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The Conditions of States’ Conforming to the Derogation Clauses in International Human Rights Treaties

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위원 김 성 은
Abstract

Under which conditions do states conform to the derogation clauses in international human rights treaties? Derogation—the suspension of obligations for parties to international human rights treaties—can be permitted in cases of national emergencies in which the life of a nation is threatened. The derogation clause has double-sidedness. On the one hand, derogation enables states to suspend their obligation "within" the boundary of legal procedure for only "temporary" terms in an exigency. On the other hand, states can abuse this derogation clause to justify repression over the people’s rights in the name of public order in national emergencies. As this derogation clause can be used as a double-edged sword, this paper aims to analyze the conditions facilitating states’ conformity to the derogation clauses such as regime type, strict conditionality, and monitoring system. I employ a qualitative method, the combination of case study and process-tracing. In the case study, I explore under which conditions Uruguay and Chile conform to the derogation clause in the International Covenant on Civil and Political Rights (ICCPR). The reason for choosing Uruguay and Chile is that while both Uruguay and Chile have derogated from the ICCPR under the authoritarian regime and have shared similarities, the types of the monitoring system were different after
derogation. I demonstrate that this difference induced different results in conformity. While Uruguay stopped relying on the derogation clause in the ICCPR to justify its repression of citizen rights, Chile continued to utilize the derogation clause to justify its repression. By tracing back these cases, I argue that the bottom-up monitoring systems centering on individual petitions prevent the misuse of the derogation clause and improve the state conformity whereas the monitoring systems focusing on top-down committees are hard to enhance the state conformity.
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1. Introduction

1.1. Research Question

Under which conditions do states conform to the derogation clause in international human rights treaties? Derogation is the suspension of obligations for parties to international human rights treaties; it may be permitted during national emergencies in which the life of a nation is officially considered to be threatened. Derogation clauses appear in Article 4 of the International Covenant on Civil and Political Rights (ICCPR)\textsuperscript{1}, Article 15 of the European Convention on Human Rights (ECHR)\textsuperscript{2}, and Article 27

\textsuperscript{1} ARTICLE 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

\textsuperscript{2} ARTICLE 15 Derogation in time of emergency

1. In time of war or other public emergency threatening the life of the nation, any High Contracting Party may take measures derogating from its obligations under this Convention to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law.

2. No derogation from Article 2, except in respect of deaths resulting from lawful acts of war,
of the American Convention on Human Rights (ACHR). Among these international human rights treaties with derogation clauses, this paper concentrates on derogations to the ICCPR, “since this is the only universal [treaty] of the three international human rights treaties with derogation provisions” (Neumayer, 2013: 4; Binder, 2012; McGoldrick, 2004). Unlike the ICCPR, the ECHR and the ACHR are ratified only among the European countries and American countries, respectively. As of April 2019, there were 175 states parties to the ICCPR, and this means that the ICCPR can be

3 ARTICLE 27. Suspension of Guarantees

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Ch Article 20 (Right to Nationality), and Article 23 (Right to Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary-General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.
regarded as the international law applying to the largest number of states among the treaties containing derogation clause. Additionally, concerning feasibility, states’ derogations from the ACHR have not been officially published. For these reasons, I chose to analyze the ICCPR to determine under which conditions states conform to the derogation clauses.

**Table 1. Countries that derogate from the ICCPR**

<table>
<thead>
<tr>
<th>Country</th>
<th>Number of derogations</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>3</td>
<td>1992, 2011</td>
</tr>
<tr>
<td>Argentina</td>
<td>4</td>
<td>1989, 2002</td>
</tr>
<tr>
<td>Armenia</td>
<td>2</td>
<td>2008</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>5</td>
<td>1994, 1995</td>
</tr>
<tr>
<td>Bahrain</td>
<td>3</td>
<td>2011</td>
</tr>
<tr>
<td>Democratic People’s Republic of Korea</td>
<td>1</td>
<td>1997</td>
</tr>
<tr>
<td>France</td>
<td>6</td>
<td>2006, 2015, 2016, 2017</td>
</tr>
<tr>
<td>Georgia</td>
<td>3</td>
<td>2006, 2007</td>
</tr>
<tr>
<td>Namibia</td>
<td>2</td>
<td>1999</td>
</tr>
<tr>
<td>Nepal</td>
<td>6</td>
<td>2002, 2005</td>
</tr>
<tr>
<td>Country</td>
<td>Number</td>
<td>Years</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>--------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>Panama</td>
<td>2</td>
<td>1987</td>
</tr>
<tr>
<td>Paraguay</td>
<td>1</td>
<td>2010</td>
</tr>
<tr>
<td>Poland</td>
<td>2</td>
<td>1982, 1983</td>
</tr>
<tr>
<td>Serbia and Montenegro</td>
<td>1</td>
<td>2003</td>
</tr>
<tr>
<td>Spain</td>
<td>1</td>
<td>1989</td>
</tr>
<tr>
<td>Suriname</td>
<td>1</td>
<td>1991</td>
</tr>
<tr>
<td>Thailand</td>
<td>5</td>
<td>2010, 2011, 2014</td>
</tr>
<tr>
<td>Turkey</td>
<td>8</td>
<td>2016, 2017, 2018</td>
</tr>
<tr>
<td>Ukraine</td>
<td>3</td>
<td>2015, 2016</td>
</tr>
<tr>
<td>Union of Soviet Socialist Republic</td>
<td>3</td>
<td>1988, 1990</td>
</tr>
<tr>
<td>Uruguay</td>
<td>1</td>
<td>1979</td>
</tr>
<tr>
<td>Yugoslavia</td>
<td>4</td>
<td>1989, 1990</td>
</tr>
</tbody>
</table>
Over the last five decades, states have derogated from the ICCPR. Table 1 shows the list of 37 countries which have derogated from the ICCPR from the 1970s to present. Scholars had paid attention to derogation clauses in the late 1970s when states started to derogate from the ICCPR and other treaties containing derogation clauses (Hartman, 1981; Hartman, 1985; Fitzpatrick, 1994; Gross & Ni Aoláin, 2006; McGoldrick, 2004; Oraá, 1992).

There are mainly three reasons why derogation clauses are important and relevant to international relations (IR) field. First, my research question is about how treaty design affects states’ behaviors. Only recently have scholars in IR started to examine “how variation in the content of legal rulings shapes the influence that treaties can have on human rights” (Hafner-Burton, 2012: 279). In particular, the degree of flexibility in the institutional design of the law is not quite well clearly understood yet (Hafner-Burton, 2012). Thus, it is crucial and meaningful to empirically demonstrate how the flexibility in treaty design determines states behaviors.

Second, derogation has double-sidedness as one type of flexibility mechanisms. On the one hand, derogation enables states to suspend their obligation within the boundary of legal procedure for only temporary terms in an exigency. In principle, states should use this derogation clause in public
emergencies which threatens the life of the nation and should not derogate from non-derogable rights such as the rights to life and the rights to be free from torture. These conditions may prevent the excessive repression of human rights since the derogating states open their situation to the international society by notifying its state of emergency and the reasons behind the derogation to the State parties. On the other hand, derogation can be utilized merely as an escape clause. States can abuse this derogation clause to justify repression over the people’s rights in the name of public order. As this derogation clause can be used as a double-sided sword in this sense, it is crucial to examine under which conditions State parties derogate while they adhere to principle.

Lastly, scholars of international relations overlooked the role of monitoring mechanisms in emergencies where states derogate. Since many domestic actors are involved, the situations in which states derogate are politically sensitive situations. Therefore, scholars thought that international bodies might be reluctant to monitor derogations in a strict way (Hartman, 1981). Also, they cast doubts on the fact-finding capabilities and review powers of the international organs as emergencies have ambiguous and complicated causes (Hartman, 1981; Green, 1979). Scholars often pointed
out that international human rights organs do not have "effective sanctions against states breaching their treaty obligations," and this causes the ineffectiveness of treaty systems. (Hartman, 1981: 2)

Contrary to these expectations, there were instances in which the monitoring systems affect the states' behaviors concerning the derogation clauses. Furthermore, even some scholars who regard the monitoring systems as an effective tool to ensure a better performance concerning the state compliance lump the monitoring systems together and view the monitoring systems as identical ones (Chayes et al., 1998; Hathaway, 2017). In other words, they do not specify the monitoring systems based on actors, nor interactions between the entities which are engaged in the systems. However, the monitoring systems are not the same. The monitoring system should be more elaborated depending on the actors who motivate and operate the system in an actual manner. In this respect, this thesis aims to find out the more sophisticated conditions that affect the State parties’ conformity. Under which conditions do states conform to the derogation clause in ICCPR?

I considered three conditions: (1) regime type, (2) strict conditionality, and (3) monitoring system. Some states conform to the derogation clause because of the change in regime type, such as the
transition from authoritarianism to democracy. Some other states tend to conform because of the embedded strict conditionality of the derogation clause and interpretation of the clause by legal or quasi-legal institutions. Finally, states might conform because of the monitoring systems regarding derogation clauses.

1.2. Definition

1.2.1. Derogation

Derogation is the suspension of obligations for State parties to international human rights treaties. After the State parties sign up and ratify to the ICCPR, they have obligations such as ensuring the human rights of the nationals. However, if they confront public emergencies which threaten the life of the nation, the States parties to the ICCPR may suspend their duties for a temporary period. The emergencies include the "situations of armed conflict, severe disorders, or violent terrorist campaigns" and severe natural disasters like floods and earthquakes (Sommario, 2012: 328; Novak, 2005: 984-1041; Joseph et al., 2005: 825; Fitzpatrick, 1994: 56).

While the State parties derogate, they cannot derogate from some articles of the ICCPR. These are often referred to as non-derogable rights,
which are the rights that cannot be suspended even in emergencies.

According to the second paragraph of Article 4 of the ICCPR, no derogation can be made from Article 6 (the inherent right to life), Article 7 (the right to freedom from torture or cruel, inhuman or degrading treatment or punishment), Article 8 (the prohibition on slavery, slave-trade, and servitude), Article 11 (the freedom from imprisonment on the grounds of inability to fulfill a contractual obligation), Article 15 (the right not to be subjected to the retroactive application of criminal law), Article 16 (the right to recognition as a person before the law), and Article 18 (the right to freedom of thought, conscience, and religion).

1.2.2. Conformity

The conformity to the derogation clause refers to the behaviors and practices in accordance with the requirements of the derogation clauses in international human rights conditions. In my thesis, there are principally two standards to judge whether states are successful in conformity to the derogation clause in the ICCPR. To begin with, the scope conditions of this thesis are that i) states have signed and ratified to the ICCPR, ii) they have derogated from the ICCPR, and iii) the derogation is suspected as misuse of
the derogation clause.⁴ Under these circumstances, if the State parties show its correcting behaviors to conform to any of the two standards of derogation clause, I view they are successful in conforming. The standards are derived from the conditionalities that form the lawful derogation.

On the one hand, the first criterion is whether there is an actual or imminent emergency which threatens the life of the nation. Many cases concerning derogation measures have been justified when there were situations of armed conflict, severe disorders, or violent terrorist campaigns that threaten the life of the nation (Sommario, 2012: 328; Novak, 2005: 984-1041). Additionally, scholars pointed out that “a severe natural disasters, such as a major flood or earthquake” could fall under the definition of public emergency for the purposes of Article 4 of the ICCPR (Joseph et al. 2005: 825; Fitzpatrick, 1994: 56). If there is no actual or imminent emergency like these, I regard that the government does not meet this conditionality and keeps the misuse of the derogation clause.

On the other hand, the second criterion is whether the states

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⁴ The reason why I include this third scope condition is that my research question is closely related to which conditions prevent the misuse of derogation clause. In other words, the conditions in which State parties conform to the derogation clause can link to the conditions in which the misuse of the derogation clause can be prevented.
guarantee the non-derogable rights during the derogation period. The non-derogable rights indicate the right to life, the right to freedom from torture or cruel, inhuman or degrading treatment or punishment, the right to be free from slavery, slave-trade, and servitude, the freedom from imprisonment on the grounds of inability to fulfill a contractual obligation, the right not to be subjected to the retroactive application of criminal law, the right to be recognized as a person before the law, and the freedom of thought, conscience, and religion. If the State parties correct behaviors to respect the non-derogable rights, then it would be regarded as the conformity to the derogation clause. In contrast, if they keep violating the non-derogable rights, then it would be regarded as nonconformity to the derogation clause.

1.3. Theories of Conforming to the Derogation Clauses

Theoretical frameworks explain several conditions that can facilitate the states' conformity to derogation clauses and prevent the misuse of the clauses. Those conditions can be classified as strict conditionality, regime type, and monitoring system.

1.3.1. Strict conditionality

Scholars contend that the strict conditionality of derogation clauses
encourages States Parties' conformity to lawful derogation (Navarro, 1993; MacDonald, 1997; Svensson-McCarthy, 1998; Gross & Ní Aoláin, 2006; Criddle & Fox-Decent, 2012). In order to make a lawful derogation, there is "an integral set of principles that constrain the scope and operation – necessity, proportionality, non-discrimination, and consistency with other obligations under international law" (McGoldrick, 2004: 389). Article 4 of the ICCPR indicates that the States parties need to notify the starting point, the provisions from which it has derogated, the corresponding reasons, and when the derogation terminates to other State parties via the Secretary-General of the United Nations. States should fulfill these strict conditions during emergencies, for a derogation to be lawful (Gross & Ní Aoláin, 2006; MacDonald, 1997; Navarro, 1993; Schreurer, 1982; Cassel, 2008; Kolb, 2008).

The strict conditionality does not only refer to how strict the provisions are, but also it includes the logic that it might induce states’ conformity by interpreting the clause in a stricter way by judges, legal experts, and quasi-legal institutions. For instance, the Human Rights Committee, and the military courts examine whether the states’ measures can be justified according to the provision in the ICCPR, especially in strictly
defined circumstances and decide whether the alleged victims are innocent (de Bouton v. Uruguay, 1981). The underlying logic of this argument is that as the strict conditions of derogation are legitimate, transparent, and consistent with accepted norms, States parties make efforts to fulfill these strict conditions during emergencies (Trimble, 1990; Hathaway, 2017).

Scholars who emphasize the strict conditionality analyze the meaning of the derogation provision into a more detailed way. For instance, Nugraha (2008) analyze "whether coup d'état can be regarded as ‘an emergency that threatens the life of a nation' under Article 4(1) of the ICCPR and Article 15 of the ECHR" (Nugraha, 2008: 195). By examining the exact meaning and connotation of the provision, scholars specified the rigid limitations and regulations of the derogation. Accordingly, they view that states would be less likely to misuse the derogation clause because of this strict conditionality.

1.3.2. Regime type

Some scholars find that regime type determines state behavior during emergencies (Hafner-Burton et al., 2011; Neumayer, 2013; Reynolds, 2017; Moravcsik, 2000). Hafner-Burton et al. (2011) find that democratic regimes are the most likely ones to file a derogation report. Neumayer (2013)
empirically analyzes whether human rights are violated more during derogation periods. He demonstrates that, unlike democracies,\(^5\) in autocracies\(^6\) and anocracies,\(^7\) non-derogable rights and derogable rights are violated during derogation periods. This suggests that regime type can be one of the conditions that affect the State parties' conformity to the derogation clause.

Logically, Moravesik (2000) showed how the regime type could facilitate the states' conformity. The newly established democratic governments tend to commit to international human rights regimes to stabilize "the domestic political status quo against nondemocratic threats" (Moravesik, 2000: p. 220). To be specific, the newly established democracies fear the future uncertainty of which the nondemocratic regimes might seize the political power in the future. Thus, the current democratic regimes provide the institutional strategies to "lock in" the domestic political status quo by employing international commitments to consolidate democracy (Moravesik, 2000: 244). In this sense, even if the nondemocratic party seizes

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\(^5\) Neumayer (2013) defined democracies as having a polity2 value of 5 or above.
\(^6\) Neumayer (2013) defined autocracies fixed at a value of polity2 of \(-5\) or below.
\(^7\) Neumayer (2013) defined anocracies as regime types which are neither clearly autocratic nor fully democratic and combine self-contradictory elements of both autocracy and democracy.
the political power in the future, the regime can be trapped in the international human rights regime, which was adopted by the previous newly established democracies. Then, the nondemocratic state can be condemned by the international society by the locking-in effect.

Applying this logic of locking-in to the derogation clause, the newly established democracies might commit to the ICCPR which contains the derogation clause, while asking for institutional constraints that can prevent the possible misuse of the derogation clause in the future. Then, the nondemocratic regimes might attempt to misuse the derogation clause to oppress the human rights of the nationals. However, the institutional strategy provided by the previous newly democratic regime might lock in the non-conforming behaviors of the nondemocratic regimes and lead to the conformity, ultimately.

1.3.3. Monitoring System

Scholars emphasize the central and pivotal role of the monitoring system for states’ authentic conformity to the derogation clauses (Richards & Chad, 2012; Pelc, 2009; Rosendorff & Milner, 2001; Sykes, 1991). In particular, Richards and Clay (2012) strongly support the view that “a monitoring regime could certainly … [fulfill] the need for increased governmental
accountability for rights-related actions during these times of emergencies” (p. 467). They demonstrate that governments are more likely to violate derogable as well as non-derogable rights without the monitoring mechanism for states of emergency (Richards & Clay, 2012). Moreover, Pelc (2009) shows empirically that increased monitoring prevents the misuse of escape clauses in international trade agreements by relying heavily on the GATT archives throughout the GATT/WTO’s history.

Unless there is a public and comprehensive monitoring mechanism regarding derogations, scholars note that states can show deviant behavior regarding treaty compliance by utilizing this exceptional clause, which is the derogation clause (Garcia-Blesa, 2011, p. 396; Marks, 1995; Dennis, 2005; Michaelsen, 2005; Garcia-Blesa, 2011; Hathaway, 2017; Green, 1979). States can pretend to provide public order and security, when, in fact, they are repressing their own citizens' rights (Marks, 1995). These scholars support the need for the systematic implementing agency for critical scrutiny of repression.

In terms of components of the monitoring mechanisms, scholars put emphasis on the Court or the Committee's role (MacDonald, 1997; Wittich, 2007; Hartman, 1981). They contend that the Court or the Committee has a
duty to scrutinize the reality and the validity of the derogation situations. In order to fulfill its duty, it is necessary to make fact-finding abilities, and reviewability is effective from these scholars' viewpoints (Hartman, 1981: 36; Gittleman, 1981: 707). Additionally, Muller and Slominski (2013) argue that time-based strategies are crucial ways to monitor the states' behaviors regarding compliance.

1.4. Argument

This thesis aims to find out the more sophisticated conditions which make states conform to the derogation clause while restricting the misuse of it. While reviewing the previous literature, I found that scholars do not classify the monitoring systems in a more detailed way (Chayes et al., 1998; Hathaway, 2017). For example, the scholars only emphasize the role of “international networks of people and institutions to monitor human rights violations” but do not specify the actors nor the directions of interaction between the actors within the monitoring systems (Hathaway, 2017: 1957). However, the monitoring systems are not the same and need to be revealed as processes through which agents interact with other entities. Notably, the environment management literature has divided the monitoring systems into
the top-down model and bottom-up model and examined the effects of the monitoring systems, respectively (Fraser et al. 2006). This can fill the gap found in the previous literature regarding derogation.

I slice the monitoring system into two models: the top-down approach and the bottom-up approach. Both approaches deal with the three levels of analysis: the international level, the domestic level, and the individual level. To begin with, both models start with the phase in which the derogation clause is drafted at the international level. In the domestic level, governments sign and ratify to the international human rights treaty, which involves the derogation clause, and those governments make decisions to derogate from some articles. The problem is, this derogation may be the misuse of the derogation clause as it creates victims in individual levels who are severely restricted in terms of human rights. These situations construct the scope conditions of my argument.

Under these situations, on the one hand, the bottom-up monitoring system represents the monitoring mechanisms centering on individual petitions which were enabled by the ratification of the First Optional Protocol of the ICCPR in the first place. The First Optional Protocol of the ICCPR is to implement the provisions in the ICCPR by enabling the Human
Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights written in the ICCPR. To simply put, the people of the State parties have a venue to make individual petitions to the Human Rights Committee based on the First Optional Protocol of the ICCPR.

The victims or the people who are directly involved, such as victims' families, friends, and neighbors may have the desire to devote themselves to making petitions against the state to the Human Rights Committee (HRC). As they are victims themselves, they have more incentives, or driving forces to protest against the measures committed by the government during the derogation period. The power of victims has been addressed in other scholars’ works (Shepson, 2015; De Warrdt, 2016). For instance, Shepson (2015) found that aggrieved victim “is more likely to have recourse to a judicial or quasi-judicial body to adjudicate his or her claims of human rights violations against a complicit state." Likewise, I argue that the activities involving petitions, making testimonies, and protests may be strong in magnitude and continuity in the bottom-up monitoring system.

Then, the HRC accepts these individual petitions and would examine, make recommendations, and request information from the
government. According to the First Optional Protocol and the ICCPR, the governments have duties to submit its states reports and should provide sufficient information surrounding the derogation. These procedures may repeat again and again because of the individuals' petitions, and the states are more likely to conform to the derogation clause.

On the other hand, the top-down monitoring system refers to the monitoring mechanisms centering on establishing the Ad Hoc Working Groups or appointing the Special Rapporteur. To begin with, the Ad Hoc Working Group or the Special Rapporteur is designated at the international level to monitor the State parties' measures regarding derogation. Specifically, the Commission on Human Rights adopted resolution 8 (XXXI), establishing an Ad Hoc Working Group on the situation of human rights in Chile in 1975. The resolution “was tabled by Senegal (combining drafts provided by the UK, Netherlands, Nicaragua and the USSR) and was adopted without a vote” (Limon and Power, 2014: 6). Four years later, in 1979, the Ad Hoc Working Group was transformed (partly to reduce costs).

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8 ARTICLE 4. 2. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.

9 As the resolution was proposed by the delegate of Senegal, I view that the formation and the operation of this monitoring system regarding Chile is top-down mechanism.
into a Special Rapporteur on the situation of human rights in Chile.

After the Ad Hoc Working Group or the Special Rapporteur diagnoses whether the emergency is real and non-derogable rights are not restricted, they submit the reports on the question of human rights. The reports are about the human rights situations during emergencies, the State parties’ reactions, and further recommendations to encourage the conformity to the derogation clause. I suppose that the top-down monitoring system lacks the direct channel for the victims so that it is less likely to deliver the victims' voices in a more powerful way. In other words, as there is little room for the victims to engage in the top-down monitoring system, it may be hard to induce the government's response and conformity to the derogation clause compared to the bottom-up monitoring system.

This thesis aims to assess the validity of this argument and find out the overlooked conditions which determine the violations or respects of the non-derogable rights by conducting the case study. Case studies can refine and identify which conditions activate the causal mechanism” with details (George & Bennett, 2005: 19-21).
1.5. Methods

In order to identify causal paths to explain the effectiveness of derogation clause on states' conformity to the ICCPR, I combine process tracing with case comparisons. I select the Uruguayan case and the Chilean case for comparisons, and I will conduct the process-tracing for these two cases, respectively.

1.5.1. Comparison between Case Study

I selected the Uruguayan case and the Chilean case to analyze the effect of derogation clauses on states’ conformity. The reason is that the two cases “are well matched for controlled cross-case comparisons” (Van Evera, 1997: 84). In other words, those cases are selected for the method of structured, focused comparison (George and Bennett, 2005). Uruguayan case and Chilean case share similar characteristics such as signing and ratifying the ICCPR in a similar period, experiencing the authoritarian regime in the 1970s and democratization in the late 1980s, and located in Latin America. Nicole Questiaux, who was the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, categorized the two countries as "the institutionalized state of emergency" cases (Questiaux, 1982).
Although they have those characters in common, they showed distinct monitoring systems. While the Uruguayan case had some individual complaints and petitions regarding derogation by using the First Optional Protocol of the ICCPR, the Chilean case did not have a case regarding individual petitions. Instead, the Chilean case was monitored by establishing several Ad Hoc Committees of derogation. By following these cases, this paper aims to find out whether and how the different monitoring systems leads to the states’ conformity to the derogation clause. Additionally, this thesis provides the richness of explanation with the detailed description within the Uruguayan case and the Chilean case.

1.5.2. Process-tracing

Based on Beach and Pedersen (2013)’s view, I suppose that “empirical tests in process-tracing should be designed in a manner that captures both the entity and the activity involved in each part of a causal mechanism” (p. 101). The causal mechanism is defined as “processes through which agents with causal capacities operate in specific contexts to transfer energy, information or matter to other entities” (Bennett, 2008: 207; Walnder, 2012: 18).

The following three questions are addressed by process-tracing the Uruguayan case and the Chilean case. The first question is what evidence we
should expect to see if a part of a causal mechanism exists. Regarding bottom-up monitoring system, my argument can be verified if individuals, including victims and their close acquaintance, intensively and continuously raise their human rights violations under the derogation period, make petitions, and struggle to get reparations or acknowledgments through the channels that were made for the victims to engage actively. However, my argument would be disproved if those individuals show no commitment and rather hide.

On the other hand, concerning top-down monitoring systems, my argument would be strengthened if the Ad Hoc Working Group or the Special Rapporteur has limitations and lack evidence because there is no room for victims to be engaged. Unlike the bottom-up monitoring system, the victims would have limited or no channel to deliver their voices. If this lack of communication channel leads to the non-conformity of the State parties, then my argument would be reinforced. In contrast, my argument would be disproved if the top-down monitoring system still shows good performance without the victims’ engagement.

The second question is what counts as evidence for alternative hypotheses. The alternative hypotheses are drawn from the previous
literature. The first alternative hypothesis is that the strict conditionality induces states parties more conform to the derogation clause in the ICCPR. Concerning strict conditionality, I examine not only the existence of the strict conditionality in the provisions but also how courts or other organs interpret the situations in which states derogate. This alternative hypothesis will be verified if the courts' decisions or the international organs such as the Human Rights Committee use the logic of strict conditionality to lead the State parties' conforming behavior to the derogation clause. If they emphasize the derogation can be justified only in restricted circumstances and if their decision or recommendation influence the State parties' behavior in the next years, then it will strengthen this alternative hypothesis.

The second alternative hypothesis is that the newly established democratic regime may make the future nondemocratic regimes be locked in by committing to lawful derogation, which is far from misuse of it. This hypothesis is related to treaty-designing phase. This hypothesis would be verified if the three evidence appears: i) the newly established democratic regime designs the derogation clause more cautiously and tries to prevent the misuse of the derogation clause, ii) the future nondemocratic regime is locked in this intention of derogation clause, and iii) the State parties
conform to the derogation clause because of this logic of locking-in. If there is any indication of regime type, I explore the specific paths and processes. It may be found in the Polity IV score, newspapers, and other recorded historical documents.

On the whole, the combination of case comparison with process-tracing contributed to my thesis in two ways. On the one hand, the case study can specify the causal story that links various hypotheses which have been identified in the previous literature based on theoretical models. In other words, my case provides a historical context so that I could formulate a causal story. On the other hand, the case study can provide a ground for examining hypotheses that could not be easily operationalized with quantitative measures such as history, culture, and meaning.

1.5.3. Data

I used a qualitative method, which is archival research to collect data. First, I conducted primary document research to identify important actors and occurrences regarding derogation and Uruguay's activities. I studied the record of the history of the derogation clause and explored the international newspaper archives. In addition, the news archives, periodic reports, and newsletters published and distributed by the United Nations General
Assembly and Uruguayan state reports were also examined.

### 1.6. Structure

My thesis is divided into two parts. The first part comprises two chapters exploring derogation in Uruguay and Chile regarding the respective governments’ conformity to the derogation clause in the ICCPR using data gathered through archival research. In Chapter 2, I provide the historical processes of the drafting of the derogation clause in the ICCPR and detailed description of Uruguay’s participation. I trace the processes of activities surrounding the derogations and figure out which conditions were significant in explaining Uruguay's improvement in conformity with derogation clause. Chapter 3 addresses the identical contents of the Chilean case. The second part concentrates on the analysis. In Chapter 4, I analyze the commonalities and uniqueness from each case study and examine the alternative hypotheses. In Chapter 5, I provide conclusions, and these conclusions are drawn from the two parts of my thesis. I link the findings from the Uruguayan and Chilean case study. I also devoted a part of this chapter to future research questions on the impact of derogation.
2. Case Study – Uruguay

2.1. Uruguay’s Participation in Treaty-designing Phase

Although there were some studies that focus on the Uruguayan case more in depth, most studies have merely mentioned Uruguay as one of the derogating states and described or cited the specific individual petitions in Uruguay (Walkate, 1982; Dennis, 2005; Hartman, 1985; Criddle and Fox-Decent, 2012; Hafner-Burton, 2011). One step further than merely citing or mentioning the Uruguayan case as one of the common examples of the derogating countries; however, my thesis provides one of the academic analysis of the conditions. I provide historical background by examining not only the history of treaty design but also that of Uruguay’s participation. I noticed how actively Uruguay had participated in designing the derogation clauses and the initial intentions of the drafters.

In 1947, the delegate of the United Kingdom proposed the necessity of including the derogation clause for the first time at “the Drafting Committee set up by the Commission on Human Rights to draft the Universal Declaration and the Covenants” (Hartman, 1985: 96). The United Kingdom required that "[i]n time of war or other public emergencies" a state
may take measures derogating from its obligations "to the extent strictly limited by the exigencies of the situation" (Dennis, 2005: 137).

Uruguay participated in designing the derogation provision of the ICCPR relatively actively, especially at the sixth session of the Commission on Human Rights in 1950. According to the summary record of the sessional report, this session was held at Lake Success, New York, on Tuesday, 16 May 1950 (UN Economic and Social Council, 1950a). The delegates addressed the draft of the International Covenant on Human Rights, especially on Articles 2, 3, and 4 (derogation clause). The delegates are from the United States of America, Australia, Chile, China, Denmark, Egypt, France, Greece, India, Lebanon, Philippines, United Kingdom of Great Britain and Northern Ireland, Uruguay, and Yugoslavia. There were also representatives of specialized agencies, those of non-governmental organizations, and secretariats.

In this period, the Uruguayan regime was democratic regime. The President was Andres Martinez Trueba, and he was in office from March 1, 1951, to March 1, 1955, as the 31st President of Uruguay. During his presidency, the fifth Constitution of Uruguay was approved in a referendum in 1952, and this Constitution created the National Council of Government
of Uruguay. This was a democratic regime, and the polity2 score of this period was 8 (Center for Systemic Peace, 2018).

The Uruguayan delegate, Mr. Oribe, supported the retention of Article 4 in the ICCPR, which is the derogation clause. Despite Mr. Oribe acknowledged the possible severe problems that could be made by the derogation clause, he asserted that the derogation clause can play an essential role in setting a new principle in international law which makes States be in charge of human rights and fundamental freedoms while they derogate (UN Economic and Social Council, 1950a: 11; Svensson-McCarthy, 1998). The delegates from Uruguay highlighted that this “principle was established in most national legislation under which the executive power was responsible for its measures suspending constitutional guarantees” (Summary record, 1950). Furthermore, Mr. Oribe pointed out that the first paragraph in Article 4 was “drafted in too indefinite terms” and asserted that the scope should be limited in the more restrictive way (UN Economic and Social Council, 1950a: 11).

In the eighth session of the Drafting Committee in 1952, “Uruguay disagreed with the inclusion of the word ‘nation’ and preferred the term ‘people’ in order to allow derogations not only when the life of a nation is in
peril, but also during calamities such as ‘floods and earthquakes, which might affect only a section of the population.’” (Nugraha, 2018: 197; United Nations Commission on Human Rights, 1952: 11-12.) This shows that Uruguay has considered the exact situations and circumstances in which the derogation should be considered, such as natural disasters.

On top of that, the delegate of Uruguay also proposed his opinion on the second paragraph of Article 4. The second paragraph of Article 4 defines non-derogable rights, or rights that cannot be derogated even in the case of a national emergency. He stated that the non-derogable rights should include the contents of “the United States amendment and that of the United Kingdom” (UN Economic and Social Council, 1950a: 11). To state the amendment of the United States, it suggested that “[N]o derogation may be made by any State under this provision which is inconsistent with international law or with international agreements to which such State is a party” (E/CN.4/365, 1950: 19). On the other hand, the United Kingdom suggested that “[N]o derogation from article 5, except in respect of deaths resulting from lawful acts of war, or from articles 6, 7, 8 (paragraphs 1 and 2) or 14 can be made under this provision” (UN Economic and Social Council, 1950: 19).
Regarding non-derogable rights, Uruguay explicitly "urged the Commission to do its utmost to agree on a list of articles from which there could be no derogation" (UN Economic and Social Council, 1950). This was due to the notion that there would be some states derogating arbitrarily from their obligations without this provision. Uruguay highlighted that this clause is necessary in order to prevent states from abusing the derogation clause. This shows that the delegates of Uruguay had emphasized the necessity of the derogation clause, and it already recognized the double-sidedness of the derogation clause. Uruguay indeed knew that the derogation clause could be abused, and it actively involved in the process of how to prevent the misuse.

The members of the sixth session of the Commission on Human Rights considered which rights should be regarded as non-derogable rights as a vote at the end of the session. The Chairman put to the vote the article 5, 6, 8 (paragraphs 1 and 2), article 10 (paragraph 2), 14, 15, 16, 20, and 30. In the sixth session, these articles were adopted by votes, but the members re-examined the question of including these articles into the second paragraph of the derogation clause.

Lastly, the third paragraph of Article 4, which contains the notification requirement, was discussed from the fifth session of the
Commission on Human Rights in 1949 to the eighth session in 1952. Belgium proposed to draft the provision in the Commission's sixth session in 1950. According to this provision, "any State party which exercises the right of derogation shall inform the other States parties to the Covenant, through the Secretary-General, of the provisions in respect of which it has exercised and of the date" (UN Human Rights Commission, 1950). The purpose of this provision was to monitor State parties to the Covenant, whether they keep others informed of derogations (UN Economic and Social Council, 1950). The Chairman of the sixth session "put paragraph 3 of the Belgian amendment (E/CN.4/497) to the vote and paragraph 3 was adopted by eight votes to none, with five abstentions" (UN Economic and Social Council, 1950).

At the eighth session of the Commission in 1952, Yugoslavia asserted that states should provide sufficient information to justify the derogation so that international control can be achieved (UN Economic and Social Council, 1952). Uruguay agreed upon this suggestion. On the whole, the Commission adopted the entire paragraph by a vote of fourteen to none, with four abstentions\(^\text{10}\) (Svensson-McCarthy, 1998, p. 687; UN Economic and Social Council, 1950).

\(^{10}\) United Kingdom (Mr. Hoare), India (Mrs. Mehta), France (Mr. Cassin), and Australia (Mr.
Taken together, Uruguay actively participated in designing the derogation provision throughout the sessions of the Commission on Human Rights. Uruguay even suggested the provision regarding non-derogable rights to prevent misuse and was in favor of retaining the derogation clause to ensure international control. In this sense, it can be inferred that Uruguay understood the original intention of the derogation clause and strongly advocated the strict conditionality of the derogation clause. Additionally, the regime type of Uruguay was democracy in this period. During the treaty-designing phase, the regime type and the strict conditionality might affect Uruguay's active role in drafting the lawful derogation clause and preventing the misuse of it.

Whitlam) had abstained on the Yugoslav proposal. Mr. Hoare explained that he had abstained because “he thought it wrong to place Governments under an obligation to go into the reasons which motivated their actions in individual cases; the addition was unnecessary in view of the fact that the action could only be taken in a situation of emergency anyway” (UN Commission on Human Rights, 1952: 8 E/CN.4/SR.331). Mrs. Mehta said that she had abstained because “she was opposed to the word "immediately" which might create difficulties in emergency cases and because she considered it sufficient to inform the Secretary-General without also informing the contracting parties” (UN Commission on Human Rights, 1952: 8 E/CN.4/SR.331). Mr. Cassin stated that he thought it is superfluous. Mr. Whitlam consented to Mr. Hoare’s viewpoints.
2.2. Derogation and Victim’s Emergence in Bottom-up Monitoring Systems

Uruguay signed in the First Optional Protocol of the ICCPR in 1967 and ratified to that in 1970. The First Optional Protocol entered into force 23 March 1976. The States parties to the Protocol agreed “to enable the Human Rights Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth” in the ICCPR (The First Optional Protocol, 1966). According to the paragraph 2 of the Article 4, “within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State” (The First Optional Protocol, 1966).

One noticeable fact is that Uruguay was turning to authoritarianism in this period. From 1966 to 1967, Oscar Diego Gestido was President, and from 1967 to 1972, Jorge Pacheco Areco, who was the Vice President under Gestido, assumed the presidency after his death. Gestido declared the Prompt Security Measures in December 1967, and this measure was intended to oppress the strikes and work stoppages by using the armed forces (Heinz & Frühling, 1999: 248). Succeeding Gestido, Pacheco prohibited the left-wing
newspapers and organizations, and his government prohibited all news about guerilla activities which opposed to the government (Heinz & Frühling, 1999: 250). The Pacheco presidency is evaluated as the "probably the most crucial period of time in the gradual transition to military dictatorship" (Heinz & Frühling, 1999: 253). It was only formal democracy but an authoritarian government. Despite Uruguay had experienced the transition to military dictatorship from 1967 to 1971, it is quite surprising that Uruguay signed and ratified to the Optional Protocol. This evidence can reject the alternative hypothesis regarding regime type. The alternative hypothesis argues that the newly established democratic regime would commit to making lawful derogation clause by using institutional strategies. However, in this case, not a newly established democratic government but a government which oppresses the citizens' rights and which is about to turn into military dictatorship signed up and ratified to the Optional Protocol, which is for reinforcing the implementation of the ICCPR and enabling individual petitions.

Based on these provisions and purpose of the Protocol, the Uruguayan people, or the victims of human rights violations, have a route to make their petitions directly to the Human Rights Committee. Additionally,
according to the second paragraph of Article 5, there should be met two conditions to enable the Human Rights Committee to consider communications from an individual. One is that the same issue should not be examined under another procedure of international investigation or settlement such as consideration by Inter-American Commission on Human Rights. The other condition is that the individual should have exhausted all available domestic remedies. (The First Optional Protocol, 1966). If these two conditions are met, Uruguay should submit written documents accounting for the issues raised by the people, or the victims to the Human Rights Committee.

We need to cautiously think about the reason why Uruguay has ratified to the First Optional Protocol of the ICCPR. It was not merely for binding itself during the derogation period. As it is stated in the preface of the First Optional Protocol, the original purpose is quite broad. The original purpose is "in order further to achieve the purposes of the ICCPR and the implementation of its provisions" (The First Optional Protocol, 1966). Article 4, which is the derogation clause, is only one of the provisions among the 53 articles in the ICCPR. Furthermore, the actual communications between the Uruguayan people and Uruguay had addressed various articles
embedded in the ICCPR, not limited in Article 4 (Baritussio v. Uruguay, 1982; de Casariego v. Uruguay, 1981; Antonaccio v. Uruguay, 1981; Izquierdo v. Uruguay, 1982). The communications were not about derogation but about human rights violations that were committed by Uruguay. It means that the reason for existence and ratification of the First Optional Protocol is not confined to the derogation nor derogation period. Therefore, the ratification of the First Optional Protocol does not necessarily lead to, does not implicitly guarantee the conformity of the derogation clause.

After designing the derogation clause in the 1950s, Uruguay notified its derogation from Article 4 in the ICCPR to other states through Secretary-General on July 30th, 1979, for the first time (Uruguay, 1979). Since a military coup occurred in 1973, the regime type of Uruguay had been the civic-military dictatorship until February 28th, 1985. Aparicio Méndez Manfredini had been de facto President who was non-democratically appointed by the armed forces from 1976 until 1981. After Aparicio Méndez Manfredini seized the power of Uruguay as de facto President from 1976, there had been many human rights violations. During his presidency, Uruguay declared a derogation from the ICCPR and notified its derogation through the UN Secretary-General in 1979 (Uruguay, 1979).
Based on the First Optional Protocol of the ICCPR, some courageous and oppressed victims and their relatives who identified strongly with them made individual petitions against Uruguay through the channel which was possible by the First Optional Protocol of the ICCPR. There have been 26 individual petitions between victims, Uruguay, and the HRC in total from 1979 to 1983. Among these communications, there were ten individual petitions which are directly related to Article 4, which is the derogation clause.  

Initially, the alleged victims submitted the initial letter to the HRC on behalf of themselves to start the processes individual petitions (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Carballal v. Uruguay, 1984; Silva and others v. Uruguay, 1981; de Bouton v. Uruguay, 1981). In other cases, close family members initiated the communication by submitting the initial letter to the HRC on behalf of the alleged victims. They were niece, brother, wife, and daughter of the alleged victims (Lanza v. Uruguay, 1980; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981). When the relatives sent the letters, they justified their acting on behalf of the alleged victims. For instance, Ana Maria Garcia

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11 I provide chronological table of communications in the Uruguayan case in Appendix.
Lanza de Netto explained that "the alleged victims were unable to act on their own behalf and that she was acting on their behalf as their close relative, believing, on the basis of her personal acquaintance with them, that the alleged victims would agree to lodge a complaint" (Lanza v. Uruguay, 1980). Likewise, in most cases, when the alleged victims were not able to submit the letter on their own, their close relatives actively identified with them and started the communications.

There were broadly three elements of the contents of the initial letters. First, one of the contents of the initial letters was detailed testimonies about what kind of tortures the victims had while being detained or kept in prisons (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Carballal v. Uruguay, 1984; de Bouton v. Uruguay, 1981; Burgos v. Uruguay, 1981). The tortures were generally "electric shocks, hanging from hands, the immersion of head in dirty water, keeping blindfolded and with hands tied," "and being forced to stand motionless for long periods" (Lanza v. Uruguay, 1980; Carballal v. Uruguay, 1984; de Bouton v. Uruguay, 1981). Furthermore, some of the alleged victims named specific names of torturers and interrogators (Motta v. Uruguay, 1984). The victims and their relatives stated explicitly the physical, mental, and moral tortures and their symptoms.
derived from those tortures such as "one arm paralyzed, leg injuries and infected eyes", "substantial loss of weight", "broken jawbone and perforation of the eardrums" (Weisz v. Uruguay, 1984; Burgos v. Uruguay, 1981). The wife of Sergio Euben Lopez Burgos also provided the details with testimonies of the witnesses while her husband and other detainees were transported (Burgos v. Uruguay, 1981).

There was an exceptional case, too. Unlike other victims and their relatives who gave very detailed description of the tortures, physical and mental damages caused by them, Lucia Sala de Touron, who submitted the initial letter on behalf of her husband, Luis Touron, gave no details about the inhuman treatment of which her husband got. This later influenced the HRC's decision on her case. The HRC stated that "as to the allegations of ill-treatment, they are in such general terms that the Committee makes no finding in regard to them" (Touron v. Uruguay, 1984). Paradoxically, this shows how valuable and powerful the evidence or testimonies provided by the victims are.

Second, the authors of the initial letters also wrote about whether they had exhausted all the possible domestic remedies and whether they submit the same issue to another procedure of international organs such as the Inter-
American Commission of Human Rights (IACHR)\textsuperscript{12}. This is basically due to the two conditions to enable the HRC to consider individual petitions. (The First Optional Protocol, 1966). The alleged victims stated that they have "exhausted all possible domestic remedies," and have "not submitted this case to any other international instance" (Motta v. Uruguay, 1984; de Bouton v. Uruguay, 1981; Pietraroia v. Uruguay, 1984). Most of the victims had recourse to habeas corpus\textsuperscript{13}; however, the recourse of habeas corpus was not accepted by the Uruguayan courts under the regime of Prompt Security Measures. Thus, they claimed that there were no effective local remedies in this sense (de Bouton v. Uruguay, 1981; Pietraroia v. Uruguay, 1984).

Lastly, the authors explicitly noted that of which articles in the ICCPR were violated during the derogation period (Motta v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva and other v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981). They pointed

\begin{itemize}
\item[\textsuperscript{12}] Some victims had submitted their case to the IACHR, however, this was not enough so that some victims withdrew their complaints on their own. For instance, in Weisz v. Uruguay case, the IACHR (case No. 2134) "had decided to shelve the case when the complaint had been withdrawn by its author" (Weisz v. Uruguay, 1984: 2). In Lanza v. Uruguay case, the author had submitted the case to the IACHR in November 1974 and February 1976 so that this case "was no longer under active consideration by that body" (Lanza v. Uruguay, 1980: 2). After the submission, Lanza submitted the case to the HRC on 29 October 1980.
\item[\textsuperscript{13}] Habeas corpus is a law that states that a person cannot be kept in prison unless they have first been brought before a court of law, which decides whether it is legal for them to be kept in prison.
\end{itemize}
out that “the Committee should declare that a serious violation has occurred of articles” of the ICCPR in the initial letters. The articles that were mentioned over twice include articles 2, 3, 7, 9, 10, 12, 14, 15, 17, 18, 19, and 25 (Motta v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva and other v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981).

Overviewing the nine cases of individual petitions, it was recognizable that how the victims and the close acquaintances emerged and submitted their unforgettable memories by documents, testimonies with exact dates. They sent additional letters for more details. They showed that they have done all the possible domestic remedies and did not submit the cases to the other international organizations while submitting these cases to the Human Rights Committee. This demonstrates that the bottom-up monitoring system, which is called individual petitions, was the ultimate breakthrough for the alleged victims. This would have been the last hope for the victims. They struggled to show their willingness and resentment against the human rights violations committed by Uruguay.
2.3. Human Rights Committee’s Requests

After the victims submitted the initial letters to the HRC, the HRC decided to transmit the communication to Uruguay, requesting further information and observations relevant to the question of admissibility (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva and others v. Uruguay, 1981; de Bouton v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981). Regarding the question of admissibility, the HRC ensured whether the domestic remedies have been exhausted and whether other international organs address the same issue at the same time. The HRC requested Uruguay and/or the victims to furnish more detail about whether these two conditions were met. The other international organs generally referred to the Inter-American Commission on Human Rights (Lanza v. Uruguay, 1980; Weisz v. Uruguay, 1984; Pietraroia v. Uruguay, 1984).

In some cases, Uruguay urged that the domestic remedies have not been exhausted, that the Inter-American Commission on Human Rights dealt with the same case, and the date in which the alleged violation took place preceded the date in which the ICCPR entered into force in Uruguay (Carballal v. Uruguay, 1984; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay,
1981). Responding to this position of Uruguay, the HRC concluded that “although the date of arrest was prior to the entry into force of the Covenant for Uruguay, the alleged violations continued after that date” (Carballal v. Uruguay, 1984).

Concerning the exhaustion of the domestic remedies, the victims actively refuted Uruguay. The authors "reiterated that the domestic remedies were in practice inoperative" (Weisz v. Uruguay, 1984; Pietraroia v. Uruguay, 1984). Specifically, Luciano Weinberger Weisz, on behalf of his brother, Ismael Weinberger, demonstrated why the domestic remedies are not applicable and operative in practice. The following statements were from his additional letter.

In substantiation of this allegation he repeats the dates relating to his brother's arrest (25 February 1976), the day the Government acknowledged that arrest (June 1976), the day charges were brought against him (16 December 1976), the day the indictment was pronounced (September 1978), and the day he was sentenced by a Military Court of First Instance (14 August 1979). The author points out that these dates and the fact that no final judgment has been pronounced in his brother's case more than four and a half years after his arrest prove that domestic remedies are not operating normally in Uruguay.

The author traced back the exact dates of the domestic remedies that he had
exhausted in Uruguay in this sense. The HRC found that there were no other remedies that could have been pursued by the victim.

Regarding whether other international organs have been reviewing the same case, the HRC investigated and found out that some cases had been submitted to the Inter-American Commission of Human Rights, but they had been effectively withdrawn¹⁴ (Pietraroia v. Uruguay, 1984; Lanza v. Uruguay, 1980; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981).

After ascertaining that these two conditions were met, the HRC decided that the communication was admissible (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981; Silva and others v. Uruguay, 1981; de Bouton v. Uruguay, 1981). Then, the HRC decided to transmit the decision to Uruguay. Lastly, and most importantly, the HRC referred to the second paragraph of Article 4 of the

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¹⁴ In Weisz v. Uruguay case, the Inter-American Commission of Human Rights (case No. 2134) “had decided to shelve the case when the complaint had been withdrawn by its author” (Weisz v. Uruguay, 1984: 2). In Lanza v. Uruguay case, the author had submitted the case to the Inter-American Commission on Human Rights in November 1974 and February 1976 so that this case “was no longer under active consideration by that body” (Lanza v. Uruguay, 1980: 2). After the submission, Lanza submitted the case to the HRC on 29 October 1980. In Pietraroia v. Uruguay case, the “case No. 2020 had been effectively withdrawn by the Inter-American Commission of Human Rights” (Pietraroia v. Uruguay, 1984). In Touron v. Uruguay case, this case was addressed by the IACHR before the ICCPR entered into force, and “therefore does not concern the same matter which the HRC is competent to consider” (Touron v. Uruguay, 1981: 3).
First Optional Protocol, and requested Uruguay to submit "written
explanations or statements clarifying the matter and the remedy, if any, that
may have been taken by it, to the Committee within six months of the date of
the transmission" (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v.
Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva

It should be noted that even when the HRC requested Uruguay to
provide facts and details, it also requested the victims to provide more details
if possible. This clearly shows that there had always been venues or channels
to listen to the victims. This is one of the most crucial differences that
distinguish the Uruguayan case from the Chilean case, which represents the
top-down monitoring system. In the Chilean case, there was no direct route
to listen to the victims and their families and the Working Groups and
Special Rapporteur only investigated the victims’ cases for once within
temporary periods. Unlike Chile, this bottom-up monitoring system in
Uruguay continuously and constantly paid attention to the victims'
allegations and their evidence, not just investigating for once. Responding to
this attention, the victims aggressively provided the exact facts in detail by
using this breakthrough. It is noteworthy that this phase could have been ended up as perfunctory procedure, but it was not. Indeed, this procedure also captured the victims' further allegations and specific evidence.

2.4. Uruguay’s Response and Victims’ Rebuttals

2.4.1. Uruguay’s Active Responses

Uruguay had submitted its comments to the HRC (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva and others v. Uruguay, 1981; de Bouton v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981). Although they generally had not submitted it within the expiration date, which was six months from the HRC’s comment, they did submit their responses. Furthermore, Uruguay had formally and officially requested the HRC to extend the time-limit reasonably (Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; de Bouton, 1981). This shows that Uruguay had sensitively responded to the HRC’s requests in the bottom-up monitoring system.

Additionally, Uruguay notified the HRC that it would submit its response as soon as possible (de Bouton v. Uruguay, 1981). This date was
two days before the expiration date. On 13 February 1980, the State party formally requested an extension of reasonable time to the Human Rights Committee in this case. This reaction clearly shows that Uruguay, at least, had made efforts to meet up the requirements within the bottom-up monitoring system.

With regards to the contents of Uruguay’s response, there were broadly four categories. First, Uruguay asserted that the question of admissibility should be reconsidered (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Pietraroia v. Uruguay, 1984). The communication can be admissible when the domestic remedies have been exhausted, and other international organs do not address the same issue. For instance, in July 1980, Uruguay reiterated that the victim had not exhausted the domestic remedies. To be specific, Uruguay stated that "Mr. Weinberger has not exhausted the available domestic remedies is proved by the appeal against the judgement of the court of the first instance which the defence lodged with the Supreme Military Court on 19 August 1979 and which was brought before that Court on 29 September 1979" (Weisz v. Uruguay, 1984). Also, regarding the other international organ's monitoring, Uruguay urged that some cases are "brought before and considered by the Inter-American
Commission on Human Rights" (Touron v. Uruguay, 1981). In this sense, Uruguay argued for reconsideration of the question of admissibility.

Secondly, Uruguay stated that the victims were arrested under the “Prompt Security Measures” because they were considered as being involved in subversive association referred to in article 60 of the Military Penal Code (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; de Bouton v. Uruguay, 1981; Burgos v. Uruguay, 1981). Under the "Prompt Security Measures," Uruguay informed the HRC that the remedy of habeas corpus does not apply to persons detained (Touron v. Uruguay, 1981).

Thirdly, Uruguay asserted that the victims were guaranteed the due process under the legal system in Uruguay and could enjoy legal assistance (Carballal v. Uruguay, 1984; Lanza v. Uruguay, 1980; Touron v. Uruguay, 1981; Burgos v. Uruguay, 1981). To illustrate, in Carballa v. Uruguay case, after Leopoldo Burro Carballal was arrested on 4 January 1976 because he was considered as being involved in subversive activities under the "Prompt Security Measures," the Fifth Military Court of Investigation closed the preliminary investigation proceedings because it lacked evidence on 29 June 1976. The author took refuge in the Mexican Embassy before leaving for
Mexico. Uruguay insisted that these series of events show that “justice in Uruguay is not arbitrary and that in the absence of any elements constituting proof of criminal acts, no one is deprived of his liberty” (Carballal v. Uruguay, 1984). For these reasons, Uruguay urged that the allegations of the author were unfounded. The government emphasized that the victims could have defense counsels as well (Lanza v. Uruguay, 1980; Touron v. Uruguay, 1981; Burgos v. Uruguay, 1981).

Lastly, regarding torture and the medical care in prisons, Uruguay insisted that “the charges of alleged ill-treatment and torture suffered by the detainees are mere figments of the author’s imagination” (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Burgos v. Uruguay, 1981). Uruguay declared that the personal integrity of detainees in Uruguayan prisons is guaranteed and rejected the allegations about physical coercion (de Bouton v. Uruguay, 1981; Touron v. Uruguay, 1981). Additionally, Uruguay affirmed that the detainees enjoy all the guarantees of medical, surgical, and hospital care afforded to all detainees (Pietraroia v. Uruguay, 1984). In the case of Burgos v. Uruguay, Uruguay cited the "relevant medical report" that indicated his fracture of the lower left jaw was caused by athletic activities on 5 February 1977 (Burgos v. Uruguay, 1981). The report also stated that “he was
discharged on 7 May 1977 with the fracture knitted and progressing well” (Burgos v. Uruguay, 1981).

2.4.2. Victims’ Active Rebuttals

The victims have rebutted to Uruguay's response in various ways by using this direct channel. They submitted additional details like the exact date, detailed description of tortures they got, and medical records written by doctors. There are largely four categories of the alleged victims' rebuttals. This part clarifies that the victims had many opportunities to refute. The first possible rebuttal could be made when the HRC requested Uruguay to furnish details, and this is the second possible chance to refute to Uruguay's reaction. It is a crucial phase as it shows how victims respond when they have chances to speak for themselves. Furthermore, this phase clearly demonstrates that the information shown in Uruguay’s response was available for victims. In other words, the victims could get access to the information provided by the Uruguayan government and actually made use of it to refute effectively to the government’s responses. It is noticeable that this information flow was visible and possible within this bottom-up monitoring system.

First, concerning the question of admissibility, the alleged victims
actively reaffirmed that they had exhausted all possible domestic remedies in practice (Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Pietraroia v. Uruguay, 1984). For instance, Motta noted that the remedy of habeas corpus was not available, and although he appealed against the military court, his appeal was “dismissed by the Supreme Court of Justice after his escape” on 12 December 1978 (Motta v. Uruguay, 1984). Another example is the case of Pietraroia v. Uruguay. On 18 August 1980, the author pointed out that these domestic “remedies can only be invoked when the person concerned has served half his sentence” (Pietraroia v. Uruguay, 1984).

Secondly, concerning the charges under the "Prompt Security Measures," the alleged victims requested Uruguay to provide what exactly the subversive activities meant (Weisz v. Uruguay, 1984). However, Uruguay did not submit any copies of court orders or decisions that are related to this consideration. This demonstrates that the victims did not obey the Court's decisions but questioned the real meaning of their charges. Also, the alleged victims cast doubts about the reason behind the charges. Luciano Weinberger Weisz claimed that “the true reasons were his brother had contributed information on trade-union activities to a newspaper opposed to the Government and his membership in a political party which had lawfully
existed while the membership lasted” (Weisz v. Uruguay, 1984).

Thirdly, while Uruguay maintained that the alleged victims enjoyed legal assistance, guaranteed the due process under Uruguayan legal order, the victims refuted these assertions by providing facts and details (Lanza v. Uruguay, 1980). To illustrate, in the case of Burgos v. Uruguay, while Uruguay urged that the victim had access to lawyers, on 22 December 1980, the author submitted that “since accused persons can only choose their lawyers from a list of military lawyers drawn up by Uruguay, her husband had no access to a civilian lawyer, unconnected with the Government, who might have provided "a genuine and impartial defence" (Burgos v. Uruguay, 1981). Accordingly, she insisted that her husband did not enjoy the proper safeguards of a fair trial.

Another example, which was the case of Lanza v. Uruguay, in a letter dated 15 February 1980, Beatriz Weismann and Alcides Lanza submitted the following additional information in detail:

They stated that they had no legal assistance before their trial.

Beatriz Weismann stated that she opted for a private lawyer, but that she never saw him, was never able to communicate with
him and that she was never informed of her rights, possible remedies or recourses. Alcides Lanza stated that he opted for an officially appointed lawyer and that Dr. Antonio Seluja, whom he saw on that occasion, but was never able to speak with, was assigned as his defence lawyer. Alcides Lanza further stated that his defence counsel was later succeeded by Dr. Pereda and Dr. Juan Barbe, neither of whom he could ever communicate with. As they had no contact with lawyers, they were unable to appeal because they did not know what their rights were and had no one to assist them in exercising them.

Lastly, whereas Uruguay considered the alleged ill-treatment and torture as a “mere figment of imagination” of the alleged victims, the authors of the communication provided further details about the types of physical and mental tortures they got, the symptoms after torture, and inadequate medical care while they were detained (Lanza v. Uruguay, 1980; Pietraroia v. Uruguay, 1984). The types of torture included electric shocks, hanging from his hands, and immersion of his head in dirty water (Lanza v. Uruguay, 1980). The physical symptoms due to the ill-treatment were like deafness, damage on spine and collar-bone, hypertension, permanent trembling in the
right arm and loss of memory due to brain damage (Lanza v. Uruguay, 1980; Pietraroia v. Uruguay, 1984). In the case of Lanza v. Uruguay, Alcides Lanza “submitted a medical report dated 19 February 1980, from a doctor in Stockholm, together with copies of hospital and laboratory records relating thereto” as evidence of this miserable state of health (Lanza v. Uruguay, 1980). They also enclosed several photographs showing scars on Alcides Lanza's legs, allegedly caused by cigarette burnings as a means of torture. The doctor's report shows that Alcides Lanza continued to suffer from auditive disturbances, a tremor of his right hand and inability to use it properly and symptoms of mental depression.

The other example regarding the physical symptoms due to torture is the case of Burgos v. Uruguay. Uruguay stated that the fractured jaw was caused by athletic activities in prison. However, the author pointed out that Uruguay's explanations are contradictory. The transcription of the medical report stated his fracture was "prior to 'reclusion.' In other words, the fracture occurred before his imprisonment. She reiterated her allegation that the fracture occurred as a consequence of the tortures to which Lopez Burgos was subjected between July and October 1976, when he was in the hands of the Uruguayan Special Security Forces (Burgos v. Uruguay, 1981).
On 5 May 1981, the State party submitted additional comments. It contended that there is no contradiction between the medical reports because the State party used the term "reclusion" to mean "hospitalization," and reasserted that the fracture occurred in the course of athletic activities in prison.

2.5. Human Rights Committee’s final recommendations

Uruguay referred to provisions of Uruguayan law, in particular, “the Prompt Security Measures” (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; de Bouton v. Uruguay, 1981; Burgos v. Uruguay, 1981). The HRC considered whether Uruguay’s acts and treatments could be justified under the ICCPR. However, Uruguay had not justified its derogation with the submission of the facts or laws. The HRC emphasized that the derogation clause in the ICCPR allows derogations only “in strictly defined circumstances” (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Touron v. Uruguay, 1981; Carballal v. Uruguay, 1984; de Bouton v. Uruguay, 1981; Burgos v. Uruguay, 1981). The phrase “strictly defined circumstances” shows that the strict conditionality of the derogation
clause was used as the logic behind the HRC’s final recommendations concerning the justification of the derogations made by Uruguay.

As the logic of strict conditionality was used in the HRC's recommendation, this evidence can reinforce one of the alternative hypotheses, which is about strict conditionality. It is true that the HRC emphasized that the derogation clause can be permitted only in strictly defined circumstances.

The HRC found that there were serious violations of the ICCPR to the alleged victims among the nine cases. The violated articles include Article 7, 9, 10, 14, 15, 19, 22, and 25. Except the Article 22, all the other articles appear for more than twice. Among these articles, Article 7 and 15 address non-derogable rights. Article 7 deals with torture and ill-treatment during detentions. Concerning Article 15, the "penal law was applied retroactively against" the alleged victim (Weisz v. Uruguay, 1984).

Regarding the torture and ill-treatment, Lucia Sala de Touron, on behalf of her husband, Luis Touron, did not state what kinds of torture he got but stated in general terms. Because of this generality, the Human Rights Committee concluded that it could not make specific findings (Touron v. Uruguay, 1981). In this sense, it is noticeable how crucial the alleged
victim’s claim or evidence is in this regard.

Meanwhile, in the same case, Uruguay “has not responded to the HRC's request that it should be furnished with copies of any court orders or decisions relevant to the matter” (Touren v. Uruguay, 1981). The HRC found that this suggests that judgments were not handed down in writing. Therefore, the HRC could not “accept either that the proceedings against Luis Touren amounted to a fair trial or that the severity of the sentence imposed or the deprivation of political rights for 15 years was justified” (Touren v. Uruguay, 1981). This also reflects that Uruguay's non-response can be influential in the bottom-up monitoring system.

Finally, the HRC recommended that Uruguay is obliged to “provide them with effective remedies, including compensation, for the violations which they have suffered and to take steps to ensure that similar violations do not occur in the future” (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; Weisz v. Uruguay, 1984; Touren v. Uruguay, 1981; Carballal v. Uruguay, 1984; Silva and others v. Uruguay, 1981; de Bouton v. Uruguay, 1981; Pietraroia v. Uruguay, 1984; Burgos v. Uruguay, 1981).
2.6. Uruguay’s Conformity

In this part, I examine the change in conformity of Uruguay in 1983. There was a noticeable change in Uruguay’s attitude in 1983. After the HRC’s recommendation, Uruguay stopped relying on Article 4 to justify its regime of prompt security measures. This can be viewed in the communication of *Hiber Conteris v. Uruguay* from 1983. In this case, Conteris, who was a victim of these measures, tried to establish that Uruguay had violated Article 4 (*Hiber Conteris v. Uruguay*, 1985). However, the Committee replied that no violation of Article 4 had occurred in this case:

Concerning the author’s allegations of a breach of Article 4, the Committee notes that the State party has not purported to rely on any derogation from provisions of the Covenant under Article 4. The Committee, therefore, regards it as inappropriate to make a finding for this Article.

Since then, Uruguay has not made any derogations. I argue that the persistent endeavors of the victims by using the bottom-up monitoring mechanisms have stopped the possible misuse of the derogation provision. Although Uruguay utilized the derogation clause in the ICCPR to justify its repression, the victims had struggled to provide more evidence and factual details by using this venue constantly for about five years. These struggles
enabled Uruguay to stop applying the derogation clause in an abusive and wrongful way. This stoppage is considered as conformity based on the definition of conformity in this thesis. According to the definition of conformity, Uruguay showed its correcting behaviors in accordance with the first criterion of conformity, which is whether there is an actual emergency threatening the life of nation. In other words, Uruguay did not derogate from the ICCPR as there is no actual or imminent emergency. Thus, Uruguay is a successful case in conforming based on this fulfillment of one of the standards of conformity.

2.7. Conclusion

Concerning regime type, Uruguay has experienced a variety of political regime type from the 1950s to 1980s. Uruguay was democracy in the 1950s and early 1960s. From 1966 to 1971, Gestido and Pacheco "confronted with an increase in trade union agitation" and many strikes, they began to lean on armed forces to oppress citizens' rights under the name of public order. They

15 According to the Polity IV project, the polity 2 score of Uruguay from 1952 to 1970 was 8. In 1971, the score decreased to 3, and in the next year, in 1972, it became -3. From 1973 to 1977, the score drastically decreased to -8. From 1978 to 1984, the polity 2 score was -7 (Center for Systemic Peace, 2018).
prohibited various forms of opposition to the government in this period. This is categorized as the gradual transition to military dictatorship.

From 1971 to 1973, Juan Maria Bordaberry became the President, and he established the Commission for the Repression of Illegal Economic Activities. Then the military-led coup d'état on June 27, 1973. Uruguay was under the civic-military dictatorship because of this coup. This authoritarian military dictatorship had continued until February 28, 1985. In this period, a lot of human rights violations occurred, such as the use of torture and unexplained disappearances. Uruguay was known as "the torture chamber of Latin America" and accumulates the largest number of political prisoners per capita in the world (BBC, 2018).

Then, on August 3, 1984, the army and political leaders signed the Naval Club Pact and decided to restore the constitution of 1967 (BBC, 2018). On November 25, 1984, democratic elections were held, and on March 1, 1985, Julio Maria Sanguinetti was elected as the next President. He consolidated the democratization as President. Accordingly, from 1985 to 1988, the polity 2 score increased as 9 and from 1989 until now, the polity score is 10, which means highly democratic.

The noticeable fact is that from 1973 to 1984, Uruguay was under the
authoritarianism. However, Uruguay stopped relying on the derogation clause from 1983, as shown in the case of *Conteris v. Uruguay*. This means that Uruguay changed its attitude toward conformity before democratization. Thus, rather than the regime type, the consistent endeavors made by the alleged victims and monitoring system were the main power to make Uruguay conform to the derogation clause in the ICCPR.

On top of that, as mentioned above, it was during Gestido and Pacheco regime in which Uruguay signed up and ratified the First Optional Protocol of the ICCPR. This contradicts the alternative hypothesis, which argues that the newly established democracy commits to international human rights regimes to make future nondemocratic regime lock in the commitment. In other words, the non-democratic regime itself ratify to the First Optional Protocol, which is an institutional instrument that provides the victims to engage in the monitoring system. Thus, the alternative hypothesis regarding regime type can be rejected in this sense.

The other factor, which is referred to as strict conditionality in this thesis, played a specific role within the monitoring system. The HRC has used the logic of strict conditionality while reviewing the communications between individuals and Uruguay. In most cases, the HRC stated that the
derogation clause in the ICCPR allows the State party to derogate from any of the provisions in the ICCPR only in “strictly defined circumstances” (Lanza v. Uruguay, 1980; Motta v. Uruguay, 1984; De Bouton v. Uruguay, 1981; Burgos v. Uruguay, 1981). Although this logic was used to correct Uruguay’s attitude, this cannot explain the change of Uruguay. If the strict conditionality played a crucial role, Uruguay would conform to the derogation clause in the first place, not changing its attitude towards conformity. This was also found in the Chilean case as well. The strict conditionality did not change or even affect the Chilean government’s attitude. Also, the strict conditionality was embedded “within” the monitoring system so that the monitoring system should be considered as the primary factor that affected the conformity of Uruguay.

The impact of the bottom-up monitoring system was well shown in the statements made by the newly elected President in 1985, who was Julio Maria Sanguinetti. He praised the monitoring procedures based on the First Optional Protocol of the ICCPR. He “thanked the Committee for persisting in its consideration of the many communications from victims of the military government” (Fitzpatrick, 1994). The Committee emphasized that “its right to communicate directly with detained victims” and this was the main source
that enabled the Committee to “simplify its admissibility decisions” regarding the exhaustion of domestic remedies and other international organs’ monitoring. This shows that the direct dialogues between victims and the HRC were crucial in making Uruguay conform to the derogation clause.

Throughout Chapter 2, I cautiously examine relevant factors and reach the following conclusions. First, I demonstrate that the bottom-up monitoring mechanisms prevent the misuse of the derogation clause. Second, the bottom-up monitoring mechanisms improve Uruguay's conformity by enabling victims to engage actively and consistently throughout the whole processes. Third, the regime type was not a determinant factor that altered the attitude of Uruguay as it had been authoritarianism during this period, and the non-democratic regime itself committed to the First Optional Protocol. Lastly, although the strict conditionality was embedded in the monitoring system as the HRC used the logic to criticize Uruguay, it solely cannot be the sufficient condition to make the change of Uruguay's attitude.
3. Case Study – Chile

3.1. Chile’s participation in Treaty-designing Phase

Chile derogated in 1976, 1986, 1987, 1988, and 2010. Most studies have merely mentioned Chile as one of the derogating states from the ICCPR (Green, 1979; Walkate, 1982; Hartman, 1985; Siehr, 2004). I aim to analyze the Chilean case to examine the precise conditions in which states conform to the derogation clause. Additionally, as I stated earlier, the Chilean case is selected for comparing to the Uruguayan case in my thesis as it shares many commonalities except the monitoring system.

Chile also participated in designing the derogation provision of the ICCPR at the sixth session of the Commission on Human Rights on 16 May 1950 (UN Economic and Social Council, 1950). After the United Kingdom suggested the inclusion of the derogation clause to the Drafting Committee, it submitted the original version at the fifth session of the Human Rights Commission (Hartman, 1985: 96; Dennis, 2005; Svensson-McCarthy, 1998: 203). Chile supported the principles, and the Chilean delegate, Mr. Valenzuela stressed that the United Kingdom amendment “was not designed to restrict human rights”, but that it rather “provided for exceptional cases
such as of war or public emergency, in which it was necessary to suspend the application of the Covenant”; the ICCPR had to “fix the line to be taken in circumstances which, however unfortunate actually did arise” (UN Economic and Social Council, 1949: 2). This shows that Mr. Valenzuela acknowledged and understood the initial intention of the drafters and consented to them.

While Chile had accepted the principles contained in the amendment of the United Kingdom in the fifth session in 1949, Chile formally proposed the deletion of Article 4. The Chilean delegate, Mr. Valenzuela, said that he would vote against Article 4 "because it felt that the concept of national security and public order set forth in the other articles of the Covenant sufficiently covered all cases which might arise in time of war or other calamity mentioned in that article" (UN Economic and Social Council, 1950). This position was predominant for the first time when the United Kingdom suggested the necessity of the derogation clause (Hartman, 1985). There was a strong resistance, and the logic behind this opposition was the same as Mr. Valenzuela asserted. This was because the derogation clause seemed "superfluous" and rather "general limitations clause would be adequate and preferable" (Hartman, 1985: 97). Mr. Valenzuela pointed out
that paragraph 1 of Article 4 was drafted in indefinite terms, and the terms are too vague. In this sense, he worried that it could be utilized and abused (UN Economic and Social Council, 1950). He also did not like the phrase "the Interests of the people" and "measures" because the expressions lack precise legal meaning and unclear (UN Economic and Social Council, 1950: 13).

Secondly, regarding the paragraph 2 of the Article 4, Mr. Valenzuela noted that the paragraph 2 would raise “very complicated problems of interpretation and to give rise to considerable abuse” (UN Economic and Social Council, 1950).

Lastly, concerning paragraph 3 of Article 4, Mr. Valenzuela could not support paragraph 3. This was because he considered paragraph 3 as a duplicated form of the Commission's measures of implementation. He also doubted the role of the Secretary-General because the Secretary-General cannot easily carry out the whole tasks. As a result, Mr. Valenzuela proposed the deletion of article 4 formally in the session. Mr. Whitlam, who was the Australian delegation supported the Chilean proposal to delete the Article 4 as another article in the ICCPR dealt clearly with the question of national security and public order (UN Economic and Social Council, 1950).
As a response, Mr. Oribe, the Uruguayan delegate highly respected the motives of the Chilean proposal. However, Mr. Oribe notified that the derogation clause is necessary because the scope of Article 4 is much more comprehensive than provisions concerning national security and public order. Accordingly, he “urged the Commission to face facts and to try to draft a clear text” (UN Economic and Social Council, 1950a).

Since Mr. Valenzuela formally proposed to delete Article 4, the Chairman put the Chilean proposal to delete Article 4 to the vote. However, the Chilean proposal was rejected by 10 votes to 2, with 2 abstentions16 (UN Economic and Social Council, 1950a). After the rejection, the Commission adopted the French amendment to the first paragraph of Article 4 by ten votes against none but with three abstentions. This was "in the case of a state of emergency officially proclaimed by the authorities or in the case of public disaster" (UN Economic and Social Council, 1950a). The first paragraph of Article 4 got its final form on 11 June 1952 (UN Economic and Social Council, 1952; Svensson-McCarthy, 1998: 211).

Throughout the statements of Mr. Valenzuela, he emphasized the

16 The document does not indicate which delegates had voted in favor, against, and abstained. It only states that “[T]he Chairman put the Chilean proposal to delete article 4 to the vote. The Chilean proposal was rejected by 10 votes to 2, with 2 abstentions” (UN Economic and Social Council, 1950a; para 96.)
possibility of misuse more than anyone else in the Commission. Since he notified the uncleanness or coherence, he indeed advocated the strict conditionality of the derogation clause. He also actively suggested his opinions and positions while drafting the provision in the first place as the Uruguayan delegate did. Considering his stress on strict conditionality and his prudence in misuse of the derogation clause, Chile would be more likely to conform to the derogation clause even compared to Uruguay.

During this period, the regime type of Chile was a democracy. The polity 2 score was 2 from 1935 to 1954, and it increased to 5 from 1955 to 1963. Gabriel Gonzales Videla was the 69th President from 1946 to 1952, and Carlos Ibanez del Campo was the President from 1952 to 1958. It might support the alternative hypothesis regarding regime type as the Chilean democratic regime in the 1950s was worried about the abuse of it and made efforts to prevent the misuse of the derogation clause and ratified to the ICCPR containing the derogation clause. If these efforts have a locking-in effect in the future non-democratic regime and make Chile conform to the derogation clause, the alternative hypothesis would be verified as true.
3.2. Derogations and Victim’s Emergence in Top-down Monitoring Systems

After participating in designing the derogation clause in the ICCPR, Chile signed and ratified the ICCPR on 10 February 1972. It has not ratified the First Optional Protocol of the ICCPR until 1992. This could implicitly mean that Chile had intentionally not ratified to the First Optional Protocol of the ICCPR not to conform to the derogation clause. Admittedly, this non-ratification made the individual petitions impossible; however, the non-ratification of the First Optional Protocol cannot be the sufficient condition accounting for the nonconformity. In other words, the non-ratification of the First Optional Protocol does not naturally lead to the nonconformity because Chile has ratified to the ICCPR so that it has duties to comply. The intent of the First Optional Protocol is only to reinforce and facilitate the implementation of the ICCPR. It is not an indispensable protocol that must be accompanied with the ratification of the ICCPR. Thus, the endogeneity issue can be solved by this logic.

Under these circumstances, Chile has derogated from the ICCPR in 1976, 1986, 1987, 1988, and 2010 (Chile, 1976; Chile, 1986; Chile, 1987; Chile, 1988; Chile, 2010). Except for the derogation declared in 2010, all the other derogations have been suspected as misuse of the derogation clause.
Nicole Questiaux, who was the special rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, categorized the Chilean case as "the institutionalized state of emergency" cases (Questiaux, 1982). This suspect was valid as the reasons provided in derogation notices have been uniformly vague (Hartman, 1981: 21).

In order to monitor the human rights abuses committed by Chile during emergencies, the Commission on Human Rights established five different Ad Hoc mechanisms at various times: the Special Rapporteur on the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile\(^\text{17}\); the Ad Hoc Working Group on the Situation of Human Rights in Chile\(^\text{18}\); replaced in 1979 by the Special Rapporteur on the Situation of Human Rights in Chile; the Expert on the Question of the Fate of Missing and Disappeared Persons; and the special fund for victims of

\(^{17}\) On 9 March 1977, the Special Rapporteur on the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile was authorized by Commission Res. 9 (XXXIII).

\(^{18}\) In 1975, the Commission adopted resolution 8 (XXXI) to establish an Ad Hoc Working Group on the situation of human rights in Chile. This was because the Commission had doubts to the effectiveness of the UN’s 1503 procedure for addressing the allegations of human rights violations (Limon & Power, 2014). The resolution was tabled by Senegal and this was the combination of drafts provided by the UK, Netherlands, Nicaragua and the USSR. This resolution was adopted without a vote. In 1979, four years later, the Ad Hoc Working Group was transformed into a Special Rapporteur on the situation of human rights in Chile. This was partly to reduce costs. As the resolution was proposed by the delegate of Senegal, I view that the formation and the operation of this monitoring system regarding Chile is top-down mechanism.
human rights abuses in Chile (Fitzpatrick, 1994: 127-8). The Commission on Human Rights aimed to facilitate Chile to change its human rights practices and accelerate its return to democracy through these mechanisms. I named this way of monitoring as the top-down monitoring mechanism.

3.3. Ad Hoc Working Group on the Situation of Human Rights in Chile (1976~1979)

The Ad Hoc Working Group on the situation of human rights in Chile (the Group) was established under resolution 8 (XXXI) of the Commission on Human Rights. From 1976 to 1979, the Group submitted the report to the Commission on Human Rights (United Nations Economic and Social Council, 1976, E/CN.4/1188; UN Economic and Social Council, 1977; United Nations Economic and Social Council, 1978; United Nations Economic and Social Council, 1979). The Group consisted of five members: Mr. Ghulam Ali Allana (Pakistan; Chairman/Rapporteur), Mr. Leopoldo Benites (Ecuador), Mr. Felix Ermacora (Austria), Mr. Abdoulaye Dieye (Senegal), and Mrs. M. J. T. Kamara (Sierra Leone). It reported the violations of human rights in Chile in particular, concerning torture and other cruel, inhuman or degrading treatment or punishment.
There are mainly four points that are found in the Group’s reports from 1976 to 1979. First, the Group had consistently requested Chile to allow a visit. However, Chile refused to permit a visit to the Working Group from 1976 to 1979. Thus, the Working Group could not verify the human rights situations in Chile in exact terms. The refusal to visit Chile means that the Group had limited access to meet or contact with the Chilean victims in that country. In this sense, there was no direct channel that can provide a platform to the victims or their acquaintance to allege their experiences regarding human rights violations.

Secondly, more fundamentally, the Group’s reports lack exact detailed information such as victim’s names, the dates in which the human rights abuses had taken place, and the place or surroundings that are related to these abuses. This was also because there was no room for the victims to engage in the top-down monitoring system. In principle, the Group’s reports were based on the exchange of communications between the Chilean government and the Working Group. This is a significant difference from the Uruguayan case, which enabled the victims to demonstrate their evidence and claim their rights directly within the bottom-up monitoring system. The rules of procedures indicate that “the Ad Hoc Working Group may not
disclose the identity of a witness” and the “Working Group does not give complete quotations” because it is apparently impossible to quote all the documents (UN Economic and Social Council, 1977: 12-13). This elucidates that the top-down monitoring mechanisms cannot show the exact victims' experiences in detail, although the Group had listened to the witnesses' voices.

It was surprisingly critical that the Group did not specify the exact names and the dates in detail. This could be verified by Chile’s counterargument. The Chilean government submitted its observations, responding to the Ad Hoc Committee’s reports. It contested that the Ad Hoc Working Group’s report is “no more than an allegation against Chile” (United Nations Economic and Social Council, 1979, Annex XXII: p. 2). It criticized that the Working Group “failed to emphasize substantive facts, devoting only a few words to them while artificially expanding denunciations which it reproduces in full even though they are anonymous” (United Nations Economic and Social Council, 1979, Annex XXII: 2). The Chilean government made comparisons between the information provided by the government itself, and that suggested by the Ad Hoc Working Group as follows.
The information supplied by the Government gives the names of the persons, the dates of their arrest, the court before which they were brought, the reason for their arrest and, where appropriate, the date of release – particulars which the Group should have included in paragraph 89 but has failed to do so. By contrast, the anonymous information reproduced by the Group does not give names, places, or any precise particulars. As it is made up merely of numbers, it can be fabricated easily with a minimum of imagination, and it is impossible to demonstrate whether it is true or false. The Government of Chile is obliged to reiterate that this procedure adopted once again by the Group does not, to put it mildly, constitute a serious method of work (United Nations Economic and Social Council, 1979, Annex XXII: 7).

Additionally, concerning ill-treatment and torture, the Chilean government criticized that the Working Group "once more followed the method of incorporating anonymous and unidentified "statements" in the report" (United Nations Economic and Social Council, 1979, Annex XXII: 8). This evidence clearly shows how powerful the exact names and dates are. Indeed, this point can be compared to the Uruguayan case as the Uruguayan
case demonstrated that the victims themselves showed up and voiced against the measures by indicating the exact names and dates through the bottom-up channel.

Thirdly, the Group had examined and listed what kinds of rights that were severely abused during the state of siege in Chile; however, it did not specify who the victims are in the documents. The report notified that because of the state of siege, every aspect of ordinary citizens’ lives in Chile was subject to be regulated and oppressed. The report contains the human rights violations regarding the rights to life, liberty and security of person, the arrest and detention of the political prisoners and missing people, the freedom of expression and information, the rights to education, the rights to leave the country, the rights not to be tortured, the freedom of association and the right of assembly, and economic, social and cultural rights.

In particular, the right not to be tortured is one of the main non-derogable rights. The Group described what kinds of tortures the victims got. They are "burying in the sand, putting the victim into an empty drum, repeatedly throwing the victim to the ground from a height of about three meters, and electricity applied to open wounds, etc." (United Nations Economic and Social Council, 1976: 40).
Although it listed up the concrete description of the tortures, however, the victims’ names were not shown and when the victims were tortured were not documented in the report. It only signified that the tortures and the torturer’s names were verified by “a considerable number of witnesses” (United Nations Economic and Social Council, 1976: 43). This shows that although the top-down monitoring system attempted to deliver the human rights situations in Chile, the actual voices of the victims could not be delivered as direct as the Uruguayan case. There was no venue for the victims’ voices. I argue that, if there was a direct route, then the victims would have been able to demand reparations or acknowledgements like the Uruguayan victims as well.

In this report, the Working Group reaffirmed that Chile has not yet taken necessary measures to implement the ICCPR into domestic practices and is far from being in conformity with the ICCPR (UN Economic and Social Council, 1977: 79). It concluded that the human rights situations have not developed since the previous years in Chile (United Nations Economic and Social Council, 1978: 11; United Nations Economic and Social Council, 1979: 103). For instance, torture of detained people remained as a serious problem and arrest, detention, expulsion, and exile of political opponents
continued. (UN Economic and Social Council, 1977). In 1978, the report stated more clearly that there remained systematic and institutionalized violations:

“absence of constitutional safeguards for human rights; the continuation of the state of siege with its limitations on fundamental freedoms; arbitrary arrest and detention; torture; trials by war-time military tribunals which do not meet minimum standards of due process; the refusal to adequately account for about one thousand missing detainees; limitations on freedom of expression; the suspension of political activity; economic inequities; infringement of the right to a nationality and the right to return to one’s country, and the systematic campaign against suspected opponents of the regime, against trade unionists and against the humanitarian activities of the Catholic Church” (United Nations Economic and Social Council, 1978: 72).

The Working Group reiterated that it hopes to visit Chile to verify and investigate the human rights conditions in a more direct way. It recommended the Chilean government to end the state of siege and
emergency. It indicated that many Chileans living outside Chile wanted to return to their country, but they were prevented by the Chilean government. Again, it did not specify who the victims are in the document.

Lastly, the top-down monitoring system downscaled the report of the Ad Hoc Working Group as it has many intervening processes. To begin with, after the Ad Hoc Working Group submitted the reports to the Secretary-General, and the Secretary General transmitted to the members of the General Assembly (United Nations General Assembly, 1976). The Working Group believed that the General Assembly should not watch a situation passively and fears the creation of dangerous precedents (United Nations General Assembly, 1976: 132). However, the problem is that top-down monitoring system seems to downscale the report of the Ad Hoc Working Group, unlike the hopes from the Working Group. The General Assembly adopted the resolution after examining the reports. The original report was about 100 pages long and had abundant resources. However, the resolution was only three pages long and only reaffirmed the condemnation of human rights violations and calls upon the Chilean authorities to take measures to restore and safeguard basic human rights.

This reduction or downsizing can be noticed in the contents and
phrases that had been reiterated and repeated for several years. To be specific, The General Assembly considered "the reports of the Ad Hoc Working Group and of the Secretary-General" and stated that it "gravely concerned by the fact that the Chilean authorities have consistently failed to give a satisfactory account for" "systemic intimidation, torture, disappearance of persons for political reasons, arbitrary arrest, detention, exile, and deprivation of Chilean nationality" (General Assembly resolution, 1977, Annex I: 1). The General Assembly "deplored" about this fact and stated that it is "deeply concerned" about the "persistence and the deterioration of" human rights situations in Chile (General Assembly resolution, 1977, Annex I: 1; General Assembly, 1981). The General Assembly commended the Special Rapporteur and reiterated its grave concern (UN General Assembly, 1981).

Compared to the communications in Uruguay, these kinds of information and statement are lack of specificity, and vague. They were stated in too general terms and vague terms. The exact number or the names of the victims did not appear in these documents. The United Nations General Assembly merely urged Chile to respect and promote human rights in accordance with their obligations under various international instruments.
The recommendations include “to put an end to the state of emergency, under which continued human rights violations occur”, “to put an end to arbitrary detentions”, “to respect the human rights of persons detained for political reasons”, “to take effective measures to prevent torture and other forms of cruel, inhuman or degrading treatment resulting in unexplained deaths”, “to investigate and clarify the fate of persons who have disappeared for political reasons”, “to restore fully trade union rights”, and “to guarantee the freedom of assembly and association” (UN General Assembly, 1981). This pointed out and emphasized the principles but did not deliver any victims' or their relatives' claims. Thus, it might not have been influential or enough pressure for Chile.

Regarding strict conditionality, the Group used the logic of strict conditionality in their reports. It emphasized that the public emergency threatening the life of the nation can permit States parties to the ICCPR to derogate "to the extent strictly required by the exigencies of the situation" and there are several non-derogable rights (United Nations Economic and Social Council, 1976: 20). However, the Group had not received any information that indicated that disturbances actually had taken place. Rather, in decree-law, No. 1181 explicitly stated that the "subversive action of
organized groups had been controlled," so that the situation in Chile cannot be concluded as the life of the nation was in danger (United Nations Economic and Social Council, 1976: 24). This means that although the Group interpreted and urged Chile to conform to the derogation clause based on the strict conditionality, it was not a useful tool to make Chile comply.

On the other hand, concerning regime type, I noted earlier that the Chilean delegate during democratic regime urged the deletion of the derogation clause to prevent the misuse of it and ratified the ICCPR to have lock-in effect on the future possible non-democratic regime. However, the series of evidence show that non-democratic Chilean regime in the 1970s was not locked in this effort that was made by the democratic regime in the 1950s. In this sense, the alternative hypotheses regarding strict conditionality and regime type can be weakened by these facts.

Taken together, three conclusions can be drawn from the Group’s reports from 1976 to 1979. First, the top-down monitoring mechanism lacked direct route for victims or their acquaintance to make allegations or provide factual details. Second, because of this deficiency, the Group’s reports lack exact detailed information such as who the victims were and the dates and places in which the human rights violations occurred. Lastly, the
top-down monitoring system downscaled the report of the Group as it had many intervening processes, and the procedures were repeated in the following years without much change or efforts to make a change.


The Commission on Human Rights in its resolution 20 (XXXVT) of 29 February 1980 decided to establish the Working Group on Enforced or Involuntary Disappearance (the Working Group) (United Nations Economic and Social Council, 1981: E/CN.4/1435). The membership of the Working Group is as follows; Viscount Colville of Culross (United Kingdom) (Chairman, Rapporteur); Mr. Jonas K.D. Foli (Ghana); Mr. Agha Hilaly (Pakistan); Mr. Ivan Tosevski (Yugoslavia); and Mr. Luis A. Varela Quiros (Costa Rica). Since 1981, the Working Group has submitted the reports on the issue of enforced or involuntary disappearance to the present.

The processes can be summarized into four steps regarding the activities of the Working Group. First, the Working Group had submitted its reports to the Commission on Human Rights every year (UN Economic and
Social Council, 1981a; UN Economic and Social Council, 1981b; UN Economic and Social Council, 1983a; UN Economic and Social Council, 1983b; UN Economic and Social Council, 1985; UN Economic and Social Council, 1986; UN Economic and Social Council, 1987; UN Economic and Social Council, 1989). These reports are based on the information from relatives, witnesses, and non-governmental organizations over the disappearances. On top of that, the Working Group contacted with the Special Rapporteur on the situation of human rights in Chile who was appointed under resolution 11 of the Commission on Human Rights (UN Economic and Social Council, 1981b). It is noteworthy that the relatives of the victims can engage in this process, similar to the bottom-up monitoring system in Uruguay.

Secondly, after contacting with the Special Rapporteur, the Working Group had transmitted to Chile the summary of the reports received from relatives with the Group’s request to receive any information the Government might wish to send on the matter (UN Economic and Social Council, 1981a; UN Economic and Social Council, 1983a; UN Economic and Social Council, 1985; UN Economic and Social Council, 1986). The point is that the Working Group had merely “retransmitted” these reports to
Chile without further details or evidence.

Compared to the HRC in the Uruguayan case, which had the bottom-up monitoring system, this retransmission is part of the annual measures. The HRC in the Uruguayan case demanded the government and even victims and their acquaintance to submit more factual details to strengthen their allegations. In other words, the victims had the direct route to make claims by attaching detailed descriptions of their situations. Furthermore, the HRC evaluated how general or how specific the evidence was after receiving the responses from the government and/or victims.

However, in the top-down monitoring mechanism, the Working Group had only transmitted and retransmitted, the relatives' reports were possible. In this sense, although the relatives were involved in the top-down monitoring processes, it was not directly delivered but only transmitted through the Working Group. Additionally, the summary of the reports was transmitted so that this might weaken the intensity and make the processes longer and more complex.

Thirdly, the Working Group "reminded" Chile that the Working Group wish to consider any information the government wishes to send (Economic and Social Council, 1981a; UN Economic and Social Council,
1986; UN Economic and Social Council, 1987; UN Economic and Social Council, 1989). In these reports, the Working Group requested the Government to confirm or disprove this information. For instance, in 1988, the Working Group constantly reminded the Government about the cases of disappearances dating back to 1975.

Lastly, and as a result of these perfunctory measures taken by the Working Group, the Chile had never replied to these requests and retransmissions (UN Economic and Social Council, 1981a; UN Economic and Social Council, 1981b; UN Economic and Social Council, 1983a; UN Economic and Social Council, 1983b; UN Economic and Social Council, 1985; UN Economic and Social Council, 1986; UN Economic and Social Council, 1987; UN Economic and Social Council, 1989). Chile had informed the Working Group that Chile “would be in no position to co-operate with general United Nations procedures as long as that situation of discriminatory” (Economic and Social Council, 1981a; UN Economic and Social Council, 1983a).

The Permanent Representative of Chile to the United Nations Office at Geneva acknowledged receipt of the above-mentioned letter and stated that the competent national authorities had taken due note of its contents (UN
Economic and Social Council, 1985; UN Economic and Social Council, 1986). However, this response served merely as the perfunctory response because Chile has not responded at all. Since there had been no reply on any of these cases, accordingly, the Working Group was unable to report on the fate or whereabouts of the missing persons in an accurate way (UN Economic and Social Council, 1989).

Aside from these perfunctory procedures, in 1987, the Agrupacion de Familiares de Detenidos Desaparecidos (Group of Relatives of Disappeared Detainees) started to submit additional information on the persons that disappeared (UN Economic and Social Council, 1989). This demonstrates that the relatives of the victims had identified themselves with the victims and started to organize themselves centering on the Group of Relatives of Disappeared Detainees. This might be the attempt made by the relatives who might have felt that top-down approach has not had an impact on solving the victims' resentment and human rights violations (UN Economic and Social Council, 1989). However, these efforts were only restricted to reporting to the Working Group. They had no direct communication channels like the Uruguayan case, which possessed the bottom-up monitoring system.
Table 2. Statistical summary of transmitted cases and Chile’s Response

<table>
<thead>
<tr>
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<tbody>
<tr>
<td>1. Cases reported having occurred in the year</td>
<td>NA</td>
<td>NA</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>2. Outstanding cases</td>
<td>NA</td>
<td>4</td>
<td>24</td>
<td>26</td>
</tr>
<tr>
<td>3. Total number of cases transmitted to the Government by the Working Group</td>
<td>4</td>
<td>6</td>
<td>26</td>
<td>28</td>
</tr>
<tr>
<td>4. Government responses</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>5. Cases clarified by non-governmental sources</td>
<td>1</td>
<td>2</td>
<td>2</td>
<td>2</td>
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</tbody>
</table>

Table 2 shows the statistical summary of Chile's response and the number of cases through various channels during the state of siege.

Taken together, the Working Group has received information and repeatedly transmitted and retransmitted to Chile without further evidence and details. The families of the victims were initially involved in this process as they could report to the Working Group. However, compared to the Uruguayan case which asked the victims and their acquaintance to provide more details for several times, this top-down mechanism lacked the direct venue for the victims and their families to actively engaged. Consequently, this led to the persistent non-response of the Chilean government during these states of siege, which are from 1981 to 1988.
3.5. Special Rapporteur on the Situation of Human Rights in Chile (1986~1990)

On 6 March 1979, Human Rights resolution 11 (XXXV) “decided to appoint a Special Rapporteur on the situation of human rights in Chile and experts to study the question of missing and disappeared persons in Chile” (UN General Assembly, 1979: 1). On 26 February 1981, the Commission on Human Rights decided to extend the mandate of the Special Rapporteur for another year by resolution 9 (XXXVII) (UN General Assembly, 1981).

As Chile had derogated from the ICCPR in 1986, 1987, and 1988, the Special Rapporteur had submitted the report on the question of human rights in Chile since then (United Nations Economic and Social Council, 1986; General Assembly, 1987; United Nations Economic and Social Council, 1988; United Nations Economic and Social Council, 1989; United Nations Economic and Social Council, 1990). From 1986 to 1989, there had been a substantial change in Chile’s attitude. The Special Rapporteur, Professor Fernando Volio Jimenez (Costa Rica), had been allowed to visit Chile for four times during this period. By this time, the Chilean government
started to co-operate with the United Nations in this sense. Fortunately, and surprisingly, the visits had taken place with freedom of action and with co-operation of the Chilean Government.

Because of this co-operative attitude of Chile, the Special Rapporteur received and gathered complaints of violations of human rights. The complaints were about the rights to life, the rights to physical and moral integrity of persons, the rights to liberty, disappearances, the rights to security, the rights to enter and leave the country freely, the right to a proper trial and to procedural guarantees, the rights to freedom of movement, and right to freedom of expression and information (Economic and Social Council, 1986: 28; General Assembly, 1987: 20; United Nations Economic and Social Council, 1988: 25; United Nations Economic and Social Council, 1989: 13).

Notably, a change had made in the Special Rapporteur’s reports compared to the other previous reports submitted by the Ad Hoc Working

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19 The reason behind this sudden change can be inferred to the rise of the opposition group against the authoritarian regime. To be specific, “the Christian Democratic Party and the parties belonging to the Popular Unity became increasingly visible as opposed to the military regime, and this opposition group shook the authoritarian regime between 1983 and 1986” (Heinz & Frühling, 1999: 558). The opposition and the military regime “agreed to take part in a referendum in October of 1988, defeating General Pinochet’s intention of remaining in power” (Heinz & Frühling, 1999: 558). I suppose that this change induced Chile’s co-operative attitude.

This was possible because the victims and their relatives “gave the Special Rapporteur handwritten sheets containing their allegations” and asked to meet the Special Rapporteurs (Economic and Social Council, 1986: 97). In 1986, the Special Rapporteur met 154 persons and interviewed them in four cities (Santiago, Valparaiso, Concepcion, and Temuco). In 1988, the Special Rapporteur stated that he could contact with Chileans and "interviewed with no less than 580 persons" during his third visit to Chile in five cities (Santiago, Valparaiso, Concepcion, Temuco, and Nueva Imperial) (United Nations Economic and Social Council, 1988: 4). These interviews were basically possible because of Chile’s permission on the Special Rapporteur to visit Chile.
The Special Rapporteur explicitly acknowledged the devotion of the individuals, stating that “many individuals were able to contact the Special Rapporteur, personally and in writing, to inform him of their opinions and provide very valuable testimony about the human rights situation in Chile” (Economic and Social Council, 1986: 93). He emphasized the ordinary Chileans’ roles in improving the human rights situations in Chile (United Nations Economic and Social Council, 1988: 58). At the end of the report, the Special Rapporteur strongly proposed that “the broadest possible channels of communication have to be established between” individuals and officials to achieve satisfactory solutions. This reinforces the necessity of the venue or channels between the individuals themselves and the government like the bottom-up monitoring systems.

As a result, there had been some temporary improvements in human rights conditions. The Special Rapporteur stated that “he was pleased to note that a number of the recommendations he made are being put into effect” and witnessed some improvements (General Assembly, 1987, A/42/556: 56; United Nations Economic and Social Council, 1989; United Nations, 2000: 426-431).

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20 The reason why I used the term “temporary” is that although Chile had reflected the Special Rapporteur’s recommendations and improved the human rights conditions, Chile soon opposed to permit the Special Rapporteur to visit from 1990 and turned not to co-operate with him and remained the status of non-conformity to derogation clause.
Nations Economic and Social Council, 1990: 20). He emphasized the power of the Chilean people, the individuals. He noted that "the Chilean people possessed the foresight, courage, and wisdom needed to find a way out" and the "individuals and groups engaged in a quest for a solution, with the establishment of a democratic regime" (United Nations Economic and Social Council, 1990: 18-19). This shows that the actual evidence, the list of the victims' names, and dates functioned as a valuable source to push the government into action.

However, the Special Rapporteur also pointed out that there are many things to be done, too. He recommended to implement the constitutional fundamental acts regarding voting, and to prevent interrogations, to permit people who were forced to live outside Chile to return, and to make Supreme Court of Justice to “exercise their jurisdiction in favor of the effective protection of human rights”, and to investigate and punish human rights violations (General Assembly, 1987: 56-7). In particular, the Special Rapporteur indicated that the military courts showed misconducts as the trials are excessively long, and “the Anti-Terrorism Act allows people to be held incommunicado for excessively long periods” (United Nations Economic and Social Council, 1988: 55). He also strongly
suggested that Chile should shed light on the throat-slitting cases, which killed four government opponents in September 1986, and deaths of a number of government opponents, which are called “Albania operation” (United Nations Economic and Social Council, 1989: 23). He also concerned that there had been some private groups which are close to government intimidate persons who have suffered exile and returned to the country. He also mentioned torture, and detainees and urged the government to comply with the ICCPR in a strict way.

Although the visits were possible because of the co-operation of the Chilean government, the Special Rapporteur stated that he sensed some tensions. The Minister for Foreign Affairs told the Special Rapporteur clearly that “he should be discreet in his public statements” (General Assembly, 1987: 46). Additionally, in 1988, the Minister of Justice showed hostile, discourteous, and uncooperative attitude to the Special Rapporteur. On top of that, after the four visits, on 30 January 1990, the Minister of Foreign Affairs refused to accept the Special Rapporteur’s visit. Without a visit, the Special Rapporteur received information about the complaints of further human rights violations from lawyers and Chilean human rights organizations without contacting the victims directly.
To compare with the bottom-up monitoring system shown in the Uruguayan case, the victims could not reiterate or reaffirm their allegations in the top-down mechanism. They only had one chance to access the Special Rapporteur. While the Uruguayan government responded to the HRC and the victims could make use of the available information embedded in the government’s responses in bottom-up monitoring system, the top-down monitoring system did not draw out the Chilean government’s responses so that the victims could not make rebuttals to the government with information. Additionally, their allegations were cited for only just one paragraph in the Special Rapporteur’s report. This shows that the platform for the victims and their families was very limited in the top-down monitoring system. More fundamentally, the victims could meet the Special Rapporteur only when the Chilean government permitted. These are the intrinsic limitations of the top-down monitoring system.

One noticeable recommendation of the Special Rapporteur is that he actually proposed Chile to “ratify the Optional Protocol to the International Covenant on Civil and Political Rights, thus enabling individual communications or complaints to be submitted to the United Nations Human Rights Committee, the body responsible for safeguarding the rights
contained in the Covenant” (United Nations Economic and Social Council, 1990: 22). This shows that the Special Rapporteur, which represents the top-down monitoring system, acknowledged the necessity of the victims' engagement, which is guaranteed in the bottom-up monitoring system. This suggests that the individual petitions can work as an effective way to improve the State parties’ conformity.

To examine the validity of the alternative hypothesis regarding strict conditionality, the Special Rapporteur pointed out that that the state of emergency in Chile is not strictly defined so that it “should be lifted because they make the oppression of human rights easier for the authorities with the excuse of protecting national security, which is not always borne out by the facts” (General Assembly, 1987: 54; United Nations Economic and Social Council, 1988: 51). He used the logic of strict conditionality in this sense. However, the Chilean government consistently had derogated from the ICCPR in 1986, 1987, and 1988. This position contradicts Chile’s cooperation with the Special Rapporteur. In this sense, the logic of strict conditionality might be weakened.

Regarding the alternative hypothesis about regime type, Augusto José Ramón Pinochet Ugarte had been the President of Chile from 1973 to
1990, and this is classified as the authoritarian regime. There had been some changes during this period. The Christian Democratic Party and the parties belonging to the Popular Unity became increasingly visible as opposed to the military regime, and this opposition group shook the authoritarian regime between 1983 and 1986 (Heinz & Frühling, 1999: 558). The opposition and the military regime "agreed to take part in a referendum in October of 1988, defeating General Pinochet's intention of remaining in power" (Heinz & Frühling, 1999: 558). As the authoritarian regime had begun to lose its power, the Special Rapporteur was able to visit Chile, in this sense. Thus, admittedly, the regime type could be a precondition for change of Chilean government’s attitude. However, the Chilean government refused the Special Rapporteur’s visit in 1990 again. There were also many things to be done even if there had been some improvements. The authoritarian regime was not that locked in the former democratic regime’s commitments to the ICCPR. In this sense, the alternative hypothesis regarding the regime type cannot be verified.
3.6. Chile’s Non-conformity

In this part, I examine whether Chile conforms to the derogation clause under the top-down monitoring mechanism. Chile had consistently shown strong resistance and protested the *ad hoc* measures. This was due to the notion that the measures "were discriminatory," and "they imposed impermissible international supervision over matters of exclusively domestic concern" (Fitzpatrick, 1994: 128). This resulted in the government's non-cooperative attitudes and wavering pattern of cooperation with the Commission’s *ad hoc* investigators (Fitzpatrick, 1994: 129).

After appointing a Special Rapporteur on the situation of human rights in Chile and experts, however, Chile temporarily allowed the Special Rapporteur to visit for four times. This enabled the Special Rapporteur to meet many victims by written records and interviews. Based on the individuals’ exact and detailed testimonies, the Special Rapporteur could publish the reports containing the victims’ voices. Due to these efforts, Chile has made some improvements in human rights situations.

Nevertheless, ultimately, Chile kept being "hostile, discourteous, and uncooperative" towards the *ad hoc* measures (UN Commission on Human Rights, 1988). In 1989, Chile announced that it would intransigently refuse
to cooperate with any further ad hoc procedures. Chile delivered its following stance to the United Nations in 1989 (Fitzpatrick, 1994: 129):

[Chile] would not be prepared to accept, in future, an ad hoc approach to the situation of human rights in Chile, experience has shown that co-operation in such an approach was pointless and unproductive for Chile. The Minister [for Foreign Affairs] said that his Government’s cooperation had not been appreciated by the United Nations bodies entrusted with the protection of human rights, which had persisted in taking a discriminatory, selective and unfair approach which contrasted not only with the Special Rapporteur's reports but also with the objective reality of the progress made in Chile (Chile, 1989: para 13).

This shows that Chile had not changed its uncooperative attitude before and after the ad hoc measures. The ad hoc mechanisms, or the top-down mechanisms, "appeared for many years to be having little effect in inducing Chile to abandon exceptional regimes" (Fitzpatrick, 1994: 131). Although the top-down mechanism in Chile, especially the Special Rapporteur had some input from victims, it did not have actual channels only for the victims and did not draw out the Chilean government’s responses.
Accordingly, the victims could not get enough information from the government and they could not refute to the government effectively. This is one of the most significant differences between the Uruguayan case in which the victims could effectively make rebuttals to the government’s allegations for various times. In this sense, I argue that in contrast to the Uruguayan case, which had the bottom-up mechanisms, enabling the victims to protest against the measures committed by the government persistently, the top-down monitoring system in the Chilean case was not useful enough to induce the conformity of Chile.

3.7. Chile’s derogation in 2010

Chile ratified the First Optional Protocol in 1992. Ever since then, Chile had derogated for once in 2010. Chile filed a derogation notice in March 2010.\textsuperscript{21} It suspended the freedom of movement and freedom of assembly in order to

\textsuperscript{21} Chile’s derogation in 2010 is not exactly within the scope conditions of this thesis. The scope conditions were i) states have signed and ratified to the ICCPR, ii) they have derogated from the ICCPR, and iii) the derogation is suspected as misuse of the derogation clause. This derogation does not meet the third scope condition. However, this case can show the difference between before Chile’s ratification of the First Optional Protocol of the ICCPR in 1992 and after that. Although the only existence of ratification may not necessarily lead to the change of Chile’s attitude, it may be meaningful to diagnose what has happened after the ratification and the creation of venue for individual petitions as a result of ratification.
deal with the aftermath of the powerful earthquake that struck Maule and Bio-Bio regions (Chile, 2010). The measures were publicly announced through the adoption of the decrees declaring a 30-day constitutional state of disaster emergency.22

As Chile ratified the First Optional Protocol in 1992, the individual communication procedure is possible. There has been no individual communication about Chile’s derogation in 2010 so that “the lawfulness of the above derogations has not been tested by the HRC under the individual communications procedure” (Sommario, 2012: 329). Sommario (2012) provided evidence that “none of the UN human rights treaty monitoring bodies has so far expressed concern or disapproval over the emergency measures adopted”,23 “nor have these been criticized by other State parties to the Covenant.”

This shows that eventually, Chile made a lawful derogation in 2010. This can partially support the view that a lawful derogation was made in

22 Supreme Decree No. 152 of 28 February 2010 for Maule; Supreme Decree No. 153 of 28 February 2010 for Bio-Bio
23 This assertion is based on an examination of the concluding observations made by the HRC, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture and the Committee on the Rights of the Child to Nicaragua, Chile and Georgia’s periodic reports filed under the respective treaties.
Chile after the bottom-up monitoring mechanism started to exist in 1992 by
the ratification of the First Optional Protocol to the ICCPR.

3.8. Conclusion

To overview the regime type, Chile also has experienced a variety of political regime type from the 1950s to 1980s. From 1970 until 1973, Salvador Guillermo Allende Gossens was the President of Chile, and the regime type was liberal democracy during the Allende government. As a result of government-induced social mobilization and ideological polarization, politically motivated violence increased during the 1960s and early 1970s (Heinz & Frühling, 1999: 583). Because of this increasing political crisis, there was a "spreading concern that the party system was unable to ensure governance" and furthermore, the Allende Administration's economic policies caused hyperinflation and food shortages (Heinz & Frühling, 1999: 584).

The Chilean armed forces, which held strong anti-communist

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24 According to the Polity IV project, the polity 2 score of Uruguay from 1950 to 1954 was 2. From 1955 to 1963, the score slightly increased to 5, and from 1964 to 1972, it was 6 (Center for Systemic Peace, 2018).
convictions and had a long tradition of professionalism, seized power in the 1973 coup. Allende was deposed by the armed forces, and the military used high levels of repression against the leftist groups. Augusto José Ramón Pinochet Ugarte had been the President of Chile from 1973 to 1990. From 1977 to 1982, members of leftist parties were disappeared. From 1983 until 1989, the repression was much less selective, and most deaths of victims occurred during public demonstrations. During this period, "the repression came as a response to the continuous insurrectionary activities of the armed opposition groups and the increase in the social mobilization against the regime" (Heinz & Frühling, 1999: 587).

Although from 1973 to 1990, it was considered as the authoritarian regime, there was a change in this period. The Christian Democratic Party and the parties belonging to the Popular Unity became increasingly visible as opposed to the military regime, and this opposition group shook the authoritarian regime between 1983 and 1986 (Heinz & Frühling, 1999: 558). The opposition and the military regime “agreed to take part in a referendum in October of 1988, defeating General Pinochet’s intention of remaining in power” (Heinz & Frühling, 1999: 558). The polity 2 score shows this change, too. From 1973 to 1982, it was -7, but it went slightly up as -6 from
1983 to 1987. It was -1 in 1988. However, Chile had derogated from the ICCPR consistently in 1976, 1986, 1987, and 1988 to justify its measures and never had responded to the *ad hoc* measures.

This persistent nonconforming behavior demonstrates that Chile adhered the attitude of nonconformity, neglecting the change of regime type. It shows that non-democratic Chile had no locking-in effect that was made by the democratic regime in the 1950s. This contradicts the alternative hypothesis which concerns the regime type. Thus, the alternative hypothesis about regime type can be rejected.

The other factor, which is referred to as strict conditionality in this thesis, did not play a crucial role within the top-down monitoring system. One thing is that the Special Rapporteur urged Chile to lift up the state of emergency because it is not strictly defined. However, Chile constantly derogated from the ICCPR to justify its measures. Accordingly, strict conditionality can be rejected.

Aside from the Special Rapporteur, the Working Groups had only “retransmitted” and “reminded” Chile of the cases regarding human rights violations. They did not interpret the derogation clause not that strictly while they transmit the information to the government. As there was no clear
evidence of using the logic of strict conditionality, it is hard to find out that
the strict conditionality was one of the necessary conditions which affect the
nonconformity of Chile.

Throughout Chapter 3, I cautiously examine relevant factors and reach
the following conclusions. First, I demonstrate that the top-down monitoring
mechanisms centering on the Ad Hoc measures could not prevent the misuse
of the derogation clause. Second, the top-down monitoring mechanisms
could not induce Chile’s conformity as they merely reminded or
retransmitted the information and recommendation without the victims’
actual voices included. Third, the regime type was not a determinant factor
that affected the attitude of Chile. This is because although there was a
change within the authoritarian regime, Chile kept misusing the derogation
clause, not conforming to the clause. Lastly, the strict conditionality was not
particularly visible in this Chilean case.
4. Analysis

4.1. Findings from Case Study

Under which conditions do states conform to the derogation clause? In this thesis, this question is answered by analyzing in detail the processes in the two comparative cases: Uruguay and Chile. It is found that the bottom-up monitoring system which enabled the victims to engage in the direct channel was the most important factor in inducing the state's conformity. Certainly, there were a series of significant factors, such as regime type and strict conditionality. Nevertheless, these important factors would not have come into play if not for the persistent struggle of victims.

The first commonality is that both Uruguay and Chile actively participated in designing the derogation provision throughout the sessions of the Human Rights Committee. Uruguay suggested the provision regarding non-derogable rights to prevent misuse and was in favor of retaining the derogation clause to ensure international control. The Chilean delegate formally proposed to delete Article 4 Throughout the statements of the Chilean delegation; he emphasized the possibility of misuse more than anyone else in the Commission. Since he notified the unclearness or
coherence, he indeed advocated the strict conditionality of the derogation clause. He also actively suggested his opinions and positions while drafting the provision in the first place as the Uruguayan delegate did. In this sense, it can be inferred that Uruguay and Chile had understood the original intention of the derogation clause and strongly advocated the strict conditionality of the derogation clause.

The second commonality is that both Chile and Uruguay had derogated from the ICCPR and these derogations were strongly suspected as the misuse of the clause. After designing the derogation clause in the 1950s, Uruguay notified its derogation from Article 4 in the ICCPR to other states through Secretary-General on July 30th, 1979, for the first time (Uruguay, 1979). Chile has derogated from the ICCPR in 1976, 1986, 1987, 1988, and 2010 (Chile, 1976; Chile, 1986; Chile, 1987; Chile, 1988; Chile, 2010).

The difference is that Uruguay had the direct channel in which the victims could engage in the monitoring process, whereas Chile did not have one, and instead it had Ad Hoc mechanisms such as the Ad Hoc Working Group on the Situation of Human Rights in Chile; the Special Rapporteur on the Situation of Human Rights in Chile; and the Working Group on the Question of the Fate of Missing and Disappeared Persons.
In the case of Uruguay, some courageous and oppressed victims and their relatives who identified strongly with them made individual petitions against Uruguay through the channel, which was possible by the First Optional Protocol of the ICCPR. The victims and their acquaintance had actively used this venue. They sent additional letters to provide more details based on facts. They showed that they have done all the possible domestic remedies and did not submit the cases to the other international organizations while submitting these cases to the Human Rights Committee. This demonstrates that the bottom-up monitoring system, which is called individual petitions, functioned as a breakthrough for the alleged victims. They struggled to show their willingness and resentment against the human rights violations committed by Uruguay.

Furthermore, even when the HRC requested Uruguay to submit facts and details, it also requested the victims to provide more details if possible. This clearly shows that there had always been venues or channels to listen to the victims. Not just investigating for once, but this bottom-up monitoring system continuously and constantly paid attention to the victims' allegations and their evidence. Indeed, this procedure also captured the victims' further allegations and specific evidence.
The victims have rebutted to Uruguay’s response in various ways by using this direct channel. They submitted additional details like the exact date, detailed description of tortures they got, and medical records written by doctors. The HRC recommended that Uruguay is obliged to “provide them with effective remedies, including compensation, for the violations which they have suffered and to take steps to ensure that similar violations do not occur in the future.” After the HRC’s recommendation, Uruguay stopped relying on Article 4 to justify its regime of prompt security measures.

On the other hand, the Working Group in Chile had received information and repeatedly transmitted and retransmitted to Chile without any further evidence and details. The families of the victims were initially involved in this process as they could report to the Working Group. However, compared to the Uruguayan case which asked the victims and their acquaintance to provide more details for several times, this top-down mechanism lacked the direct venue for the victims and their families to actively engaged. As a result of these perfunctory measures taken by the Working Group, Chile had never replied to these requests and retransmissions during these states of siege, which are from 1981 to 1988.

Notably, a change had made in the Special Rapporteur’s reports
compared to the other previous reports submitted by the Ad Hoc Working Group on the Situation of Human Rights in Chile in the 1970s. These reports explicitly elucidated the names and the dates when the human rights of the victims were violated. This was possible because the victims and their relatives "gave the Special Rapporteur handwritten sheets containing their allegations" and asked to meet the Special Rapporteurs. This led to some improvements in human rights conditions in Chile as Chile had reflected the Special Rapporteur’s recommendation to some extent.

However, on the whole, this did not induce Chile’s conformity to the derogation clause. To compare with the bottom-up monitoring system shown in the Uruguayan case, the victims could not reiterate or reaffirm their allegations in the top-down mechanism. They only had one chance to access the Special Rapporteur. While the Uruguayan government responded to the HRC and the victims could make use of the available information embedded in the government’s responses in bottom-up monitoring system, the top-down monitoring system did not draw out the Chilean government’s responses so that the victims could not make rebuttals to the government with information. Additionally, their allegations were cited for only just one paragraph in the Special Rapporteur’s report. This shows that the platform
for the victims and their families was very limited in the top-down monitoring system. More fundamentally, the victims could meet the Special Rapporteur only when the Chilean government permitted. These are the intrinsic limitations of the top-down monitoring system.

Chile had consistently shown strong resistance and protested the *ad hoc* measures. This was due to the notion that the measures "were discriminatory," and "they imposed impermissible international supervision over matters of exclusively domestic concern" (Fitzpatrick, 1994: 128). This resulted in the government's non-cooperative attitudes and wavering pattern of cooperation with the Commission’s *ad hoc* investigators (Fitzpatrick, 1994: 129). I argue that in contrast to the Uruguayan case, which had the bottom-up mechanisms, enabling the victims to protest against the measures committed by the government persistently, the top-down monitoring system in the Chilean case was not useful enough to induce the conformity of Chile.

On top of that, Chile made a lawful derogation in 2010. This can partially support the view that a lawful derogation was possible in Chile after the bottom-up monitoring mechanism started to exist in 1992 by ratifying the First Optional Protocol to the ICCPR. Taken together, I argue that the persistent endeavors of the victims by using the bottom-up monitoring
mechanisms have stopped the possible misuse of the derogation provision. Although Uruguay utilized the derogation clause in the ICCPR to justify its repression, the victims had struggled to provide more evidence and factual details by using this venue constantly for about five years. These struggles enabled Uruguay to stop applying the derogation clause in an abusive way. I demonstrate that the top-down monitoring mechanisms centering on the Ad Hoc Committees could not prevent the misuse of the derogation clause. Second, the top-down monitoring mechanisms could not induce Chile’s nonconformity as they merely reminded or retransmitted the information and recommendation without the victims’ actual voices included.

4.2. Examination of Alternative Hypotheses

4.2.1. Regime Type

Concerning regime type, Uruguay has experienced a variety of political regime type from the 1950s to 1980s. Uruguay went through the coup d'etat by the military on June 27, 1973 and it was under the civic-military dictatorship. This authoritarian military dictatorship had continued from June 27, 1973, until February 28, 1985. In this period, a lot of human rights violations occurred, such as the use of torture and unexplained disappearances. Uruguay was known as "the torture chamber of Latin
America" and accumulates the largest number of political prisoners per capita in the world (BBC, 2018).

Then, on August 3, 1984, the army and political leaders signed the Naval Club Pact and decided to restore the constitution of 1967 (BBC, 2018). On November 25, 1984, democratic elections were held, and on March 1, 1985, Julio Maria Sanguinetti was elected as the next President. He consolidated the democratization as President.

The noticeable fact is that from 1973 to 1984, Uruguay was under the authoritarianism. However, Uruguay stopped relying on the derogation clause from 1983, as shown in the case of Conteris v. Uruguay. This means that Uruguay changed its attitude toward conformity before democratization. Thus, rather than the regime type, the consistent endeavors made by the alleged victims and monitoring system were the main power to make Uruguay conform to the derogation clause in the ICCPR in a strict way.

On top of that, it was during Gestido and Pacheco regime in which Uruguay signed up and ratified the First Optional Protocol of the ICCPR. This contradicts the alternative hypothesis, which argues that the newly established democracy commits to international human rights regimes to make future nondemocratic regime lock in the commitment. In other words,
the non-democratic regime itself ratify to the First Optional Protocol, which is an institutional instrument that provides the victims to engage in the monitoring system. Thus, the alternative hypothesis regarding regime type can be rejected in this sense.

Concerning regime type, Chile also has experienced a variety of political regime type from the 1950s to 1980s. From 1970 until 1973, Salvador Guillermo Allende Gossens was the President of Chile, and the regime type was liberal democracy during the Allende government. There were a few denunciations of torture provoked by state agents under the Allende government (Heinz & Frühling, 1999: 583). As a result of government-induced social mobilization and ideological polarization, politically motivated violence increased during the 1960s and early 1970s (Heinz & Frühling, 1999: 583). Because of this increasing political crisis, there was a "spreading concern that the party system was unable to ensure governance" and furthermore, the Allende Administration's economic policies caused hyperinflation and food shortages (Heinz & Frühling, 1999: 584).

The Chilean armed forces, which held strong anti-communist convictions and had a long tradition of professionalism, seized power in the
1973 coup. Allende was deposed by the armed forces, and the military used high levels of repression against the leftist groups. Augusto José Ramón Pinochet Ugarte had been the President of Chile from 1973 to 1990. From 1977 to 1982, members of leftist parties were disappeared. During this period of time, the "security services were clearly responsible for selecting the victims" (Heinz & Frühling, 1999: 588). From 1983 until 1989, the repression was much less selective, and most deaths of victims occurred during public demonstrations. During this period, "the repression came as a response to the continuous insurrectionary activities of the armed opposition groups and the increase in the social mobilization against the regime" (Heinz & Frühling, 1999: 587).

Although from 1973 to 1990, it was considered as the authoritarian regime, there was a change in this period. The Christian Democratic Party and the parties belonging to the Popular Unity became increasingly visible as opposed to the military regime, and this opposition group shook the authoritarian regime between 1983 and 1986 (Heinz & Frühling, 1999: 558). The opposition and the military regime "agreed to take part in a referendum in October of 1988, defeating General Pinochet's intention of remaining in power" (Heinz & Frühling, 1999: 558). However, Chile had derogated from
the ICCPR consistently in 1976, 1986, 1987, and 1988 to justify its measures and never had responded to the \textit{ad hoc} measures.

This persistent nonconforming behavior demonstrates that Chile adhered the attitude of nonconformity, neglecting the change of regime type. This contradicts the alternative hypothesis which concerns the regime type. Thus, the alternative hypothesis about regime type can be rejected.

\textbf{4.2.2. Strict Conditionality}

In the Uruguayan case, the strict conditionality played a certain role within the bottom-up monitoring system. The HRC has used the logic of strict conditionality while reviewing the communications between individuals and Uruguay. In most cases, the HRC stated that the derogation clause in the ICCPR allows the State party to derogate from any of the provisions in the ICCPR only in strictly defined circumstances. However, although this logic was used to correct Uruguay's attitude, this cannot explain the change of Uruguay. If the strict conditionality played a crucial role, Uruguay would conform to the derogation clause in the first place, not changing its attitude towards conformity. Also, the strict conditionality was embedded "within" the monitoring system so that the monitoring system should be considered as the primary factor that affected the conformity of
Uruguay.

While the strict conditionality did not play a crucial role within the top-down monitoring system in Chile. One thing is that the Special Rapporteur urged Chile to lift up the state of emergency because it is not strictly defined. However, Chile constantly derogated from the ICCPR to justify its measures. Accordingly, strict conditionality can be rejected.

Aside from the Special Rapporteur, the Working Groups had only “retransmitted” and “reminded” Chile of the cases regarding human rights violations. They did not interpret the derogation clause not that strictly while they transmit the information to the government. As there was no clear evidence of using the logic of strict conditionality, it is hard to find out that the strict conditionality was the necessary condition leading to the nonconformity of Chile.
5. Conclusion

5.1. Summary

_Under which conditions do states conform to the derogation clauses in international human rights treaties?_ This paper aims to analyze the conditions facilitating states’ compliance such as regime type, strict conditionality, and monitoring system. I employ the combination of case comparison and process-tracing. I examine under which conditions Uruguay and Chile conform to the derogation clause in the International Covenant on Civil and Political Rights (ICCPR). The reason for choosing Uruguay and Chile is that these cases are appropriate for method of difference. Both Uruguay and Chile have signed and ratified to the ICCPR in the similar period. They have derogated from the ICCPR under the authoritarian regime in 1970s. Additionally, they were democratized in the 1980s. One of the major differences was their monitoring system. While Uruguay had the bottom-up monitoring system which made victims and their families to voice against Uruguay in a direct way, Chile did not have this one. The Chilean monitoring system was top-down approach, and this was operated in a more indirect way and ended up as perfunctory measures in the end.
I divided into phases in order to demonstrate the difference in monitoring system induces different results in conformity. First, I demonstrate that the bottom-up monitoring mechanisms prevent the misuse of the derogation clause, whereas the top-down monitoring mechanisms centering on the Ad Hoc measures could not prevent the misuse of the derogation clause.

Second, the bottom-up monitoring mechanisms improve Uruguay’s conformity by enabling victims to engage actively and consistently throughout the whole processes. Additionally, there were certain phases in which victims could get access to the information provided by the government as the government responded to the HRC. The victims made rebuttals to the government’s replies effectively by using this information. In contrast, the top-down monitoring mechanisms could not induce Chile’s nonconformity as they merely reminded or retransmitted the information and recommendation without the victims’ actual voices included. The government did not reply to the ad hoc measures, so that the victims could not make use of the information. In this sense, the victims could not refute to the government effectively unlike the Uruguayan case.

Third, the regime type was not a determinant factor that altered the
attitude of Uruguay as it had been authoritarianism during this period, and the non-democratic regime itself committed to the First Optional Protocol. This contradicts the lock-in effect suggested by Moravcsik (2000). Similarly, the regime type was not a determinant factor that affected the attitude of Chile. This is because although there was a change within the authoritarian regime, Chile kept misusing the derogation clause, not conforming to the clause.

Lastly, the strict conditionality solely cannot explain the change of governments’ attitudes. Although the logic of strict conditionality was used to correct Uruguay’s attitude, this cannot explain the change of Uruguay. If the strict conditionality played a crucial role, Uruguay would conform to the derogation clause in the first place, not changing its attitude towards conformity. This was also found in the Chilean case as well. The strict conditionality did not change or even affect the Chilean government’s attitude. In the case of Chile, the strict conditionality was not particularly visible. Also, the strict conditionality was embedded “within” the monitoring system so that the monitoring system should be considered as the primary factor that affected the attitudes of governments.

By tracing back these cases, I argue that the monitoring mechanisms
centering on individual petitions prevent the misuse of the derogation clause and improve the state conformity whereas the monitoring systems focusing on top-down committees are hard to enhance the state conformity.

5.2. Implications

This finding has a significant theoretical implication by suggesting the importance of the monitoring system. Often, scholars cast doubt on the effect of ratification of international human rights treaties because of the lack of enforcement mechanism. However, my study empirically shows that the monitoring system which directly delivers the victims' voices to the international society and the governments' influences and corrects the States' behaviors.

Furthermore, while the previous literature which lumps the monitoring system together, this finding contributed to specifying the monitoring systems by dividing the systems into bottom-up and top-down approaches. By comparing the causal mechanisms of these two different approaches, my study demonstrates that the bottom-up approach would be more effective to increase the possibility of states’ conformity to derogation
On top of that, this thesis can contribute to the literature concerning the monitoring system. The monitoring system is not only confined to the human rights issues, but also has great relevance with other literature such as nuclear weapons, international monetary system, and investment agreements, etc. This finding can be applied to these various realms, not simply restricted in only international human rights regimes.

This finding also has policy implications for designing the treaty. Policymakers and human rights practitioners have been discussing significant questions regarding how to design treaty in order to make State parties comply with the treaties that they have signed up and ratified (Alston, 2011; Chayes & Chayes, 1993; Denemark & Hoffman, 2008; Dutton, 2012; Guzman, 2005; Marcoux & Urpelainen, 2013; Mitchell, 1994; Sanchez & Urpelainen, 2014). My study shows that, empirically, the mobilization of victims or individuals can be, and is more likely to, induce State parties' conformity. Accordingly, the venue that enables the involvement of individuals should be embedded in the design of treaty in order to induce the State parties' conformity. In this sense, my study has both theoretical, practical, and policy implications for these reasons.
Appendix

- Chronological table of communications in Uruguayan case -

Lanza v. Uruguay (1980)


--26. Aug. 1977. HRC transmitted the communication to Uruguay


--1. Feb. 1978. HRC’s decision on admissibility


--18. Apr. 1979. HRC’s request to Uruguay

--30. Apr. 1979. Victim’s rebuttal

--18. Sep. 1979. HRC’s transmission of victim’s rebuttal to Uruguay


--3. Apr. 1980. HRC’s final recommendation and decision
Touron v. Uruguay (1981)

- 16. May. 1978. Victim’s initial letter
- No reply from Uruguay
Silva and others v. Uruguay (1981)

--30. May. 1978. Victim’s initial letter

--28. Sep. 1978. HRC transmitted the communication to Uruguay

--No reply from Uruguay


--8. Apr. 1981. HRC’s final recommendation and decision
de Bouton v. Uruguay (1981)


- 27. Oct. 1978. HRC transmitted the communication to Uruguay

- No reply from Uruguay


**Burgos v. Uruguay (1981)**


---7. Aug. 1979. HRC transmitted the communication to Uruguay


---24. Mar. 1980. HRC’s decision on admissibility


---8. Apr. 1981. HRC’s final recommendation and decision
Carballal v. Uruguay (1981)

--30. May. 1978. Victim’s initial letter

--28. Jul. 1978. HRC transmitted the communication to Uruguay


--27. Mar. 1981. HRC’s final recommendation and decision
Motta v. Uruguay (1984)

--25. April. 1977. Victim’s initial letter

--26. Aug. 1977. HRC transmitted the communication to Uruguay


--1. Feb. 1978. HRC’s decision on admissibility


--18. April. 1979. HRC’s request for further details

--18. May. 1979. HRC’s transmission of victim’s rebuttal to Uruguay


--29. July. 1980. HRC’s final recommendation and decision
**Weisz v. Uruguay (1984)**

<table>
<thead>
<tr>
<th>Date</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>8. May. 1978</td>
<td>Victim’s initial letter</td>
</tr>
<tr>
<td>26. Jul. 1978</td>
<td>HRC transmitted the communication to Uruguay</td>
</tr>
<tr>
<td>29. Dec. 1978</td>
<td>Uruguay’s response</td>
</tr>
<tr>
<td>11. Feb. 1979</td>
<td>Victim’s rebuttal</td>
</tr>
<tr>
<td>24. Apr. 1979</td>
<td>HRC’s decision on admissibility</td>
</tr>
<tr>
<td>10. Jul. 1979</td>
<td>Uruguay’s response</td>
</tr>
<tr>
<td>18. Aug. 1980</td>
<td>Victim’s rebuttal</td>
</tr>
<tr>
<td>29. Oct. 1980</td>
<td>HRC’s final recommendation and decision</td>
</tr>
</tbody>
</table>

--Jan. 1979. Victim’s initial letter

--24. Apr. 1979. HRC transmitted the communication to Uruguay


--27. Mar. 1981. HRC’s final recommendation and decision
Conteris v. Uruguay (1985)


27. Sep. 1983. Uruguay’s response


30. March 1984. HRC decision on admissibility


17. Jul. 1985. HRC’s final recommendation and decision
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