International Human Rights Law and Practice in Latin America

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Human rights practices in Latin America provide a lens through which to examine the relationship between international law and domestic politics. International human rights norms are expressed in numerous widely ratified treaties. Many of those norms also are embedded in customary international law. The number of binding human rights norms incorporated into international or regional law as well as the precision and delegation of those norms increased significantly between the mid-1970s and the mid-1990s. In addition, in the 1970s and 1980s an international human rights advocacy network committed to documenting and spotlighting human rights violations, drafting and implementing international human rights standards, and pressuring governments to implement bilateral and multilateral human rights policies emerged.[1]

During the same time period, a transformation occurred in the composition and behavior of political actors in the region. Whereas two decades ago most Latin American states were governed by dictatorial regimes that routinely engaged in torture, disappearance, extrajudicial execution, and prolonged arbitrary detention, today they enjoy electoral regimes that for the most part comply with fundamental international human rights norms.

We explore the extent to which these two parallel processes are linked. We examine state compliance with three primary norms of international human rights law: the prohibition against torture, the prohibition against disappearance, and the right to democratic governance. These three norms vary in their degree of obligation, precision, and delegation. In the context of this legalization framework, the prohibition against torture is the most legalized, the prohibition against disappearance has mid-level legalization, and the right to democratic governance is the least legalized.

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1. See Sikkink 1996; and Clark, forthcoming.

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Torture is the most widely outlawed human rights violation. Nearly all Latin American nations have long prohibited torture as a matter of domestic law.[2] It is prohibited by numerous international instruments, and it violates customary international law.[3] Torture is one of a handful of rights in the International Covenant on Civil and Political Rights for which no derogation is permissible. The customary international law prohibition similarly has a *jus cogens,* or nonderogable, character. Thus, under no circumstances may states take measures to annul the prohibition against torture. In 1980 a U.S. federal court judge, considering the customary international law prohibition against torture, declared that "the torturer has become—like the pirate and slave trader before him—*hostis humani generis*, an enemy of all mankind."[4] The British House of Lords recognized the inviolability of the international prohibition against torture when it allowed extradition proceedings against General Augusto Pinochet to go forward. Spain sought Pinochet's extradition from England, where he was visiting to receive medical care, to stand trial for torture that occurred in Chile during the Pinochet regime (1973–90).[5]

In addition to being obligatory, the norm against torture also is precise. Two treaties, the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and the Inter-American Convention to Prevent and Punish Torture, contain detailed definitions of torture and the obligations of states to prevent and punish it.[6] Although levels of delegation are not high, third-party authority exists to review state compliance with the international prohibition and to settle disputes involving allegations of torture. Individuals in the Americas may submit complaints of torture to the Inter-American Commission on Human Rights (IACHR), and the commission may refer cases to the Inter-American Court of Human Rights if the country involved has accepted the court's jurisdiction. Individuals in states that have ratified the relevant treaties and protocols may submit petitions to the UN Human Rights Committee or Committee Against Torture. These quasi-judicial bodies issue findings and recommendations.

The prohibition against disappearance is less legalized than that against torture. It emerged almost overnight in response to an epidemic of state-sponsored secret abductions and killings in Chile, Guatemala, and Argentina in the mid-1970s. The legaliza-

2. Amnesty International 1975.

3. Restatement of Foreign Relations Law of the United States (Third), Section 702.

4. *Filártiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).

5. *5 R v Bartle and Commissioner of Police for the Metropolis and others, ex parte Pinochet*, House of Lords, 24 March 1999.

6. The definition in the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the treaty elaborating on the prohibition against torture that is most widely ratified by Latin American states, is:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to lawful sanctions.

tion process was eased because the violation was seen as analogous to well-institutionalized norms against arbitrary arrest and detention and summary execution. In 1988 a U.S. federal court judge declared that disappearances violate customary international law.[7] However, steps to make the prohibition against disappearance more legalized did not occur until the 1990s. In 1992 the UN General Assembly adopted a Declaration on the Protection of All Persons from Enforced Disappearance, and in 1994 the Organization of American States (OAS) adopted the Inter-American Convention on Forced Disappearance of Persons.[8] The latter contains a precise definition of disappearance,[9] but that treaty only entered into force in 1996 and as of 1999 had been ratified by only seven states.

In principle the norm against disappearance is obligatory, but in fact the norm's obligatoriness is weakened by the nature of the rights violation involved. Disappearances often are difficult to prove because the accuser must show that the victim was deprived of his or her freedom by government agents notwithstanding government claims to the contrary. With respect to delegation of enforcement authority to independent institutions, victims of disappearance in the Americas have the same opportunities as survivors of torture to file complaints with the IACHR of the OAS. In some cases, the IACHR has the discretion to submit disappearance complaints to the Inter-American Court on Human Rights, as it did in the Honduras case discussed later.

The right to democratic governance is the least legalized norm internationally, though its constituent elements, including freedom of expression, freedom of association, freedom of assembly, and the right to participate in free and fair elections, are included in all the major human rights treaties. Until September 1997 the primary norm reference for the right to democracy in the Americas was the Santiago Commitment to Democracy and the Renewal of the Inter-American System (Santiago Declaration), a resolution adopted by the OAS General Assembly in 1991.[10] As a declaration, it lacked the dimension of formal legal obligation. It also lacked precision, since its definition of democracy is vague. Finally, there is no legal delegation to a third party for dispute resolution, though in a resolution adopted the following day the OAS General Assembly established a process for convening an ad hoc meeting of the region's ministers of foreign affairs in the event of any occurrence giving rise to the sudden or irregular interruption of democratic governance in a member state.[11]

7. *Forti v. Suarez Mason*, 697 F. Supp. 707 (N.D. Cal. 1988).

8. Inter-American Convention on Forced Disappearance of Persons, done at Belém, Brazil, 9 June 1994, 33 I. L. M. 1529.

9. That treaty provides

> forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by the absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

10. Reproduced in Vaky and Munoz 1993.

11. AG/RES. 1080-(XXI-0/91), Representative Democracy, Resolution Adopted at the Fifth Plenary Session, 5 June 1991, reproduced in Vaky and Munoz 1993.

TABLE 1. *Issue-area legalization in Latin America (mid-1990s)*

Issue-area	*Level of obligation*	*Level of precision*	*Level of delegation*
Torture	High	High	Medium
Disappearance	Medium	Medium	Medium
Democracy	Low	Low	Low

Note: The table reflects the level of legalization of democracy before the Protocol of Washington entered into force in 1997. After 1997, we could say that democracy was characterized by a medium level of obligation but still had low levels of precision and delegation.

After September 1997 the level of obligation of the democracy norm in Latin America increased substantially when the Protocol of Washington, an amendment to the OAS Charter, entered into force. The protocol provides that two-thirds of the OAS General Assembly may vote to suspend a member state whose democratically elected government has been overthrown by force.[12] The levels of precision and delegation are still low, however, since the protocol does not include a definition of democracy or an explanation of what constitutes being "overthrown by force." Nor are decisions delegated to a neutral third party, since the decision on suspension is made by two-thirds of the OAS General Assembly in a process that would clearly involve more political bargaining than legal argument. Table 1 summarizes the extent of legalization of the three issue-areas—torture, disappearance, and democracy—in Latin America in the mid-1990s.

We explore in this article the consequences of legalization on human rights practices in countries in the region. The impact of legalization varies considerably in relation to each of the three issue-areas. If legalization is significant, we would expect it to have the most impact on the prohibition on torture and the least impact on the right to democratic governance. However, the degree of legalization within any issue-area also varies across countries, since some countries ratified treaties and thus accepted more obligation and delegation. We devote our exploration primarily to the effect of legalization within the context of comparative country case studies. Before we turn to those cases, it is useful to explore the hypotheses in the context of the region as a whole to see how legalization has affected human rights practices.

Despite the unambiguous prohibition against torture both in international law and in domestic law, torture has been widely practiced in Latin America and was particularly prevalent in the 1970s and early 1980s when the majority of states in the region were governed by military dictatorships.[13] In the early 1980s Amnesty International

12. 1-E Rev. OEA Documentos Officiales OEA/Ser.A/2 Add 3 (SEPF). Signed 14 December 1992; entered into force 25 September 1997.

13. Amnesty International says that Costa Rica is the only country in Latin America from which they had received no torture allegations of any kind in the year preceding the preparation of the report. Amnesty International 1975, 191.

reported that it had credible evidence of torture in fifteen Latin American countries: Argentina, Bolivia, Brazil, Chile, Colombia, El Salvador, Guatemala, Guyana, Haiti, Honduras, Mexico, Paraguay, Peru, Suriname, and Uruguay.[14] By the mid-1990s, most analysts agree that torture was less widespread throughout the region than it was in the 1970s. Nevertheless, in 1999 Amnesty International reported that torture was frequent or widespread in four countries in Latin America (Brazil, Colombia, Mexico, and Venezuela) and that "some" or "several cases" of torture had been reported in nine additional countries.[15] The UN Special Rapporteur on Torture in his 1999 report discussed numerous cases of torture in Brazil, Colombia, Mexico, and Venezuela, and added Peru as a country where torture was frequently used. The Special Rapporteur discussed six additional Latin American countries from which he had received cases alleging torture.[16] Despite the high legalization of the prohibition against torture, the practice has far from disappeared from the hemisphere.

Unlike torture, which has occurred for centuries, the widespread and systematic practice of disappearance is a more recent phenomenon in the region. The IACHR first expressed concern for the practice in its 1976 annual report to the OAS General Assembly, arguing that "disappearances seem to be a comfortable expedient to avoid application of the legal provisions established for the defense of personal freedom, physical security, dignity, and human rights itself." In 1978 the UN General Assembly adopted a resolution calling on governments to investigate and punish those responsible for disappearances and calling on the UN Commission on Human Rights to take up the matter.[17] The commission subsequently created the UN Working Group on Disappearances.

In its first report in 1981 the UN Working Group reported that it had received information about 11,000 to 13,000 cases of disappearances from fifteen countries, ten of which were Latin American: Argentina, Bolivia, Brazil, Chile, El Salvador, Guatemala, Mexico, Nicaragua, Peru, and Uruguay.[18] By 1996, however, the UN Working Group concluded that political disappearances had almost ended in the Western Hemisphere. "Argentina, Bolivia, Brazil, Chile, Ecuador, El Salvador, Guatemala, Haiti, and Nicaragua were among the nations where no disappearances were reported in 1996, although several countries still have backlogs of unexplained cases."[19] By 1998 the UN Working Group and Amnesty International reported disappearances in only two countries in Latin America: Colombia and Mexico.[20] It appears that despite being less legalized than the prohibition against torture, the prohi-

14. Amnesty International 1984, 143–79.
15. Amnesty International 1999.
16. United Nations 1992–1999. 1999 Report of the Special Rapporteur on Torture.
17. UNGA Res.33/173, 20 December 1978.
18. United Nations 1991. The list of countries in Latin America that practiced disappearance almost completely overlaps with the list of countries that practiced torture during the same period, so it should be clear that although we examine these rights separately, they are linked in practice.
19. *New York Times,* 25 May 1997, 4.
20. See Amnesty International 1999; and United Nations 1998. The UN Working Group also reported it had received one newly transmitted case from Ecuador.

TABLE 2. *Changes in human rights practices in Latin America*

Practices	*Late 1970s*	*Mid 1990s*
Torture	Very high	Medium
Disappearance	Very high	Low
Nondemocracy	Very high	Low

bition against disappearances has coincided with a more dramatic decline in disappearances in the region.

The region has witnessed a similarly dramatic change with respect to democracy. Preceded by a century of swings between democratic and authoritarian regimes, every Latin American country except Cuba either retained or returned to electoral democracy between 1978 and 1991.[21] These electoral regimes are far from perfect democracies, but as a result of these changes, Latin America today faces a new set of issues—not the problem of military coups, but the problems involved in expanding existing electoral regimes into fuller democracies.

Table 2 summarizes these very broad regional trends. It suggests that each of these issue-areas followed a similar trend during the period from the late 1970s to the mid-1990s, moving from a very poor situation to an improved situation. In part that is because the three issues are related to each other. Although some democratically elected governments still use or tolerate torture, the transition to democracy contributed to a reduction in the use of torture and disappearance. A comparison of Table 1 and Table 2 suggests that legalization alone cannot explain the trend described here.

We conclude that to understand the improvement in human rights practices illustrated by Table 2 we need to consider two additional factors. The first is a broad regional norm shift that led to an increased regional and international consensus concerning an interconnected bundle of human rights norms, including the three discussed in this article. The popular, political, and legal support and legitimacy these norms now possess is reinforced by diverse legal and nonlegal practices designed to implement and ensure compliance with them. This factor is consistent with the conclusions of a prominent group of legal scholars at the University of Chicago who argue that, even within a domestic setting, understanding compliance requires attention to the pervasive influence of social norms on behavior.[22] In the 1980s Latin America experienced a regional human rights "norm cascade"—a rapid shift toward recognizing the legitimacy of human rights norms and international and regional action on behalf of those norms.[23]

21. Palmer 1996, 257–58.

22. See Sunstein 1997; and Lessig 1995. For an interesting overview by a journalist, see Jeffry Rosen, The Social Police: Following the Law Because You'd Be Too Embarrassed Not To, *The New Yorker* (20–27 October 1997), 170–81.

23. On "norms cascades," see Sunstein 1997; and Finnemore and Sikkink 1998.

The second factor influencing improved human rights practices is the extent to which decision making is centralized with respect to norm compliance. Decisions about military coups or whether to hold free and fair elections are made by a country's top political or military authorities and are therefore highly centralized. Decisions about disappearances also tend to be centralized, since the ability to use security forces to kidnap and clandestinely detain large numbers of prisoners requires a high level of coordination. Decisions about torture, however, can be either centralized, like decisions about disappearances, or decentralized. If torture decisions are decentralized, even where state policy categorically outlaws the practice, police and security officers at local or regional levels may continue to use it to extract confessions in criminal cases, intimidate local political actors (such as campesino leaders, trade unionists, and political opponents), or strike fear in the local populace. In countries whose legal systems are penetrated with corruption or unresponsive prosecutorial or judicial procedures, or that lack the political will to investigate and prosecute police or security officers who engage in such conduct, decentralized torture is likely to continue despite declared or legalized national policy to the contrary. Thus international norms and the pressures exercised to enforce them will be more effective in securing compliance when decisions are made by a handful of powerful, central political actors than when decision making is decentralized.

Background

Human rights principles have long resonated in Latin America, and Latin American policymakers, legal scholars, and activists have historically been vocal supporters of the development of international human rights law. Long before the founding of the UN and the OAS, they perceived such law as a means of protecting weaker states and their people from unlawful interventions of more powerful states, particularly the United States. Many early Pan American leaders also stressed the importance of international law in promoting the doctrines of sovereignty and nonintervention, but they argued that the doctrine of nonintervention needed to be harmonized with other principles of international law, including human rights.[24] This legal tradition led Latin Americans to support human rights language in the UN Charter, to adopt in 1948 the American Declaration of the Rights and Duties of Man, and to unanimously support, later that same year, the UN General Assembly's adoption of the Universal Declaration of Human Rights.

Actual practice in adhering to international law in the region often fell far short of this commitment, especially in the 1970s and 1980s, when many Latin American governments carried out unprecedented levels of human rights violations. Latin American military leaders often argued that international human rights pressures were a violation of sovereignty and a form of moral imperialism. But this argument was less persuasive in Latin America because of the region's long discursive tradition of sup-

24. See, for example, Alvarez 1943. For a survey of this historical tradition, see Sikkink 1997.

port for international law and human rights. Domestic human rights organizations demanded that their governments respect human rights and allied with international human rights networks to publicize human rights violations and demand change.

The primary international human rights norms are found in the Universal Declaration of Human Rights and the American Declaration of Human Rights. In addition, international human rights norms relevant to Latin American states are articulated in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social, and Cultural Rights, and the American Convention on Human Rights. These treaties were adopted by the UN and the OAS in the late 1960s and entered into force between 1976 and 1978. More highly elaborated norms were subsequently expressed in such treaties as the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture, and the Inter-American Convention on Forced Disappearance of Persons—treaties that were drafted and entered into force in the late 1980s and early 1990s.

Because many of these norms are expressed in treaties, they impose legal obligations. They are not highly legalized, however, since formal international mechanisms for delegation in the area of human rights are limited and weak. Individual petition procedures are available to victims complaining of human rights violations by states that have ratified the First Optional Protocol to the International Covenant on Civil and Political Rights or have consented to the authority of the Committee Against Torture to consider individual petitions submitted under Article 22 of the Convention Against Torture, but neither of these bodies has the power to enforce its findings or recommendations. Individual victims in the Americas alternatively can elect to petition the IACHR. Those complaining of violations by states that have not ratified the American Convention may do so under the IACHR's authority to examine violations of certain human rights included in the American Declaration.[25] Those complaining of violations by states that have ratified the American Convention may apply to the IACHR in its quasi-judicial capacity to consider individual petitions and seek a resolution.[26] None of these bodies, however, has the authority to coerce state compliance. The Inter-American Court of Human Rights is the only international adjudicatory body with enforcement capability available to victims of human rights in the Americas. But access is limited. Victims must complain of rights violations by a state that has both ratified the American Convention and accepted the jurisdiction of the Inter-American Court of Human Rights.[27] They must then exhaust domestic remedies and

25. The human rights include those in Art. 1 (right to life, liberty, and personal security); Art. 2 (right to equality before the law), Art. 3 (right to religious freedom and worship), Art. 4 (right to freedom of investigation, opinion, expression, and dissemination of information), Art. 18 (right to a fair trial), Art. 25 (right of protection from arbitrary arrest), and Art. 26 (right to due process of law). See OAS Resolution XXII of the 2nd Special Inter-American Conference OEA/Ser. E/XIII.I Doc. 150 Rev. (1965); and Medina Quiroga 1990, 439–41.

26. Articles 44–51 of the American Convention on Human Rights.

27. In 1999, twenty-five of the thirty-five members of the OAS had ratified the American Convention, and twenty-one had accepted the contentious jurisdiction of the court, including most of the key members of the organization, but significantly excluding the United States. This number is a significant increase from the ten members accepting the contentious jurisdiction of the court in 1990.

file a petition with the IACHR. Should the IACHR be unable to resolve the matter, it may, at its discretion, refer the case to the court. Individuals do not have independent standing to invoke the court's jurisdiction.

The paucity of formal international delegation to third-party judicial authority does not mean international human rights law is never enforced. Active enforcement occurs in a variety of ways. Transnational human rights advocacy networks promote adverse international publicity about a state's violations of human rights so that noncompliance leads to embarrassment or a blow to reputation. Moreover, once a state's human rights misconduct has been exposed, more damaging bilateral or multilateral enforcement measures may follow. Bilateral foreign policy sanctions may be imposed on states that violate human rights. Courts in other countries, relying on their own domestic civil and criminal law, may hold individuals who fall within their jurisdiction responsible for violations of international human rights that occurred in other countries. In recent years there has been increased multilateral willingness by regional or international organizations to apply sanctions to rights-violating states. Although bilateral and multilateral enforcement continues to be selective, such measures frequently impose high costs on recalcitrant states.

Not only do the issues differ in their degree of legalization, but countries differ as well with respect to their acceptance of obligation and delegation in each of these areas. While the degree of obligation is implicit in the nature of the agreement, it also depends on whether a state has ratified a treaty. Thus countries that have ratified a treaty have more binding obligations than countries that have not. In turn, treaty ratification often implies delegation, or the acceptance of some third-party authority. Thus in the following section, for each of the issue-areas we consider—torture, disappearances, and democracy—we compare two countries with different levels of obligation and delegation with respect to that issue.

We look at the degree to which international law reflects preexisting domestic norms and the extent to which international law has penetrated and influenced domestic law and its enforcement. We also look at whether external enforcement measures have been applied to pressure states to comply with international human rights norms, the types of enforcement measures used, and the extent to which states have responded to such pressure. In the case of torture we compare Uruguay and Paraguay; for disappearances, Argentina and Honduras; and for democratic governance, Uruguay and Guatemala.

Case 1: Torture in Uruguay and Paraguay

To explore whether international law contributed to reducing governmental use of torture, we look at Uruguay and Paraguay between 1970 and the present. The two countries differed markedly in their formal acceptance of legal norms against torture. The prohibition against torture was more legalized in Uruguay than it was in Paraguay, so comparing the two countries sheds light on whether domestic acceptance of

obligation and delegation of international human rights law leads to compliance with that law.

In the 1970s regimes in both Uruguay and Paraguay made extensive use of torture. Despite their similar size and population, and their physical proximity, the political histories of the two states are dramatically different. Until 1973, when the military was handed unchecked power by an elected civilian president, Uruguay had one of the longest traditions of democratic rule and best records of protecting civil liberties in the region. Paraguay, on the other hand, endured under General Alfredo Stroessner, who held power from 1954 until 1989, one of the region's longest lasting dictatorships. That dictatorship stifled all efforts to develop democratic traditions and hindered the independence and effectiveness of the institutions of civil society. Yet after the military took power in Uruguay, the situations of the two countries shared many characteristics. The independent functioning of Uruguay's courts and other institutions of civil society was suspended, making access to protection from governmental abuse of power more like the situation in Paraguay. Governments in both countries exercised repression, mainly through widespread, arbitrary imprisonment and torture.

The Uruguayan military regime was shorter in duration but more severe in its human rights violations. The Uruguayan military systematically engaged in far-reaching arrests, routine torture of prisoners, and complete surveillance of the population. In 1976 Amnesty International estimated that 60,000—or one out of fifty—people had been arrested and detained in Uruguay for some period of time since the coup. Most were held for a short time and released, though there were between 4,300 and 5,000 political prisoners in 1977, and between 1,000 and 2,500 in 1979.[28] Seventy-eight people died in detention, many as a result of torture.[29] A survey of a sample group of 313 released prisoners conducted after Uruguay returned to democracy found that only 1–2 percent were not tortured during imprisonment.[30]

A comprehensive report on human rights in Paraguay during the Stroessner regime has not been written.[31] Nevertheless, in 1976 Amnesty International estimated that there were about 1,000 political prisoners. That figure dropped to about 300 to 400 in August 1977.[32] Amnesty International further stated that during this period torture was common in Paraguay. It documented ten cases of death under torture in 1976 and another two in early 1977.[33]

Prior to the dictatorship, Uruguay was one of the few countries in the region to ratify the International Covenant on Civil and Political Rights and its First Optional Protocol. The Optional Protocol gave individuals in Uruguay the right to bring their cases to the UN Human Rights Committee if they believed that their government had

28. See *Latin America,* 11 February 1977, XI (6); and Schoultz 1981, 350.
29. Servicio Paz y Justicia Uruguay 1992.
30. Ibid.
31. One preliminary report is Simon 1990, but it does not provide systematic reports of numbers of victims of repression.
32. Amnesty International, "August 1977 Addendum" to Briefing Paper on Paraguay published in July 1976.
33. Amnesty International 1977a, 9–13.

violated rights in the covenant.[34] The decision in 1970 to ratify these treaties was the logical outgrowth of Uruguay's long tradition of support for multilateral human rights efforts and its domestic support for the rule of law. In contrast, Paraguay had not acknowledged the legitimacy of international human rights norms nor ratified any of the major human rights treaties that prohibit torture. For over two decades of authoritarian rule, from 1954 until 1977, Paraguay faced very little international pressure or criticism for its human rights practices.

Although approximately half of all political prisoners in Uruguay were arrested between 1972 and 1974,[35] little international attention to Uruguayan human rights abuses was brought to bear until 1976, the year the International Covenant on Civil and Political Rights and its Optional Protocol entered into force. Once it entered into force, Uruguayan victims, who before the dictatorship had been accustomed to seeking effective remedies from domestic legal institutions, transferred their entreaties to the Human Rights Committee established under the covenant.[36] The committee was responsive to the barrage of petitions it received and in case after case found Uruguay responsible for treaty violations, including torture and arbitrary detention. Its findings, which called on the Uruguayan government to release political prisoners and provide compensation, were publicized and attracted the attention of the then newly burgeoning nongovernmental international human rights movement.[37]

Uruguayan victims similarly appealed to the IACHR to investigate torture in Uruguay. Although Uruguay's military government refused to permit the IACHR to conduct an on-site visit, the IACHR issued several reports outlining abuses of human rights in Uruguay.[38] These reports were later adopted by the OAS General Assembly. In addition, as a result of prodding by Venezuela and the United States, the OAS Permanent Council rejected on human rights grounds Uruguay's offer to host the 1978 meeting of the OAS General Assembly.[39]

Between 1976 and 1980, several nongovernmental human rights organizations, including the International League for Human Rights, the International Commission of Jurists, the Secretariat International des Juristes Pour l'Amnistie en Uruguay, and particularly Amnesty International, took up the cause of human rights in Uruguay. These organizations held symposia, issued reports, sent missions and trial observers to Uruguay, and lobbied governments.[40] They also used evidence from the UN and OAS human rights bodies to pressure governments, particularly the United States, which around the same time began to adopt bilateral human rights foreign policies, to

34. See the article in this issue by Robert Keohane, Andrew Moravcsik, and Anne-Marie Slaughter, which also discusses the different dynamics that result when individuals have direct access to legalized international regimes.

35. Servicio Paz y Justicia Uruguay 1992.

36. After taking power, the military could have rescinded Uruguay's ratification of the covenant but chose not to do so, perhaps because it saw no harm from continued embrace of an international human rights treaty that was not yet in force.

37. Macdermot 1981. During its early years, the UN Human Rights Committee decided more cases against Uruguay than against any other country.

38. See, for example, Inter-American Commission on Human Rights 1978.

39. *Latin American Political Report,* 10 February 1978, XII (6).

40. Macdermot 1981, 88.

suspend bilateral aid to Uruguay on human rights grounds. Thus the work of both nongovernmental and intergovernmental human rights bodies contributed to the legitimacy of bilateral political pressure against Uruguay.

With its 1976 report detailing extensive human rights abuses, Amnesty International brought the human rights situation in Uruguay to the attention of U.S. Congressman Edward Koch, who led the movement to ban U.S. military aid to Uruguay. The Koch amendment was one of the earliest country-specific cut-offs of military aid motivated by human rights concerns. Early U.S. human rights policy toward Uruguay sent mixed messages because of differences between Congress and the executive branch, but between 1977 and 1980 under the Carter administration U.S. human rights policy toward Uruguay was one of the most coherent and consistent of all the bilateral human rights policies. In 1977 Secretary of State Cyrus Vance announced that the United States would reduce economic aid to Uruguay, making it, along with Argentina and Ethiopia, a test case of the new administration's commitment to take human rights into consideration when granting economic aid. The United States also opposed twelve out of thirteen loan requests made by Uruguay to international financial institutions between 1977 and 1980.[41]

The Uruguayan military government was divided between soft-liners and hard-liners who disagreed about the necessary level of repression and the desirable timetable for a return of democracy.[42] International legal and political human rights pressures had the effect of strengthening the position of the soft-liners against their domestic opponents. The leader of the soft-line faction, General Alvarez, believed that progress on the human rights front could help him in his internal power struggles with other members of the military and with his future presidential ambitions. International pressure reinforced the soft-liner's preference for a plebiscite on a new constitution. Given the opportunity in 1980 to vote for the first time since the coup, the Uruguayan public defeated the military government's proposed constitution, starting the country on the path toward the return to democracy in 1985 and the eventual improvement of human rights practices. Torture is no longer systematically practiced in Uruguay, but neither have the torturers of the past been brought to justice. An amnesty law, and the public's reaffirmation of that law through a referendum, effectively blocked holding torturers legally accountable for their acts.[43]

The Uruguayan case is one in which a highly legalized international norm with a high degree of domestic popular acceptance, obligation, and delegation was successfully reinforced through persistent international enforcement pressure directed at a violating government. International human rights pressures did not function independently, but rather interacted with both strong public support for a return to democracy and the positions of soft-liners with the military regime.

In contrast to Uruguay, Paraguay's prohibition against torture was not highly legalized. Paraguay had not ratified any of the human rights treaties prohibiting torture,

41. Schoultz 1981, 295.
42. Gillespie 1991, 109–110.
43. Barahona de Brito 1997.

nor had it ratified the Optional Protocol or accepted the jurisdiction of the Inter-American Court of Human Rights. There was no form of international delegation for victims of torture in Paraguay.

Although Paraguay under Stroessner had been engaging in human rights violations since 1954, international attention to human rights violations in Paraguay began at about the same time as attention to Uruguay. Because of international neglect prior to that time, Paraguay's repressive regime had more than two decades to consolidate its power and co-opt or destroy all opposition.

Even though human rights norms were not legalized in Paraguay, there is substantial evidence that international human rights pressures contributed to stopping torture and other human rights abuses. For example, although Paraguay would not permit an on-site visit, the IACHR reported regularly on the human rights situation in Paraguay, both in the special country section of its annual reports and in two special country reports in 1978 and 1987. In its 1978 annual report the IACHR concluded that torture had declined considerably and all political prisoners had been released.[44]

It is difficult to separate the influence of the IACHR from the simultaneous pressures of the Carter administration, and it seems likely that both contributed to the enforcement of human rights norms. Reports by Amnesty International and Americas Watch found that human rights conditions in Paraguay improved after external political enforcement measures were brought to bear against it. Robert White, U.S. Ambassador to Paraguay during the Carter administration, was a vocal opponent of human rights violations in Paraguay. Americas Watch concluded that the number of political prisoners declined drastically when White raised the human rights issue there, and that many political exiles were permitted to return as a consequence of political pressure exerted by the new democratically elected government in neighboring Argentina.[45] Americas Watch attributed this improvement to both internal developments and external pressure. It emphasized the importance of political and economic uncertainty in an era when President Stroessner was seen to be failing as well as a willingness by the Catholic Church to abandon its neutrality toward the regime and replace it with a campaign that encouraged Paraguay's long-oppressed opposition. But it also noted that United States' abandonment of dictatorships throughout the world and increasing democratization throughout Latin America were important factors that pushed Paraguay toward rights improvements.[46]

Another, less appreciated aspect of the enforcement of international human rights law toward Paraguay took place through the U.S. judicial branch. In 1979 lawyers for a Paraguayan doctor, Jose Filártiga, and his daughter Dolly filed a lawsuit against Américo Peña Irala who was then in the United States. They accused Peña Irala, former police inspector of Asunción, with kidnapping and torturing to death Filártiga's teenage son, Joelito, in 1976 in Paraguay. The Filártiga family's lawyers in-

44. Inter-American Commission on Human Rights 1979. Because Paraguay had not ratified the International Covenant on Civil and Political Rights or its First Optional Protocol, the Human Rights Committee never had the opportunity to consider petition from Paraguayan victims of human rights violations.

45. Americas Watch 1995, 4.

46. Americas Watch 1986, 3. Also see Carter 1990.

voked the Alien Tort Claims Act of 1789, which grants federal courts jurisdiction in "any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States," provided the court has personal jurisdiction over the alleged tortfeasor. The court's decision in the *Filártiga* case broke new ground because it held that in the 1970s the torturer now had a status in customary international law akin to that of the pirate and slave trader—"an enemy of all mankind."[47] A U.S. district court eventually awarded the Filártiga family $10 million in compensatory and punitive damages. In assigning punitive damages, the court declared: "Punitive damages are designed not merely to teach a defendant not to repeat his conduct but to deter others from following his example. To accomplish that purpose this court must make clear the depth of the international revulsion against torture and measure the award in accordance with the enormity of the offense. Thereby the judgement may perhaps have some deterrent effect."[48]

Since *Filártiga,* U.S. federal courts have adjudicated numerous cases involving human rights abuses in other countries under a variety of jurisdictional statutes. These include a groundbreaking case filed by the Letelier family against the Republic of Chile under the Foreign Sovereign Immunities Act for the car bomb murder of Orlando Letelier in the streets of Washington D.C.;[49] three cases against General Guillermo Suarez Mason, one of the more notorious perpetrators of disappearances during Argentina's "dirty war";[50] and a case against General Gramajo of Guatemala for torture and execution of peasants.[51] Courts in Spain and Italy have gone a step further in criminally indicting individuals responsible for violations of human rights in Latin America. The House of Lords decision in the Pinochet case demonstrates broadening international consensus that extranational criminal trials of rights violators should be allowed to proceed.

Despite the broadening trend to "borrow" the courts of other countries to seek justice, little is yet known about the impact of such cases on the government, police, and military officials in repressive countries. Anecdotal evidence suggests that foreign officials are aware of these cases and that they could have a chilling effect on repressive decisions. Former ambassador Robert White described an incident that occurred while he was ambassador to Paraguay: "After the case was decided in favor of Dr. Filártiga one of the people closest to General Stroessner told me that I just had to do everything possible to get this decision reversed. They don't really understand the independence of our court system here. And he stressed to me that no Paraguayan government figure would feel free to travel to the United States if this judgement was upheld because, you know, they would feel that they would be liable to arrest just being in any state in the United States."[52] Dr. Filártiga, however, has asserted that the

47. *Filártiga v. Pena-Irala*, 630 F.2d 876, 890 (2d Cir. 1980).
48. *Filártiga v. Peña-Irala*, 577 F. Supp. 860, 866 (S.D.N.Y. 1984).
49. *Letelier v. Republic of Chile*, 488 F. Supp. 665 (D.C.D.C. 1980).
50. *Forti v. Suarez Mason*, 672 F. Supp. 1531 (N.D. Cal. 1987), reconsidered, 697 F. Supp. 707 (N.D. Cal. 1988); *Martinez Baca v. Suarez Mason*, Civ. Action No. C-87–2057-SC (N.D. Cal. April 22, 1988); *Rapaport v. Suarez Mason*, Civ. Action No. C-87–2266-JPV (N.D. Cal., April 11, 1989).
51. *Xuncax v. Gramajo*, 886 F. Supp. 162 (D.C. Ma 1995).
52. As cited in Claude 1992, 336.

case made very little impact in Paraguay and did not lead to an improvement in the human rights situation there.[53]

The Stroessner regime was not as divided as the military regime in Uruguay. By the late 1980s, however, divisions were beginning to emerge within the ruling Colorado party and the military, especially about who would succeed the aging dictator. Colorado party officials were divided between those who supported the succession of Stroessner's son and those who opposed this "dynastic" model of succession. This conflict contributed to the coup in 1989, when Stroessner was deposed by his close associate General Rodriguez, who, to the surprise of many, oversaw a return to democratic rule. General Rodriguez, with nothing in his personal history to foreshadow his role as a champion of democracy, responded to a new international, regional, and domestic consensus in favor of democratic rule, and oversaw the most dramatic change in domestic structures in the last thirty-five years of Paraguayan history. Since that time, Paraguay has experienced some political turmoil; a coup attempt was resisted, and a president resigned after facing impeachment proceedings for being implicated in the murder of his vice president. Despite this turmoil, democracy has not been interrupted and systematic torture of political opponents is no longer practiced in Paraguay. Aside from four cases of alleged torture transmitted to the government in 1996, the UN Special Rapporteur on Torture made no mention of receiving cases of torture in Paraguay in his reports from 1992 to 1999.[54] After the transition, Paraguay ratified the American Convention on Human Rights, the Covenant on Civil and Political Rights, and both the UN and Inter-American Conventions Against Torture. In addition, in 1992 Paraguayans rewrote their constitution to include a list of human rights that widely conforms to international human rights instruments and establishes various institutions for protecting human rights. The human rights situation in Paraguay is still far from ideal, but significant improvement has occurred.

International law clearly contributed to reducing governmental use of torture in both Uruguay and Paraguay, though in neither case did it operate in isolation. By 1976, when the momentum of international support for international norms prohibiting torture was sufficiently advanced, organs of the UN and OAS, nongovernmental organizations, and other governments pressured both countries to abide by those norms. That pressure bore fruit when forces inside each nation's military determined that it was to their political advantage to yield. Their doing so cleared the path for greater civil society demand for human rights protections, which, in turn, led to an end to the use of torture and the restoration of democracy.

Case 2: Disappearances in Argentina and Honduras

Latin America helped introduce the term *disappearance* (translated from the Spanish word *desaparecido*) into the international human rights vocabulary. Although govern-

53. Interview with Dr. Joel Filártiga, Asuncion, Paraguay, 2 January 1996.
54. United Nations 1992–1999.

ments have long used "disappearances" to rid themselves of perceived opponents, international attention to this grave human rights abuse did not emerge until the 1970s, when repressive regimes in Latin America began to engage in it on a widespread and systematic basis.[55]

Argentina and Honduras differed in the extent to which they practiced disappearances and the degree of legalization of international human rights norms. In Argentina the official number of reported disappearances reached almost 9,000 between 1973 and 1983. In Honduras it is estimated that approximately 179 people disappeared between 1980 and 1992. In Argentina, the disappearances occurred during a brutal authoritarian government, and in Honduras they occurred after the country began a transition to a civilian democratic government with an election in 1981. Although neither country ratified the International Covenant on Civil and Political Rights prior to the period in which the disappearances occurred, Honduras had ratified the American Convention on Human Rights and accepted the compulsory jurisdiction of the Inter-American Court of Human Rights. This step provided delegation and opened the door for legal enforcement against Honduras that was not available with respect to Argentina.

Amnesty International and groups staffed by Argentine political exiles first brought the human rights situation in Argentina to world attention after the military coup in March 1976. Amnesty International estimated that between 2,000 and 10,000 persons had been abducted and presented evidence that the disappearances were part of a concerted government policy by which soldiers and the police kidnapped perceived opponents, took them to secret detention centers, tortured, interrogated, and killed them, and secretly disposed of their bodies.[56]

In response to increasing dissemination of information on human rights abuses in Argentina, the Carter administration, along with the French, Swedish, and other governments, denounced the rights violations of the Argentine junta. In 1977 the U.S. government reduced the planned level of military aid for Argentina on human rights grounds. The following year, Congress passed a bill eliminating all military assistance to Argentina.[57]

Although by the military's admission 90 percent of the armed opposition had been eliminated by April 1977, their defeat did not lead to an immediate change in human rights practices.[58] By 1978 the military was divided among different factions with different positions as to what the military government should do in the future. One faction was led by Admiral Massera, a right-wing populist; another by Generals Carlos Suarez Mason and Luciano Menendez, who supported indefinite military dictatorship and an unrelenting war against the left; and a third by Generals Videla and Viola, who hoped for eventual political liberalization under a military president. Over time, the Videla-Viola faction emerged supreme within the junta, and, by late

55. Amnesty International 1981, 1, 75.
56. Amnesty International 1977b.
57. U.S. Congressional Research Service 1979, 106.
58. *El Diario del Jucio*, No. 28, 3 December 1985, 5–8.

1978, Videla had gained more control over the Ministry of Foreign Affairs, which had previously been in the navy's sphere of influence.[59]

Within this new domestic context, the Videla-Viola faction decided to improve Argentina's international image and to restore military and economic aid flows.[60] This faction hoped it could use international human rights in its efforts to pursue a strategy of liberalization, which in turn would allow them to gain autonomy from the rest of the junta and improve Argentina's international image. This helps to explain Videla's willingness to permit the IACHR to conduct an on-site investigation in Argentina in December 1978 in exchange for a U.S. promise to unblock Export-Import Bank funds.[61] In the period that followed this invitation, the human rights situation in Argentina improved and the number of disappearances declined significantly.[62]

The IACHR's post-visit report was far more condemnatory of human rights practices than the Argentine military had anticipated. Argentine human rights groups smuggled the report into the country and made it available to key journalists, political figures, and opinion leaders, leading them to increasingly question official disclaimers of noninvolvement in the disappearances.[63]

Notwithstanding Argentina's prior unwillingness to formally ratify international human rights treaties and the fact that the norm against disappearance had not been codified per se, the Argentina case illustrates the effectiveness of informal enforcement measures in responding to violations of international human rights norms. Here no formal obligation, precision, or delegation existed. Even the IACHR's visit to and report on Argentina were exercises of its political function to investigate and document gross and systematic violations of human rights rather than exercises of juridical authority.[64] Nonetheless, the pressure worked and disappearances nearly stopped. It is unlikely that Argentina would have invited the IACHR to visit Argentina without strong international human rights pressures, including those of the U.S. government. The Argentine case is an example of bilateral and multilateral political enforcement working together to contribute to a decline in disappearances.

Pressure of another sort was brought to bear against Honduras. In April 1986 the IACHR submitted to the Inter-American Court of Human Rights three contentious cases involving 4 of some 140 cases submitted to the IACHR alleging disappearances in Honduras between 1981 and 1984. The IACHR, operating in its quasi-judicial capacity under the American Convention on Human Rights, found Honduras

59. Rock 1989, 370–71. This understanding of divisions within the military was reinforced during interviews with military officers and civilian policymakers of the Videla government, conducted in Buenos Aires in July–August 1990.

60. *Carta Política*, a news magazine considered to be very close to the military government, commented that international pressures on Argentina continued to increase and concluded that "the principal problem facing Argentine State has now become the international siege." Cuadro de Situación, *Carta Política* 57 (August 1978), 8.

61. Interviews with Walter Mondale, 20 June 1989, Minneapolis, Minn., and Robert Pastor, 28 June 1990, Wianno, Mass.

62. See Asamblea Permanente por los Derechos Humanos 1988, 26–31.

63. Mignone 1991, 56–57.

64. See Medina Quiroga 1990, 442–43.

responsible for violations of the American Convention based on Honduras' denial of any knowledge of the victims' whereabouts and its unwillingness to investigate.[65]

Since disappearances are not mentioned specifically in the American Convention, the IACHR asked the court to determine that Honduras had violated Articles 4, 5, and 7 of the convention, which guarantee the rights to life, humane treatment, personal liberty, and security. In its decision on the merits in the *Velásquez Rodríguez* case, the court concluded that these rights must be interpreted alongside Article 1(1) of the convention, which establishes the duty of governments to respect the human rights of individuals and to guarantee the enjoyment of the rights recognized in the convention. The court held that under Article 1(1) states have a duty to organize the governmental apparatus so that it is capable of juridically ensuring and actually ensures the free and full enjoyment of human rights.[66] As a consequence of this obligation, "states must prevent, investigate, and punish any violation of the rights recognized by the Convention."[67] Failure to do so may result in a finding that the state is liable for the alleged human rights violations because it failed to perform its duties under Article 1(1).[68]

In the course of testimony before the court, witnesses revealed that the Honduran army officers who carried out the abductions were first trained in the United States in 1980 and later received training in Honduras from Argentine and Chilean military instructors who had participated in the campaign of disappearances in their countries. During this period, the U.S. government increased foreign assistance to Honduras, helped train military and police officers, and failed to recognize and respond to credible reports of human rights violations. Argentine training of Honduran military personnel ended after the country's return to democracy in 1983, but U.S. training and support continued as part of the Reagan administration's program of support for the Nicaraguan contras operating out of Honduras.[69]

The court handed down its decisions in the three Honduras cases in 1988 and 1989. In the same years the Honduran government virtually stopped the practice of disappearances. Of the 175 documented cases of disappearances in Honduras, only 2 took place in 1989, and only 1 disappearance took place after 1989. The practice of disappearance in Honduras dropped from 26 cases in 1985 to 4 in 1986, the year the disappearance cases were submitted to the court, increased to 22 in 1987, then dropped to 10 in 1988, 2 in 1989, and none in 1990 and 1991.[70] In 1996 the UN Working Group on Disappearances recorded one case of disappearance in Honduras. In 1997 Honduras ratified the Inter-American Convention on the Forced Disappearance of

65. See Mendez and Vivanco 1990, 507, 535; *Velásquez Rodríguez* Case, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4 (1988); and the parallel *Godiñez Cruz* Case, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 5 (1989). For convenience, this article will refer only to the *Velásquez Rodríguez* Case.

66. *Velásquez Rodríguez,* supra, n. 65, para. 166–67.

67. Ibid., para. 166.

68. Ibid., para. 182.

69. *New York Times*, 14 February 1986.

70. Yearly figures compiled from the "List of Disappeared in Honduras," Human Rights Watch/Americas Watch 1994.

Persons, and in 1998 the U.S. State Department reported that there had been no reports of politically motivated disappearances in the previous year.[71]

It is not easy to isolate the role of the court's decision in this change because the 1988–89 period coincided with other political changes that affected Honduras. The regional peace process intensified after the 1987 Esquipulas meeting and the March 1988 cease-fire agreement between the Sandinistas and the Contras. When President George Bush took office in January 1989, he carried out a quiet but significant shift of U.S. policy toward Central America away from a military solution and toward a negotiated political solution. The end of the Cold War led to an expanded embrace of democracy both in the region and worldwide. In early 1990 a new government took office in Honduras; for the first time in fifty-seven years, power was peacefully transferred from one party to another, a transition often taken as an indicator of the consolidation of a new democracy.[72]

It is important to note, however, that the decline in disappearances in Honduras in 1988 preceded rather than followed many of the other developments. Thus the authoritative decision of a prestigious regional court must be seen as having contributed to a decline in the practice of disappearances. The decisions of the Inter-American Court of Human Rights in the Honduras cases appear to have been more influential domestically than the U.S. federal court decision in *Filártiga* was in Paraguay. This may be due to differences in the nature of the two kinds of cases. In the Honduran case, the court found the Honduran government itself responsible for the practice of disappearance, whereas in *Filártiga* an individual was found liable. The court's physical proximity (the Inter-American Court is located in Costa Rica) as well as the greater legitimacy of a truly regional court also may help to explain the different impacts of these two cases.

Case 3: Democracy in Uruguay and Guatemala

A discussion of the right to democracy further illustrates the interaction between strengthened legal norms and the application of political pressure to enforce those norms. Thomas Franck has argued that "democracy . . . is on the way to becoming a global entitlement, one that increasingly will be promoted and protected by collective international processes."[73]

In Latin America the strength of norms and legalization around the "right to democracy" has varied significantly over time. Prior to 1991, there was not a strong regional norm against military coups, which were considered part of the standard political repertoire in the region. Since then, prompt condemnation of any interruption of democracy in the region, backed by bilateral sanctions against the norm-violating state, is normal.

71. U.S. Department of State 1998.
72. Schulz and Sundloff Schulz 1994, 269.
73. Franck 1992, 46.

Comparing the international response to the coup in Uruguay in 1973 and the coup in Guatemala in 1993 illuminates the development and implementation of norms in favor of democracy in the region. The coup in Uruguay occurred well before the 1991 Santiago Declaration; the coup in Guatemala occurred after the Santiago Declaration, and that declaration was invoked to justify regional sanctions. Although the Santiago Declaration was not part of a treaty and did not have any of the dimensions of legalization, it nevertheless provided normative guidance for an effective regional response to the coup in Guatemala as well as to a similar coup in Peru in 1993.

In many ways the coups in Uruguay and Guatemala were similar. Both were "autogolpes": when confronted by an armed guerrilla movement, the elected president, with the support of the military, undermined the constitutional order, closed Congress, censored the press, and arrested members of the political opposition.

The strength of the commitment to democracy and to international intervention on behalf of democracy in Uruguay was far stronger than in Guatemala. Uruguayan diplomats had supported early efforts in the 1940s in both the OAS and the UN to make democracy a condition for membership and to empower the institutions and their member states to sanction military coups. Even so, there was no initial international or regional response to the Uruguayan coup; it took over five years for international actors to develop the kinds of pressure that was applied immediately to Guatemala. Even when international pressure on Uruguay increased after 1976, almost all criticisms were directed against the human rights practices of the Uruguayan military regime, not against the interruption of democracy per se. Uruguay's democratic tradition was far stronger than almost any country in the region, but in the absence of a strong norm against interruptions of democracy, other countries failed to protest the coup.

In contrast, the international response to a coup attempt in Guatemala was rapid, clear, and forceful. When President Serrano carried out a "self-coup" in May 1993 by closing Congress and the judiciary and censoring the press, international pressures contributed to domestic efforts in Guatemala to force Serrano from power. In accordance with the Santiago Declaration, the OAS called an emergency meeting of foreign ministers of the region, which in turn called on member states to implement sanctions against the government. One of the most powerful sanctions was the threat by the United States to withdraw Guatemala's trade benefits under the General System of Preferences. It was this threat that apparently led business leaders to join other groups in civil society to pressure for Serrano's removal.[74]

International pressures did not work alone in the case of Guatemala, but operated in synergy with the domestic legal processes and domestic opposition. Unexpectedly, the judges of the recently formed Guatemalan Constitutional Court declared that the coup decree was unconstitutional and faxed their decision all over the world before the military shut the court down.[75] The court's pronouncement reinforced international pressure against the coup because external actors could say that they were

74. *New York Times*, 3 June 1993.
75. Interview with Judge Jorge Mario García Laguardia, Mexico City, 6 June 1996.

basing their actions both on international law and on a Guatemalan court order that declared the government action illegal. Encouraged by the actions of the court and by international condemnation, other sectors in civil society opposed the coup. Journalists ignored the censorship orders, and people poured into the streets to demonstrate in favor of democracy. Eventually the Guatemalan military responded to the pressure and ousted Serrano and his vice president.

Once Serrano was ousted, the reassembled members of Congress, under pressure from organized citizens in the streets, elected Ramiro de Leon Carpio, the former attorney general for human rights, as the new president of Guatemala. To most observers of Latin American politics, this scenario was surprising because for decades Guatemalan regimes had been among the region's most severe violators of human rights and were impervious to international human rights pressures. The Guatemalan case illustrates some of ways in which a society can move along the continuum from less democracy to more democracy; it also shows the role that international forces, including international norms, can play in that process. By 1999 the country had sustained its still fragile democracy, the UN had brokered a successful agreement between the government and the guerrillas to end the civil war, and two truth commissions, one sponsored by the UN and one by the Catholic Church, had produced definitive reports on human rights violations in the past. In 1998 the murder of Bishop Juan Gerardi, founder and director of the Archdiocesan Human Rights Office and director of the Catholic Church's *Nunca Más* (Never Again) project, suggested that the structures of power and impunity behind the human rights violations had not been fully dismantled,[76] but human rights monitors agreed that human rights violations had declined significantly.[77]

How can we explain the very different international responses to these comparable civilian-led coups in Latin America? Between 1990 and 1993, strong normative developments occurred in the region around the "right to democracy." At the OAS General Assembly meeting in Santiago in 1991, all thirty-five member states declared "their firm political commitment to the promotion and protection of human rights and representative democracy." The General Assembly unanimously approved Resolution 1080, which instructs the secretary general to convoke an emergency meeting of OAS foreign ministers to decide on a collective reaction "in the case of any event giving rise to the sudden or irregular interruption of a democratic government." This is a clear example of a norm event, not legalization, since the Santiago Declaration was not a treaty and lacked all aspects of legalization. Resolution 1080 does not constitute delegation, because the resolution specifies only that the foreign ministers "look into the events collectively and adopt any decisions deemed appropriate, in accordance with the Charter and international law." It has nevertheless proved to be an effective means of coordinating and legitimating political sanctions by member states.

76. Interviews with Helen Mack, Leila Lima, and Daniel Saxon, Guatemala City, 22, 23 May 1998.

77. Amnesty International listed neither reports of torture nor of new disappearances in Guatemala in 1998, though it expressed alarm over the continued high level of extra-judicial executions. Amnesty International 1999.

In 1992 the members of the OAS took this commitment to democracy further and amended the OAS Charter to include a new article (Article 9) giving the General Assembly the power to suspend from membership by two-thirds vote any government that overthrows a democratic regime. This amendment entered into force in 1997, and by late 1999 twenty-three member states had ratified this "Protocol of Washington." This significantly enhanced the level of obligation for the democracy norm in the Americas, particularly for the ratifying states. In addition, in 1990 the secretary general of the OAS set up a Unit for the Promotion of Democracy to provide advisory services and direct assistance, such as election monitoring and technical support, to member states.

The Santiago Declaration and Resolution 1080 provided the procedural means for the rapid regional response to the military coups in Guatemala (as well as in Peru, Haiti, and Ecuador) and put the OAS in the forefront of efforts by international organizations to promote democracy. The Protocol of Washington increases the legal obligation of the democracy norm, though levels of precision and delegation are still low. The Protocol of Washington has not yet served as a basis for any institutional response because no coup attempts have occurred in Latin America since it entered into force. Actions under the Santiago Declaration and the Protocol of Washington in response to military coups in the region are examples of political enforcement of regional norms on democracy.

The new norm of democracy and the accompanying institutional procedures were clearly important in restoring democracy in Haiti, Peru, Ecuador, and Guatemala. Both the Santiago Declaration and the Protocol of Washington were more significant in confirming rather than creating an emerging regional normative consensus, but they offered normative justification and institutional mechanisms for the OAS and member states to respond forcefully and immediately to military coups in the region, helping to prevent nascent dictatorships from becoming established. Before these norms existed, countries in the region failed to respond when the country with the longest democratic tradition—Uruguay—experienced a coup in 1973. After they existed, the OAS responded quickly to help sustain democracy in Guatemala, where it had less robust roots.

Conclusions

These cases suggest a process in which international human rights norms—some embedded in law and some not—were implemented through a wide range of judicial, quasi-judicial, and political channels. The enforcement of international norms through multiple legal and political mechanisms successfully influenced human rights behavior in Latin America.

The factors identified in the introduction to this special issue—degrees and combinations of legalization along the dimensions of obligation, precision, and delegation—turned out to be only partially helpful in explaining compliance with human rights norms in the countries examined here. The prohibition against torture was more

legalized than norms about disappearances and democracy, but governments complied with all three norms, and torture is the issue-area in which change is occurring most slowly. Nor did some of the domestic factors we examined—severity of human rights violations and differences in domestic ratification of relevant treaties—explain the trends we saw. The countries differed significantly from each other with respect to all of these variables. Yet the most surprising findings were the convergences in expectations and in behavior among the countries.

International pressure was a crucial factor, but this pressure was exercised though diverse channels, and no single channel was more effective than another. The clearest variation in the amount of international pressure was not between countries or between issues but over time. Most of the kinds of pressures we describe did not occur before the 1973–76 period. By the 1980s, however, a "norms cascade"—a rapid shift toward new international human rights norms—impacted all three of the norms.[78] Before the norms cascade, the countries we considered violated human rights with impunity. Afterwards, each of the countries moved along a continuum toward greater compliance with international human rights norms.

Norms have a quality of "oughtness" that sets them apart from other kinds of rules. Norms involve standards of "appropriate" or "proper" behavior. We recognize norm-breaking behavior because it generates disapproval or stigma.[79] Many prohibitions are both norms and law. Almost all of the human rights norms in the region are embedded in both strong norms and international law, so it is difficult to distinguish what is driving behavior—norms or law. In the case of democracy we have a clear example of a norm at work (the Santiago Declaration) well before the law (the Protocol of Washington) went into effect. But even when they are embedded in law, not all human rights norms are equally legalized. Despite significant variation in legalization at both the regional level and the country level, behavior change occurred in all three issue-areas in all five countries.

Precise definitions and standard ways of showing the operation of a norms cascade do not yet exist.[80] Because most of the work on norms cascades has been done by legal theorists interested in domestic norms, there have not yet been efforts to model what an international norms cascade would look like. We suggest that norms cascades are collections of norm-affirming events. These events are discursive events—that is, they are verbal or written statements asserting the norm. Note that we are careful to define a norms cascade as something different from changes in actual behavior, because we are interested in exploring the effect of norms on behavioral change. Norm-affirming events can take various forms—they can be formal articulations of norms in declarations or treaties, they can be statements in speeches of

78. Sunstein 1997, 38.

79. See Elster 1989; and Sunstein 1997.

80. Sunstein, who invented the term, does not define it more precisely nor does he demonstrate its operation for purposes of research. Sunstein 1997. Picker presents a fascinating computer simulation model of norms cascades but also does not define or show how norms cascades operate in the real world. Picker 1997. Finnemore and Sikkink also do not show the operation of a norms cascade, although they suggest that where treaties exist on an issue, the entry into force of a treaty might be a useful proxy for the "tipping point" that begins a norms cascade. Finnemore and Sikkink 1998.

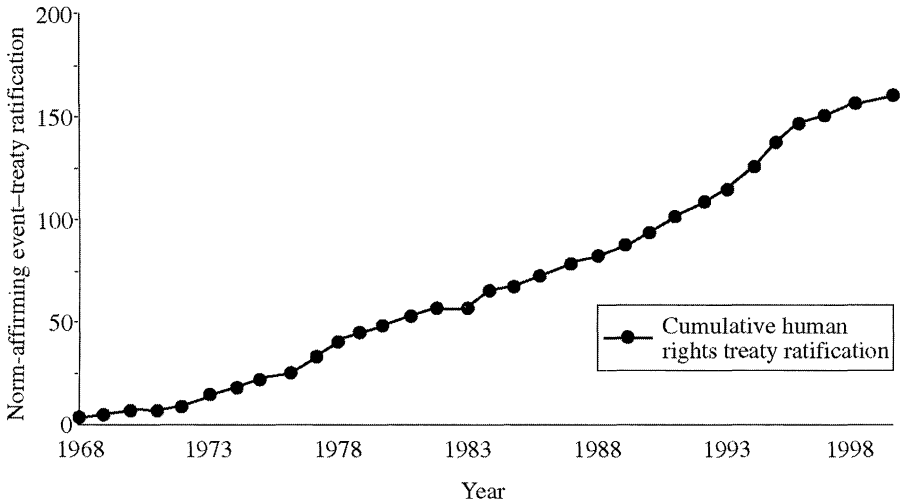

FIGURE 1. *Human rights norms cascade: OAS member states*

government officials, or they can be incorporated into domestic legislation that makes reference to international norms. Justifying norm breaking may also be a norm-affirming event, if in making the justification, the actor recognizes the existence of the norm and explains why it was not possible to abide by the norm in particular circumstances.[81]

While we support this broad definition of norm-affirming events, it would be impossible to document and record all such events for international human rights norms for all of Latin America over a thirty-year period. We map instead one piece of this broader set of norm events—formal government adhesion to an international or regional declaration or treaty affirming the norm.

International human rights norms often come clustered in declarations or treaties that bundle groups of norms with very different levels of legalization. Our regional norms cascade includes adherence to these general declarations and treaties as indicators of norm-affirming events. It also includes single-issue norm-affirming events, such as the ratification of issue-specific treaties. Figure 1 displays this illustrative mapping of cumulated major human rights norm-affirming events for the last three decades in Latin America. We think that this picture is a fair representation of the human rights norms cascade in the region. We believe that if we used a more expansive mapping of norm-affirming events, the number of events would be much greater but the pattern would be very similar. Figure 1 reveals that although the entire period from 1977 to the present could be considered a human rights norms cascade, the increase in norm-affirming events is particularly steep at two moments—from 1977 to 1981 and from 1990 to 1996.

81. Kratochwil and Ruggie 1986.

It is beyond the scope of this article to explain in detail what caused the norms cascade that occurred in Latin America during this period. Human rights norms first emerged in response to the dramatic violations during World War II, but in the Americas during the Cold War progress on human rights norms was stalled and subordinated to anti-communism and the logic of national security doctrines. The intense repression of the military dictatorships of the 1970s in Chile, Uruguay, and Argentina initiated a renewed concern with human rights throughout the region and contributed to the emergence of regional human rights networks, with active participation by exiles from repressive regimes. The efforts of these networks were reinforced by the human rights policies of the Carter administration. The resurgence of Cold War ideology under the Reagan administration temporarily dampened the norms cascade (but did not halt its progress), but with the end of the Cold War, U.S. support for newly authoritarian dictators waned. In the 1990s newly democratized regimes in Latin America, responding to both changed world conditions and strong domestic demand for democracy and an end to serious human rights abuses, embraced human rights norms. This response can be seen in the surge in norm-affirming events by Latin American governments.[82]

Whatever the cause, the evidence shows that once in motion the norms cascade developed a momentum of its own. The norms themselves, together with their accompanying domestic, regional, and international enforcement mechanisms intended to pressure countries to comply with them, caused regional political actors to transform their behavior. This change in behavior had the effect both of intensifying the norms cascade and transforming the political and human rights landscape across Latin America. We also suggest that decentralization of decision making helps explain variation in the impact that norms have on practices. Where decision making about norm implementation is more centralized, there is greater likelihood that norms cascades and norm enforcement mechanisms will have an impact. Because decisions about torture are more decentralized than decisions about disappearances or democracy, it is more difficult to change practice in this area.

Legalization is relevant to the outcomes here. Law has an important expressive function—it formally restates social values and norms. So even international human rights law that is not highly legalized may be important for expressing and communicating international norms.[83] Indeed, international law was essential for some, but not all, of the enforcement mechanisms we have discussed here. The extradition proceedings with respect to General Augusto Pinochet, for example, turned on arguments about what international human rights law requires. The British House of Lords concluded, consistent with our argument, that the issue-area of torture was more legalized and, as such, provided the only grounds upon which General Pinochet could be extradited to Spain to stand trial. What message will dictators elsewhere in the world take from the Pinochet case? Will they decide that they cannot torture because that realm is sufficiently legalized to put them at risk of extradition, but that

82. See Schoultz 1981; Forsythe 1989; Lauren 1998; Donnelly 1989; and Sikkink 1993.
83. Sunstein 1997, 36.

they can disappear, arbitrarily imprison, or carry out genocide, because the British House of Lords dismissed those accusations against Pinochet? We doubt it. But there are indications that current and past repressors of various sorts are limiting their international travel in fear that they, too, will face international arrest.[84]

In Latin America legalization increased the number of pathways (or "toolkits," as Judith Goldstein has argued) by multiplying the arenas within which human rights issues could be raised.[85] Legalization led to the creation of the Inter-American Court of Human Rights and to the UN Human Rights Committee's authority to hear individual complaints. But these legal channels were not the only, nor necessarily the most important, mechanisms through which human rights pressures were brought to bear. What was more important was how legal and political enforcement mechanisms reinforced each other as they underscored the increasing strength of the norm consensus.

The human rights norms also decreased the number of available political pathways. Military coups, for example, used to be acceptable behavior within the Latin American political game. This changed in the 1980s, when military coups were removed from the list of acceptable political action paths. Indeed, there have been no successful military coups in the region since 1982. The remaining puzzle is why repressive governments would respond at all to such international norms and pressures. Even at their most forceful, the sanctions imposed were not crippling. Military and economic aid was cut, as were certain trade credits or preferences, but trade and investment continued. Part of the answer is that the influence of international human rights law in Latin America occurred incrementally and was not intended by the target states. Authoritarian states agreed to certain international human rights norms, often because they hoped to reap the benefits of participation in an international and regional legal order and believed they could avoid any costs. Because international law is perceived as not having any enforcement mechanisms, states may have believed that they could selectively and instrumentally partake in it. But international human rights law was capable of imposing more costs than they originally anticipated because it was enforceable not only directly, but also indirectly through a wider range of political channels. These diverse channels eventually imposed more costs or required more compliance than state actors originally thought possible, but by the time this became apparent, states could not readily disentangle themselves from their legal obligations. Certainly, when Pinochet agreed to allow Chile to ratify the Convention Against Torture in 1988, he had no idea that the words of the convention would justify his arrest in the United Kingdom ten years later.

But the answer is more complex than just saying that these governments somehow made a mistake and were then caught in a web of their own making. We cannot understand the reactions of Latin American governments to international, regional, and domestic human rights norms and pressures without confronting the issue of

84. *New York Times*, 29 November 1998. The *International Herald Tribune*, 24 August 1999, mentions a "Pinochet Syndrome" humbling dictators of the world.

85. Goldstein et al., this issue.

legitimacy and esteem. Leaders of authoritarian governments sometimes responded to these pressures because as members of an international or regional society of states they had been "socialized" to care about what other states think of them.[86] Scholars have long understood that collective legitimation has become one of the major functions of international organizations.[87] Leaders increasingly seek or care about international legitimation because it can help to enhance or to undermine the domestic legitimacy and survival of their regime. But the reasons go even deeper than the need for domestic legitimacy. Human rights pressures operate not only at the pragmatic level by imposing material costs or jeopardizing domestic legitimacy but also at the social level by creating ostracized "out-groups" of norm breakers.

These social processes may have been especially effective in Latin America because they resonate with a tradition of commitment to international law and human rights norms. These norms are embedded in the belief systems of influential individuals and sectors of civil society and are articulated in positive law. Latin American dictators could not, as much as they tried, successfully sustain the story that human rights was simply "cultural imperialism." Because of this preexisting, well-established normative framework, international enforcement pressures resonated domestically as external pressures reinforced domestic values. As international human rights norms were increasingly articulated and clarified, individuals in Latin America demanded that their governments live up to these norms and welcomed external pressure to do so.

After re-democratization in the region, the effectiveness of past international human rights pressures reinforced the confidence of newly democratic governments in the efficacy of international legal institutions. Some of these governments have become enthusiastic supporters of efforts to further develop international and regional human rights law and institutions. The Argentine government, for example, helped draft and facilitated the final agreement on the UN Convention Against Torture in 1984. At the Vienna World Conference on Human Rights in 1993, when China and other Asian nations tried to organize nonaligned countries to fight against the notion of the universality of human rights, Latin American countries were conspicuously absent and instead joined forces with the Western countries of Europe and the United States.

Serious problems involving compliance with international human rights law continue to plague Latin America. But very diverse Latin American states have increasingly complied with prohibitions against torture, disappearance, and military coups over the last two decades. International norms and international law, implemented and enforced through the widest range of channels, are important parts of the explanation for these changes.

86. See Finnemore 1996; and Risse, Ropp, and Sikkink 1999.
87. Claude 1966.