Nacional*, a national court with jurisdiction over international crimes. Cases in the *Audiencia Nacional* can be brought by any citizen, for the public's interest and common good (the principle known as *acción popular*). Interestingly, Chilean citizens can present cases in the *Audiencia Nacional*, since a 1958 Spanish-Chilean convention on dual citizenship gives Chileans the right to file a suit in Spanish courts.³⁷ The cases surrounding the violations of human rights in the Southern Cone initially involved only Spanish victims of the dictatorships. There was evidence gathered for 600 victims in the case of Argentina, and 7 in the case of Chile. Spain was pursuing the alleged criminals on the basis that a state has a responsibility to protect all its citizens, even outside its national borders. The files were against high ranking military leaders for their involvement in the death, torture and disappearance of these Spanish citizens. But as the process evolved, and as Chilean human rights organizations increased their crucial role in gathering evidence and providing essential local cooperation to the Spanish magistrates, non-Spanish victims came to be included as well, in a judicial process that was

³⁵ Although the judicial process initiated by Spanish magistrates was also directed towards Argentine military officials for their responsibility in humanitarian crimes, we focus in this essay on the Chilean case, as the arrest of Pinochet points more directly to the human rights situation in this country. Also, as previously mentioned, Chile and Argentina have two different political conjunctures, since the military was largely discredited in Argentina, as opposed to Chile where it kept a considerable influence.

³⁶ Wilson (1999), p. 931.

³⁷ Wilson (1999), p. 935.

becoming more international.³⁸ Some judges in Chile were also joining the judicial process and trying to bring to domestic court's attention numerous cases of human rights violations over Chilean citizens that had remained unsettled, and for which Pinochet was allegedly ultimately responsible.³⁹

Garzón's process was given much international attention when Pinochet was arrested. But in the two previous years, the Spanish investigations had accomplished much in setting up the basis for legal action, and they had captivated the public's attention in the three countries concerned, Chile, Spain and Argentina. The consequences of the investigations for other military officials implicated in the perpetration of human rights crimes have been thoroughly covered in other instances⁴⁰, and I rather emphasize here the legal origins and implications of the arrest of Pinochet himself.

The main achievement of Spanish courts was to reject the Chilean domestic immunity for Pinochet as a possible defense in a trial. This immunity was already specifically condemned by the Inter-American Commission on Human Rights, on the basis that it was in itself a violation of fundamental international human rights norms. The American Convention on Human Rights claimed throughout the 1990s that new democratic regimes such as Chile, Argentina, Uruguay and El Salvador, had a duty to punish human rights criminals of previous regimes. Such a duty existed under international treaties --the Inter-American and International Conventions against torture, the International Covenant on Civil and Political Rights, the Convention against Genocide and the Convention against Torture, for example⁴¹-- and was reinforced by the principle that states are

³⁸The victims were believed to be Chilean, naturally, but also Spanish, Argentine, English, and Americans, as mentioned in Garzón's arrest order.

³⁹*The Economist*, June 26, 1999, "Judges of the past"; October 16, 1999, "Life without Pinochet".

⁴⁰Wilson (1999), in particular, provides a very extensive overview of the consequences of these investigations for other military officials, both in Argentina and in Chile.

⁴¹Mc Sherry (1992), p. 479.

responsible for the security of their citizens. The impunity deriving from amnesty laws or political immunity set in place to facilitate a smooth transition towards democracy in Chile but in various other countries as well, in this sense, was contrary to the international obligation to investigate and punish human rights crimes.⁴² Since the return to democracy, the balance of power between civilians and military in Chile had not allowed the Chilean judiciary to pursue this legal avenue, however. Pinochet's international arrest created a situation where the former dictator had to face the question of the validity, according to international law, of his political immunity. Spanish magistrates rejected immunity on the basis that it was "depenalizing" the conduct of Pinochet in particular but of military officials in general as well, and contrary to human rights international law, and thus to domestic Spanish law.⁴³

Garzón justified the extra-territorial jurisdiction in affirming that human rights violations, as considered by international law (kidnapping, illegal detention, torture and murder), were recognized under Spanish criminal law as well. These violations could be criminally pursued in Spain according to the Spanish Organic law which embodies international treaties and conventions. The principle of the Spanish Organic law vesting national courts with universal jurisdiction was only adopted in 1985, (i.e. after the perpetration of Pinochet's worst alleged crimes), but the *Audiencia nacional* ruled that the provisions of the Organic law were procedural and not substantive in nature, and thus that jurisdiction was legal according to the nature, and not to the dates of the crimes committed.⁴⁴ Adopting the principle that "international treaties prevail over domestic law"⁴⁵ in their

⁴²See Kokott (1993) for a discussion on the reports of the Inter-American Commission on Human Rights that condemn immunity in Latin America.

⁴³Wilson (1999), p. 957.

⁴⁴Wilson (1999), p. 952.

⁴⁵Wilson (1999), p. 956.

country, Spanish courts could then legally pursue their anti-impunity efforts against Pinochet, not with the application of direct international customary law as has been the case with *ad hoc* tribunals, but through Spain's own domestic law which embodied international principles.

Pinochet was arrested in London, where he was receiving medical care, on an order of international detention with further extradition to Spain to be judged. Garzón based his demand for extradition and prosecution on the basis of Pinochet's maximal responsibility in the leadership and coordination of a massive plan of illegal arrest, detention, torture and murder of ideological opponents to his regime, referred to as Operation Condor. This operation was multi-national, as it had established many links with other regional dictatorship regimes such as the Argentine, Uruguayan and Paraguayan regimes. It was intimately linked with the DINA (National Intelligence Division), Pinochet's secret security force. Although the initial procedures were referring only to Spanish citizens, Garzón soon extended his request for extradition as to include more than a thousand names of victims of various nationality of the former dictator. By this token, he was asserting that genocide had been committed through the organization of Operation Condor. Genocide, under either Spanish or international law, was condemnable as expressed in the Genocide Convention of 1948.

The crimes of which Pinochet was being accused were subject to international prosecution according to international norms and treaties part of international human rights law, that were both applicable to Spain and the United Kingdom where the former general was being detained. Garzón emphasized that they were crimes to which a prescription, or a time limit for the retribution of the alleged criminal, could not be applied. Accordingly, their perpetrators should not benefit from diplomatic immunity. All countries of the world, he argued, were responsible for the prosecution

of such criminals, and should collaborate in these efforts.⁴⁶

The extradition hearings under way in London that were to decide of Pinochet's fate, are mainly an inter-governmental process mediated by the courts. In the United Kingdom, extradition processes include both political and legal actors who must examine the demand made by a foreign state (Spain in this case) to surrender an accused present within their territory. The High Court examines legal arguments (which can be taken to appeal in the House of Lords), but the Home Secretary decides whether to authorize the extradition process or not. Apart from their political content which can create a fuzzy barrier between judicial objectivity and political will, extradition processes are legally complex since they normally include two countries (and three in the Pinochet case). All countries must consider whether alleged offences are extraditable under their own domestic law, and whether the accused benefits from special immunity. Pinochet's defense was precisely to argue that the crimes he was being accused of were not extraditable under British law, and that as a former head of state, he was immune from judicial prosecution under international law.⁴⁷

On the first argument, the question was indeed complex. In an extradition process where only two states are implicated, the alleged criminal behaviour must be condemnable in both states. As Pinochet had conducted the alleged crimes in Chile, the case concerned an extra-territorial offence which brought further complications. The English Courts, in effect, had no jurisdiction to allow Pinochet's extradition to a third state, on the basis of crimes such as murder committed in Chile. Rather, they chose to concentrate on alleged acts of torture, which was an act criminalized

⁴⁶*El país*, adapted from the complete reproduction of the "Texto de solicitud de Garzón pidiendo la detención de Pinochet".

⁴⁷*Latin American Weekly Report*, 12 October 1999, p. 474. The following discussion on the legal intricacies of the Pinochet case are mainly taken from this report.

by international conventions of which Spain, Chile and the United Kingdom were all signatories. The 1984 Convention against Torture, for example, commits signatory states to prosecute or extradite any individual accused of torture committed anywhere in the world. As the case was brought to appeal to the House of Lords, the decision was taken to allow the extradition process on the basis of extra-territorial offences of torture, but only for the offences committed after 8 December 1988, date when the Convention against torture was ratified in the United Kingdom. The Lords thus limited the scope of the Spanish inquiry to a very small number of Pinochet's alleged crimes, as the worst criminal acts were committed during the first, and most repressive years of his dictatorship. However, the judicial process could at least remain underway.

The second argument, regarding Pinochet's alleged immunity from judicial prosecution for crimes committed while he was head of state, was also brought down by English Courts. The High Court first accepted the argument that a head of state may commit crimes for reasons of state while exercising his functions. These crimes are protected under international law by a political immunity that continues to be applied even at the return to private life. But this argument was rejected when the case was taken to appeal in the House of Lords. The Lords argued that the systematic killing of citizens could not be considered as function of a head of state. But as the legal argument for extradition concerned Pinochet's responsibility in torture, the Lords also argued that states signatories of the Convention against torture had to consider torture as a crime of universal jurisdiction punishable at all times, whoever was the accused.

After much internal judicial debate, England's Chamber of the Lords affirmed on October 31, 1998 the legality of Pinochet's extradition to Spain to be tried. The process of extradition was appealed by Pinochet's lawyers on the basis that it was illegal and interfering with the senator's diplomatic immunity. In every case, England upheld its decision to consider the trial in Spain legal.

The extradition process to Spain was nevertheless stopped on January 13, 2000, after Jack Straw, England's Home Secretary, concluded that based on medical reports, Pinochet was unfit to undertake a trial. The political revision allowed in extradition processes, it seems, got the better of the judicial decision. However ironic this may seem, Pinochet's international trial was thus avoided for humanitarian reasons.

2.4 A Trial in Chile?

Augusto Pinochet returned to Chile on March 3, 2000. Many believe that he has returned to a Chile that is fundamentally different than the one he had left, 18 months earlier. To be sure, the international legal battle has been taken over by Chilean magistrates, and Pinochet now faces a trial in Chile, that could bring about a significant change in the balance of power between civilians and military sectors of the society. The heated issue of military immunity had become increasingly difficult to avoid from part of the military in recent years in Chile, and especially during Pinochet's detention in London. The arrest of Pinochet certainly added the pressure to once and for all settle this question, undeniably inhibiting Chile's full democratization.⁴⁸

Previously to the December 1999 elections, major candidates outlined their platforms concerning reforms that would clean Chile from the authoritarian enclaves still present in some institutions. Joaquín Lavín, the right-wing presidential candidate, suggested that the army had to participate in the effort to resolve the human rights problem, and speak out for what it knew concerning the crimes. The candidate of the *Concertación* (left-of-center party), Ricardo Lagos --who became the new President of Chile in March 2000-- went further and made it clear from the beginning of its campaign that the armed forces had to lose the power and privileges that were

⁴⁸*El país*, Sept. 27, 1999, "La detención del ex dictador ha provocado cambios en la política y la justicia chilena"; *The Economist*, Oct. 16, 1999, "Life without Pinochet", p.36

making them a parallel power to the civil and elected government in Chile, since the return to electoral rule.⁴⁹ Lagos, once elected, openly criticized the still enormous power of the armed forces in the political regime and in the proper working of the judiciary. But while military officials were starting to be more conciliatory towards possible reforms during Pinochet's international detention, they quickly gained back their self-confidence at the return of their former leader. The armed forces wanted to tightly negotiate any loss of status, and did not want to take the blame for dictatorship atrocities unless it was officially recognized that the initial crisis (the 1973 coup and the severe repression that followed) was in fact due to the policies set in place by elected President Salvador Allende and the left in Chile.⁵⁰

At the heart of the question of the armed forces status in Chile, was the status of Pinochet himself. With his role as senator, the former dictator was immune to any judicial pursuit. And as every armed force member, he was immune from any crime committed between 1973 and 1978, as a result of the amnesty law that he had himself adopted. But Pinochet nonetheless came back to his country facing 77 criminal complaints for his leadership in gross human rights violations between 1973 and 1990. The complaints were deposited by Chilean judge Juan Guzmán, who closely followed Spanish judge Garzón's crusade against Pinochet, and who was also building a case against the former dictator (and other retired military officials) in his home country during Pinochet's international detention. The Spanish magistrates, after Pinochet's return to Chile, offered their full collaboration to Chilean magistrates in the pursuit of domestic justice against Pinochet.⁵¹ The possibility of judging Pinochet in Chile, then, depended on whether or not the senator could be

⁴⁹ *Latin American Weekly Report*, June 29, 1999, "Izurieta proposes final settlement", p. 2.

⁵⁰ *Latin News*, May 23, 2000, "Lagos dialogue with right dries up".

⁵¹ *El país*, 4 March 2000, "El juez Guzmán estudia la petición para levantar la inmunidad a Pinochet"; 11 March 2000: Garzón ofrece al juez Guzmán ayuda para juzgar al general".

ripped from his political immunity. Pinochet's trial had been avoided in the international sphere, but was becoming increasingly possible in his home country.

While the judiciary was to decide about the possibility to try Pinochet, the political forces also wanted to alter Pinochet's influence and power in the political sphere. The Chilean Congress adopted on March 26, 2000, a law giving the Senator a special privilege that would allow him to keep his parliamentary immunity, even if he was to leave political life and resign from the Senate. Although this law was specially designed to free the political sphere from the spectre of the former dictator, it was nonetheless strongly criticized by leftist governmental officials, with Lagos at their head, as it was interpreted by them as nothing more than a double immunity status for Pinochet.⁵² But on the other hand, some politicians of the ruling *Concertación* clearly agreed with this law, as it was encouraging Pinochet's retirement, and was thus allowing them to assure a majority in the Senate in the long term. Lagos nonetheless assured that he was to amend the law, as he had promised the Chilean people to make reforms that would encourage the rule of law and greater democratization in Chile, not the reverse.

Clearly, the return of Pinochet to Chile created a turmoil among political coalitions, as most political actors did want to forget about the senator's legacy, but most did not agree on the proper way to do so. The law giving double immunity to Pinochet was all the more criticized as it was voted during the judicial process, intended by Guzmán, where a decision was to be taken in the Court of Appeal on the possibility to rip the former dictator from the parliamentary immunity which was keeping him free from judicial retribution. But before the special status of the former dictator could be decided in the political arena, the judiciary sphere proved to be capable of fair and autonomous judgment. In June 2000, the Santiago Court of Appeal ruled that Pinochet was not protected by his

⁵²*El país*, March 26, 2000, "El Congreso chileno aprueba una ley que da inmunidad a Pinochet"; Latin News, March 30, 2000, "Pinochet affair refuses to fade into the background".

parliamentary immunity for his participation in the Death caravan. Pinochet was not the executor of the crimes committed in this sinister security operation, but as a dictator he was assuming the highest executive powers in Chile at that time, and as Chief Commander of the military he was at the head of security services and thus the author of this mission.⁵³ This decision was received with great dissatisfaction by an important fraction of the Chilean society which remains pro-Pinochet, but there was no significant reaction from the armed forces which could lead to believe that civil rule would be threatened. The decision of the Santiago Court of Appeal thus indicates another solid step in the achievement of rule of law and democracy in Chile, and it gives more manoeuvrability to the governing coalitions in its intent to take away from the armed forces some of its tutelary powers.

This decision represented a solid step in the consolidation of the Chilean judiciary system's autonomy and credibility. This credibility was far from being fully attained before the arrest of Pinochet, which proved to be a catalyst element in the beginning of a series of needed reforms. The kind of initiative intended by Guzman was not frequent and very difficult before the international pressure to achieve judicial independence brought about by the Pinochet case. In Chile, there were still numerous indications of irregularities such as corruption, negligence and patronage in the courts system, some of those irregularities dating back to 1973. Those irregularities were directly caused by an intimate link between the members of the judiciary and the security forces of the dictatorship.⁵⁴

⁵³El País, June 5 2000, "La Corte de Apelaciones de Santiago, a favor del desafuero de Pinochet"; June 7, 2000, "Caravana de Pinochet"; "Los jueces opuestos al desafuero califican las ejecuciones de "acto de gobierno"; June 10, 2000, "La defensa de Pinochet apela el fallo que le privó del fuero parlamentario".

⁵⁴*Latin American Weekly Report*, April 27, 1999, "Integrity of judiciary takes a drubbing". This article, in particular, mentions that a Chilean journalist, Alejandra Matus, after writing and releasing a book entitled *El libro negro de la justicia chilena* in which she denounces corruption in the judiciary system and links between the judiciary and the military, was forced to leave Chile. A Santiago judge issued an arrest warrant, evoking the Chilean internal security law according to which there cannot be slandering or offending of members of any power of the state. The president of the supreme court, Roberto Dávila, objected to this interpretation of the security law, which was directly infringing upon the liberty of expression, and expressed his disapprobation of other repressive laws that date back to the dictatorship.

Even during the detention of Pinochet in London, there were serious doubts about whether the Chilean judiciary would be up to the task of trying Pinochet or other military officials.

The Santiago Court of Appeal's decision concerns Pinochet's status, but it is also very significant for the situation of the armed forces as a whole in Chile. Since the end of the dictatorship, Pinochet had come to personify the entire body of the armed forces, and every attempt to strip him from any political privilege was seen as an attempt to change the fragile balance instituted since 1990 between civil and military powers. The close relationship between Pinochet's personal status and the institutional status of the army was a significant obstacle to any reform to the tutelary role of the army since the return to democracy, as Brian Loveman notes:

Although Pinochet would leave the army **someday**, several officers felt his presence protected the armed forces, at least for the present, from the threat of trials, dishonor, and loss of resources and political influence. They hoped to translate this temporary protection into a permanent settlement of institutional concerns, including that of the human rights issue.⁵⁵

Pinochet did in fact leave the army, but continued to enjoy political immunity as a senator for life, and was able to object to any political attempt to reform the military. The decision of the Court of Appeal, in this sense, represented a fundamental change in the institutional balance in Chile, with important repercussions for the armed forces. It was taken to the Supreme Court of Chile but was upheld on August 9, 2000, allowing judge Guzmán to announce his intention to interrogate Pinochet and pursue his legal battle against the former dictator.⁵⁶ Such a battle, while directly corresponding to the continuous demands for justice of human rights social actors in Chile, could take many years in coming to a term.

⁵⁵Loveman (1991), p. 43. The author emphasises.

⁵⁶*El país*, August 10, 2000, "El juez Guzmán interrogará Pinochet en pocos días y ordenará una revisión médica".

Conclusion

Pinochet's arrest and extra-territorial trial, had it not been for his delicate health, was a possibility not because of surprising judicial novelties, but rather because of existing laws and norms encompassed in the international human rights law. Albeit not reinforced by any permanent and overarching authority, these norms are nonetheless effective when used with sufficient will. They have been set in place over the years by sovereign states which accept their binding nature for the purpose of a common, universal good, that of the protection of human rights. Social movements and advocacy groups implicated in the defense of human rights in the international sphere, were important contributors to this process. They have played a crucial role in initiating normative change in the international sphere in the last fifty years, which set in place the elements that could allow Pinochet's arrest. Although social movements are not institutionalized political actors, they remain very powerful in both domestic and international policy-spheres. They benefit from discursive resources which can significantly alter power relations, and influence states in the definition of their identities and interests.

Although establishing dangerous precedents for some, the Pinochet case can on the other hand inspire greater faith in the possibility of international collaboration for the achievement of justice. Other state criminals that in the past have gone unpunished and that have hid behind amnesty laws or domestic immunity are now threatened by the tangible consequences of the Pinochet case. The case has certainly encouraged further discussion about the need for an International Criminal Court which would have universal and retroactive jurisdiction. As much as such an institution is undesired by sovereign states, it could on the other hand be the only efficient instrument in deterring individuals from violating human rights, and in stopping the circle of crimes and impunity which has been so frequent, in Latin America but in all areas of the world as well.

Although there has been incredible progress made in the development of an international human rights law, the Pinochet case proves that there are still many political obstacles to the achievement of international justice. Extradition processes can happen and succeed. But they are complex and too much charged with political connotations to ensure that all human rights violators will be prosecuted at all time.

CONCLUSION

What has happened in the Pinochet case seems to resemble what Louis Kriesberg calls a “circle of transnationalism” in his analysis on social movements and global transformations.¹ Kriesberg believes that structural change was brought about in the international sphere with greater cooperation between sovereign states and the creation of inter-governmental organizations. These organizations are more sensible to the demands of an increasingly global civil society. They are in a way a discursive tribune for transnational social movements and advocates which can use them to bring issues and ideas considered of global interest to the attention of policy-makers. Yet transnational social actors directly contributed to the global transformations that give them such discursive space and room to manoeuvre. Social movements are themselves propelling a circle of transnationalism in which they contribute to the creation of the structural changes that allow for their further mobilization and activity.

Human rights movements and activists have in effect benefited from the international arrest of Pinochet to get directly implicated in the political and judicial struggles initiated in Spain and taken over in Chile, to obtain justice in the cases of unresolved disappearances and gross human rights violations. These struggles are certainly apparent in Chile, but also elsewhere in the world where domestic social forces, in collaboration with transnational networks, have used the Pinochet case as an example for their own struggle against immunity and impunity. But the conditions allowing the Pinochet case to happen were in the counterpart set in place in part by human rights movements and advocates themselves, in the long building process of an international human rights regime. Social movements were among the initiators of the international normative change that allowed the extra-territorial judicial process against the former president of a sovereign state, which

¹Kriesberg (1997), pp.3-4.

they used as an opportunity for further mobilization and activism.

The Pinochet case has been analysed here in its causal and consequential relation to human rights social movements and transnational advocates' activity. Certainly, another analysis could have been made as to exclusively focus, for example, on the judiciary and political components of the case. But the decision to concentrate on social movements as powerful agents of domestic and international change was made because of the important insights that such a focus can provide to the understanding of political phenomena in general and to the Pinochet case in particular. Human rights as a concept, a norm that increasingly influences the conduct of domestic and international politics, has been constructed in great part with the influence of advocates and social movements. Engaged in a discursive struggle with more powerful opponents, such as sovereign states which are not so easily accessible when one lacks sufficient institutional resources, advocates and social movements can become powerful agents of political change when they use the political opportunities presented to them to continue their struggle and create further social mobilization and disruption. Social movements' power, and their role in the political process, must not be overlooked by political scientists.

Social movements and transnational advocates have an determining role to play in the reinforcement of the democratic culture that is needed to sustain the political, legal and social democratic institutions. In the Latin American perspective, this is a focus that needs particular attention. The Pinochet case has highlighted that non-institutionalized social actors, both at domestic and international levels, can have an important role in initiating change that is disrupting for the political, legal and social arrangements considered enduring and stable by political actors. Human rights social movements, because of the international opportunity that they contributed to create and because of the continuous activism and mobilization for change that they were able to sustain

afterwards, were crucial actors in the Pinochet case. In this sense, they contributed to design the political transformations under way in Chile today.

In a era of globalization, a delicate balance must exist between, on the one hand, the management of normative issues which are deemed of global interest for the international community and, on the other hand, the desire of states to protect their sovereignty in the international structure. This dilemma is not new, and it promises to be at the heart of further developments in the institutionalization of a human rights regime, with, for example, the discussion concerning the appropriate juridical powers of an International Criminal Court. Statist actors will ultimately decide on the juridical arrangements that ought to be institutionalized in the international sphere, but non-statist actors will certainly continue to be influential in this process, as they were until today.

The Pinochet case was initially very international in nature, as it implicated three sovereign states and numerous other transnational actors. But the fate of Pinochet is now in the hands of Chilean magistrates, where many argue it should always have remained, since the Pinochet case as it was evolving was raising too many concerns about the threat that such a precedent symbolized for sovereign states. But the interesting paradox in the Pinochet case is that judicial and political developments contributing to greater democratization and greater internal sovereignty in Chile did not seem possible until the intervention of international actors. It shall be interesting to see what the results of the Chilean investigations will be, and what lessons from the Pinochet case in general will contribute to the evolution of the international legal thinking.

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