THE PINOCHET EFFECT

TEN YEARS ON FROM LONDON 1998

Author: Sebastian Brett  Editor: Cath Collins

Report of a conference held at the Universidad Diego Portales, Santiago, Chile, 8-10 October 2008
PHOTO CREDITS

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The dramatic UK detention of former Chilean dictator Augusto Pinochet in a London clinic on 16 October 1998 made headlines around the world. Seeming to take almost everyone by surprise, the arrest was a new ‘JFK moment’ for a certain constituency, including the Western human rights community. Most Chileans, and many outsiders, remember perfectly where they were when they heard the news that the archetypal Latin American dictator, flat on his back after an operation in a plush West End clinic, had been served with an Interpol warrant and was wanted in Spain for crimes against humanity.

The 500-day legal, political and diplomatic saga which ensued brought a whole host of larger questions into view. Did the bold promises of human rights for all, enshrined in the UN Declaration of 1948, mean anything at all? If so, where and when would they finally be upheld? Is internal political violence a fit subject for past colonial powers to meddle in? But should it either be subject to unlimited political discretion? Are torture, murder and disappearance proper functions of a head of state? Is it possible, or wise, to seek justice at all costs, anywhere and at any time, for these kinds of atrocity? Can any answer ever be enough for relatives and survivors of state-sponsored violence?

A decade on from the Pinochet case in Spain, it seemed important to take stock of its causes and consequences as a step towards answering those bigger questions. What can the Chilean experience, and its sudden, dramatic ‘internationalisation’ tell us about the prospects for justice in the globalised era? Can the traumas and trials of one nation, played out on the international stage, be edifying for others? The Universidad Diego Portales in Santiago, Chile, long associated with innovative research and activity in the justice sphere, believed it both necessary and useful to mark this ten year anniversary with an event that looked back but also forward to see what could and should be learned from the case. The conference we convened in October 2008 gathered together national and international experts, practitioners and activists, to debate why the case happened at all and what happened next, in Chile and elsewhere. Over the course of an intense three days of discussion and activity we tried but inevitably failed to deal exhaustively with the question of what the ‘Pinochet effect’ meant then, and means today.

What follows is a report expertly prepared by longtime Chilean resident and human rights professional Sebastian Brett, participant in and rapporteur to the 2008
rather than a verbatim account or a panel-by-panel summary, the report develops the main themes and issues emerging from the conference. Drawing not only on the written and audiovisual material presented over the three days, but also on previous work published by conference participants, attendees and other key actors, it provides a rich and intriguing seam of ideas and debates. The issues discussed are far from abstract, and our conference participants do not address them from an ivory tower. Panelists in both the formal academic sessions and the afternoon film and forum sessions included many whose personal and professional engagement with the human costs of human atrocity has been lifelong. We hope that this report can serve to make their invaluable contributions available to a wider audience, joining an ongoing, and urgent, international conversation about the practice and price of justice in which the ‘Pinochet Effect’ will, we are sure, continue to make itself felt for a long time to come.

Our thanks to the Ford Foundation, the International Center for Transitional Justice, Amnesty International Chile Section and all the panelists, forum speakers, filmmakers, activists, participants and students who made the 2008 conference possible. Particular thanks go to the Ford Foundation for sponsoring the production of this report and a subsequent book length publication which we hope will cover these themes in more depth.

Cath Collins, School of Political Science
Javier Couso, School of Law

Universidad Diego Portales, Santiago, Chile
December 2008
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On October 8-10, 2008, the School of Political Science and the Law School of Diego Portales University held an international conference in Santiago, Chile on the tenth anniversary of the arrest in London of former dictator Augusto Pinochet. International law practitioners, experts on transitional justice, rights activists, academics, Chilean lawyers experienced in litigating human right cases and their colleagues from Argentina and Peru, met to analyse the long term impact of the case.

Moving over three days through national, regional and international levels of analysis, the questions posed to and by conference participants included: How did the London events affect the decades-long quest for justice by survivors of the dictatorship in Chile? Did Pinochet’s arrest in London contribute to the notable, if still incomplete, progress of Chilean courts in holding perpetrators of human rights violations accountable? Or was that progress due to national changes, under way for years but capturing little international attention? Has the ‘Pinochet effect’ – understood as specific, identifiable change brought about by the 1998 Pinochet arrest - been exaggerated by advocates of universal jurisdiction?

Advances in accountability in the Spanish-speaking world during the current decade have not only been a Chilean phenomenon. Argentina’s progress has in some ways been more dramatic, especially in the political and symbolic realm. Peru has put a former president in the dock for human rights violations for the first time in its history. Other countries as far flung as Uruguay, Mexico and Spain have been caught up in the same dynamic of account-settling involving past conflicts and authoritarian regimes. To what extent did Pinochet’s arrest and near-extradition to Spain set all these balls rolling?

The conference also addressed more general questions about the place of the Pinochet case in the panorama of universal justice institutions and doctrine, which currently face important challenges. Since the establishment of the International Criminal Court, has universal jurisdiction outlived its usefulness? Is it beating a retreat? What can be done to strengthen the co-ordination between international and domestic accountability efforts in countries with significant limits to domestic justice capability?

The conference combined six formal panels devoted to these issues, with three speaker presentations plus Q&A in each, with afternoon sessions using film and open forum discussions to deepen the debate. Day 1 was devoted to the Pinochet case in Spain and London, and its impact in Chile. Day 2 focused on transitional justice in the Chilean courts, and Day 3 on regional and international dimensions of transitional justice. The full conference programme, together with a list of panel speakers and other participants, is available in the appendices of this report.
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<td>11 March 1990</td>
<td>General Pinochet steps down as head of state and Patricio Aylwin is sworn in as Chile's first elected president in 20 years</td>
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<td>11 March 1994</td>
<td>Eduardo Frei Ruiz-Tagle succeeds Aylwin as president</td>
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<td>28 March 1996</td>
<td>Spanish prosecutor Carlos Castresana and the Union of Progressive Spanish Prosecutors (UPF) file a complaint against former Argentine military rulers for Spanish victims of the Argentine dictatorship</td>
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<td>4 July 1996</td>
<td>Spanish lawyer Joan Garcés and the UPF file an official complaint in Spain on behalf of relatives of more than 3,000 Pinochet victims, of both Chilean and Spanish nationality</td>
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<td>12 January 1998</td>
<td>Chilean Appeals Court Judge Juan Guzmán begins investigating private accusations filed against Pinochet by relatives of victims of the so-called ‘Caravan of Death’ killings and by Gladys Marín, secretary-general of the Chilean Communist Party</td>
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<td>11 March 1998</td>
<td>Pinochet hands over his army command to Gen. Ricardo Izurieta and is sworn in as an ‘honorary lifetime Senator’</td>
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<td>September 1998</td>
<td>A landmark case verdict in Chile (<em>Poblete-Córdoba</em>) treats disappearance as kidnap and refuses to apply amnesty</td>
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<td>9 October, 1998</td>
<td>Pinochet undergoes back surgery during a visit to London</td>
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<td>16 October 1998</td>
<td>Acting on a request by Spanish judge Baltazar Garzón, London Metropolitan police arrest Pinochet while he is recovering in a private clinic. A second arrest warrant charges him with crimes against humanity, including torture</td>
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<td>28 October 1998</td>
<td>The British High Court rules that as a former head of state, Pinochet has immunity from criminal prosecution. He remains under house arrest pending an appeal to the House of Lords</td>
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<td>11 November 1998</td>
<td>Switzerland also submits a formal extradition request, joined later by France and Belgium</td>
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<td>25 November 1998</td>
<td>The Judicial Committee of the House of Lords, Britain’s highest court, rules by three votes to two that Pinochet is not entitled to claim state immunity, reversing the High Court decision</td>
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<td>17 December 1998</td>
<td>The House of Lords decides to revisit the issue of Pinochet’s immunity due to claims that Lord Hoffman, who voted against Pinochet in the November 25 decision, was linked to Amnesty International, an intervenor in the case</td>
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<td>24 March 1999</td>
<td>After a two-week hearing, a second House of Lords panel (of seven judges) rejects Pinochet’s immunity by six to one. However, it also rules that Pinochet can only be extradited for crimes of torture and conspiracy to torture committed after 29 September 1988, when Britain enacted Section 134 of the Criminal Justice Act, making torture an extraterritorial offence</td>
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<td>15 April 1999</td>
<td>British Home Secretary Jack Straw issues a second ‘authority to proceed’ with the application for Pinochet’s extradition to Spain</td>
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<td>27 September 1999</td>
<td>Formal extradition proceedings begin in London, presided over by British magistrate Ronald Bartle</td>
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<td>Magistrate Bartle upholds Spain’s claim for Pinochet’s extradition on 35 counts of torture and for conspiracy to torture</td>
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<td>14 October 1999</td>
<td>Chilean President Eduardo Frei asks Jack Straw to return Pinochet to Chile on humanitarian grounds because of his age and alleged ill-health</td>
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<td>5 January 2000</td>
<td>Pinochet undergoes an official medical examination ordered by Jack Straw in response to the Chilean government request</td>
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<td>11 January 2000</td>
<td>After reviewing the results of the medical tests, Straw announces that he is “minded” to end extradition proceedings against Pinochet. A legal battle begins to oblige Straw to turn over the results of the medical tests to the four countries making the extradition requests</td>
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<td>2 March 2000</td>
<td>Jack Straw announces his final decision that “no purpose would be served” by continuing extradition proceedings against Pinochet due to his health problems. Pinochet is freed from house arrest and departs on a flight to Chile that day</td>
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<tr>
<td>11 March 2000</td>
<td>Ricardo Lagos succeeds Eduardo Frei Ruiz-Tagle as president of Chile</td>
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I. What “Pinochet effect”?  
Pinochet’s 1998 London arrest was described by many as a landmark in the development of international justice. Recalling the debate in the judicial committee room in the UK House of Lords, Reed Brody of Human Rights Watch described how “[h]uman rights law came of age in that room...The arrest of Pinochet... inspired others to bring their tormentors to justice, particularly in Latin America, where victims challenged the transitional arrangements of the 1980s and 1990s that allowed perpetrators of atrocities to go unpunished and, often, to remain in power.” ¹ Brody called it the ‘Pinochet precedent’.

Chilean human rights lawyer Roberto Garretón accordingly suggested early in the conference that the impact of Pinochet’s experience in persuading other tyrants to abandon or suspend their international travel plans may have been the first concrete manifestation of the ‘Pinochet effect’. Garretón also argued for the equal significance of the ‘Garzón effect,’ understood as the good example set to judges in other parts of the globe by Baltazar Garzón, the Spanish judge whose investigation sparked Pinochet’s arrest. ²

The Spanish case is a clear example of transnational justice, which can be defined as “legal actions brought in the national courts of one country against civil or criminal defendants based elsewhere.” ³ It’s often claimed that transnational justice activity can substitute for domestic justice in a country where grave human rights abuses have committed but trials of those responsible have hitherto been impossible. Alternatively it can, by naming and shaming, stimulate the courts in that country to take action they have hitherto failed to take. A prosecution initiated in a third country may be lawful because the crimes involve nationals of that country, or because its domestic laws allow jurisdiction over certain grave crimes wherever they are committed, and whatever the nationality of the victims (what is known as “universal jurisdiction”). This was the case in Spain, and in other countries that have initiated transnational prosecutions,
like Belgium, France and Germany. The Pinochet case began with a relatively small number of Spanish victims but was almost immediately extended to cover thousands of Chilean victims of crimes such as genocide, terrorism and torture allegedly committed in Chile. For this reason it is often cited as a test case of universal jurisdiction.

Who were the actors in Spain, and was there a co-ordinated international strategy?

What was the source of the legal action in Spain and the relationship that developed between the major players in Spain, the United Kingdom, and Chile? According to one school of thought, transnational prosecutions are often initiated by domestic accountability actors frustrated by roadblocks in their own courts or apparently insuperable political obstacles to successful prosecutions. Another perspective considers transnational judicial actions as a product of “transnational accountability networks”, a sort of globalized justice collaboration involving activists from various countries sharing common goals.4

Nonetheless, none of the Chilean-based conference participants suggested that actors resident in Chile initiated the prosecution.5 It had been a Spanish organization, the Progressive Association of Prosecutors (Unión Progresista de Fiscales), which had filed the original complaint in March 1996. Moreover the initial action - for crimes committed in Argentina, not Chile - had used a procedure known in Spain as ‘popular action’. This allows certain ‘reputable’ groups, such as NGOs, to bring a case in the public interest, even when the group itself has no direct connection to the alleged crime or its victims. Even when a complaint for Chile was added in July to the existing, Argentina-focused, investigation, this was done not by a Chile-based group nor even by a Chilean national, but by a Madrid-based organization (the Salvador Allende Foundation, under the direction of Spanish lawyer Joan Garcés, a former aide to deposed Chilean president Salvador Allende). In terms of justice and impunity, the situation in Chile was certainly frustrating enough to justify a transnational action by residents. In 1998 Pinochet, whose government had been responsible for more than 3,000 deaths and disappearances, seemed untouchable as he handed over his army command and

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4 Margaret Keck and Kathryn Sikkink, Activists Beyond Borders (Cornell University Press, 1998)

5 And with scheduled speaker Carlos Castresana, responsible for the initial Spanish complaint, unfortunately called away by last minute UN business we were unable to hear directly from a Europe-based actor on this point.
took his unelected lifetime seat in the Senate. Yet it is surely significant that Chilean Communist Party president Gladys Marín and a group of victims’ relatives tabled the first actions against Pinochet in Chilean courts in January 1998, eight months before his fateful trip to London.

Although the Chilean press mentioned the Spanish investigation from the outset, Cath Collins’ research suggests that most human rights activists in Chile did not give the case much chance of success and did not even follow its progress closely. Spain, after all, does not permit trials in absentia and at that stage the idea that Pinochet might ever sit in a Spanish courtroom seemed frankly risible. Journalist Patricia Verdugo was the only person in the human rights world Collins could trace in Chile who had advance knowledge of the Spanish proceedings. “Other interviewees, and all the major human rights organizations reported that they had ‘read about it in the papers’, having had little further occasion to act on it until requests for information and documentation came flooding in, in the wake of the unexpected success of the October 1998 arrest warrant issued against Pinochet.”6 In the Chilean courts, as Garretón noted in his presentation, it was business as usual. They were as unmoved by the Spanish investigation as they had been by the complaints against Pinochet recently filed by his victims in Chile.

Yet Chilean actors did co-operate, testify and otherwise contribute to the investigation before October 1998. The Spanish consulate in Santiago received visits of support from individual relatives, the Association of Relatives of the Disappeared (AFDD), the Association of Relatives of Victims of Political Execution, and Chilean human rights organisation CODEPU. The court in Madrid meanwhile received personal depositions or documents from

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What are the effects of the effort to try Pinochet, even though in the end he died without having been sentenced? Firstly, reaffirming the principle that in a democratic society no-one is above the law. Secondly, and very important, reaffirming that during the dictatorship serious and massive human rights violations were committed in the name of the ‘national interest’; and [third] that social peace is produced not by impunity but by doing justice.

Elizabeth Lira
María Maluenda (a Chilean congresswoman and mother of a torture and execution victim), psychologist Paz Rojas, lawyer Roberto Garretón, congresswoman Isabel Allende (Salvador Allende’s daughter), the late Sola Sierra (then-president of AFDD), and others. Barely four months before she filed the complaint in the Chilean courts, Communist Party leader Gladys Marín, whose husband was among Pinochet’s victims, visited the consulate to make herself a party to the Spanish investigation.7

Chilean public opinion was not completely ignorant of what was happening in Spain. The leftist newspaper Punto Final covered the opening of the investigation, and the establishment daily El Mercurio reported on it for the first time in December 1996. But El Mercurio’s report focused at length on objections to the investigation raised by the Spanish Audiencia Nacional’s chief prosecutor (fiscal jefe), Eduardo Fungairiño, reinforcing the sense that the court case was doomed to early failure. The Chilean government issued a diplomatic passport to former president Patricio Aylwin when he visited Spain, to shield him from being called to testify. It considered the investigation at most a tiresome irritant in bilateral relations.

As noted, Chilean courts had admitted complaints against Pinochet for atrocities eight months before his arrest in London, and would admit hundreds more while he was under house arrest in London. The Chilean government mentioned these proceedings as evidence that justice was already under way in Chile and Pinochet should be therefore repatriated instead of extradited. Cath Collins reports that “some of the Spanish case lawyers, convinced that their case had better prospects of success, responded by pressing lawyers in Chile to withdraw their domestic complaints,” provoking an acrimonious dispute. 8

When the House of Lords ruled in its second decision that Pinochet could only be extradited to Spain for cases of torture committed in the final year of the dictator’s 17-year rule, activists in Chile received urgent requests from lawyers in England and Spain to find and document such cases to bolster the accusation. To some, such demands seemed bizarre given that the Lords’ decision would exclude Pinochet’s most egregious crimes, the disappearances and executions committed between 1973 and 1978, from prosecution in Spain. Those crimes would probably remain unpunished forever if he was extradited.

What did the UK ‘Pinochet precedent’ actually consist of?

If the London process excluded Pinochet’s most serious crimes, which would presumably have been central to any possible trial in Chile, was the Pinochet case in its London dimension really an example of the successful use of universal jurisdiction? Why is it considered a milestone?

Sebastian Brett suggested that the November 25, 1998 ruling of the Judicial Committee of the UK House of Lords had been the high point of the London hearings. Turning down a *habeas corpus* appeal by Pinochet’s lawyers, three of the panel of five judges considered that his status as a former head of state did not afford Pinochet immunity for grave human rights crimes like torture and hostage taking. This decision overturned an earlier ruling that all actions carried out by heads of state were exempted from prosecution or extradition under the UK’s 1978 State Immunity Act. Lord Nicholls summed up the court’s new finding: “... International law has made plain that certain types of conduct, including torture and hostage taking, are not acceptable conduct on the part of anyone. This applies as much to heads of state, or even more so, as it does to everyone else; the contrary conclusion would make a mockery of international law.”

The assertion of this principle gave a huge boost to the movement for international justice. But the matter did not end there. In another of the case’s historic moments, the Law Lords invalidated one of their own rulings - for the first time in over a century - accepting a complaint that indirect links between one of the judges and Amnesty International (a party in the case) affected the apparent impartiality of the judgment. The eventual re-run of the appeal hearing – known as ‘Pinochet 2’ - is, Brett suggested key in appreciating both the achievements and the limitations of the London events. The second panel (of seven judges) again rejected the defence of sovereign immunity. The majority had increased to six to one, despite the fact that the Chilean government had now officially joined the case, arguing unsuccessfully alongside Pinochet’s lawyers for his exemption.

9 Judgments – *Regina v. Bartle and the Commissioner of Police for the Metropolis and others* EX Parte Pinochet (on appeal from a Divisional Court of the Queen’s Bench Division) *Regina v. Evans and another and the Commissioner of Police for the Metropolis and others* EX Parte Pinochet (on appeal from a Divisional Court of the Queen’s Bench Division) http://www.derechos.net/doc/hl.html
On the plus side, the highest possible level court, actively ‘purified’ of possible bias, agreed by an overwhelming majority that British law provided no sovereign immunity defence against charges of grave human rights violations. This was indeed a defining moment for global justice. But this verdict did not necessarily imply that other heads of state could be prosecuted in a third country for grave human rights violations. In a sense, argued José Zalaquett, Pinochet 2 cannot be considered or cited as a defence of universal jurisdiction at all. This because the legal issues addressed were not principles of universal jurisdiction but issues of domestic law, in particular the “double criminality” rule of the British extradition statute (which requires a crime to be spelt out in the criminal code of both countries before it can count as an extraditable offence).

Following this logic, in Pinochet 2 the Lords voted to limit drastically the number of charges on which the former dictator could be extradited. They excluded extra-territorial murder (extrajudicial executions in Chile), terrorism, and hostage-taking. The only crimes left on the charge sheet were torture and conspiracy to torture. Torture is a crime for which the United Nations Convention against Torture specifically contemplates extra-territorial jurisdiction. But the Lords applied a strict reading of double criminality, whereby only torture committed after December 8, 1988 - the date on which the Convention had entered into force in both Spain and the United Kingdom - could be considered extraditable. In other words, Pinochet could not be extradited to Spain at all for genocide, enforced disappearances, or the targeted killings of his political opponents. And he could only be extradited for torture where this had been committed after December 8, 1988: the date on which torture in another country became a crime in Britain. This meant that in effect he would not be tried for crimes committed during the 1970s in Chile’s most notorious torture centres such as Villa Grimaldi, Calle Londres, or José Domingo Cañas.

This was hardly a resounding defence of universal jurisdiction. As Human Rights Watch noted at the time, “unlike the November 1998 decision of the House of Lords whose unequivocal defence of international accountability had electrified world opinion, the second decision was confusing and hard to interpret, causing perplexity in both the pro- and anti-Pinochet camps, both of which claimed it as a victory.” 10 To extradite Pinochet to Spain, lawyers and human rights groups had to search for previously undocumented cases of torture from the final year of the dictatorship, after Pinochet

had lost an October 1988 plebiscite and was preparing to hand over government. With the information provided, Garzón was able to add more than 50 cases to the indictment. But, as Zalaquett pointed out, by 1988 Pinochet no longer exercised day to day control over the activities of the secret police, and it was therefore harder to link him directly to police abuses. Moreover, the extradition hearings filtered out from future consideration in Spain Pinochet’s gravest crimes from the 1970s, including all of those for which he was later indicted after he was sent back to Chile.

This is not to diminish the enormous surprise effect of Pinochet’s arrest, and the significant advances in global accountability that resulted from the London process. But it is also clear that the existence of an accountability process in the home country (with its own dynamic, however uncertain) also generated tensions and conflicting priorities with the process underway in the intervening countries. Could the process against Pinochet in Chile have led to his arrest and indictment without the London events? Those events had such a huge impact in Chile that it is probably futile to speculate what would have happened to the domestic case against Pinochet if he had never left Chilean shores.
Most Chileans can probably still remember what they were doing on October 16, 1998. It was to prove a day as momentous as the military coup of September 11, 1973 or the plebiscite of October 5, 1988 that brought the general’s rule to an end. October 16, 1998 was to mark Pinochet’s real loss of power. In some ways it could be said to herald the end of Chile’s long transition. But few Chileans suspected such an outcome at the time. Simple disbelief was the dominant emotion, journalist Patricia Politzer recalled. The senator was bound to be quickly released and all would return to normal. The media’s slow reaction, she continued, reflected his aura of invulnerability. Everyone was incredulous, including government officials who rashly thought that the diplomatic passport issued to Pinochet would solve the problem. “[P]olitical leaders were unable to comprehend what was happening… they joined the Pinochetista hysteria, invoking discredited and anachronistic ‘reasons of state’ and outdated notions of patriotism and national sovereignty,” recalled Roberto Garretón. An Air Force plane was promptly dispatched to an RAF base in England to ferry the supposedly ailing general back to Chile.

But 503 days would pass before he returned, and it was to a changed country. Conference panelists agreed about the depth of the transformation that took place in Chile. “What happened changed the country’s psychology, mood, and way of feeling,” Politzer observed. As Jorge Correa Sutil, lawyer and former government official, put it: “It was the mirror in which we saw ourselves, the image we had of ourselves, that changed.”

### Political Changes

Pinochet’s arrest brought to the surface Chile’s longstanding division between his hard-line detractors and supporters, as police both in London and Santiago solidly separated rival demonstrators. But according to Politzer, the arrest not only opened old sores that Chileans thought had healed. It also blurred the division between government and opposition, generating new political divisions on both left and right
which until then had been only latent. While the Pinochetista right railed against Spanish colonialism, President Eduardo Frei stole its thunder by appointing a team of Socialist Party ministers (themselves former victims of torture or exile) to co-ordinate the dictator’s defence against Spain’s judicial pretensions. Other Socialist Party figures meanwhile travelled to England to join the anti-Pinochet pickets. While some right-wing politicians led pro-Pinochet demonstrations or boycotted refuse collection from the Spanish and British embassies in Santiago, others began to distance themselves from their former idol, bringing accusations of treason and disloyalty.

Above all, Politzer observed, the events brought the dormant issue of human rights back into the headlines. Many victims of the dictatorship who had suffered in silence now seized the opportunity to testify and take their cases to the courts. She recalled how Frei recognised, in his annual address to the nation in 1999, that “the insufficiencies of our democracy have become patent,” and described unresolved disappearances as an “open wound in the national soul.” According to Roberto Garretón, “the supposed ‘reconciliation’ turned out to be non-existent except among politicians, and the passage of time had not erased memories of the horrors.”

This was the political climate in which ‘post-transitional’ justice took root in Chile. If ‘transitional justice’ concerns itself with what can be done about truth, justice and reconciliation in the immediate aftermath of regime change, what happened in Chile after 1998 clearly belongs to a new phase. The unforeseen re-irruption of the justice question, years after its supposedly definitive resolution by a combination of truth-telling and amnesty, showed up the fault lines in Chile’s supposedly model pacted transition of 1990. It may be, after all, that a full accounting for human rights legacies cannot be postponed indefinitely.

This shouldn’t be just the relatives’ responsibility any more. It’s also the responsibility of each of the governments we’ve had… the first one said ‘justice, to the extent possible’, and even back then there were […] calls for ‘justice with clemency’ – which means we investigate but the criminals go free or get house arrest, they’re not to go to prison.

Viviana Díaz, AFDD
Unfinished tasks of the transition

As Cristián Correa explained in his presentation, Chile in 1998 still had a substantial deficit on human rights to make up for. On the credit side was the truth-telling work done by the 1991 Rettig Commission and its successor the Corporación Nacional de Reparación y Reconciliación (CNRR, 1992-1996), in what Michael Ignatieff has called ‘limiting the scope of what could be acceptably denied.’ Even in establishing the truth, however, the success of these government bodies had its limits. The Rettig Commission did not deal with the issue of torture in depth or provide reparations for torture victims, and, as Correa pointed out, the CNRR’s report went largely unnoticed. But the deficit on justice and accountability, as expressed in then-President Patricio Aylwin’s often cited phrase “justice, to the extent possible” was a far more serious flaw, and one that reflected the essence of Chile’s controlled and cautious transition.

As Garretón reminded the conference, judicial advances in the first eight years of democracy could easily be counted on the fingers of one hand. Former secret police chief Manuel Contreras and his deputy Pedro Espinoza were jailed in 1995, but for only seven and six years, respectively. The sentences were for the 1976 car bomb murder in Washington DC of exiled former government minister Orlando Letelier and his US aide, Ronnie Moffit. The murder plot was therefore an act of international terrorism, both politically and legally exceptional, and expressly excluded from the regime’s 1978 self-amnesty law at US insistence. Otherwise it would probably never have gone to court at all, at least during this early period. Other sentences around this time included 600 days for a policeman who had deliberately set fire to two student protesters, one of whom died. Other police officers were convicted in 1994 for the 1985 kidnapping and murder of three Communist Party militants, a crime of particular brutality. These hardly amounted to a substantial breakthrough: other than the Letelier case, all were relatively isolated crimes committed during the 1980s. The vast majority of crimes, committed during the most intense 1973-1978 period of repression of the political left, went unpunished because the courts were still rigidly applying the amnesty law decreed by Pinochet in 1978. This law, granting effective impunity for all ‘politically motivated crimes’ committed between September 1973 and March 1978, had been left intact by the Aylwin government, despite initial campaign promises to repeal or

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annul it. Early efforts to limit or contest the reach of the law by appeal to international standards were unsuccessful: in 1994 the Supreme Court overturned two dissident decisions by Santiago Appeals Court judge Humberto Nogueira, the first to give international human rights law priority over domestic legislation (see below). Another limiting factor on justice was that military courts continued to claim jurisdiction over human rights cases, and were usually successful in wresting cases away from civilian judges.

By 1999 so little had changed that Roberto Garretón, asked by Human Rights Watch to present an affidavit in the Pinochet case, remained convinced that as things stood, Pinochet could not be tried in Chile. Referring to the report originally submitted to the UK Law Lords, he told the conference: “in reality the obstacles preventing the Chilean courts from judging him were political rather than legal. That was the thrust of my report.” Garretón was proved right, in that the domestic post-transitional justice advances which did eventually materialise were achieved without any legislative change or reform to either the amnesty law or the military justice system.

**Government truth-telling initiatives: the Round Table and the Valech Commission**

As Cristián Correa noted, after the ripples generated by the Rettig Commission had died away in the early 1990s, the government discreetly renewed the mandate of its successor the CNRR. This finally evolved into a Human Rights Programme attached to the Interior Ministry, tasked with assisting relatives with compensation claims and undertaking legal and administrative activities to try and locate the remaining disappeared. At the same time the government tried to devise legal formulas to expedite outstanding judicial investigations (for example by offering sentence reduction, or even immunity, for information leading to clarification of the crimes). The left wing of the governing centre-left coalition however vetoed each of these attempts, denouncing them as thinly veiled ‘full stop’ measures.

The so-called ‘Dialogue Round Table’ set up by Defence Minister Edmundo Pérez-Yoma in August 1999, was the most interesting and controversial of the government’s reactions to Pinochet’s arrest in London. Bringing together representatives of the military, human rights lawyers and religious leaders, the Round Table eventually came
up with a formula to find information on the remaining disappeared which involved offering anonymity to informants. Opinion at the conference was divided over the Round Table’s impact on justice and accountability. Panelists including Jorge Correa Sutil, Cristián Correa, Patricia Politzer, and Felipe Agüero stressed its positive results, while others questioned its sincerity and detected hidden political motives including the offer of ‘more truth’ as a substitute for justice. The initiative was also heavily questioned at the time, with the AFDD denouncing it as a public relations exercise and refusing to take part. Many human rights lawyers agreed with them, signing an open letter in June 2000 claiming the true motive was to persuade the Chilean courts to abandon efforts to proceed with domestic charges against Pinochet. In her intervention to the 2008 conference, current AFDD vice-president Viviana Díaz, made it clear that the group’s opinion of the Mesa has not changed.

No one denied three points in its favour, however. Firstly, this was the first official dialogue ever held between human rights lawyers and top military brass (a continental, not just a Chilean first). Secondly, it led to a landmark public statement by the armed forces acknowledging responsibility for grave violations of human rights. In January 2001, the armed forces released information suggesting that 150 bodies of disappeared prisoners had been thrown into the sea. (However, as the Human Rights Programme’s current director, Rosemarie Bornand, pointed out at the conference, much of this information proved to be flawed and inaccurate). Third, and most importantly, as a result of the information-gathering phase of the Round Table, in mid 2001 the Supreme Court appointed, at government request, 60 special judges to strengthen investigations into human rights cases. Nine received full time assignments to human rights cases, while the remainder were to give priority to this section of their caseload. Bornand pointed out that by late 2001, the Human Rights Programme had made itself a party to 162 cases under investigation by these judges, as well as to the accumulated cases against Pinochet already being processed by Judge Juan Guzmán. These vital building blocks of post-transitional justice are largely attributable to the Round Table, itself a by-product of the government effort to get Pinochet back to Chile.

The second major governmental human rights initiative of the ‘post-Pinochet case’ era was the National Commission on Political Imprisonment and Torture (known as the ‘Valech Commission’), announced in August 2003 and reporting in 2004.
The commission interviewed more than 36,000 victims, establishing that more than 28,000 of them had suffered torture. It identified more than 1,000 places of detention, confirming what human rights organisations had always maintained, that the practice was systematic throughout the dictatorship. “The margin of deniability was reduced still further,” said Cristián Correa, former legal secretary to the Commission. He reminded the conference that then Army Commander General Juan Emilio Cheyre had felt forced to anticipate publication of the report, acknowledging on November 5, 2004 the army’s institutional involvement in “punishable and morally unacceptable acts in the past”.12

There are good reasons to believe that Pinochet’s arrest in London indirectly influenced the decision to form such a commission to report on torture. Several conference participants thought that the fact that the House of Lords had narrowed the charges in the Spanish extradition request down to torture was an important factor, as it had made torture for the first time undeniably a judicial issue. And as Correa noted, while Pinochet was detained in London, torture survivors came forward in growing numbers in Chile to denounce their cases to the courts, give media interviews or seek help. It seemed that a taboo had finally been broken.

**Impact on the Armed Forces**

How did the armed forces absorb the shock of Pinochet’s detention? How did they adapt to cases being brought in Chile against Pinochet and scores of now-retired fellow officers, who for years had been simply above the law?

Apart from being self-appointed head of state for 17 years, Pinochet commanded the Chilean army, alegendarily monolithic institution, for a quarter of a century. When he finally handed the baton to Gen. Ricardo Izurieta in early 1998, Pinochet enjoyed its unquestioning loyalty. How come Chilean democracy faced no serious threat when he was arrested in London? Journalist and author Patricia Politzer, and Felipe Agüero, an expert on civil-military relations, addressed these fascinating questions in their presentations.

Izurieta had a challenging task, Politzer argued, given that the crisis broke only seven months after he assumed his command. The new commander had plans to bring the

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12 As reported in the New York Times November 28, 2004, which however points out that Cheyre’s gesture “won lukewarm support at best from the armed forces and among retired army officers.”
army into the 21st century, which inevitably meant distancing it from the Pinochet era. Instead he was suddenly saddled with the divisive Pinochet legacy. Politzer praised Izurieta’s measured approach and his refusal to be browbeaten by Pinochet loyalists. Instead of rushing to London to declare the army’s support, Izurieta waited six months before visiting Pinochet. When he did so, he wore a suit rather than uniform, to indicate that it was a private occasion.

However, it was Juan Emilio Cheyre, Izurieta’s successor, who left a greater stamp on the new-style Chilean army. Politzer suggested that an unspoken deal was involved: President Frei had kept his promise to keep Pinochet out of the Spanish courts, and the army was thereby obliged to respond by complying with the courts in Chile. Cheyre stuck to that commitment throughout his command, during which Pinochet faced more than 300 lawsuits, arrest, and indictment for human rights violations, tax evasion and forgery. At the same time, Cheyre stressed the army’s subjection to the rule of law and its moral duty to respect human rights, and even controversially distanced the institution from the military government. This was accompanied by numerous symbolic gestures including the replacement of the walls surrounding military garrisons with see-through railings, the removal of portraits of Pinochet from the walls of the main Military School, etc.

Despite these symbolic changes, Politzer insists that the army did not cease to idolise Pinochet. Even the Riggs Bank scandal of 2004 – the discovery of millions of dollars salted away by Pinochet in foreign bank accounts under assumed names - did not provoke outright criticism, although it shook the loyalty of some. Under Cheyre and his successor Oscar Izurieta, the army with all its changes remains Pinochetista, according to Politzer, never having fully accepted the need to draw a dividing line between ‘Pinochet’s army’ and the army in democracy.

Felipe Agüero analysed the same changes, borrowing from eminent sociologist Guillermo O’Donnell the notion of the army as a complex organisation that must adjust to an uncertain environment. Prior to London 1998, Pinochet had tried to minimise uncertainty for the armed forces during political transition: an amnesty law to protect members, a secure source of finance; maintenance of a network of loyal political and business supporters, friendly judges and legal and constitutional protection. “I’ve seen how they destroyed the army in Germany and Spain. That won’t happen here,” the former dictator had vowed.
That certainty ended with his London arrest, which speeded up a process of redefinition that had already started when Pinochet handed over command. The army repositioned itself, forging new political ties based on its constitutional loyalty to the current president (no longer automatically privileging the political right). It distanced itself from the Pinochet legacy, adopted a strictly professional role and began to emphasise civic and peacekeeping activities. But Agüero agreed with Politzer that there was no real break with Pinochet. “In Chile it would be unthinkable for the portrait of the commander-in-chief to be ceremonially removed from Military Academy as a gesture of repudiation” he insisted. Although Cheyre ordered a ceremony to rehabilitate the memory of Gen. Carlos Prats, Pinochet’s predecessor as commander in chief of the army, the institution still has not publicly recognized Pinochet’s responsibility for Prats’ assassination in 1974.

Impact on the judiciary

Advocates of universal jurisdiction often argue that it furthers accountability by offering an alternative forum to hold former heads of state accountable when chances of prosecution are blocked in their home country, and thereby spurs domestic courts into doing what they had failed to do before. Chile is often cited as a good example of this beneficial effect. But is it true that the London extradition hearings kick-started human rights prosecutions in Chile? Were changes in judicial performance due wholly, in part, or not at all, to the ‘Garzón effect’? Would the dramatic upsurge in prosecutions in the last decade in Chile have happened anyway?

Lisa Hilbink, who has written extensively on this subject, interviewed 14 members of the Supreme Court and the Santiago Appeals Court in 2001, asking them what if anything had changed about the judiciary over the previous five years. Eight of the 14 judges thought that Pinochet’s London arrest had been an important influence on judicial behavior. Almost all thought the intervention of the Spanish court was wrong and unnecessary, but none denied its influence. Conservative judges complained that foreign powers had ‘obliged’ the Supreme Court to change its criteria, while more progressive colleagues believed that Pinochet’s loss of sovereign immunity before the courts in London had loosened political restraints on Chilean courts, nudging them in the direction judges wanted to go anyway.

Jorge Correa Sutil’s conversations with Supreme Court and appeals court judges during the London events bear out Hilbink’s findings: “I’d never seen so many of them so upset,” Correa Sutil commented. “To have a foreign judiciary acting in a

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13 As happened in 2004 in Argentina, under President Néstor Kirchner. The gradual removal of Pinochet memorabilia referred to by Politzer was an internal decision, in no sense representing outright repudiation.
way that could only be described as a substitution for what the Chilean judiciary had failed to do, implied a powerful critique of their personal and collective efforts.” The government’s strategy to get Pinochet back to Chile, which rested in large part on the argument that Chilean courts were perfectly capable of getting the job done, enhanced this demonstration effect.

But Correa Sutil and Hilbink both noted that by the mid 1990s, long before the dramatic events in London, changes were already under way in the Chilean judiciary, chipping away at the corporate conservatism which had made the courts such subservient partners of the military government. The year 1997 had been a watershed for judicial reform. For years, the judiciary had been “neglected, poor and atrophied.” Conservative, inward-looking and underfunded, it was the ‘Cinderella’ of the Chilean state, in Correa Sutil’s often-quoted phrase.14 In 1997 Chile introduced a new oral and accusatory system of criminal law involving, for the first time, trial in open court.15 Corruption scandals caused the near impeachment of several conservative Supreme Court judges, and the government pushed through a bill expanding the Supreme Court from 17 to 21 members. Five posts on the court were reserved for entrants from outside the judiciary, an upper age limit of 75 years was imposed, and new appointees were made subject to ratification by the Senate.

I’d never seen so many [judges] so upset…

Jorge Correa Sutil

Eleven new faces joined the court in 1998, including five lawyers from outside the judicial hierarchy. Hilbink’s interviewees thought that these new judges brought fresh thinking to the court, especially to the criminal chamber. There was also, as one judge told her, “a greater popular consciousness about law, courts, and about rights and remedies.”

So there was at least some fertile judicial soil for the seeds of a new accounting on human rights. The political climate was favourable too, in that after the Pinochet affair in London, the world had become interested in Chile’s response to the challenge of justice. “Pinochet’s arrest and trials in London served to strengthen and expedite a process of change that had already begun within the judiciary,” concluded Hilbink. The London events emboldened previously timorous judges; challenged them to prove their mettle, and — given the political class’s promises on the matter — also impelled them to produce results.


15 Although this system was not and will never be used for the current human rights trials, as under the changeover rules all previously committed crimes are seen under the old investigative magistrate system.
However, panelists agreed that the changes that resulted did not amount to a radical departure from the traditional conservatism and insularity of Chilean judges. According to Hilbink, “international pressure and attention were not strong enough to set off a more comprehensive liberal or constitutionalist turn among Chilean judges.” Hilbink’s research into post-1998 decisions in rights cases showed that even newly appointed justices were reluctant to engage in constitutional argument in defence of rights. In other words, London 1998 marked no deep rupture in Chilean judicial culture. Rather, it grafted new obligations onto the existing tradition of deference to the executive.

Both Hilbink and Correa Sutil quoted liberally from the more recent doctoral research of Alejandra Huneeus of the University of Wisconsin to support this idea. According to Huneeus, the recent turn in human rights jurisprudence “was not the product of normative change within the judiciary ...Nor was it the product of the judiciary’s new sense of its role vis-à-vis the government, or a new openness to outside ideas. The change was, for a majority [of judges], the product of the practice of deference. Once President Frei had proclaimed to the world that Chilean courts would try Pinochet, deference judges had their marching orders.”

To accuse pro-accountability judges of ‘twisting the law’ to win career points is damming criticism indeed. It is not a far cry from claims made by Pinochetista newspaper columnists that the legal doctrines supporting accountability—such as the notion that disappearances are ongoing kidnappings—are legal fictions, that defy common sense but are repeated by judges looking for brownie points. According to this view, the Supreme Court imposes a stifling conformity even when it is backing doctrines that support accountability.

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16 As quoted by panelist Lisa Hilbink. In 2002, Huneeus interviewed 45 judges dedicated exclusively or preferentially to human rights cases. She classified only four of them as ‘autonomous’, defined as those who believe that justice is by no means coterminous with application of the law.

17 This is a view frequently expressed by staunch Pinochet supporter Hermógenes Pérez de Arce in his weekly column in El Mercurio.

18 There is a danger of overstating this case. As conference participants noted in later panels, the Supreme Court has always had significant minority votes on human rights issues, showing deep and persistent doctrinal differences on the amnesty law and statutes of limitations. That is still the case, even though the weight of opinion is now on the accountability side.
Correa Sutil cited a comment by Huneeus that the ‘human rights issue’ “is not viewed [by the judiciary]… as part of an abstract category that includes other fundamental civil and political liberties, but more narrowly as the plight of victims who directly suffered the violence of the military dictatorship.”  

Huneeus leaves us with the impression that some, if not all, of today’s judges who convict human rights violators are fair weather human rights defenders, who might balk at doing the same if the political tide turns.

The issue of international human rights law arrived on the judicial scene in a way it would never have done if it hadn’t been for the Pinochet arrest [...] whether this cultural change is permanent, or whether the judges are still a more or less closed society that only opened temporarily during those four years, remains to be seen. That would be a ‘Garzón effect’ rather than the Pinochet effect.

Jorge Correa Sutil

19 Author’s note: The judiciary seems to be taking its cue here from the political class. If defending a Pinochet victim, once suspicious, is now de rigueur for a judge, defending the rights of a gay sex worker may be quite another matter. Let’s not forget that before he became a figurehead in the Pinochet case, Judge Juan Guzmán voted in favor of censoring the film The Last Temptation of Christ. The one judge who seems to appreciate the comprehensive scope of human rights, Carlos Cerda, has attracted criticism equally from the Supreme Court and the legislature, which have passed him over for promotion to the Supreme Court. In 1996 Cerda defended the free speech rights of a former Pinochet minister, Francisco Javier Cuadra, after he was convicted for ‘insulting the honour’ of Congress. The Supreme Court promptly reinstated the sentence and censured Cerda,
Judicial doctrines on the amnesty law and statutes of limitation

As Jorge Correa Sutil pointed out, the dramatic post-1998 progress in the investigation and judgment of the human rights crimes of the Pinochet era was not due to legal reforms such as annulment of the 1978 amnesty law or reform of the Code of Military Justice. The fact that these laws are still on the statute books after almost two decades of democratic rule is often incomprehensible to outsiders. Instead, progress came after politically-driven changes in how key figures such as Appeals Court and Supreme Court interpreted existing laws. But were these changed legal decisions due to pressure on judges to show progress in prosecutions following Pinochet’s return to Chile, or did they follow their own internal dynamic independent of the London events?

None of the speakers at the conference saw these jurisprudential developments as directly tied to Pinochet’s London arrest. For one thing, the changing court dynamic can be traced back at least until 1997, more than a year beforehand. Secondly, there is notably little sign of Chilean courts being influenced by the judgments handed down by their Lordships in Westminster. In fact, to the best of the panelists’ knowledge, Chilean Supreme Court justices have yet to cite the opinions of their British colleagues in any verdict.

Yet, indirectly, the impact of London is evident. Rosemarie Bornand, head of the Human Rights Programme of the Chilean Ministry of the Interior, spoke of a multiplier effect, as the ongoing proceedings in London stimulated an exponential growth in the number of complaints filed with the Chilean courts. In addition, she argued, “[a] progressive jurisprudential tendency began to gain ground”, one prepared to consider principles of international law alongside domestic statutes. In Bornand’s own words, “I wouldn’t go so far as to say the argument was turned on its head, but there was definitely an obvious shift in this delicate game of action and reaction, never dissociated from politics… Seeing at first hand the media impact of the case, and being forced to realise just how sensitive this issue was, made all the actors involved examine their consciences. It unleashed a series of events that otherwise would never have happened.”

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20 Editor’s translation.
But the impact was not primarily at the level of legal doctrine. The Chilean courts had no need to borrow international law arguments from abroad. As Garretón noted, human rights lawyers and even some junior judges had been using the very same arguments for years without managing to convince the majority of their peers. It was the changing political climate that made these ideas not only acceptable for the first time, but also functional.

As Bornand showed, the first positive judicial decision on accountability long predated the London events, but it was an isolated decision that was quickly reversed. As already alluded to by panelist Roberto Garretón, in October 1994 Santiago Appeals Court Judge Humberto Nogueira refused to apply amnesty to the 1974 disappearances of Bárbara Uribe and Edwin Van Yurick. Nogueira invoked various international legal norms, in particular the Geneva Conventions. The Supreme Court nonetheless reversed the decision in 1995, annulling the charges and finally closing the case (in August 1998). Apart from this one exception, application of the amnesty was “unrestricted” prior to London 1998, according to Bornand. All it took was for the court to establish that a putative crime had been committed within the time frame of the amnesty law (September 11, 1973 to March 10, 1978), for the amnesty to be applied immediately.21

The next link in the chain of positive change was the September 1998 Supreme Court ruling in the Poblete Córdoba case. The court considered that at the moment of Poblete’s disappearance Chile was in a ‘state or time of war’. The Geneva Conventions—which require the state to protect the security of detainees—were therefore in force, meaning amnesty could not be applied at this stage, and investigations should continue. Indeed,

21 After the 1995 convictions of Manuel Contreras and Pedro Espinoza for the Letelier-Moffit assassination, the Supreme Court had reverted to this hawkish interpretation of the amnesty law, as applied during the dictatorship. In between times, the court had softened the doctrine slightly: during the Aylwin presidency (1990-1994), it had tended to allow investigations to continue until it had been fully established what crimes had been committed.
the Chilean Ministers of Justice and Foreign Affairs both referred to the *Poblete Córdoba* verdict to support their argument in the House of Lords that the 1978 amnesty was not an insuperable obstacle to human rights investigations. However, as Robert Garretón noted in his affidavit to the Law Lords, four subsequent Supreme Court decisions affirmed that it was unnecessary to complete a criminal investigation before applying amnesty, “in clear contradiction of the reasoning presented in *Poblete Córdoba.*”

Subsequently, Bornand explained, the Criminal Chamber endorsed a new doctrine that considered enforced disappearance to be equivalent not to illegal arrest or execution, but to kidnap. The courts further accepted that kidnap was a so-called ‘ongoing crime’, rendering amnesty inapplicable if the victim could not be shown to have died before 10 March 1978 (the expiry date of the amnesty). This was the reasoning used in the *Sandoval Rodríguez* case, which in November 2004 produced a landmark decision leading to the second arrest, conviction and imprisonment of Manuel Contreras. The same reasoning was applied in the *Aarón Svigilsky* case in May 2006. As Garretón observed with a touch of irony, the courts were finally reproducing arguments first advanced by victims’ lawyers decades previously. Its first significant acceptance in the post-1998 period had been back in July 1999, when the Supreme Court used it to unanimously confirm the prosecution of a retired general and four other senior retired army officers in the so-called ‘Caravan of Death’ case. This doctrine, repeatedly rejected in the past when lawyers had tried to use it to appeal against case closure, now became a template to deal with disappearance cases.

As Lidia Casas pointed out, the doctrine of disappearance as an ongoing crime has a major drawback. Making only the post-March 1978 ‘portion’ of a crime prosecutable, it implicitly justifies absolving perpetrators of executions committed before this date, unless separate arguments are introduced preventing the application of amnesty or

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22 Of the five civilian judges who made up the Criminal Chamber at the time, three (Alberto Chaigneau, Enrique Cury and Jose Luis Pérez) favored striking down the amnesty. If one of them was absent and replaced by a substitute judge (usually a lawyer) the verdict could go the other way. Unsurprisingly, the military member of the court, Gen. Fernando Torres, voted consistently for the amnesty to be applied. The army’s presence on the Supreme Court was tacitly derogated by the 1997 constitutional reform restructuring the Supreme Court, but a bill tabled to amend the Code of Military Justice to this effect is sleeping in Congress. The Supreme Court itself consistently opposed the change.

23 ‘New’ only in the sense of suddenly acquiring currency, the argument had in fact been employed in vain by human rights lawyers since the early days of the dictatorship.
statutes of limitation. Confronted by this dilemma, the Supreme Court’s Criminal Chamber began to adopt a more radical interpretation of international law requirements. As Bornand noted, it cited Chile’s obligations under international law in a series of decisions that have led to convictions for executions and torture. Bornand cited Vásquez Martínez and Superby Jeldres (December 2006); José Matías Ñanco (January 2007) and Manuel Tomás Rojas (May 2007) as examples of this trend. In the first of these rulings, the court argued that the executions in question were crimes against humanity, prohibited by *jus cogens* norms obliging the state to investigate and punish them without possible benefit of domestic amnesty. In essence, the court had finally come full circle, now routinely endorsing arguments adopted ten years previously by Judge Nogueira. However, as several conference participants noted, majorities in the Criminal Chamber are still fragile. Since Chilean law does not recognize binding jurisprudence, the powers of the Supreme Court to set firm precedents are moreover limited.

Cristián Correa considered that the judiciary has done much better than many observers expected, and has contributed far more to settling accounts with the past than have the executive or legislature. For example, despite a public commitment by Bachelet to introduce legislation to cancel the effects of the amnesty law once and for all, a bill introduced to that end is still stuck at the Congressional committee stage, two years after the Inter-American Court of Human Rights ordered Chile to take this step.24

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24 Inter-American Court ruling of September 26, 2006, case Almonacid-Arellano v. Chile. The Court ordered Chile to “ensure that Decree Law No. 2.191 [the 1978 amnesty law] does not continue to hinder further investigation into the extra-legal execution of Mr. Almonacid-Arellano as well as the identification and, if applicable, punishment of those responsible…”. It also ordered similar conditions to be applied to [all] “those responsible for similar violations in Chile”. Although the court did not explicitly order that compliance take the form of legislative change, in effect this is the only possible avenue open to the executive, which legitimately controls the legislative agenda but cannot in theory – under the principle of separation of powers – order the courts to change their interpretive practice with respect to existing legislation.
Actors in Chilean post-transitional justice

Compared with the earlier period before Pinochet's arrest in London, the government has deliberately taken a back seat on post-transitional justice since 1998. Official action was limited to the upkeep of the Human Rights Programme of the Ministry of the Interior, as already mentioned. The programme's work was described by current director Rosemarie Bornand. Taking over where predecessor the CNRR left off, the Programme was to provide “social and legal assistance to the relatives of victims of human rights violations to accede to reparation benefits and to make effective the aforementioned right” [the right to know the whereabouts and fate of their loved ones]. The fact that this original mandate, dating from 1997, did not refer to the pursuit of justice in the courts is telling. Indeed, the Programme’s mandate allows it to undertake legal action only where this is aimed at locating the remains of fatal victims. It is not allowed to initiate in its own right the prosecution of perpetrators. Yet President Ricardo Lagos (2000-2006) expressed an explicit commitment to justice as well as to truth in a major human rights policy proposal announced in August 2003.25 The Programme, reorganised and given some additional resources after this announcement, has since played an important role in representing victims’ relatives in the courts and in monitoring judicial progress.26

The new phase of ‘late justice’ is not straightforward, it can’t make up for everything that wasn’t done when it ought to have been.

Cath Collins

25 In the announcement, made under the title ‘There is no Tomorrow without Yesterday’, Lagos said he considered the objectives of truth and justice to be morally binding: “I repeat my insistence that the courts are the only forum for reaching the truth and applying justice according to the law. Consequently, my government will not adopt any proposal to establish a full-stop to trials. Such proposals are either morally unacceptable or legally unviable. Equally, it will be left to the courts to interpret the amnesty law.” Gobierno de Chile, ‘No Hay Mañana sin Ayer’, Propuesta del Presidente Ricardo Lagos en Materia de Derechos Humanos, http://www.ddhh.gov.cl/filesapp/propuesta_DDHH.pdf. Editor’s translation.

26 The prohibition on initiating criminal complaints remains in force, but judges have allowed Programme lawyers to act as ‘additional parties’ once cases have been initiated by relatives.
State Defence Council (CDE), has meanwhile been contradictory and ambivalent. The CDE functions in effect as a private legal chambers contracted to defend state interests in a whole range of legal matters. As far as recent human rights prosecutions are concerned, the CDE’s position shifted towards a pro-accountability stance once its former legal director, a public champion of the amnesty law, was replaced. The CDE subsequently argued alongside human rights lawyers in favour of criminal prosecution in numerous important cases, including the removal of Pinochet’s parliamentary immunity for alleged human rights and financial crimes. Yet, as Lidia Casas pointed out, the CDE still seeks at every turn to minimise the financial burden on the state, defending the state against civil claims for financial compensation brought by relatives or survivors.

As Cath Collins noted in her intervention, “it’s mainly private litigants, relatives’ groups and their lawyers who have successfully broken through the barrier of the amnesty law, in the face of an ambiguous if not overtly hostile attitude on the part of the state.” The physical exclusion of the rest of society from these behind-closed-door proceedings has been another feature of post-transitional justice in Chile, forcing perpetrators and survivors into close proximity in the uncomfortably intimate setting of judges’ chambers. The experience of being confronted, cross examined and in some cases openly intimidated by defendants last seen in the torture chamber has proved traumatic for many witnesses. The restricted circle of actors has also turned judges and human rights lawyers into the main professional protagonists of this new justice phase.

As Javier Couso noted in his presentation, aside from a few notable and valiant exceptions most of Chile’s top-notch lawyers turned a cold shoulder to human rights after the 1973 coup. Rather than jealously guard democratic values—a role traditionally taken on by lawyers in France and in other Latin American countries such as Brazil—the Chilean Bar Association quickly became, according to Couso, “a mouthpiece for parties that supported the coup and the military dictatorship.” Only a small group of lawyers, working for human rights groups set up by the churches (most notably the Catholic Church’s Vicaría de la Solidaridad) defended human rights. More than 30 years on, these lawyers are still key players, often working alongside younger colleagues for surviving dictatorship-era human rights organisations CODEPU and FASIC (the ‘Fundación de Ayuda Social de las Iglesias Cristianas’).

27 The now-superseded code of criminal procedure, still valid for these cases for reasons discussed above, does not allow for trials in open court, much less for a media presence at hearings.
The Supreme Court has zigzagged between one position and the other.

Lidia Casas

Litigants’ strategy today remains essentially the same, said Villagra: patiently pushing the envelope of accountability, using arguments one step ahead of the Supreme Court’s doctrinal position at the time.

Problem areas in post-transitional justice

Lidia Casas and Hiram Villagra agreed that the major obstacle to accountability in the present scenario is the existence of sharp differences of opinion in the Supreme Court as to whether statutes of limitations can be applied to these crimes, on the one hand, and what international law principles such as the 1949 Geneva Conventions actually mean. The very applicability of the Conventions to post-coup Chile is still a debated issue. In order to justify ‘exceptional measures’ including outright repression and the imposition of states of emergency, the 1973 military junta declared Chile to be in a state of ‘internal commotion’. Pro-accountability actors now argue that under the same logic, the actions of regime agents should therefore be judged against those very same wartime standards. Yet no one denies that the so-called 1973 ‘war’ was actually a fiction decreed by the regime. This unresolved debate means that the ultimate fate of present-day cases depends much less on the facts or on persuasive legal arguments than it does on the particular composition of the Supreme Court’s Criminal Chamber.

28 During the final year of the dictatorship, the Santiago military court dug out more than 30 of these hibernating disappearance cases and closed them definitively, as a preventive measure before the political climate changed. Vicaría lawyers fought the closures, but with little success.

29 Which offer specific protection to ‘combatants’ and other prisoners, and expressly rule out amnesty or statutes of limitations for actions which constitute war crimes.
on the day of the final hearing. This situation obviously leads to contradictory and inconsistent judgments.

“It’s become an issue of permanent and intense debate between majority and minority, and the Supreme Court has zigzagged between one position and the other,” Casas explained. She cited the so-called Puente Loncomilla case, involving three murdered peasant farmers. The person initially convicted for the crimes was absolved in November 2007 because the Supreme Court held that the crimes were subject to a statute of limitations.30 Judges not only applied statutes of limitation to cases in which bodies had been found and identified, but also to cases where death was merely presumed on the basis of other evidence.31

Even judges who accept that statutes of limitation cannot be applied to these crimes have found other ways to tone down their verdicts, resorting to a criminal code norm allowing for sentences to be reduced in direct proportion to the time which has elapsed since the crime was committed.32 For example, in the Parral case, involving the deaths of 17 peasant farmers, the Supreme Court confirmed the guilty verdicts but reduced one of the associated sentences from 15 years to five. The result was a sentence low enough to allow the perpetrator to escape actual prison time altogether. A minority of two on the court had voted for the statute of limitations to be applied, while even the majority who opted for sentencing decided to find a formula which would avoid the risk of the ageing perpetrators spending the rest of their lives in prison. This compromise has become increasingly common in the Supreme Court in recent times, according to Casas.

Post-transitional justice poses other challenges. Much of the conference had been devoted to legal and technical issues, with the question of the human costs of this 'late justice' phase, for both victims and perpetrators, largely overlooked. Cath Collins drew attention to the imbalance, suggesting that the successful prying open of at least the possibility of justice brings complications and tensions which must be acknowledged.

30 The decision was due to the temporary replacement of one of the court’s permanent members, Alberto Chaigneau, by a substitute judge. When Chaigneau returned to his post a few days later, the same court rejected applying the statute of limitations in another case.

31 The judges who consistently applied statute of limitations in the Supreme Court, according to Casas, include Hernán Alvarez, Ruben Ballesteros and Nibaldo Segura. On the Santiago appeals court they include Juan Mera, Alfredo Pfeiffer, Juan Muñoz Pardo and Emilio Pfeiffer. In some cases the norm was applied by special status judges (‘Ministros en Visita’) such as Juan Fuentes Belmar, Jorge Zepeda and Joaquin Billar.

32 The norm is known in Chile as ‘media prescripción’, ‘half statute of limitations’.
and confronted. For example, courts do not always deal sensitively with relatives and witnesses, failing to consider likely reactions at being called upon to testify so many years after the events. In a case recounted by Collins, the nephew of a disappearance victim, summoned under pain of legal sanction to testify, told the judge he was no longer interested in taking his uncle’s case to court. He even confronted her with the contradictions of her recent ‘conversion’, demanding: “Where were you 30 years ago, when we were knocking on the doors of all the courts in Chile and getting no answer?” Perhaps, in a case like this, the Sleeping Beauty analogy is more suggestive than that of Cinderella. Kissed awake by the dashing Spanish Prince Garzón, the Chilean judiciary suddenly emerges refreshed and eager to go to work, forgetting that the citizenry is sadder, wiser, and much older.

“In the rush to achieve justice ‘before the witnesses and survivors die on us’, a phrase which can be heard even amongst the most committed and sensitive human rights lawyers, how can we be sure not to instrumentalise survivors, treating them as merely a ‘necessary input’ for a social task that we are suddenly set on carrying out?” asked Collins. She recalled the peremptory ‘orders’ received in 1998 from Spain and London, urgently requiring compelling torture cases from the final year of the dictatorship in order to bolster the case against Pinochet in London. “More than one torture survivor said, ‘Wait a minute, I’m not going to sit down obediently and recite this whole intimate, painful story yet again just because you need it for your trial; just to give you the chance to say that you were the lawyer that got Pinochet indicted’.”

In the conference’s closing round-table discussion, Jorge Correa Sutil returned to Collins’s troubling questions. Doesn’t this “late and unequal” justice, as Correa Sutil described it, challenge human rights defenders in new ways? The human rights movement has always confronted challenges, repression, reprisals, threats, and even years of indifference, with the equanimity of knowing that it occupied the moral high
ground. But is this still true today, Correa Sutil asked, as these belated trials force ageing citizens to reconstruct past horrors they’d rather forget while the rest of society goes about its business as if nothing was happening? Will the sentences now being handed down by the courts so long after the events carry the weight of conviction and justice that we all hope for? Or will the legitimacy of the human rights movement be questioned for the first time in its history?33

Several members of the audience took up Correa Sutil’s point, with one mentioning several recent cases that caused media impact and public concern. Former DINA agent Germán Barriga committed suicide in 2005, tormented by the effect of ongoing trials and public notoriety on his family and livelihood. The forced retirement of Gen. Gonzalo Santelices from the army in January 2008, after he was implicated in extrajudicial executions which he had supposedly witnessed when a 20-year-old junior officer, caused public disagreements between government officials. Discrepancies in the severity of the sentences being handed down by the Supreme Court for the same crimes have also been questioned.
What was the regional impact of Pinochet’s arrest in London? Argentina and Peru have both achieved important advances in accountability in recent years. What role, if any, did ‘London 1998’ play in these processes?

**Argentina**

One current and one former lawyer from Argentina’s Centre for Legal and Social Studies (CELS), an NGO which has played a vital role in reanimating justice and memory in Argentina, spoke about the evolution of accountability in Argentina and the difficulties still faced.

CELS’s current director Gastón Chillier noted at the outset a vital difference between the Chilean and Argentine cases. The difficulties of getting a formerly powerful head of state into the dock, crucial in both Chile and Peru, were not an issue in Argentina. In 1985, at the very beginning of the transition, Argentina tried and convicted the leaders of the military juntas for grave human rights violations committed in the 1976-1983 ‘dirty war’. This was the first such case in Latin American history and only the second in the world (after the trial of the Greek colonels), long predating the movement for international justice. The unresolved accountability issue in Argentina therefore boiled down to the effects of two subsequent laws, introduced by the same transitional government which had initially ordered the junta trials. Introduced by President Raul Alfonsín virtually at gunpoint, in the face of army rebellions when ongoing human rights trials had threatened to reach down to middle level officers, the so-called Full-stop and Due Obedience Laws of 1986 and 1987 were effective amnesty provisions. They blocked the prosecution of any military or police officials who had served in any capacity below the highest positions of command.

Over the next two decades, accountability in Argentina went into reverse gear, with even the originally convicted Junta members pardoned and released. The only trials...
which successfully went ahead were for crimes expressly excluded from the new amnesty provisions. These included the distinctive and widespread practice of ‘forcible adoption’ - theft by military officers of babies born to political prisoners who subsequently disappeared. Beginning in 1995, Argentine human rights lawyers and some public prosecutors also argued successfully in favour of an emerging ‘right to truth.’ By the late 1990s they succeeded in persuading judges to conduct ‘truth trials’, hearings whose only immediate effect was to clarify the fate of victims of enforced disappearance, as long as amnesty prevented the sentencing of perpetrators. The longer term purpose was however to amass information and keep the issue on the public agenda, even while the door to justice remained closed.34

The door finally began to give way during a truth trial involving the disappearance of a Chilean-Argentine couple (the ‘Poblete-Hlaczik’ case). In March 2001, Federal Judge Gabriel Cavallo declared Argentina’s amnesty laws unconstitutional.35 The federal appeals court ratified the decision later in the year. In 2003 Congress declared the laws to be null and void, and in 2005 the Supreme Court formally annulled them with retrospective effect, opening the door to the trial of scores of perpetrators who had hitherto escaped justice. The process received overwhelming political support from President Néstor Kirchner, who took office in May 2003.

The action of foreign courts was fundamental in achieving domestic trials.

Gastón Chililier

To what extent were these developments influenced by the Pinochet case? Clearly it wasn’t appropriate to talk of a ‘Garzón effect’ in Argentina, Chililier argued, in that the dirty war rulers had already been tried and convicted and, unlike Chile, the problem of impunity was not due to the residual political power of the armed forces. The Pinochet effect was felt because the case was a milestone in the development of international criminal justice, part of an evolution which included the special tribunals for former Yugoslavia and Rwanda, and the

34 The Argentine Supreme Court recognized the right to truth and ratified the truth trials in the Urteaga case of 1998. The government did the same in a settlement reached with plaintiffs at the instigation of the Inter-American Commission on Human Rights in 1999 in the Lapacó case.

35 Although Chililier did not say so, Judge Cavallo essentially endorsed arguments presented by CELS.
debates leading up to the creation of the International Criminal Court. Chillier also noted that Emilio Massera and Jorge Rafael Videla, two former junta leaders under investigation for the non-amnestiable crime of theft of babies born to the disappeared, were eventually arrested in October 1998, just days after Pinochet’s London arrest. Chillier considered that the international context had helped generate consensus in Argentina about the need to punish these crimes.

However, a key pre-existing factor was the investigation and trial of Argentine state agents already under way in several European countries, including Spain. Garzón had been investigating the Argentine case since 1996, coming to focus on Operation Condor, a joint 1970s Southern Cone security forces’ clandestine operation involving cross-border kidnappings and renditions. Courts in four other European countries had also opened proceedings for dirty war crimes. Taken together, these trials put pressure on the De La Rúa government in Argentina (1999-2001) to open prosecutions so as to be able to counter the mounting number of extradition requests.

According to Chillier and Carolina Varsky, “the action of foreign courts was fundamental in achieving trials in the domestic forum. The extradition requests and trials in absentia conducted in different countries played an important role, by strengthening the pressure of the international community on the institutions of the Argentine state to either try or extradite. They helped persuade the courts to remove the obstacles that prevented the trials from happening.”

The process had begun back in 1996, when Garzón requested the extradition of about 100 Argentine military and police officers. Next came trials in France, Italy, Sweden and Germany. They included the convictions in absentia of former Argentine naval officer Alfredo Astiz in Paris, and Guillermo Suárez Mason, in Rome. In August 2000 another naval officer, Ricardo Miguel Cavallo, was arrested in Mexico and eventually extradited to Spain to face trial there. In 2005, the Spanish Audiencia Nacional convicted former Argentine military officer Adolfo Scilingo to 640 years in prison for his part in the notorious ‘death flights’, during which drugged political prisoners had been thrown from helicopters into Buenos Aires’ nearest river. After providing a sensational exposé of the flights to renowned investigative journalist Horacio Verbitsky in 1995, Scilingo had volunteered to go to Spain and testify before Garzón. As soon as he incriminated

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36 Operation Condor was in fact the key to Garzón’s adding Chile to his existing Argentina investigation, leading eventually to the 1998 arrest warrant which sealed Pinochet’s judicial fate.

37 CELS legal director and co-author of the paper presented by Chillier to the conference.
himself in his own testimony, Garzón cut short the interview, having Scilingo arrested and eventually charged.

The Menem and De La Rúa governments (1989-1999 and 1999-2001, respectively) blocked all such extradition requests *in limine*, but in doing so Argentine governments could not escape their own obligation to punish the crimes. The obligation was as inescapable as Chile’s obligation to try Pinochet after persuading the British government to hand him over.

According to Chilier, foreign cases were not however the only external influence which helped shape events in Argentina. Opinions and decisions on impunity issued by the Inter-American Commission and Court of Human Rights were also significant. Chilier argued that Argentine judges have for years been much more receptive to the decisions of international and foreign courts than have their Chilean counterparts. For example, the Argentine Federal Court which rejected Massera and Videla’s appeals against their indictment endorsed many of the legal concepts employed by Judge Garzón in his Spanish investigation of the military juntas. It also made abundant reference to precedents in other countries on the justiciability of international crimes, including the House of Lords decision on the Pinochet case.

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**In Argentina trying the military juntas was a major public debate, highly political [...] in Chile it’s been limited to a judicial discussion. Chile’s had more government initiatives that weren’t trials, like the Round Table and the Torture Commission, but they were all explicitly designed to keep the issue out of the political arena.**

Martín Abregú

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Other contrasts between the Chilean and Argentine cases can be put down to differences of legal and political culture perceptively described by Martín Abregú, who played an important role in developing CELS’s 1990s strategy before moving to Chile several years ago. “The first big difference is the bipolarity of the Argentine process compared to the uniformly “rectilinear” nature of the Chilean process... in that sense the human rights process is just a reflection of general public policymaking style. Chile creeps slowly forward in short, gradual steps. I remember when I first came here I noticed how slow the changes were, but also how once taken there was no going back. But progress in Argentina is spasmodic, two steps forward, one step back. Politics in Argentina is like arm-wrestling: each side takes
up a position, and sheer muscle determines the outcome. Chile’s progress, on the other hand, has been based on negotiated agreements between government and opposition, which change as result of pressure from the outside. For example, the tacit agreement not to pursue the goal of justice gave way, and there were significant advances in accountability when the consensus came under pressure from foreign judges, relatives of victims and local judges.”

As for similarities, Abregú claimed that in both countries things are often the opposite of what they seem. In Argentina, Alfonsín wanted to be the president who put the military on trial, but ended up exonerating them. Menem wanted to achieve reconciliation with pardons, but ended up with more military men in jail than Alfonsín. Chile avoided annulling its impunity mechanisms, but has convicted more human rights violators than Argentina. “At the risk of sounding precious, one could say that Chilean presidents never have dreams, while Argentine presidents’ dreams often turn into nightmares,” Abregú quipped. He recognised that to a large extent time has ironed out the differences, and in terms of accountability and memory advances, both countries are now in a similar situation, largely due to the changes in the international climate.

Nonetheless, a second major difference noted by Abregú is that the Chilean accounting has fundamentally happened in the judicial rather than the political arena. The opposite has been true for Argentina. Like Felipe Agüero, Abregú contrasted the images of General Bendini, commander of the Argentine army, removing portraits of Videla and company from the wall of the military college under the watchful eye of President Kirchner, with the solemnity of the wake held at the Chilean Military Academy after Pinochet’s December 2006 demise. Although technically denied an official funeral, in spirit this was a funeral fit for a statesman, despite the serious corruption and human rights charges the former dictator was facing when he died.
Peru

As Jo-Marie Burt related, Peru emerged out of a twenty-year armed conflict in 2000 with a government discredited by political corruption scandals and grave human rights violations. In November 2000, when President Alberto Fujimori fled Peru to a safe haven in Japan, Pinochet had already been back home for eight months and would soon be indicted in Chile for the first time. Thus, Peru’s truth commission, the cornerstone of Peru’s transitional justice effort, had the advantage of being formed in 2001 after Pinochet’s arrest and eventual return to Chile.

The impact of the new regional accountability climate, Burt claimed, is evident in the Commission’s decision from the start to make justice—in the form of criminal trials of those on both sides of the conflict—a central objective. As the commission’s president, Salomón Lerner put it, “There is a mid-point between truth and reconciliation, and that is justice”. Peru’s was the only Latin American truth commission ever to find non-state forces, mainly Maoist guerrilla group the Shining Path, responsible for more than half of almost 70,000 deaths documented and estimated by the Commission. The Commission was accordingly careful to recommend that both state human rights abuses and non-state infractions of humanitarian law be pursued with equal vigour. Most Shining Path members, including founding ideologue Abimael Guzmán, were already in prison. The Commission referred 47 more cases to the attorney general’s office, providing detailed dossiers with names of both state and non-state perpetrators recommended for investigation and possible prosecution. Most of these cases involved military and police officials accused of grave human rights violations between 1982 and 1997. In Peru there was no question of truth standing in for justice, as had been the case at the start of the Chilean transition.

Ronald Gamarra listed some of the key factors that contributed to the subsequent successful judicialisation of human rights abuses from the armed conflict: the notoriety of the political corruption during Fujimori’s final years in power, including dissemination of the incriminating ‘Vladivideos’ showing close aide Montesinos openly bribing congressmen; Fujimori’s undignified flight to Japan and adoption of his Japanese citizenship to evade extradition; the pro-human rights policy of the transitional government of Valentín Paniagua (2000-2001), including co-operation with the Inter-American human rights bodies; the positive role played by Peru’s Constitutional Tribunal, and the vital contribution of victims’ relatives, civil society groups, and a combative press.
Gamarra considered the 2001 Inter-American Court verdict in the Barrios Altos case to have been a particularly important trigger of domestic judicial action over accountability. Peruvian cases have featured prominently in the Court’s caseload, and Peru has been particularly sensitive to its decisions, at least twice threatening to withdraw recognition of the court’s jurisdiction. National judges however showed a commendable readiness to cite and apply the Barrios Altos ruling, a welcome departure from their inescapably subservient role under Fujimori, who had intervened and even suspended the courts when they tried to curb his authoritarian excesses. After Barrios Altos, therefore, the blanket amnesty introduced by Fujimori in 1995 to cover up the abuses committed by the ‘Colina Group’ death squad no longer cut ice and ceased to be an obstacle to prosecutions.

Gamarra did note some impact for the Pinochet case in helping to create a climate favourable to human rights prosecutions in Peru. In particular, he claimed, the fate of former president Fujimori, currently on trial in Lima for the ‘Barrios Altos’ and ‘La Cantuta’ massacres, is a perfect illustration of the Pinochet effect. Apparently intending to participate in upcoming Peruvian presidential elections, Fujimori decided to abandon his secure Tokyo residence in November 2005, even though Japan had dependably protected him from attempted legal action, simply refusing to answer all extradition requests submitted during Fujimori’s five year residence. Heading back to Peru, Fujimori fatefully decided to include a Santiago stopover en route. Detained (albeit not immediately) on a warrant issued by Interpol, Fujimori spent nearly two years under house arrest in Chile awaiting a court decision on an extradition request submitted by the government of Peru. In theory confined to a luxury residence in the exclusive Chicureo district, Santiago’s version of Virginia Waters, he made the most of his stay, cooking for his influential Chilean friends, playing golf, fishing, buying wine, and even basking in the sun in the exclusive resort of Puerto Velero in the north of Chile. Much of the Chilean press speculated as to the nature and strength of his clearly high-level Chilean connections.

In July 2007 Judge Orlando Alvarez, a staunch defender of the application of statutes of limitation in Chilean domestic cases, denied Peru’s extradition request in a deeply flawed decision that disregarded the opinion of the Supreme Court’s prosecutor. In September of the same year the Supreme Court’s Criminal Chamber - the same one that has begun to bypass domestic amnesty - granted Fujimori’s extradition in seven
cases, ruling unanimously to support his extradition on the human rights charges. It was the first time any court has ordered the extradition of a former head of state to be tried for gross human rights violations in his home country.

As Jo-Marie Burt noted in her presentation: “The trial of Fujimori marks an important departure in efforts to end impunity and achieve justice and accountability in Latin America. It is the first time in Peru that a former president is standing trial for crimes against humanity, and the first time ever that a former president has been extradited to face charges in his home country for such crimes. The trial therefore represents a key moment in the affirmation of democratic governance and respect for human rights in Peru and all of Latin America. It also represents the efforts by the legal system to establish and affirm three fundamental democratic principles: the rule of law; equality before the law, even for former presidents; and accountability. Eduardo Galeano has said that “Latin America has long been a sanctuary of impunity.” This and other ongoing human rights trials represent a dramatic shift away from this historical reality.”

The trial of Fujimori started on December 10, 2007, and is centred on four cases of human rights violations: the Barrios Altos massacre of 1991, in which 15 people were killed; the disappearance and later killing of nine students and a professor from the Cantuta University in 1992; and the kidnappings of journalist Gustavo Gorriti and businessman Samuel Dyer in the aftermath of the April 5, 1992 autogolpe, or self-coup, in which Fujimori – with the backing of the armed forces – closed congress, suspended the constitution and took control of the judiciary. In the cases of Barrios Altos and Cantuta, the killings were carried out by the Colina Group, a clandestine death squad that operated out of the Army Intelligence Service. The prosecutor alleges that Fujimori is ultimately responsible for these crimes. If he is convicted, Fujimori could be sentenced to up to 35 years in prison and be fined millions of soles in reparations. At the time of this conference, the trial was entering into its final phase.

In the meantime, the political space in Peru for prosecuting human rights crimes has diminished substantially. President Alan García —elected for a second presidential term in 2006, after a disastrous presidency between 1985 and 1990— is named in the Truth Commission report in connection with massacres carried out during his own first presidential period in the 1980s. He thus has his own reasons for being less
than enthusiastic about the principle of full accountability for Peru's political violence. Fujimori himself is far from a spent political force: the political vehicle he created for himself has significant support and daughter Keiko gained the highest single vote in the process of winning a congress seat in the most recent elections. Nonetheless, according to Gamarra Fujimori’s trial has done much to restore the reputation of Peruvian justice. It has proved that all Peruvians are equal before the law. It has scrupulously respected the due process rights of the defendant. It has allowed the presentation of expert opinion on international law norms (an opportunity which Fujimori did not exploit, probably to his detriment, Gamarra thought), and it has allowed permanent media coverage.

Progress in other judicial investigations has however been slow, and seems to be flagging. Of the nearly 1,200 human rights cases under investigation in Peru, according to Gamarra’s figures, only 29 have resulted in the presentation of formal charges. The Ministry of Defence claims that about 900 military and police officers have been charged, and 50 are on trial. So far, 25 military and police have been convicted in 12 cases. The government set up a structure of specialised prosecutors and judges to deal with the cases, and a ‘law of effective cooperation’ helped break the conspiracy of silence that so often blocks clarification of human rights crimes. However, prosecutions and convictions are now stagnating, said Gamarra, due to waning political interest, the lack of a clear prosecution strategy, and above all the refusal of the military to provide information about military operations and those who participated in them. Also, the playing field is far from level: while the state pays private law firms to defend former soldiers, most victims are unable to afford legal representation. Only around 20 per cent have access to lawyers from human rights NGOs.

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**Judges in Peru tend to sail with the prevailing wind.**

Ronald Gamarra
What were the international reverberations of the ‘Pinochet Precedent’?

The final panel of the conference provided an opportunity to reflect on the wider impact of the Pinochet case on the development of international justice, and on advances and setbacks in universal jurisdiction since 1998. Three distinguished experts on international human rights law, Naomi Roht-Arriaza, Florian Jessberger and José Zalaquett, opened the debate.

If the number of subsequent third-party country convictions is taken as an indicator of the Pinochet effect, universal jurisdiction would appear to have advanced little since 1998. But Naomi Roht-Arriaza concluded that better indicators are the number of new prosecutions that have been opened, the impetus given to local judiciaries, the paradigm shift effect of the legal debates stimulated by the arrest, and the emergence of transnational legal teams around key prosecutions.

Belgium-Senegal-Chad

The positive aspect can be seen most clearly in a case cited by Roht-Arriaza, that of former Chadian dictator Hissène Habré, often described as ‘Africa’s Pinochet’. Habré sought refuge in Senegal after he was deposed in 1990. Attempts by victims’ relatives to open proceedings against him in Senegal failed, after the Senegalese Supreme Court ruled that the international Torture Convention had not been incorporated into domestic law. Victims, supported by international human rights organisations, then took the case to Belgium. After a four-year investigation, a Belgian judge charged Habré with crimes against humanity, war crimes, and torture. Senegal initially rebuffed a Belgian request for his extradition, but eventually agreed to the African Union’s recommendation that Senegal amend its laws and prosecute the former dictator itself ‘on behalf of Africa’. In July 2008, Senegal completed the legal reforms and constitutional amendments needed to allow Habré’s trial, and the victims have since presented complaints to a Senegalese prosecutor. Even though the Belgian effort to try Habré was stymied, it is difficult to imagine that the case against him now under way in Senegal would have materialised without the Belgian intervention.
Spain-Guatemala

Another illustration is the Spanish investigation of genocide in Guatemala, a case Roht-Arriaza has followed closely. Between 1960 and 1996 an estimated 200,000 people are estimated to have died in Guatemala, in what its truth commission considered to be acts of genocide against the country’s Mayan population. In an effort to reverse the impunity for these crimes that has prevailed in Guatemala, Nobel prizewinner Rigoberta Menchú asked the Spanish Audiencia Nacional in 1999 to investigate cases including the burning of the Spanish embassy in Guatemala - during which Menchú’s father and 35 others were killed - the murder of four Spanish priests, and various other massacres and disappearances. The case provoked a legal battle both in Spain and Guatemala. In 2003 the Spanish Supreme Court rejected the prosecutor’s invocation of universal jurisdiction, allowing only cases with clear domestic links (the case of the Spanish embassy and Spanish citizens) to proceed.

In 2005 Spain’s Constitutional Tribunal however ordered the other cases to be reinstated, finding the Supreme Court’s interpretation of the law overly restrictive given that crimes against humanity were involved. After Spanish judge Santiago Pedraz issued international arrest warrants, the contest moved to Guatemala. In 2007 Guatemala’s Constitutional Court rejected the Spanish court’s pretensions to universal jurisdiction, vetoing the arrests and extradition.

All might have ended there had not Guatemalan judge Jose Eduardo Cojulún, unexpectedly taken up the torch. In April 2008 Judge Cojulún collected testimonies on behalf of his Spanish colleague, submitting evidence of the crimes to the Guatemalan attorney general’s office. “[This] could be a powerful incentive for national justice to finally work,” said Roht-Arriaza. Whereas impunity in Guatemala seemed unchallengeable before the Spanish action, the outcome is now unpredictable.

Despite these promising examples, Florian Jessberger warned of the dangers of exaggerating the Pinochet effect: “While foreign prosecutions may indeed occasionally stimulate prosecutorial activity by the territorial state, other historical precedents show that foreign prosecutions may well produce negative effects such as solidarity with the perpetrators, and may thus ultimately result in impunity rather than punishment.” There has in fact been a visible backlash against universal jurisdiction in
the international arena. Belgium, which along with Spain, led the field in international human rights prosecutions in the aftermath of Pinochet, has also taken the brunt of the backlash. Countries with particularly advanced legislation on universal jurisdiction were persuaded to narrow or lay aside the provisions, not least to avoid being flooded by hundreds of submissions from all around the world.

Jessberger preferred to see the Pinochet case as the product of a changing international human rights environment, rather than as an independent variable in its own right. Juan Méndez agreed with this assessment: a paradigm shift in the international community to beat impunity had already begun when Pinochet was arrested.

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**Pinochet [...] was a consequence rather than a trigger of the ‘revolutionary’ developments in international law and transitional justice which we have been witnessing since the early 1990s.**

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**Belgium-Democratic Republic of Congo (DRC)**

Despite these putative advances an early, and influential, negative post-Pinochet example highlighted by both Jessberger and Zalaquett, was the decision of the International Court of Justice in The Hague in 2000 to uphold a complaint against Belgium by the DRC. The latter complained that an international arrest warrant issued by a Belgian judge against Congo’s acting foreign minister, Abdulaye Yerodia Ndombasi, for war crimes and crimes against humanity, violated Yerodia’s right to diplomatic immunity. The court agreed, refusing to recognise any exception to customary rules on diplomatic immunity even for international crimes. In fact, as Jessberger pointed out, some of the judges even doubted that the exercise of universal jurisdiction was ever permissible under international law. Belgium had to climb down and cancel the warrant.

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**Belgium-Israel, United States**

Powerful states like Israel and the United States pressured Belgium into significantly narrowing its universal jurisdiction rules in 2003. This came after Belgian judges sought to question Ariel Sharon about massacres in Palestinian refugee camps, and former President Bush Sr. over war crimes committed during the first Gulf War of 1991. Roht-Arriaza recalled that then-US Secretary of Defence Donald Rumsfeld threatened
to have NATO headquarters relocated from Brussels if Belgium did not comply. Belgian universal jurisdiction laws now have only a fraction of the scope they once had. Courts only exercise a form of passive or active nationality jurisdiction, unless Belgium has an obligation to prosecute under treaty law.

Several conference participants wanted to know why universal jurisdiction only seemed to work when questioned government officials came from poor states. Belgium successfully convicted some Rwandans for genocide, but had to back down when the spotlight was on former Israeli Prime Minister Ariel Sharon. What can be done to level the playing field of international justice?

Using different language, panelists all gave similar answers and none were optimistic. Jessberger thought that politics, rather than law, was the problem: “On paper, many states recognize that they can and should bring to justice those responsible for crimes under international law. Still, practice significantly lags behind laws on the books”, he said. Jessberger also reminded the conference that criminal law is necessarily selective. While we have had convictions in cases in Rwanda and Afghanistan, complaints against the US, Israel, Russia, and China have never reached the trial stage. In 2004 the US NGO the Centre for Constitutional Rights (CCR) took advantage of Germany’s progressive universal jurisdiction laws to present a well-documented case against former US Secretary of Defence Donald Rumsfeld, US Attorney General Alberto Gonzales and others for torture committed in Iraq’s Abu Ghraib prison. The German federal prosecutor decided not to open the investigation, preferring to wait in case a prosecution was opened in the US. When the CCR presented the case again, the prosecutor again declined to pursue it, this time on the grounds that Rumsfeld was not present in Germany. Thus, prosecutorial discretion, in theory a useful filter against frivolous complaints, in practice often acts as a safety valve by which the state can avoid engaging in politically costly prosecutions.

Putting the problem in a nutshell, José Zalaquett referred to a clash between Kantian and Hobbesian logic. Sovereign power sometimes yields to universal legal principles, as happened with Pinochet in London, but in many cases national interest and state security concerns trump the law. Moreover, the ‘soft law’ of universal jurisdiction imposes no binding obligations and powerful states are free to enforce it or ignore it. Even in the Rome Statute of the International Criminal Court, ICC, justice is subject to the

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38 These are the classic (traditional) bases for extraterritorial jurisdiction, requiring crimes to have directly affected nationals of the country proposing to try them.
demands of collective security. Article 16 of the Statute allows the UN Security Council to suspend cases for twelve months on overriding security grounds, a provision recently invoked by Sudan in an effort to prevent the investigation of genocide allegations against Sudanese president Omar Hassan al-Bashir.

Complaints filed against Rumsfeld in several jurisdictions, including Germany and France have all failed, as have attempted civil actions under the Alien Tort Claims Act in the United States. The US has even used aid to induce certain countries not to ratify the statute.

Juan Méndez observed that the current international political climate has been inimical to the development of international justice. The US has itself been responsible for serious human rights violations and has ceased to meaningfully champion human rights, while the performance of many European countries has been disappointing. New actors like Russia and China are more interested in national promotion than in human rights, and the African Union’s performance has also been disconcerting, as can be seen from the al-Bashir case, and its refusal to take on Mugabe.

Aside from these political constraints, the credibility of international jurisdiction can easily be undermined by the presentation of poorly documented or politically motivated cases. Méndez, for one, confessed to being “pretty sceptical” about the direction universal jurisdiction has taken. He accused the Spanish and French judges who filed genocide accusations in 2008 against the president of Rwanda of “a sort of revisionism of the genocide in Rwanda, which discredits and demoralises the whole effort of international jurisdiction.” When questioned by Roberto Garretón about this case in the closing session, Méndez said that the effects on the ICC of prosecutions like these have been negative, inspiring accusations from civil society as well as African governments that the work of the court is tainted by neo-colonialist attitudes.

The peace and justice dilemmas [...] are the same ones we were hearing about 25 years ago, when they told us the options were democracy or justice because we couldn’t have both. But South America proved that you can have democracy with justice. Pretty soon we’ll also be able to show the world that you don’t have to renounce justice in order to keep the peace.

Juan Méndez
Méndez also rang alarm bells about the “totally unacceptable” situation of Argentine torturer Cavallo, who was extradited from Mexico to Spain and from Spain back to Argentina, where he is currently awaiting trial for dictatorship-era human rights violations during the dictatorship. Cavallo has so far spent two years in a Mexican jail, five years in a Spanish jail, and has been in jail for a year in Argentina, but his trial has yet to begin.39

39 Due process concerns over Argentine cases surfaced again as this report went to press in December 2008: a national court ordered the immediate release of notorious former naval officer Alfredo Astiz and another man after they had been kept in preventive detention for two years without trial.
Conference panelists addressed a wide range of issues over three days of discussion, and many of their thought-provoking observations and comments simply could not be included in this brief summary. They nonetheless allow some tentative conclusions, offered here to stimulate further debate and research:

- While opinions may differ on whether Pinochet case was the most important generator of change in transitional justice in Chile, no one doubts its impact on the political climate in the country. This was felt by political parties, public opinion and the military alike, but it had particularly important implications for the judiciary.

- Institutional change and jurisprudential evolution in the Chilean courts prior to Pinochet’s arrest were also important, and have perhaps been underestimated. The impact of these changes was felt even in the absence of direct government intervention or significant legislative reform, such as annulment or formal reinterpretation of the Amnesty Law.

- Pinochet’s arrest in London was a milestone in universal jurisdiction. The House of Lords’ judgments were also a landmark because they set clear limits to the criminal immunity of former heads of state. However, they did not explicitly recognise and certainly did not extend the scope of universal jurisdiction. In fact, the House of Lords ultimately tied its jurisdiction narrowly to treaty obligations incorporated into the domestic legislation of the countries concerned.

- The Pinochet case illustrates how the exercise of universal jurisdiction can generate conflicts between the priorities of domestic and foreign judicial scenarios. It can divide as well as unite human rights activists in the countries concerned. Extradition laws may dilute and filter the charges on which an extraditee may be prosecuted in a third country, or even in his or her own country. The ideal is that state agents be held accountable in the domestic forum, as trials in the home country can strengthen the rule of law, public consciousness and historical memory, perhaps offering more reparation to victims and survivors.

- Victims, their relatives, human rights lawyers and activists are the key actors in any accountability process. History suggests that their persistence eventually brings results once difficult to imagine.
• The second phase of justice (post-transitional justice?) presents problems of its own that need to be faced and confronted. Among the key issues mentioned were: defining a prosecutorial strategy, obtaining information from the military, witness protection, introducing sentence reductions or immunity in exchange for information, limits on pre-trial detention, the human toll on relatives, witnesses and defendants, evidence issues, and publicity.

• The arrest of former President Fujimori in Chile and his extradition to Peru by the Chilean Supreme Court is the clearest example of the Pinochet effect in Latin America. The events in London also had a positive effect on the evolution of post-transitional justice in Argentina and Peru, but this influence can hardly be distinguished from the effect of wider changes in the international climate regarding impunity and accountability.

• Although universal jurisdiction had some successes in other parts of the world after Pinochet (notably the Hissène Habré case), questions are being asked about its viability since the inauguration of the International Criminal Court. Some attempted prosecutions of powerful Western world leaders have provoked a backlash. This has reversed progressive legislation in some countries, like Belgium. In others, like Germany, state prosecutors have filtered out politically sensitive cases.

• Attempted prosecutions using universal jurisdiction criteria that are not solidly founded can discredit international justice by attracting accusations of political bias, imperialism, and the like.

• Universal jurisdiction is not a panacea. It is limited by political and security factors, as well as economic considerations.
• **Martin Abregú**, lawyer, Ford Foundation representative for the Southern Cone and Andean countries. Formerly director of major Argentine NGO the Centre for Legal and Social Studies (CELS).

• **Felipe Agüero**, political scientist, Co-ordinator of the Human Rights and Citizenship Program at the Ford Foundation’s office for the Southern Cone and Andean countries. Formerly professor of political science at the Universities of Miami and Ohio State. Author of numerous books on the military and political transitions.

• **Rosemarie Bornand**, lawyer, executive secretary of the Human Rights Programme at the Chilean Ministry of the Interior. Lawyer at the Vicaría de la Solidaridad during the military dictatorship.


• **Jo-Marie Burt**, political scientist, professor of political science at George Mason University. Previously editor of the North American Congress on Latin America (NACLA). Has written extensively on political violence, human rights and social movements in Latin America.

• **Lidia Casas**, lawyer, associate professor at the Law School of Diego Portales University. Expert on gender violence, reproductive health, and discrimination issues, Casas is responsible for the ‘justice for past human rights violations’ chapter of the university’s Annual Human Rights Report. (available online via www.udp.cl)

• **Gastón Chillier**, lawyer, executive director of major Argentine NGO the Centre for Legal and Social Studies (CELS), based in Buenos Aires. Formerly Senior Associate in Human Rights and Security at the Washington Office for Latin America (WOLA).

• **Cath Collins**, political scientist, professor at the School of Political Science at Diego Portales University. Associate Fellow, and formerly Research Fellow, for Latin America at Chatham House, London. Expert on transitional justice and author of articles on Chile and El Salvador.
- **Cristián Correa**, lawyer, expert on reparation policies at the New York based International Center for Transitional Justice (ICTJ). Formerly legal advisor to Chile’s Advisory Commission on Human Rights, established by President Bachelet to investigate and solve errors in the identification of victims of the dictatorship, and legal secretary of the National Commission on Political Imprisonment and Torture (Valech Commission).

- **Jorge Correa Sutil**, lawyer, former secretary of Chile’s National Commission of Truth and Reconciliation (Rettig Commission) and ex-Undersecretary of the Interior.

- **Javier Couso**, lawyer, professor in the Law School of the Diego Portales University. Expert on the sociology of law, constitutional law, and state reform.

- **Viviana Díaz**, longstanding organiser and former president of Chile’s main relatives’ association the Agrupación de Familiares de los Detenidos Desaparecidos (AFDD), which was party to both the Spanish and Chilean legal cases against Augusto Pinochet. The AFDD continues to campaign actively for full accountability in the Chilean courts for human rights violations committed during the 1973 to 1990 dictatorship.

- **Ronald Gamarra**, lawyer, General Secretary of Peru’s National Coordinator on Human Rights. Formerly lawyer to major Lima-based NGO the Legal Defence Institute (IDL), and Assistant Prosecutor for corruption and human rights crimes attributed to former president Alberto Fujimori and his advisor Vladimiro Montesinos. Gamarra is one of the litigants for the civil party in the current trial of Fujimori.


• **Florian Jessberger**, Lichtenberg professor in International and Comparative Criminal Law at the University of Humboldt (Berlin). He edits the *Journal of International Criminal Justice* and has published extensively on German, international and comparative law.

• **Elizabeth Lira**, psychologist and therapist, is director of the Centre for Ethics at the Alberto Hurtado University, and a member of the Council of the Latin American Social Science Faculty (FLACSO). Lira has worked for years with torture victims in Chile and was a member of the Round Table on human rights and of the National Commission on Political Imprisonment and Torture (Valech Commission). She is the author of several books on these issues.


• **Carlos Peña**, Rector of the Universidad Diego Portales and former Dean of its Law School. Expert on civil law and freedom of expression, protagonist of Chile’s recent major criminal justice system reform. Former member of the national Commission on Historical Truth and a New Deal for Indigenous Peoples, current chair of the Presidential Commission on Higher Education.

• **Patricia Politzer**, journalist and writer, former president of the Chilean National Television Council, news director for National Television (TVN), and director of the government Secretariat for Communication and Culture. Author of several books on Chilean politics and social issues.

• **Cristián Riego**, lawyer, director of the Centre of Justice Studies for the Americas (CEJA). Formerly legal advisor to Chilean NGO the ‘Citizen Peace Foundation’ (Fundación Paz Ciudadana). Participated in pilot studies for Chile’s new Criminal Procedure Code and the law creating a Public Ministry, and advised the Ministry of Justice during the congressional debate on these laws.

- **Hiram Villagra**, lawyer, has worked since 1988 as a lawyer for Chilean NGO the Committee for the Defence of the Rights of the People (CODEPU). Has litigated numerous human rights cases in the Chilean courts, including the Letelier case, the Caravan of Death, Operation Condor and Villa Grimaldi.

- **José Zalaquett**, lawyer, is co-director of the Human Rights Centre at the University of Chile. He was a founding member of the Committee for Peace (precursor of the Vicaría de la Solidaridad) in the early years of the dictatorship, and has since been a director of Amnesty International, the International Commission of Jurists, and presided the Inter-American Commission on Human Rights. He was a member of the Retting Commission and the Dialogue Round Table. Zalaquett has received numerous awards for his pioneering work on transitional justice.
Convenors: School of Political Science and Faculty of Law, Universidad Diego Portales, Santiago de Chile

In Association With: The Ford Foundation, The International Center for Transitional Justice (ICTJ)

Dates: 8, 9 & 10 October 2008

Venue: UDP, Santiago de Chile

**Wednesday 8 Oct: Introductory Session & Panels 1&2**

9.00-9.30 Introductory Session - Carlos Peña, Rector UDP

**The Pinochet case, ten years on**

Chair: Robert Funk, UDP
Panelists:
- Sebastian Brett, Human Rights Watch
- Roberto Garretón, human rights lawyer, Chile

Chair: Claudio Fuentes, political scientist
Panelists:
- Felipe Agüero, Ford Foundation, Chile
- Patricia Politzer, journalist; Director of Studies, UNIACC University, Chile
- Cristián Correa, ICTJ and ex-Legal Secretary, Valech Commission

16.00-18.00 Cinema: ‘The Pinochet Case in Pictures’ - British and Chilean films

18.00-20.00 Forum: ‘The Pinochet Legacy: Human Rights in the Chilean Bicentenary’
organised by Amnesty International Chile Section

9.00-9.30: **Accountability in the Chilean justice system 1998-2008**
Lidia Casas, UDP Human Rights Centre

9.30-11.15: **Panel 3 - Pro-accountability actors and strategies since 1998**
Chair: Lidia Casas, UDP
Panelists:
- Cath Collins, UDP Chile
- Hiram Villagra, human rights lawyer, Chile
- Javier Couso, UDP Chile

11.30-13.15: **Panel 4 - Judicial System Actors and Accountability Practice since 1998**
Chair: Javier Couso, UDP
Panelists:
- Lisa Hilbink, University of Minnesota, USA
- Rosemarie Bornand, Executive Secretary, Human Rights Programme of the Chilean Ministry of the Interior
- Jorge Correa Sutil, former Subsecretary of the Interior and former Secretary of the Rettig Commission (Truth and Reconciliation Commission), Chile

Recently premiered documentary telling the story of the domestic cases against Pinochet through the figure of case judge Juan Guzmán.

18.00-20.00 **Forum with Chilean director Patricio Lanfranco, Viviana Díaz (AFDD), Eduardo Contreras (human rights lawyer) and Mónica González (journalist).**
Friday 10 Oct: Panels 5 & 6
Regional and International Dimensions of Transitional Justice; Closing Round Table

9.00-10.45: Panel 5 - Comparative Dimensions: Argentina and Peru
Chair: Rossana Castiglioni, UDP
Panelists:
- Martín Abregú, Ford Foundation Representative for the Southern Cone & Andean Region
- Gastón Chillier, Director, CELS Argentina
- Jo Marie Burt, George Mason University, EEUU
- Ronald Gamarra, Co-ordinadora Nacional de Derechos Humanos, Peru

11.00-12.45: Panel 6 - International Dimensions: Developments in International Justice and Universal Jurisdiction.
Chair: Jaime Couso, UDP
Panelists:
- Naomi Roht-Arriaza, University of California, USA
- Florian Jessberger, University of Humboldt, Berlin
- José Zalaquett, University of Chile

12.45-14.00: Closing Round Table – The state of the art of transitional justice in 2008. The role of the Pinochet case in the story
Presider: Juan Méndez, Director, International Center for Transitional Justice
Participants:
- Juan Méndez
- Elizabeth Lira (Universidad Alberto Hurtado, Chile)
- Jorge Correa Sutil
- Cristian Riego (CEJIL Chile)

16.00-18.00 Cinema: ‘State of Fear’ (2005, Paco de Onis & Pamela Yates)

18.00-20.00 Forum: ‘Recent Developments in the Fujimori Trial’
Ronald Gamarra (trial lawyer); Jo-Marie Burt and Roberto Garretón (trial observers)
CHILE

Nº of cases in progress: 342
Nº still in investigation stage: 241
Nº of agents charged or accused: 505
Nº of agents convicted: 245
Nº of generals or admirals among those convicted or charged: 45

Source: Human Rights Programme, Chilean Ministry of the Interior
www.ddhh.gov.cl

ARGENTINA

Nº of cases in progress: 242
Nº of agents charged: 419
Nº of agents convicted: 33
Nº in detention (including house arrest): 443

Source: Centre for Legal and Social Studies (CELS) Argentina.
www.cels.org.ar

PERU

Nº of cases in progress: 1,200 approx (937 in the region of Ayacucho)
Nº still in investigation stage: 1,170
Nº of agents formally charged: 50
Nº of agents convicted: 25

Source: Ronald Gamarra, National Human Rights Co-ordination, Peru
www.dhperuorg