The Indigenous People of Chile and the Application of the Anti-terrorist Law

A case study of the land-conflict in Araucanía, Southern Chile

Author: Pernilla Stamm’ler Jaliff
Master’s Thesis in International and European Relations at Linköping University
Supervisor: Ph.D. Patricia Lorenzoni, University of Gothenburg
2013-08-26
Abstract

This study examines the conflict between indigenous rights and the exploitation of land in Chile. The conflict is displayed through a public discourse about the recognition of the indigenous people on the one hand, and the application of the anti-terrorist law against the indigenous people on the other. The anti-terrorist law is currently applied to the indigenous group, the Mapuches, in southern Chile, which makes this issue particularly acute. The role of the international community and the international laws surrounding this issue thus play a part in the conclusions made by the author, together with minority rights and the concepts of sovereignty and terrorism. The case is further placed within the world-economy through the concepts of World System Theory by Immanuel Wallerstein.

Keywords: Mapuche, Indigenous people’s rights, Chile, Anti-terrorist law, International law, Terrorism, World System Theory

Word Count: 23 836
Abbreviations:

CAM: Coordinadora Arauco-Malleco
CONADI: National Corporation of Indigenous Development
IACHR: Inter-American Commission on Human Rights
ICCPR: International Covenant on Civil and Political Rights
IGO: Intergovernmental Organization
ILO: International Labour Organization
NGO: Non-Governmental Organization
OAS: Organization of American States
UDHR: Universal Declaration of Human Rights
UN: United Nations
UNDRIP: United Nations Declaration on the rights of Indigenous People
UNHCR: United Nations Human Rights Council
WIPO: World Intellectual Property Organization
# Table of contents

1. Introduction ......................................................................................................................... 6
   1.1 Purpose of the Study ...................................................................................................... 7
   1.2 Outline .............................................................................................................................. 7

2. Background ............................................................................................................................ 8
   2.1 The Mapuches .................................................................................................................. 8
   2.2 The Anti-terrorist Law .................................................................................................... 9

3. Methods and Approaches ..................................................................................................... 11
   3.1 One-Case Study .............................................................................................................. 11
   3.2 Textual Analysis with an Interpretative Approach ....................................................... 12
   3.3 Research Questions ....................................................................................................... 13
   3.4 Data Collection and Limitations ................................................................................... 14

4. Theoretical Framework ......................................................................................................... 16
   4.1 World System Theory ..................................................................................................... 16
   4.2 Sovereignty Theory ........................................................................................................ 18
   4.3 The Concept of Terrorism ............................................................................................. 20
   4.4 Specific Approaches ...................................................................................................... 23
      4.4.1 Human rights and the indigenous people’s rights ................................................... 23
      4.4.2 What does minority and group rights contain? .................................................... 24
      4.4.1 The significance of ethnocultural rights ............................................................... 26

5. The Mapuches, Colonization and the Chilean State ............................................................. 29
   5.1 The Democratization in Chile ....................................................................................... 32

   6.1 National Law .................................................................................................................. 37
      6.1.1 Law no. 19.253: ‘Ley Indígena’ ......................................................................... 37
6.1.2 Law no. 18.314: the anti-terrorist law .................................................................39

6.2 Cases of Practicing Anti-terrorist Law ..................................................................41
  6.2.1 Application of law no. 18.314 ........................................................................42
  6.2.2 The 87 day hunger-strike ..............................................................................43
  6.2.3 Case 2013/1/4 ...............................................................................................45

6.3 The International Community and International Law ............................................47

7. The Three Active Actors in the Land Conflict in Southern Chile ............................58
  7.1 The International Community .............................................................................58
  7.2 The Chilean State ...............................................................................................63
  7.3 The Mapuches ...................................................................................................65
  7.4 History and the Three Actors Intertwined ...........................................................67

8. Conclusion ..............................................................................................................70

9. References .............................................................................................................73

Appendix ....................................................................................................................78
1. Introduction

“By its very nature, terrorism is an assault on the fundamental principles of law, order, human rights, and the peaceful settlement of disputes upon which the United Nations is established.”

/Kofi Annan

To be classified as a terrorist is an everyday reality for some indigenous people around the world. It is not unexpected that when driven away from a territory which one has inhabited for hundreds of years, conflicts spur around land-tenure between the state, private companies and land-owners, and ultimately the indigenous people. These sorts of conflicts have demonstrated themselves historically due to colonization or political shifts, often to the disadvantage of the indigenous peoples. The conflict often develops into people rising in some way (either legally or illegally), or people accepting the situation and the new way of living. In these conflicts some indigenous peoples choose (or are forced) to be integrated into the majority culture of their country while others choose to struggle for their rights. In the case of the largest group of indigenous people in Chile, the Mapuches, several individuals have taken action against the occupation of their land while others have chosen not to. Since the mid-1990s, Mapuche communities have tried to get national and international attention to their cause and to the restoration of their land which they argue has been grabbed illegally by forestry companies and private landowners. Protests have ranged from non-violent demonstrations to violent acts such as occupation of disputed land, blocking of public roads, burning of forest and houses, and sabotage of machinery and equipment. To prevent violent actions from the Mapuche people, the Chilean government has charged and convicted Mapuche individuals and pro-Mapuche activists under an anti-terrorism statute, a heritage from the Augusto Pinochet period. Human Rights Watch has called attention to how this use of terrorist charges keeps Mapuche leaders in pre-trial detention for years, how investigations are held in secret and key evidence may be presented in oral hearings from “faceless” witnesses in trial. It is therefore

1 Press Release, 2002, Addressing Security Council, Secretary General Endorses
not surprising that many Mapuches feel that Chile’s progressive criminal justice system, in force since 2000, is not only unfair but violates the human rights of international law.

1.1 Purpose of the Study
The purpose of this study is to, through the Mapuche case, deepen the understanding of the conflict between indigenous rights and the exploitation of land. In Chile this conflict is displayed through a public discourse about the recognition of indigenous people on the one hand, and the application of the anti-terrorist law against indigenous people on the other. In order to better understand the conflict, the case is placed in the context of globalized capitalism, sovereignty and minority rights.

1.2 Outline
The next chapter, Chapter Two, presents a background of the Mapuche situation and the anti-terrorist law. To continue, Chapter Three discusses the methodology and the research questions used for the realization of the study. Chapter Four provides a theoretical and conceptual framework, using World System Theory and discussing the concept of Sovereignty and Terrorism. It further presents specific approaches that will be used in the analysis. Chapter Five provides a historical background of the Mapuche situation up to today. Chapter Six presents the national laws that encourage the development of indigenous people and the anti-terrorist law no. 18.314 used against Mapuche activism. It further describes cases of when the law has been applied and a summary of international law on the rights of indigenous people. Chapter Seven contains an analysis of the empirical findings in regard to the theory presented in chapter four. I will here answer the research questions presented in chapter three. Chapter Eight finally contains the conclusion of this study.
2. Background

2.1 The Mapuches

The term Mapuche originates from the language mapungundun, for ‘people of the earth’, reflecting the central relationship between the people and the land. The Mapuches have for centuries inhabited a region in the southern part of what today is Chile and Argentina. Before the arrival of the Spaniards their territory reached from the Limarí River in northern Chile to the Island of Chiloé in the south, and from the Pacific Ocean in the west to the prairies in what today is on the Argentinian side of the border. However, during the past century the territory has shrunk significantly and today most of the Mapuche live in the Chilean region of Araucanía. Several Mapuches have also moved to larger cities such as Concepción and Santiago. Today there are between 650,000 and 980,000 Mapuches thus constituting around 4–6% of the Chilean population.

As several other indigenous peoples the Mapuches are struggling for recognition of their traditional land whilst commercial companies, such as large timber companies, seek to exploit the land in order to gain market shares. The situation of the Mapuche is far from unique. According to a report by the United Nations Human Rights Council (UNHRC), the global situation of scarce natural resources is acute and approximately 60 million indigenous people worldwide depend deeply on forests for their survival. Yet, indigenous communities continue to be expelled from their territories under the pretext of the creation of protected areas or for commercial usage. The report by the UNHRC claims that forced displacement of indigenous peoples from their traditional land is a result of national laws favouring the interests of large companies. These laws have further become a major factor to the impoverishment of these communities. The Mapuche is hence among the poorest groups in Chile, the social and

---

2Carter D., 2012, *Chile’s Other History: Allende, Pinochet, and Redemocratisation in Mapuche Perspective*, p.61
4Se Appendix 1 for map
5Carter D., 2012, *Chile’s Other History: Allende, Pinochet, and Redemocratisation in Mapuche Perspective*, p.61
6UNPFII - *Backgrounder 1: Indigenous Peoples - Lands, Territories and Natural Resources*, 2012-12-06
economic conditions in the region of Araucanía are acute and the Araucanía region has the lowest result on the Human Development Index in Chile.\(^7\)

One of many factors to the impoverishment is that, as with other indigenous people, the Mapuches have been exposed to so-called ‘landgrabbing’\(^8\). During the 1990s the Mapuche lands were profoundly affected by investments in forestry, hydroelectric projects and road construction. By the year 2000, 1.5 million hectares of Mapuche territory, including pastures and agricultural land, had been covered by pines and eucalyptus. Two companies alone (Mininco and Arauco) covered more than 1 million hectares with exotic trees.\(^9\) This has led to a widespread dissatisfaction amongst the Mapuche community that in turn has expressed itself through hunger-strikes and occupation of disputed land. The aggressive attempts from Mapuche activists to recover their ancestral land have resulted in a government response in form of the application of the anti-terrorist law.

### 2.2 The Anti-terrorist Law

The anti-terrorist law No. 18.314 was established by Pinochet in 1984 and further modified by President Ricardo Lagos in 2002. Under the previous government of Eduardo Frei, from 1994 to 2000, the ordinary criminal code had been used and three prosecutions had been initiated against the Mapuches under the Law of State Security. However, as the number of violent incidents in the zone of Araucanía increased, the demands from landowners for a firmer government response also increased. The Lagos government then turned to the anti-terrorist law as a more powerful instrument. This is something that has upset the international community\(^10\) and international critique has been directed against the use of military tribunals against the Mapuche people. It is said to violate the fair trial guarantees of Art.14 of the International Covenant on Civil and Political Rights.\(^11\)

Even though Chile has ratified the ILO Convention No. 169, which specifically deals with the rights of indigenous people, and the United Nations Declaration on the Rights of Indigenous People the demands of the Mapuches has not been met. In 2010 an 87-day long

---

\(^7\) Human Rights Watch, *Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile*, p.11

\(^8\) Oxford Dictionary definition: “a person who seizes and possesses land in an unfair or illegal manner”.


\(^10\)International Community: A notion that contains intergovernmental organizations, non-governmental organizations, regional organizations and the civil society

hunger-strike was held by imprisoned Mapuches with the aim to pressure the government to annul the anti-terrorist law that has been applied against them since 2002.

The anti-terrorist law is a heritage from the Pinochet regime, but it was not applied to the Mapuche people until the Lagos government modified and implemented it in 2002. During the Pinochet regime the ancestral lands of the Mapuche was opened up for large timber companies. This act was a result from government policies installed to increase the Chilean competitiveness in the world economy. However, the policies of the Pinochet regime did not reflect the general position of the international community at that time. A stronger emphasis had been given in international discourse to the conflict between exploitation of land and the rights of the indigenous people, and in the 1980s the international community went through a shift where indigenous people eventually became bearers of their own rights. The application of the anti-terrorist law in 2002 (and its application up to this day) is thus highly criticized by the international community, so the conflict between indigenous rights and the exploitation of land becomes even more interesting in this particular case.
3. Methods and Approaches

3.1 One-Case Study

As other indigenous people, the Mapuches are concerned about corporations and private landowners buying up land in the region. This situation results in many natural resources being off-limits to Mapuches and stifles development in an already poor region. Through the case of the Mapuche people in Chile I hope to deepen the understanding of the conflict between indigenous rights and the exploitation of land, with a focus on globalized capitalism. I limit myself to look at the specific case of Chile since the use of the anti-terrorist law makes this case particularly acute, also in comparison with the Argentinean side of the Andes.

According to Della Porta and Keating the case-oriented study seeks to describe a few instances of a certain phenomenon in order to understand its complex units.\(^\text{12}\) The Mapuche situation will then serve as the case investigated in order to understand the complex units of market forces in relation to land-possession and the conflicts surrounding it. Hence, the method is of a qualitative character, with only one case in question. Case-studies are often strong where statistical models and methods are weak. They are useful in testing hypothesis and for theory development.\(^\text{13}\) The case of the Mapuches will be read through Wallerstein’s World System Theory and used as an example for theory in practice. The study thus investigates a phenomenon which is the conflict between indigenous land rights and the commercial exploitation of land, within a real-life context: the Mapuche case. This case has carefully been selected because of the many paradoxes that this case implies. In many other countries of the world the ILO Convention No.169 has not been ratified, yet in Chile it has. Therefore it is even more interesting how a country may ratify such a convention but at the same time classify indigenous activism for recognition of rights as terrorism. This case was therefore picked partly because of its generalizability to other cases, where indigenous people are exposed to landgrabbing, but also because of its uniqueness. The Mapuche case is unique in character firstly because they are the only indigenous group in Latin America that violently protected their autonomy during colonization, and secondly because of the application of the anti-terrorist law. I have not wished to analyse any of the other indigenous groups of Chile.

\(^{12}\) Della Porta & Keating, 2008, *Approaches and Methodologies in the Social Sciences*, p.198

\(^{13}\) Bennet & George, 2005, *Case Studies and Theory Development in the Social Sciences*, p.19
since they did not resist the colonization of the Spaniards as the Mapuches did and therefore did not maintain their territories, moreover these other groups are not subject to the application of the anti-terrorist law. Furthermore, there have not been many academic reports on the situation of the Mapuches why I believe that this case should be given singular recognition. The Mapuche case raises questions on many of the elements of world politics such as terrorism, sovereignty, international law, minority rights and the global economy. Because of this, the case is relevant not only for other cases involving indigenous people, but also involving people charged with terrorist crimes as well as other minority groups demanding political recognition.

Furthermore, by choosing a one-case study, I have had the time to go more deeply into Mapuche history, as well as giving me further room to focus on the theories chosen and the forces behind the globalized capitalist system. This study thus presents an in-depth empirical research of a specific phenomenon. Although a comparative analysis could have provided valuable insights, too much would have been lost regarding the possibilities to go in-depth with the complexity of the Chilean case and the remarkable use of anti-terrorist legislation.

3.2 Textual Analysis with an Interpretative Approach

The purpose of the study is to deepen the understanding of the conflict between indigenous rights and the exploitation of land, by looking at the Mapuche case. In order to accomplish this purpose I have chosen to interpret Chilean as well as international law in relation to the theories chosen. World System Theory serves as an overall theoretical frame of understanding, while minority rights will serve as a more specific approach, used for normative inferences. To start, I will gain knowledge about the Mapuche situation and its historical relation to the Chilean state in order to understand the historical context of the national and international law used in this study.

The study is further carried out by using an interpretative approach in order to seek understanding of the land-tenure conflict. Della Porta and Keating state in their book ‘Approaches and Methodologies in the Social Sciences’, that “interpretative analysis keep a holistic focus, emphasizing cases (which could be an individual, a community, or other social collectivity) as complex entities”. What I will be analysing is thus a conflict, more specifically the conflict between the Mapuche community and the Chilean state regarding land-tenure in the southern region of Chile.

14 Della Porta & Keating, 2008, Approaches and Methodologies in the Social Sciences, p.30
According to Peter Esaiasson, the interpretative approach is basically to understand what a text is saying in consideration to the questions asked. As regards to the law-texts the focal point will then lie in the manifest message since it can be read rather immediate, disregarding the role of the researcher.\footnote{Esaiasson P., 2009, \textit{Metodpraktikan-konsten att studera samhälle, individ och marknad}, p.250} The number of international laws found for this study is vital also for understanding the general standpoint of the international community. The law-texts will serve as my primary research material.

In order to achieve this interpretative approach I will conduct a qualitative textual analysis based on the collected material. The collected material includes both international and national law-texts as well as newspaper articles, research papers and published reports. A qualitative textual analysis is used to find a deeper understanding of a text and to reveal certain parts that may be more relevant than others for the specific research purpose. This may further be done by two methods: \textit{systematize} or \textit{critically review}. To systematize means to categorize certain texts for analysis in order to reveal a pattern or deviations. When critically reviewing, the researcher summarizes and evaluates texts in relation to a certain phenomena. In this study I will critically review as to how the situation of the Mapuche reflects a conflict between indigenous rights and the exploitation of land. In order to understand the actions of the actors involved, I will summarize the international laws and the national laws chosen and clarify the historical context of these documents. The international laws will further be connected to the specific case of the Mapuche situation. The study will be executed by an ideological-critical investigation that analyzes all the collected material through the theories presented in chapter four.\footnote{Ibid. pp.237-239} Moreover, the study is carried out with a normative prospect, which implies that conclusions will be made about what the Chilean state \textit{should} do according to the law documents and theories of minority and human rights, presented in chapter four.

\subsection*{3.3 Research Questions}
Chile has ratified the ILO Convention No.169 that specifically deals with the rights of indigenous people which implies that Chile should incorporate its principles into their domestic law. Article 14 of the convention recognizes the importance of land in the indigenous culture and that the state has a duty to protect it.\footnote{International Labour Organization (ILO) - \textit{C169 - Indigenous and Tribal Peoples Convention, 1989 (No. 169)}} Despite the ratification of the ILO Convention No. 169 the Chilean Government has applied the anti-terrorist law on Mapuche activists to recover their ancestral land. In autumn 2010, imprisoned Mapuches held
an 87-day hunger-strike to highlight the use of anti-terror legislation against them. After the hunger-strike the Chilean Government has reviewed the legislation and minor modifications have been made. These do not, however, change the situation for the already imprisoned Mapuches.\textsuperscript{18} In January 2013 the law was again applied, which indicates that the Chilean State believes the anti-terrorist law to be a useful instrument. The seemingly paradoxes of this complex conflict have thus led to the following research question:

- How may the conflict between the recognition of the Mapuches and the application of the anti-terrorist law be understood?

In order to understand this conflict, the further questions are made:

- How has the present Mapuche situation emerged historically?
- What in governmental discourse justify the application of the anti-terrorist law?
- In which way do international legal documents apply to the Mapuche situation?

3.4 Data Collection and Limitations

The selection of the gathered material in this study is based on a pre-study where I have reviewed a multitude of legal documents that reflects general standards of human rights. A selection has thereafter been made regarding indigenous rights in particular and the national laws in Chile that apply to them. The pre-study has moreover included the history of Chile from colonial times to the current government of Sebastian Piñera where specific events have been viewed in the context of the Mapuche situation.

The primary material consists of eleven international laws, conventions and agreements, and three national laws. I have chosen these laws firstly because they reflect the growing importance of indigenous rights and secondly since Chile is a member of the international organizations that have adopted these laws and conventions. The eleven international laws are handpicked laws that are relevant for indigenous peoples in particular and human rights in general. The three national laws are the ones that directly affect indigenous people in Chile. To reflect the Mapuche situation and to learn more about the events around this conflict I have used articles from different Chilean newspapers, some that reflect the opinions of Mapuche activists and leaders. I have chosen different newspapers, since they are all politically coloured, in order to get a more objective view of the events, the government’s

\textsuperscript{18} Survival International - \textit{Mapuche hunger strike enters 65th day}, 2012-12-06
position and the opinion of the Mapuches. Furthermore academic articles and books, together with reports from international organizations have served as my secondary material.

The law-texts are useful since they present a clear message of how indigenous people in a juridical context should be treated. The media reporting serve as to present specific events and the public discourse revolving the land-conflict. Previous academic research further gives a historical background of the Mapuche situation in Chile.

I have been forced to limit myself to the public discourse at hand, where not every group, strata and interest are represented. However, since the purpose clearly states that the conflict is understood through the Mapuche case, I believe that this has not been an obstacle for the realization of this study.
4. Theoretical Framework

The purpose of this study is to get a deeper understanding of the conflict between indigenous rights and the exploitation of land, through the Mapuche case. I have found it fruitful to use World System Theory in order to understand the economic interests and mechanisms behind the situation in southern Chile. The land-tenure conflict revolves around a competition for market shares in the global trade system where the Mapuches are subject to the application of the anti-terrorist law. Sovereignty theory and the concept of terrorism are thus presented separately in this chapter in order to understand how the law is motivated and if the Mapuches can be classified as ‘terrorists’.

4.1 World System Theory

World System Theory derives from the thoughts of Immanuel Wallerstein in the 1970s. Wallerstein describes the modern world in which we live in as being a capitalist world-economy. By world-economy he means a large geographic zone where there is a division of labour and thus a significant internal exchange of basic goods as well as flows of capital and manual labour. The various political units inside the world-economy are loosely tied together in a modern interstate system. By a capitalist world-system Wallerstein refers to a system that gives priority to the endless accumulation of capital. This means that people and corporations are accumulating capital in order to accumulate yet more capital, a process that is continual and endless. The system thus gives priority to this process since those who act with other motivations than the accumulation of capital are penalized in one way or another.19 Historically, however, this type of system did not exist since the accumulation of capital was not possible. Before modern times of industrialization it was not easy to produce goods that afterwards had a distribution-system and potential buyers with large economic assets. The goods had to be sold at a higher price than the total costs, and the difference between the cost and the price had to be bigger than what the seller needed for its own livelihood. In the previous agrarian systems these stages were missing and therefore the good had not become ‘commodified’. In order for the good to get commodified the production process had to become as complex as to go through a market and thereby accumulate more capital. Wallerstein explains that the capitalist seek to accumulate more capital so that the production

process could get linked together in complex commodity chains. In these chains the production needed other produced goods and labour for the process to continue. Hence the accumulation pace became dependent on competition, which in turn generated higher rewards to those that were better at following this capitalist system. Eventually the commodification process also came to include land, which vastly opposed the traditional use of land and subsequently also the indigenous people’s way of farming the soil.

The world-economy and the capitalist system go together. As the world-economy lack a common overall political structure or a homogenous culture, the efficacy of the division of labour is therefore what holds the two together.

The theory indicates that the world-economy developed a core in which well-developed states were technologically progressive that flourished skilled well-paid labour and high investments. But the core was in need of peripheries from which to extract the surplus that encouraged expansion. The periphery produced a certain key amount of primary goods and labour became coerced in order to keep down the costs of production. The technology stagnated and the labour became less skilled, and capital was moved toward the core. Historically, Wallerstein describes that at first the differences between the core and the periphery were relatively small. However, when the North increasingly exploited the periphery by buying cheap primary goods in return for expensive manufacturing goods, the northern states expanded the gap between them. According to Wallerstein uneven development is neither a recent phenomenon nor a mere artefact of the capitalist world-economy; it is one of capitalism’s basic components. The quest to make resources in the peripheries available to the global market eventually lead to an expansive movement that gradually removed every other way of organizing a society. The system that emerged has remained to the disadvantage of traditional and indigenous way of cultivation.

Wallerstein also developed a third category, the semi periphery. This category contains societies that stand between the core and periphery in terms of economic power. Some societies may eventually fall into the periphery, as did Spain in the 17th and 18th centuries, and others may eventually develop and become core-societies, as Japan. Most countries in the semi periphery and the periphery struggle to become core states and central actors within the global trade system.

20 Wallerstein I., 1985, Den Historiska Kapitalismen pp.15-18
22 Chirot D., Hall T., 1982, World System Theory, p.85
23 Ibid. p.86
When the commodification chains became inevitable the land also became a commodity that could be sold and exploited. As the land developed into a commodity it was essential that the borders of it be defined. People who previously moved freely and cultivated the land also had a more dynamic relationship to the land. Now, even when indigenous people are claiming their traditional right to the land, they are forced to delimit it in the same way. Demarcation of the land was thus required even though the idea itself may be completely foreign for the indigenous own tradition. This idea is something that people today struggle with, from the Mapuche in South America to the Sami in the northern parts of Scandinavia.

### 4.2 Sovereignty Theory

Benedict Anderson describes the nation as being an imagined political community. It is imagined because even within the smallest nations the citizens do not know, neither by meeting nor hearing, their fellow citizens. The nation is further limited because even the largest nations have finite borders. Anderson hence defines the nation-state as being an imagined political community – “and imagined as both inherently limited and sovereign”.24

The concept of sovereignty is significant for understanding the underlying mechanisms of a state’s actions, and in this case the actions of the Chilean State. In order to participate in the world-economy that Wallerstein described and decide upon the politics of its own population a state need to be sovereign. The concept of sovereignty has several nuances that depend on the political viewpoint selected. The general definition of sovereignty is that it is the supreme power or authority. It is the authority of a state to govern itself or another state.25 Sovereignty further needs to be recognized by others if it is to have any meaning. Wallerstein claims that “sovereignty is more than anything else a matter of legitimacy […that] requires reciprocal recognition.”26

Realists, such as Thomas Hobbes, describe sovereignty as part of a ‘social contract’. The social contract is further explained as people having no choice but to obey a ‘Soveraigne Power’ that is able to pursue them to act in the common good. Sovereignty must therefore be absolute and indivisible.27 Sovereignty need to be absolute otherwise the sovereign would not be the final authority moreover indivisible because otherwise there would be no way of solving disagreements between multiple authorities.

24 Anderson B., 2006, *Imagined Communities*, pp.6-7  
In summary, the concept of sovereignty is composed by a number of features as it is supreme, persistent over time, indivisible, absolute, and given by explicit territorial boundaries. Theories from Machiavelli to Rousseau describe the seizure of land as being the start for political sovereignty and as the essential basic condition for the public and private right, ownership and order. The ownership to the land is thus connected to the sovereign power of a nation-state, it is by separating land from a common land that sovereignty is born. Early modern thinkers, such as John Locke, claims that it is by not defining a territory that the “Indians of America” do not possess sovereignty, instead they live in a condition of ‘political barbarousness’.

While realists tend to defend sovereignty that, in Hobbesian manner, need to be untouchable and absolute, other political philosophers contradict this by claiming that the sovereignty status can be disrupted if there are serious violations to human rights. The latter ones are said to belong to the rationalist approach and it has been seen in practice when for example the United Nations intervened in Libya in 2011 following the Responsibility to Protect (R2P) policy.

Another approach to sovereignty is given by Wendy Brown. As classical sovereignty is founded on the power-relation between the one who is ruling and the ones who is ruled, Brown describes this sovereignty as today being challenged by international entitlements to law, rights, and authority that thus openly tries to exceed state-sovereignty. Sovereignty is not vanishing for that matter, but the state and the sovereignty tend to drift apart from each other. The sovereign nation-states do no longer define the global political relations in the post-westphalian order, and Brown believes the walled states as being symbols for this corroding sovereignty. Walls are set up between state borders, between for example USA and Mexico, India and Bangladesh and Saudi Arabia and Yemen. These new barriers are neither there for defining the borders of the nation-state nor as a defensive act against other sovereign powers, they are built to prevent transnational actors from entering: individuals, groups, movements and organizations. The walls reveal a certain vulnerability and instability which is in direct contrast to the characteristics of sovereignty. Thereof the visual paradox of these walls:

29 Ibid. p.48
30 UN Security Council, SC/10200, Approves ‘No-Fly Zone’ over Libya, ‘All Necessary Measures’ to protect civilians
32 Ibid. p.23
looks like an articulation of state sovereignty is instead a corroding sovereignty in relation to other transnational global powers.\(^{33}\)

Sovereignty thus administers a population and its condition of life in favour of the common good but at the same time uses walls as a tactic to mark its sovereignty and protect its territory, and in that way also tries to guarantee the security of its population. These walls are however of theatrical character revealing the actual vulnerability of sovereignty in today’s global society. I have found it fruitful to use Brown for this study since she helps to understand the meaning of international law posing a threat towards the national sovereignty and the anti-terrorist law being a governmental instrument (similar to a wall) to protect the majority culture in Chile.

### 4.3 The Concept of Terrorism

Although the anti-terrorist law no. 18.314 was enacted by the Pinochet regime its application on Mapuche activists takes place in a political landscape developed after 9/11, 2001, where the war on terror has turned into a worldwide priority. Before 9/11 studies made on terrorism have been rather marginalized. A common universal definition of terrorism has not been agreed upon and many treaties avoid the concept because of its many veneers and constituents. In literature one finds over a hundred definitions of terrorism. However, at least four debates are repeated in most definitions. The first debate contains the methods and tactics, and if violent acts or the mere threat of violence are to qualify as terrorism. In this debate most definitions stress *violent acts* as being the primary component of terrorism. The second debate regards the nature of the terrorist where *non-state actors* are seen as the foremost committers. The third aspect involves the nature of the targets where most definitions stress that the target needs to be *civilians and non-combatants*. The fourth and final aspect debates over the motivation and objective of the terrorists. In this debate the consensus made is that the goal of terrorism is to provoke a political response through *fear* and violence.\(^{34}\)

There is a fine line between what terrorism is and what is to be seen as intimidations. In the UK, for example, there are a number of political actors which tangent to this line: boycotts, strikes, civil disobedience or politically motivated vandalism. Despite of this range of estimations certain key-elements are included into the definition of terrorism. The following points give some examples of different definitions of terrorism:


• US view: “Any premeditated politically-motivated violence perpetrated against non-combatant targets by sub-national groups or clandestine agents, usually intended to influence an audience”.

• UN view: “An anxiety-inspiring method of repeated violent action, employed by (semi-)clandestine individual, group or state actors, for idiosyncratic, criminal or political reasons, whereby – in contrast to assassination – the direct targets of violence are not the main targets”.

• Arab League view: “Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeks to sow panic among people, cause fear by harming them, or place their lives, liberty or security in danger…”

• Israeli view: “A terrorist organization is a body of persons resorting in its activities to acts of violence calculated to cause death or injury to a person or to threats of such acts of violence”.

The only convention that includes a definition of terrorism is the UN Convention for the Suppression of Financing of Terrorism which is stated as follows:

“Act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing any act.”

Important to notice is that all definitions presented involve grave violence against persons.

A suitable definition based on the four common aspects presented earlier and the five definitions found could be formulated as follows: violent acts committed by non-state actors who target civilians and non-combatants in order to provoke fear designed for a political cause.

Studies on terrorism show that the aggressive military resources used in order to combat terrorism have sometimes been out of proportion. This together with tactics of torture, rendition, and detention without legal representation or trial worsen the problem by creating a

---

36 Art. 2 of the International Convention for the Suppression of the Financing of Terrorism
larger group of terrorist recruits and sympathizers. The net benefit of this orderly policy then actually becomes negative.\textsuperscript{38} The term ‘global war on terror’ was first introduced by the George W. Bush administration in the United States. To prevent indictment for war crimes the Bush administration disregarded the Geneva Convention and the torture ban in American law and instead introduced a state of emergency, due to the exceptional character of terrorist crimes.\textsuperscript{39} The extraordinary measures used have resulted in the opening of Guantanamo Bay detention camp and the legitimization of torture in terrorist-cases. Torture has thereby re-emerged as an instrument for justice where the one who is torturing claims jurisdiction, and uses torture as an instrument for power with the aim to force out information or confessions.\textsuperscript{40}

When an international law was processed in 2008, in order to ban ‘waterboarding’\textsuperscript{41} and other techniques that are not compatible with anti-torture laws, Bush vetoed the law. Bush claimed that it is not a coincidence that the U.S. have not been attacked again, the law would eliminate all alternative procedures that was developed to question the world’s most dangerous terrorists in order to keep the U.S safe.\textsuperscript{42} Mattias Gardell describes that torture was introduced as an exceptional legal instrument in order to deal with exceptional crimes. Over time this notion of exceptional crimes has been extended to include all sorts of crimes that vaguely can be traced back to the original category of exceptional crimes. In this context, many of the anti-terrorist laws adopted in several nation-states are alarming since they enable prosecutions based on secret evidence produced through secret methods. Since it is already prohibited to commit murder, arson attacks, and detonate bombs, little points to the need of special terrorist-laws in the judiciary. The motivation of these new legislations can then hardly be to judge people who are suspected of committing these crimes, neither to frighten others to commit these sorts of crimes since that could be accomplished simple by increasing the penalties. According to Gardell the motivation of anti-terrorist legislation is an extension of a legal no-man’s-land where the security police may operate without accounting for why, how, and against who. It creates a room where no law exists that thus also challenge the mere existence of democracy. Gardell claims that one cannot in any way defend democracy by taking away its democratic principles.\textsuperscript{43}

\textsuperscript{39} Gardell M., 2008, \textit{Tortyrens Återkomst}, p.9
\textsuperscript{40} Ibid. p.13
\textsuperscript{41} Waterboarding is a form of torture in which water is poured over cloth covering the face and breathing passages of the captive
\textsuperscript{42} Gardell M., 2008, \textit{Tortyrens Återkomst}, p.150
\textsuperscript{43} Ibid. p.187
The anti-terrorist laws create a space where it is legitimate to disregard international human rights and moreover democratic principles, because of the exceptional character of terrorist crimes. The term ‘terrorism’ has, over the last few years, been stretched to include people who barely can be traced back to the original definition of exceptional crimes. One can therefore ask who should go under the classification of terrorist, a discussion that will be further developed in chapter seven.

4.4 Specific Approaches

This part of the theory chapter provides approaches to human rights and ethnocultural rights, which are important for understanding the law-documents of national and international law, moreover, the specific rights claimed by the Mapuche community. It further provides a theoretical framework of which categories that exists within group-specific rights and why ethnocultural rights are significant. This is done through the concepts and standards of Human Rights and through the arguments of Will Kymlicka and Jorge M. Valadez.

4.4.1 Human rights and the indigenous people’s rights

Since the establishment of the United Nations in 1945, human rights and the rights of peoples have grown as an idea that should be internationally protected. A complex network of international law, agreements and declarations has flourished where people’s rights should not solely be addressed by every single country but by the virtue of being human and by sharing a common humanity.

What we today call human rights has gone through a development in which every platform is named ‘generations’. The first generation contains political and civil rights, the second economic, social and cultural rights and the third generation enclose group rights.44

Since the recognition of indigenous people in 1977, at the NGO Conference at the United Nations office in Geneva, the estimations of the number of indigenous people in the world have grown from 40 million to nearly 350 million.45 The indigenous people have emerged as a distinct group in international human rights, and it has been universally recognized that they should enjoy collective rights and to some extent autonomy. Indigenous people and minorities seek similar claims. Both groups want equality with other citizens while at the same time assert state respect and support for the development of their culture, religious and linguistic identities.46

45 Symonides J., 2000, Human Rights: Concept and Standards, p.301
46 Ibid. p.304
There are two categories of rights sought by indigenous people; *Substantive Rights* and *Procedural Rights*. Substantive rights include basic human rights, in contrast to procedural rights which include procedures that in turn enforce the substantive rights. Regarding substantive rights indigenous people in general seek the right to self-determination, autonomy and territorial rights.\textsuperscript{47} However, Erica-Irene A. Daes claims that “even within states which are proud of their ethnic diversity, and reflect that diversity in their state institutions, indigenous people are generally either missing or have been assigned a role that is subordinate to other ethnical and regional populations.”\textsuperscript{48}

Procedural rights refer to the rights to information, rights to justice and the rights to participation. These rights include claims such as possessing and standing to negotiate the indigenous people’s legal status with the nation-state. It thus includes the emergence of indigenous rights law and reflects their influence in developing standards within for example the United Nations system. Procedural rights further means that self-determination cannot be achieved without constitutional reforms and law-making. Daes claims that “qualitative changes are required in the distribution of political authority and legislative jurisdiction.” Participation by indigenous groups is thus vital in order to guarantee the rights of indigenous people in international bodies, to some extent this has been accomplished at the Working Group of Indigenous Populations.\textsuperscript{49}

According to Deas there are both collective and individual aspects of how to protect indigenous rights. Rights of equality, identity and independence are generally exercised through collective institutions. In practice these rights do not have any meaning unless the indigenous people are free to create and maintain these institutions. Indigenous people hence both want to be treated as equals (to the other citizens) yet also be able to exercise their identity and culture as a group.\textsuperscript{50}

### 4.4.2 What does minority and group rights contain?

Ethnocultural rights goes hand in hand with minority and group rights. According to Will Kymlicka the way of dividing rights into ‘individual’ or ‘collective’ is today old-fashioned, instead we should focus on asking substantive moral and institutional questions. An example of these types of questions would then be *how important is ethnicity to personal identity and self-respect, and does accommodating these interests require more than standard citizenship*

\textsuperscript{49} Ibid. pp.312-315
\textsuperscript{50} Ibid. p.304
Moreover, Kymlicka claims that by focusing solely on individual or group rights one misses the real issue behind ethnocultural conflicts. One should instead ask if the familiar system of common citizenship rights within liberal democracies, such as the standard set of civil, political and social rights is sufficient to accommodate the valid interest people have in virtue to their ethnic identity. Jacob T. Levi further gives a clear classification of rights-claims which are morally and institutionally similar, and some that are not. These categories are:

a) Exemptions: from laws which penalize or burden cultural practices. This may be laws such as hunting laws or compulsory vaccination.

b) Assistance: to those things the majority can do unassisted. This is practiced through for example affirmative action and funding ethnic associations.

c) Self-government: for ethnic, cultural, or national minorities. Self-government can be conceived through secession, federal units or other institutions.

d) External rules: restricting non-members’ liberty in order to protect the members’ culture. An example of this may be restriction by not practicing minority languages in school.

e) Internal rules: for members’ conduct enforced by exclusion, ex-communication. This can be when rules are established that disown children to marry outside of the member group.

f) Recognition/enforcement: of traditional legal code by the dominant legal system. When recognizing for example land rights and traditional family law.

g) Representation: of minorities in government bodies, guaranteed or facilitated. An example of this is the U.S. black-majority congressional districts.

h) Symbolic claims: to acknowledge the worth, status, or existing of various groups. In practice this may be acknowledging national holidays or teaching of history in school.52

By doing this classification Levy hopes to clarify the set of policies that may facilitate or impede the rights of cultural minorities. Hence the rights-claims here provided are essential for accommodating ethnic and linguistic pluralism.53

Darlene Johnston point to how the reaction to the idea of collective rights has in some aspects been strongly negative. These rights may be seen as dangerous and oppressive and the reaction thus stems from a perceived clash between individual rights and group rights. This

---

52 Ibid. p.25
53 Ibid. p.24
notion contains an assessment that group rights may create a conflict with for example the interests of women who are part of minority communities, and that the group’s most vulnerable individuals will be worse of as a result of these group-specific rights. This view is highly represented by Martha Nussbaum, who believes that the moral legitimacy of ethnocultural rights depends on an unjustified privileging of ethnocultural identity. Nussbaum claims that individuals within these groups may not only identify themselves as members of that group but also for example as women, an older person or with their profession. However, in response to this Jorge M. Valadez argues that when defending group rights, it is not necessary to solely assume that ethnocultural identity is the one important form of identification. For some people it is not the primary issue, however ethnocultural group rights address the injustices committed against them in the past (or present) times. Most indigenous peoples have been subjected to state policies in form of assimilation or outlawing their cultural traditions. Valadez continues by arguing that what matters is how they are treated by the dominant society, and not how they see themselves. Moreover, Johnston believes that group rights are widely misunderstood and that recent efforts have been made in form of collective rights-based theory in order to develop a strategy for their justification. Johnston claims that native communities are entitled to recognition as rights-bearing entities.

4.4.1 The significance of ethnocultural rights

Social, political and economic forces of globalization have established new forms of interdependence and overlapping spheres of influence and jurisdictional authority. However, at the same time, local and regional collectivities are demanding state resources, cultural rights and decentralization of the governing power. One of the major political developments that challenge contemporary states is the granting of group-specific rights to ethnocultural minorities. Jorge M. Valadez claims that in order to understand the significance of group-specific rights one must first understand the concepts of ethnocultural identity and membership in a national community. Those authors who believe that liberal democracies should recognize the importance of ethnocultural identity generally distinguish between states, nations and peoples. States are defined as political entities which exercise coercive power over its territories which are recognized as sovereign by the international community. Nations, on the other hand, are a society where the members share a common culture, a

54 Kymlicka W., 1995, The Rights of Minority Cultures, p. 179
56 Kymlicka W., 1995, The Rights of Minority Cultures, p.179
common language and a common heritage. Nations may or may not have a state and states are thus not equal to nations. One of the reasons why membership in nations and ethnocultural identities are important is because they provide a social context where meaningful choices can be made. To clarify, it provides a background of shared values, practices and understandings where ethnocultural identity and its cultural context make it possible for the members to exercise autonomy and moral agency. Important to say is that these cultural contexts do not need to be unitary or homogenous wholes. Valadez adds that identity is important because it provides an ‘effortless belonging’ in which individuals are accepted as members of a national community, it provides a feeling of self-worth. Another argument for the significance of ethnocultural identity centres in its capacity to provide institutions in the public space that promotes engagement in civic affairs. This provides institutions that people find understandable and meaningful. When political institutions are understandable they provide a certain degree of transparency and facilitate participation of minority cultures.\textsuperscript{57}

Valadez claims that states cannot be neutral regarding culture. However debates are going on within states as to which ethnocultural group should be given official institutional support. Ethnocultural groups that then experience discrimination or oppression by the dominant society can be divided into three categories: accommodationist, autonomist and secessionist.

The accommodationist group wants to integrate into the socioeconomic and political institutions of the majority society. This group includes for example the Turks in Germany and the Albanians in Italy. The autonomist group, on the other hand, seeks varying degrees of autonomous self-determination within the boundaries of the state. Rather than seeking political integration they want cultural and political autonomy. They regard themselves as a distinct people or community who never gave their consent to becoming part of the state. Typically for this group is that they did not immigrate to the country in which they live and their historical land was forcibly seized by the state. This group hence contains indigenous people, ethno-nationalists, communal contenders and religiously defined communities. The third group, the secessionist group, either wants independent statehood or irredentist integration into a different state. This category then includes groups as Palestinians, the Tamils of Sri Lanka and some Kurdish communities.\textsuperscript{58}

Valadez argues that ethnocultural rights are significant for theories of governance in the global era. These rights rectify historical injustices and existing injustices and should be

\textsuperscript{57} Jorge M. Valadez, 2007, \textit{Identities, Affiliations, and Allegiances}, Benhabib, Shapiro & Petranovic (eds.), p.305

\textsuperscript{58} Ibid. pp.307-313
incorporated in theories of governance. Ethnocultural rights, and the identity that underpin them, will remain important because of diminishing natural resources. As vital natural resources become scarce it is likely that states will assert their claims to their territory and these developments will entrench the significance of ethnocultural identity and their knowledge.\textsuperscript{59}

5. The Mapuches, Colonization and the Chilean State

The word Mapuche means ‘people of the earth’, reflecting their central relationship to the land. During the colonization the Spaniards referred to the Mapuche as Aracanians, or people from Arauco, since they are situated in Araucanía in southern Chile and Argentina. The word Mapuche has then come to replace the colonial term of Aracanians which has previously been used in literature and in media. It is hard to estimate the exact number of Mapuches in Chile since the Chilean government eliminated the category of ‘Mapuche’ from the national census. However, research on the subject estimates between 650,000 and 980,000 which constitutes around 4-6% of the Chilean population.\textsuperscript{60} Hence they are the largest group of the nine indigenous groups\textsuperscript{61} that are found in Chile.

Historically the Mapuches violently resisted the Spanish invasion of their land, to a greater extent than any other indigenous people in South America. The arrival of the Spaniards caused a massive change in the structure of the Mapuche society. Before the war the Mapuches were organized around the family and did not engage in any other administrative institutional forms. The war, however, made more systematic alliances where methods such as acquisition of basic foodstuffs and fishing where hierarchically applied in order to prepare for the war that began in 1546. Together with these changed structures, the Mapuches were deeply affected by illnesses imported from Europe and the consumption of alcohol. Nevertheless, the extended family continued to function as the basic social unit, precluding preservation of traditional occupations such as gathering, hunting and orchard agriculture.\textsuperscript{62}

The capacity of adaptation by the Mapuche enabled them to continue fighting against the Spanish regime for over ninety years, when eventually peace was signed. The Mapuches succeeded in surviving independently during the colonization where they evolved into a cattle-raising and agricultural society. They effectively developed trade links to the Spanish colony and beyond the Andes toward other indigenous groups.\textsuperscript{63}

In 1819 the situation of the Mapuche people again changed. Through various treaties the Mapuche where tied to the Spaniards in the war against the newly born Chilean state, in what

\textsuperscript{60} Carter D., 2010, \textit{Chile’s Other History: Allende, Pinochet, and Redemocratisation in Mapuche Perspective}
\textsuperscript{61} Indigenous groups: Aymara Atacameña, Colla, Quechua, Rapa-Nui, Mapuche, Yámana, Kawashkar and Diaguita
\textsuperscript{63} Ibid. p.19
was called ‘La guerra a muerte’. The republican era then caused many new confrontations between the Chilean state and the Mapuches. The economic needs of the new state led to exploitation of coal in the northern part of the Mapuche territories, driving the indigenous southwards. The Mapuche control of the lands between the Bío-Bío and Tolten rivers was perceived as an obstacle for national integration and a hinder for the determination of the border between Chile and Argentina. As the border eventually was defined, the Chilean sovereignty was stretched over the territory of the Mapuches. In the final military confrontation between the Mapuches and the Chilean state the Chilean propaganda portrayed the indigenous as cruel savages, creating a slothful stereotype that has survived until today. 64

In the 1860s, the occupation of Mapuche territory began to be discussed in political and military circles. Two heavily violent waves of military conquest then took place, the first in 1869, and the second transpired from the Mapuche uprising of 1881 to 1883. These military conquests finally defined Chilean sovereignty in the south of Chile. Thus, an end was put to Mapuche control over the southern lands. 65

Since the loss of control over their territory, the Mapuches’ main concern has been the integration procedures into the Chilean society. Their agricultural marginalization, resulting from the loss of territory, impaired their capacity to continue extensive cattle-raiseing. They lost good grazing lands and thus most of their capital. These circumstances resulted in an increased poverty and emigration. The process of integration of the Chilean state then turned the Mapuches from indigenous to ‘campesinos’- farmers, and they then lost much of their cohesion. The attempts to integrate the Mapuche into Chilean society were through education, modernization and teaching of the Spanish language. The Mapuche traditions and identity was then gradually being overpowered. However, during the government of Salvador Allende (1970-1973), the Mapuche’s rights took a turn with the new general agrarian reform 66. This reform led to the restoration of 70,000 hectares to the Mapuche. The Allende government regarded the Mapuche people as part of the agrarian proletariat and gave them preferential treatment. By law No. 17.729 or ‘Ley Indígena’ the ‘Dirección de Asuntos Indígenas’ was transformed into a more executive body: Instituto de Desarrollo Indígena (Institute for Indigenous Development). This law then enhanced active participation of the Mapuche community leaders. Its ambition was to combine the agrarian reform with Mapuche ethno-

64 Langer E.D, Muños E., 2003, Contemporary Indigenous Movements in Latin America, p.20
65 Ibid. p.21
66 The agrarian reform was a process of land ownership restructuring that took place from 1964 to 1973, through different phases. See: http://www.archivochile.com/S_Allende_UP/doc_de_sallende/SAdo034.pdf (Spanish)
development and at improving the standard of living of the Mapuche agrarian population. However, with the Pinochet government taking over the Mapuche situation radically changed.\

In the period of Pinochet’s military government the law No. 17.729 was annulled. Instead, neoliberal economic policies were implemented, through the decree 2.568, which further divided Mapuche lands. The Mapuche leadership then underwent severe repressions during the military regime because of the connection to leftist policies. The only organization allowed at that time was that of a small farmers and craftsmen association, AD-MAPU. The AD-MAPU tried to repeal the decree 2.568 which aimed at integrating the Mapuche definitely into the Chilean society, however failed to do so.\

With the application of the new law, Pinochet aimed at replacing the community property-based system of the Mapuche which he referred to in his fourth presidential message:

“This morning I also wish to announce the promulgation in the near future of a law on indigenous property which, while respecting the cultural values of the Mapuche, will enable those that wish to do so to opt voluntarily and freely for a title to property, replacing the present system of community ownership.”\

The new law then permitted setting-up of corporations in the Mapuche areas and provided for the division of Mapuche land so as to enable the distribution of individual titles of property. This eventually attracted timber companies that exploited the old araucaria forest. The elements of the previous ‘Ley Indígena’ such as education, professional training, the establishment of centers of craft, and the protection of their territories classified as “indigenous lands”, was thus absent from decree 2.568. Anyone moving to the indigenous lands and working the land was then considered to be a settler, hence opening the areas for non-Mapuche settlement with a commercial status. The neoliberal economic policies established by the Pinochet government created a situation in which the individual possession of land made the Mapuche eligible for taxation but denied them access to free social and health services. In the wordings of Pinochet a definite Mapuche identity rejected the Christian and Western values that characterized Chilean nationalism and the demand for devolution of seized lands was totally unacceptable for the military government. The Chilean nation was

67 Langer E.D, Muños E., 2003, Contemporary Indigenous Movements in Latin America, p.23
68 Ibid. p.24
69 El Mercurio, 1993-09-12, Promulgada ley de trato especial a los indígenas
said to be shaped by Western Christian values hence leaving the Mapuches outside of this nationalism. Several Mapuches were considered close associates of the Chilean left and therefore became subject of discrimination and close supervision. When, at last, the transition to democracy became a reality the Mapuche problem became a public issue.\footnote{Langer E.D, Muños E., 2003, \textit{Contemporary Indigenous Movements in Latin America}, p.27}

\subsection*{5.1 The Democratization in Chile}

The Pinochet government came to an end in 1990 when Patricio Aylwin (Christian Democrat) became president of Chile. One issue that brought the Mapuche situation to the surface was the long-going dispute between the Galletué timber company and the Mapuche (Pehuenche) community of Quinquén. The term Pehuenche means people (che) of the pine nut (pehuen) in Mapudungun. They are situated in the Quinquén area and much of their economy rests upon access to renewable natural resources: pine nuts, wood for building or fuel, pastures, and gathering of forest products. This group tried to resist the penetration of economic activity in their communal lands while the timber company tried everything possible to evict the 150 Mapuches in the area, so that it could cut down the age-old araucaria trees. As the company won court decisions the representatives of the Quinquén Pehuenches, in 1990, appealed for help from President Patricio Aylwin. Since the Chilean Supreme Court had already ruled in favour of the timber company, who were legally owners of the land, the scope of the government actions were limited. Nevertheless, through debate between the parties, the Mapuche situation was given public prominence within a democratic framework and in May 1991 the government declared the Quinquén area a National Forest Reserve. This excluded the araucaria forest from commercial exploitation however a decision that was made without the permission from the Chilean National Forest Corporation. This did of course also exclude the area from the Pehuenche Mapuches but did save it from further exploitation. Yet, in March 1992, the government and the company came to an agreement that 30,000 hectares where sold to the State thus opening an opportunity to restore it to the Pehuenche community.\footnote{Ibid. p.27}

The Chilean government proved sensitive to the plight of the Mapuches. Several Mapuches were executed during the military coup in 1973 and many more were persecuted during the Pinochet dictatorship. At the end of the 1970s the Mapuches became the first social group to confront the military regime, while trying to defend their communal land. In this sense, they set an example for later popular movements and social reform and became symbolic for the
social costs of the authoritarian version of economic neoliberalism. Yet, during the presidential campaign, in 1989, Aylwin signed the agreement of “Nueva Imperial” which included the demands of the Mapuches in the electoral platform. In May 1990, the Aylwin government created a special agency, the Comisión Especial de Pueblos Indígenas (CEPI), that dealt with the issues of the indigenous peoples. The chairperson was delegated José Bengoa who was a social anthropologist and historian of the Mapuches. The organization became the defender of indigenous interest apropos the Chilean government. This was a great step towards admitting the Mapuches to participate in the political dialogues.\(^\text{72}\)

Also in 1990 the Indigenous Law, ‘la Ley Indígena’, was prepared. With the cooperation of CEPI a draft was established and it was approved in 1993. During the discussion process of the draft the Council of All Lands (Consejo de Todas las Tierras) was established in 1991. The members of this Council, and its supporters, repeatedly demanded autonomy and appealed constitutional recognition of the Mapuche communities. This was at the time an impossible request since the opposition, tacitly backed by the army and the remnants from the Pinochet government, would block such a reform. Yet, until this day the Mapuches are still not recognized in the constitution of Chile.\(^\text{73}\)

In the 1990s, the Radical Party in the government coalition supported a constitutional recognition of the Mapuche communities. However, the opposition senator Sergio Diez, who was a member of the Renovación Nacional and former supporter of the Pinochet regime, expressed the opposite view:

“I am in favour of the integration of all the roots of the Chilean people, into the Chilean people... I believe we all feel Chileans and wish to integrate into the national reality, but we do not wish to assimilate to a single pattern in order to become part of that national unity. Therefore it is important to distinguish between integration and assimilation.”\(^\text{74}\)

Mario Sznajder, professor of political science at the Hebrew University of Jerusalem, writes that in political terms the clash between the opposition and the coalition can be considered within the larger framework of the institutional model of limited democracy protected in the 1980 constitution. The constitution clearly speaks for a single Chilean nation within the territorial boundaries and the balance of power between the state and the people, which is as difficult to change as it is to reform the constitution. Addressing the roots of the problem of

\(^{72}\) Langer E.D, Muños E., 2003, Contemporary Indigenous Movements in Latin America, p.28

\(^{73}\) Diario Uchile, 2010, Se retrasa proyecto de reconocimiento constitucional a pueblos indígenas

\(^{74}\) Langer E.D, Muños E., 2003, Contemporary Indigenous Movements in Latin America, p.30
the indigenous people by opening the Chilean nationality to redefinition are issues directly linked to the nature of the Chilean democracy.\footnote{Langer E.D, Muños E., 2003, \textit{Contemporary Indigenous Movements in Latin America}, p.30}

During the democracy process, President Aylwin promised in his campaign in 1989 to carry out the demands of the Mapuches, and law 19.253 was created in 1994 in order to protect and support the indigenous people. This law announced the establishment of the National Corporation of Indigenous Development (CONADI), as an autonomous and decentralized organization in Temuco. The objective of this organization was, and is today, to promote, implement and coordinate the actions of the state for the development of indigenous people. The new law and organization thus regularize the already existing policies of the government in different areas. The former CEPI was then replaced by CONADI and was a step towards allowing the indigenous people to find their place within the Chilean society, in which democracy is being consolidated.

Sznajder writes that the Chilean parliament and government hence enacted a modern law that makes a start at redressing historical patterns that had led to the attrition of marginal ethnic groups in Chile. Yet, bound by its own limitations – politically and budgetary – it has perhaps, according to Sznajder, done too little too late.\footnote{Ibid. p. 32} Because of the lack of meeting the demands of the Mapuches (land-rights and representation at the governmental level) a new Mapuche-based organization was established in 1998. This organization goes by the name “\textit{Coordinadora Mapuche de Comunidades en Conflicto Arauco Malleco}” (CAM) and was established as an intent to gather the Mapuches in Chile and protest against the state and private sectors that impose threats to their ancestral lands.\footnote{Morán Faúndes J., 2012, \textit{La Ley Antiterrorista y la Protesta Social Mapuche: una Mirada desde la Gubernamentalidad y la Soberanía}, p.52} Already after a year the CAM organization was charged of ‘illicit association’ and after the reform of the law no. 18.314, in 2002, they were again charged of ‘illicit terrorist association’.\footnote{Human Rights Watch, Undue Process: \textit{Terrorism Trials, Military Courts, and the Mapuche in Southern Chile}, pp.37-41} After the government of Aylwin and Eduardo Frei (1994-2000), President Ricardo Lagos Escobar became head of state in 2000. During this time the demands from landowners had risen and put pressure on the government to take action against the violent acts of Mapuches in the Araucanía region. Hence Lagos’ government developed the anti-terrorist law in 2002 from the dictatorial law into what it is today. It was established as a more powerful instrument to cope with the problem of land-tenure in Southern Chile and thus incorporated arson attack into the criteria.
of terrorist acts. The CAM was then charged of illicit terrorist association on the grounds of participating in a criminal association, planning and carrying out acts of terrorism in parts of the Araucanía region over a period of several years.

Regarding the democratic transition of Chile and the indigenous people, plenty of international organizations, both NGO’s and IGOs, have criticized the use of the anti-terrorist law against the Mapuches. Although the Mapuches regained some recognition by the government of Aylwin the anti-terrorist law, enacted by the Pinochet government and modified by president Lagos, is today again applied against the Mapuches in Chile. Human Rights Watch writes that “Chile’s use of anti-terrorist law for crimes committed by Mapuche in the context of land conflicts, […] is not only inappropriate but also reinforces existing prejudices against the Mapuche people”.

According to the Economist Intelligence Unit contemporary Chile belongs to the flawed democracies and has ranking number 34 on the democracy index scale 2010.

<table>
<thead>
<tr>
<th>Democracy index, 2010, by regime type</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td><strong>Full democracies</strong></td>
</tr>
<tr>
<td>No. of countries</td>
</tr>
<tr>
<td>Flawed democracies</td>
</tr>
<tr>
<td>Hybrid regimes</td>
</tr>
<tr>
<td>Authoritarian regimes</td>
</tr>
</tbody>
</table>

The overall score by Chile is 7.56 while for example Sweden has 9.5 (4th place), Canada 9.08 (9th place) and Uruguay has 8.10 (21st place). This overall score is then calculated through 5 categories: electoral process and pluralism, functioning of government, political participation, political culture and civil liberties. The following points show Chile’s score in all categories:

- Electoral process and pluralism: 9.58
- Functioning of government: 8.57
- Political participation: 3.89
- Political culture: 6.88
- Civil liberties: 9.41

---

79 Human Rights Watch, Undue Process: Terrorism Trials, Military Courts, and the Mapuche in Southern Chile, p.2
80 Ibid. p.37
81 Ibid. p.4
82 The Economist Intelligence Unit, Democracy Index 2010, p.2
Important to notice is the low participation rank that Chile have, a score that probably serve as a disadvantage to the indigenous people of Chile who are already in minority in relation to the rest of the population. The anti-terrorist law is thus controversial in many aspects since it both criminalizes a minority’s attempts to recover their traditional land when they have no recognition in the national constitution, and potentially violates international human rights law. Hence, the next chapter presents national and international law noteworthy for indigenous people, and cases of when the anti-terrorist law has been applied to Mapuche activists.

---

85 Economist Intelligence Unit, *Democracy Index 2010*, p.4

This Chapter describes the national laws that the Chilean government has established which both support the indigenous rights and in a controversial way criminalize the indigenous people by categorizing them as terrorists. It further describes cases of when the anti-terrorist law has been applied. The last part provides a summary of international laws, conventions, declarations, and directives that either can be interpreted as having substantial meaning for indigenous people or are strictly directed towards indigenous rights in particular.

6.1 National Law

The Chilean national laws which are important for the continuation of this study are first the one that support indigenous peoples and second the one that criminalize violent attempts from the Mapuches to recover their ancestral land. These laws are the Indigenous Law No. 19.253 and the Anti-terrorist Law No. 18.314. I also added the law No. 20.519 that prevails a modification made to the law No. 18.314 in 2011.

6.1.1 Law no. 19.253: ‘Ley Indígena’

During the last century the Mapuches benefitted from substantial rights under the government of Allende (1970-1973). Allende established the ‘Ley Indígena’ No. 17.729 which afterwards got annulled under the Pinochet era. The law was however reinstated during the government of Aylwin under the number 19.253, in 1993. This law, as stated in article 2, was created on request of the indigenous communities or indigenous people. The first Article of this law state that:

“The State recognizes that the Indigenous people of Chile are the descendants of groups, humans that exist in the national territory since the pre-Colombian time, that conserve their own ethnic and cultural manifestations being for them the principal foundation of their existence and culture.”

84 Art. 1 of Law No. 19.253
The Chilean state further recognizes the main indigenous ethnic groups in Chile to be: Mapuche, Aymara and Rapa Nui or Pascuences of the Atacameña communities, Collas and Quechua from the northern part of the country, Kawashkar or Alacalufe, and Yamana or Yagan from the southern part. The Chilean State continue by expressing their existence as an essential part of the cultural heritage of the Chilean Nation and to further value and respect their integrity and development, according to the indigenous peoples’ customs and values. Article 1 further states that:

“It is the duty of the society in general and the State in particular, through its institutions to respect, protect and promote the development of indigenous people, their cultures, families and communities, taking the adequate measures for such purposes and protect indigenous lands, ensuring their appropriate exploitation for its ecological balance and promote its expansion.”

When it comes to the questions of land tenure Article 12 states that those that historically have occupied and possessed these lands (the 9 indigenous groups) always, as their rights are inscribed in the Register of Indigenous Land, are entitled to this property. Regarding the participation of the indigenous people Article 34 and 35 state that:

Article 34

“The services of the state administration and the organizations with territorial character when bringing materials that interfere or have a relation to indigenous issues, shall hear and consider the view of indigenous organizations recognized by this Act.

Notwithstanding the foregoing, in those regions and localities with high density of indigenous people, these through their organizations and when so permitted by applicable law, should be represented in the instances of participation that recognize other intermediate groups.”

Article 35

“In the administration of protected wild lands, located in the areas of indigenous development, it will be considered the participation of the communities existing there. The National Forest Corporation or the Agricultural and Livestock Service and the Corporation, by agreement, determinate in each case the form and scope of the

85 Art. 1 of Law No.19.253
86 Art. 2 of Law No.19.253
87 Art. 34 of Law No.19.253
participation about the right to usage in areas corresponding to the Indigenous Communities.”

Even though it is clear that indigenous people in Chile should have representation when it comes to issues that interfere with for example their culture, customs, or land possessions, they still do not have recognition in the constitution of Chile and they do not have any representative institution at the governmental level. The only governmental body that exist is CONADI which was established by this law and is a pure development agency.

How to deal with conciliation and judicial procedures of lands in conflict is further defined in Article 55 of the Indigenous Law:

“To prevent or terminate a trial over land, in which is involved any indigenous, the interested parties may voluntarily attend the Corporation so that they instruct about the nature of the conciliation and their rights and seek court resolution of the matter in dispute. The conciliation procedure will not have any solemnity.

The Corporation will be represented in this instance by a counsel that will be appointed as the effect of the Director who will act as a conciliator and Minister of Faith. It will raise the act of agreement, which have the effect of res judicata in the last instance and will be enforceable. Failing to agree may lead to attempted legal action correspondent or a continuation of the trial, if necessary.”

Along with this, CONADI states that they are reviewing the distribution of land to indigenous people and are working on new tools to support the education, training, entrepreneurship and housing for the indigenous people of Chile.

6.1.2 Law no. 18.314: the anti-terrorist law

The anti-terrorist law goes by the number 18.314 and was established in 1984, during the Pinochet period. It determines the conduct of terrorists and determines their penalty. It was first introduced to cope with the actions of armed political groups that carried out crimes such as kidnappings, assassinations and attacks on police stations. It was thus installed in order to deal with violent as well as non-violent opposition to the military dictatorship. The use of

---

88 Art. 35 of Law No.19.253
89 Art. 55 of Law No.19.253
90 CONADI, 2011, Ley Indígena No. 19.253
91 Ch. 1 of Law No. 18.314
92 Human Rights Watch, 2004, Undue Process: Terrorism Trials, Military Courts, And the Mapuche in Southern Chile, p.3
93 Ibid. p.21
the anti-terrorist statute against the Mapuches did not begin until the government of President Lagos, in year 2002. When the number of violent incidents in the Araucanía zone increased, together with harder pressure from landowners for a firmer government response, President Lagos turned to this anti-terrorist law as a more powerful instrument.94

Article 1 of the anti-terrorist law states the criteria for terrorist attacks:

“When it is committed with the intention of producing fear in the population or a part of it, justified by being victims of crimes of the same species, either by the nature and effects of the means employed, either by the evidence that they obey to a plan premeditated to attack a category or a determined group of persons, either because it is committed to start or inhibit resolutions of the authority or to impose requirements.”95

Article 2 further announces five points of acts when one is considered to be a terrorist. The first point constitutes of offences that involves assassination, kidnapping, abduction, arson attacks and destruction. The second consists of attempts against public transportation services, or acts that endanger the life, physical integrity or health of its passengers or crew. The third point consists of attacks against the life of the Head of State or other political, judicial or military authority. The fourth point regards offences that place, send, activate, throw, detonate or shoot bombs or explosive devices of any kind, weapons or devices of great power of destructiveness or of toxic or infective effect. The fifth and last point consists of illegal associations with the purpose of committing terrorist acts according to previous points or Art.1 of law no. 18.314.

In the Criminal Code of the anti-terrorist statute offences that are included also involve setting fire to woods, cornfields, pasture, fences or fields.96 The previous anti-terrorist law installed by Pinochet did however not make any reference to these types of arson attacks.97

Furthermore Article 3 of the law no. 18.314 states that the penalty for terrorist acts will be increased from one, two till three degrees in respective cases and Article 7 further states that:

“An attempt to commit any of the offenses under this Act shall be punished with the penalty attached to the respective illicit, reduced by one or two degrees. Conspiracy to commit any of these offenses is punishable by the penalty prescribed by law for the crime

94 Human Rights Watch, 2004, Undue Process: Terrorism Trials, Military Courts, And the Mapuche in Southern Chile, p.2
95 Art. 1 of Law No. 18.314
96 Art. 476 of the Criminal Code
97 Human Rights Watch, 2004, Undue Process : Terrorism Trials, Military Courts, And the Mapuche in Southern Chile, p.22
lowered by two degrees. The statement in this paragraph is without prejudice to the provisions of Article 3.

The serious and credible threat to commit any of the offenses mentioned in this Act shall be punished with the penalties to attempted respective crime without increases in degrees carried out in Article 3. The foregoing shall not take place if the fact more worthy to penalty according to Article 296 of the Criminal Code is applicable."98

Article 15 further describes the anonymity of witnesses. When it is considered to be a risk for the witness’ life or its physical integrity and for other persons involved that got a connection to the witness, they will be protected. Adequate measures shall be taken which the public ministry will be in charge of.99 This point is highly controversial for the Mapuche trials since witnesses may themselves have criminal records or a personal grudge against the defendants.100

Modifications to this law were, however, made on the 8 of October in 2010, and goes by number 20.519. It was the result of the 87-day long hunger-strike that Mapuche prisoners carried out from the 12 of July to the 12 of October in 2010. In Article 1 of the 18.314 law the 20.519 has added that “this law does not apply to conduct carried out by people less than 18 years old.”101 This modification does therefore not neither change the conditions in jail nor displace the Mapuches already charged of terrorist crimes.

The anti-terrorist law removes the guarantees that ordinary criminal defendants gets, and Mapuches accused of terrorist offences are thus omitted the guarantees given in ordinary civil courts. The public prosecutor is allowed to conduct criminal investigations in secret, hold people charged in pre-trial for months, and the defendants are not allowed to know the identity of their accusers. Furthermore the judges are given authority to permit prosecutors to intercept the defendant’s correspondence, inspect personal computers, and to tap phones, actions that are not allowed in ordinary criminal investigations.102

6.2 Cases of Practicing Anti-terrorist Law

The application of the anti-terrorist law began in 2001 and has been applied several times since. This section gives a description of cases of when the anti-terrorist law has been applied,
the 87-day hunger strike following its application, and lastly describes the most recent case of practicing this law, namely January this year (2013).

6.2.1 Application of law no. 18.314

The 1984 anti-terrorist law was first applied in order to cope with oppositional activism against the dictatorship. Yet in 2002 it was modified by President Lagos and used against the Mapuche. As the number of violent incidents increased landowners put pressure on the government for a firmer response, the anti-terrorist law was then modified to include setting fire on “woods, cornfields, pasture, scrub, fences, or fields.”

In 2002 seven Mapuches had been charged and convicted for terrorist acts such as arson or threats of arson committed against the properties of landowners and forestry companies. The seven Mapuches were at that time serving prison sentences for up to ten years. Some of them had been held in pro-longed pre-trial detention for over a year before charges were dropped.

Terrorism charges have also been invoked to convict leaders of Mapuche associations such as Víctor Ancalaf Llaupe, who was charged for setting fire to four trucks belonging to the electrical company Endesa. He was judged to ten years in prison in 2003, but the sentence was reduced to five years in 2004 because of insufficient evidence. In 2003, Patricia Troncoso Robles was charged of threat of arson attacks and of setting fire to property and buildings. She was held one year and five months in pre-trial detention before charges were dropped. Leaders and sympathizers with CAM have also been subjects to the anti-terrorist law on the accusation of participating in a criminal association. The interesting part is that the defendants had already been tried under the ordinary criminal code for the same underlying acts which violates the double jeopardy rule. No one shall be liable to be tried or punished for crimes for which they have already been convicted of, thus International Organizations are also concerned if Chile is committing violations to its human rights obligation stated in the International Covenant on Civil and Political Rights.

Today there are 28 Mapuche political prisoners around the prisons of Chile, all who have been convicted under the anti-terrorist law.

---

104 Ibid. p.1
105 Ibid. p.26
106 Mapuexpress.net, 2006, *Quienes son los presos politicos Mapuche en huelga de hambre?*
6.2.2 The 87 day hunger-strike

The 12 of July in 2010 in the prison El Manzano, in the city of Concepcion, in a detention centre in Temuco, 23 Mapuches initiated what would become 87 days of hunger-strike.\textsuperscript{109} According to the national newspaper, \textit{El Mercurio}, the strike was due to discontent and the Mapuches’ strong opinion of unjust treatment. They accused the government of being corrupt and that they had been victims of montage by the public ministry. The Mapuches claimed that the Chilean government had criminalized the just struggle of the Mapuche communities by imprisoning and preying against them. They continued by referring to the use of the dictatorial law no. 18.314.\textsuperscript{110}

Through the hunger-strike, the Mapuches wanted to put an end to the use of the anti-terrorist law. Additional demands were to stop the prosecutions in the military court and to release all political prisoners. They wanted to put an end to the political submission of evidence in the court procedures, the anonymity of witnesses, the physical and psychological torture and the degrading conditions in jail.\textsuperscript{111}

As the government, at first, ignored the demands of the Mapuches the hunger-strike continued. Already the 26 of July, eight other Mapuches joined the hunger-strike in the prison of Angol.\textsuperscript{112}

\textit{El Cuidadano}\textsuperscript{113} further announced that three additional Mapuches joined the strike at the 16th of September in Valdivia. It was first after this that the Government announced a meeting with the Mapuches on September 17, with the help by Ricardo Ezzati (Archbishop of Santiago de Chile) who agreed to be the mediator between the two parties.\textsuperscript{114}

On the 65\textsuperscript{th} day the hunger-strike was given internationally publicity and Survival International explicitly wrote about the far harsher sentences given to Mapuche defendants under the anti-terrorist law, harsher sentences than would be given if tried in civilian courts. At this point, president Piñera had proposed some modifications to the anti-terrorist law in response to the strike. However, the Mapuche believed that these changes was planned beforehand since they suspected that the government wanted to end the protest before Chile celebrated its 200 years of independence, on September 18\textsuperscript{th}. Survival International also

\footnotesize

\textsuperscript{109} \textit{La Nacion}, 2010-07-12, \textit{Mapuches en huelga de hambre para exigir garantías judiciales}

\textsuperscript{110} \textit{El Mercurio}, 2010-07-12, \textit{Reos mapuches iniciaron huelga de hambre en cárcel de Concepción}

\textsuperscript{111} Ibid.

\textsuperscript{112} Foro Escandinavo por los Derechos de los Pueblos Indígenas, 2010-07-26, \textit{Huelga de hambre prisioneros políticos mapuches de Angol}

\textsuperscript{113} \textit{El Cuidadano} is a fortnightly Chilean newspaper with influences from leftist politics

\textsuperscript{114} \textit{El Cuidadano}, 2010-09-16, \textit{Se unen 3 personas más a la huelga de hambre de los presos políticos mapuche}
continued by pointing out that Chile has ratified the ILO Convention No. 169 two years ago, however never made any significant progress in implementing its provisions.\(^{115}\)

After 79 days of hunger-strike the two parties had still not reached an agreement. The 29\(^{th}\) of September another meeting was held between representatives of the striking Mapuches and Claudio Alvarado, the sub secretariat of the General Secretary of the Presidency. After three hours of discussions, with Mgr. Ricardo Ezatti as the mediator, the two parties could still not settle. The Mapuches rejected the proposition made by the executive for being insufficient and at that point they demanded to speak with the public ministry and the legislative power.\(^{116}\)

Rodrigo Curipan, the representative of the Mapuches, announced that the Government had not been able to solve the problem and that they were now calling for the other powers of the state to join the table of discussion in order to solve the situation. However, the Interior Minister, Rodrigo Hinzpeter, declared that the government had done everything in their power to solve the dispute. He then continued by saying:

“If there are 35 community members who believe they are above the law, who want the judiciary and the public ministry to join the negotiation table, as requested, sincerely nobody is to the impossible obligated. There is a limit for everything and even here I feel that we are reaching this limit”.\(^{117}\)

Curipan highlights that the situation is about to have a disastrous outcome, and even more so if a death were to occur.\(^{118}\)

Nevertheless, some Mapuches decided to give up the strike at the 82\(^{nd}\) day, although their demands were not met. Yet, the prisoners of Angol and the prisoners situated at the Victoria Hospital (due to the hunger-damages to the body) continued the strike.\(^{119}\) The 13 Mapuche prisoners continuing the strike said that the reforms of the anti-terrorist law were insufficient. It only changed the situation for the underage prisoners (who became explicitly excluded from the law) and the 13 prisoners did not consider this to be a sufficient reform.\(^{120}\)

The 8\(^{th}\) of October ‘El Mercurio’ informed that the prisoners of Angol had come to an agreement with the government. The arrangement also involved the prisoners admitted at the Hospital of Victoria. The Secretary General of the Presidency, Cristián Larroulet, then stated...
that the efforts to terminate the hunger-strike had been realized in a satisfactory manner. The
decision made was then to be announced the 11th of October to the Mapuche community and
to the civil society that had shared the concern of the Mapuches. The spokesman of the
Mapuches, Jorge Huenchullán, stated that although an agreement had been settled the table of
discussion would continue due to the discontents within the Mapuche community. He stated
that “from the beginning we made it clear that it was not enough, but clearly there were taken
considerations with human character.”

At a public declaration to the Mapuche organizations and the communities, the prisoners of
Angol stated that they were forced to terminate the hunger-strike due to critical condition of
health; the decision was only based on humanitarian reasons. They also manifest that they do
not agree with the propositions of the government and that the propositions do not prevent the
application of the anti-terrorist law, the anonymity of witnesses and the double prosecution in
civilian and military court.

The outcome of the dispute was then a modification of the anti-terrorist law in form of the
law 20.519, which then excluded minors from the law but did not change the circumstances
for the already imprisoned Mapuches.

6.2.3 Case 2013/1/4

Despite the hunger-strike held in 2010, the anti-terrorist law was again used the 4 of January
2013. An elderly couple, Werner Luchsinger and his wife Vivian McKay were killed in an
attack made by Mapuche-activists in Vilcún. The family tried to protect their home as it was
exposed to an arson attack. The dispute had been long between the landowners and the
Mapuches in that region, however this time it ended with two deaths.

The Luchsinger family have a history in the region dating from their arrival in the late
1800s. They benefited from the government’s colonization policies and became one of the
largest landowners in the Patagonian region. Their companies of forestry and ranching occupy
massive areas of southern Chile in which Mapuches live on the margins of their properties.
Hence, the conflict between them has been long and intense.

Following the attack, President Piñera quickly announced new security measures that
included the application of the anti-terrorist law and a special anti-terror police unit to be

---

121 El Mercurio, 2010-10-08, Mapuche de Angol y Victoria deponen huelga tras acuerdo con el Gobierno
122 Ibid.
123 Foro Escandinavo por los Derechos de los Pueblos Indígenas, 2010-10-11, PPM, ante término de la
huelga de hambre
backed by Chile’s military in the Araucania territory. In his speech at the scenery Piñera announced that:

“This attack affects the entire country and causes gigantic damage, for the pain and the delays that it means for thousands of families who want to live in peace […] This government is united in its effort to combat terrorism that affects the region. We will not hesitate to apply the full weight of the law.”

He then continued:

“It should be completely clear that this fight is not against the Mapuche people. It's with a minority of violent terrorists who must be fought with everything the law allows”

One of the Mapuche leaders, Venancio Coñuepan, wrote a statement that rejected the idea that armed conflict could lead to victory and called for the responsible to reveal themselves and to be tried in court. He added that he believes the majority of the Mapuche community to agree with him. On Radio BioBio Coñuepan said:

"Enough of people using violence in the name of the Mapuche people. Our grandfathers never covered their faces. The Mapuche created parliaments, and always put dialogue first”

Titling his editorial:

"Although you don’t believe me, I'm Mapuche and I'm not a Terrorist.”

The director of Chile’s Human Rights Institute, Lorena Frias, was already from the start against the application of the anti-terrorist law No. 18.314. Frias referred to holding suspects in isolation without charges, using secret witnesses, and other measures that have been used in previous cases of Mapuche violence.

In the same context the ex-director of CONADI, Domingo Namuncura, expressed her condolences to the Luchsinger family but added that we have to remember the many years that the Mapuche communities also has suffered numerous victims. She further urged not to include the ethnic group of Mapuche in this tragedy.

Celestino Cerafín Córdova Tránsito was declared responsible for the two deaths and was detained at the hospital of Temuco. He had been shot in the chest during the clash with the...

---

124 Radio Bio Bio, 2013-01-04, Aunque no lo crean, soy mapuche y no soy terrorista
125 Ibid.
police, yards away from the fire. Meanwhile, the interior minister, Andrés Chadwick, announced that the government will invoke the anti-terrorist law to those responsible for the attack.

A week after, the 9th of January the brother to Celestino, José Cordova Tránsito, was also submitted to the anti-terrorist law, being the second suspect of the arson attack in Vilcún. According to La Tercera, he would together with his brother be judged under the anti-terrorist law in court on Friday 11th.\textsuperscript{126}

After the court-decision Celestino Cordova Tránsito was kept in jail for the arson attack. He was then charged of violent robbery and common fire of three vehicles. The Judge, Luis Olivares, decided that the investigation will continue, yet in secret for 70 days. As for José Cordova Tránsito he was charged of illegal possession of firearm. When he was arrested they found a 22 calibre revolver in his home. However, they could not confirm his participation in the arson attack of Vilcún.\textsuperscript{127}

6.3 The International Community and International Law

The international community has established certain laws in form of conventions, declarations, agreements and directives of how nation-states should deal with indigenous peoples’ rights around the world. International organizations are themselves creations of international treaties why they play a significant role in identifying international law that apply to them. Since their existence depends on intergovernmental agreements they are therefore the single most important platform for collective law-making, identification and development. Through formalized meetings and conferences they offer drafting for international treaties. The United Nations is the hub of the world’s international treaty making, although regional organizations such as the Organization of American States (OAS) and the Council of Europe fulfil similar roles.\textsuperscript{128}

To clarify, a convention or agreement is another name for a treaty.\textsuperscript{129} A treaty (or an agreement) is governed by international law and concluded primarily between states. A treaty is legally binding and the parties of the treaty can hold each other accountable for breaches. States do however not become bound to a treaty unless they express their consent to become parties to it. When a treaty has “entered into force” it is bound to all members of the treaty. Multilateral treaties often come into force when a fair number of the negotiating states have

\textsuperscript{126} La Tercera, 2013-01-09, Amplían detención del segundo sospechoso en atentado en Vilcún y anuncian que será formalizado junto a su hermano

\textsuperscript{127} La Nación, 2013-01-11, Caso Luchsinger: En prisión preventiva machi imputado por atentado

\textsuperscript{128} Cali B., 2010, \textit{International Law for International Relations}, p.96

\textsuperscript{129} Ibid. p.101
expressed their consent to be bound.\textsuperscript{130} A ‘Charter’ is also another name of a treaty. However, some sources of international law, such as declarations or resolutions are seen as soft law, and are thus not binding on states. The Rio Declaration on Environment and Development is an example of a non-binding agreement.\textsuperscript{131} The Universal Declaration of Human Rights is another example of a declaration that is non-binding, however, since many of its articles have become as universal as it is perceived as customary law it has become legally binding. A directive is, as declarations, not binding and can be seen as strictly advisory.\textsuperscript{132}

**The Charter of the United Nations** can be seen as the first treaty that deals with peoples who still have not attained a full degree of self-government and that the interests of these peoples are to be seen as supreme. In other words indigenous peoples’ interest should be respected where the members of the United Nation should assume responsibilities for the administration of these indigenous territories. The Charter was first signed the 26\textsuperscript{th} of June 1945 and came into force the 14\textsuperscript{th} of October 1946.\textsuperscript{133}

The rights of the indigenous people or “people who have not yet attained a full measure of self-government” is stated in Chapter 11, Art.73 of the UN Charter. It states that the Members shall:

“...accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:

\begin{itemize}
  \item a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;
  \item b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;
\end{itemize} \textsuperscript{134}

The entire Chapter 11 of the UN Charter was meant to be applied to territories which were then known to be of colonial type. Hence, this chapter is part of the de-colonization policies of the United Nations. A full measure of self-government is furthermore said to be reached when the peoples of these territories have emerged as a sovereign independent state, created a

\begin{footnotes}
\textsuperscript{130} Cali B., 2010, *International Law for International Relations*, p.108
\textsuperscript{131} Ibid. p.147
\textsuperscript{132} Ibid., p.148
\textsuperscript{133} Charter of the United Nations, *Introductory Note*
\textsuperscript{134} Ch.11, Art. 73 of the Charter of the United Nations
\end{footnotes}
free association within an independent state, or been integrated with an independent state. In the case of the Mapuche community neither of these types of self-government has been reached since they are not an autonomous state (which they nonetheless do not demand) nor have the freedom to modify the status of its territory through the expression of their will or through constitutional process. The Mapuche community’s self-government was far more reaching when they lived side by side with the colonialist power Spain than with the Pinochet dictatorship in the 1980’s.

Two years after the establishment of the UN Charter the General Assembly adopted the **Universal Declaration of Human Rights (UDHR)**, 1948, and resolution 217 A (III) Art. 15 states that everyone has the right to a nationality and everyone has the right to change his or hers nationality. No one shall be arbitrarily deprived from his nationality. As seen, this was an issue during the era of Pinochet when the Mapuches where prohibited to identify themselves as Mapuches if they wished to become Chileans. However, since a declaration is not legally binding it does not have any legal consequence, one can only consider it to be an action against the recommendations of the United Nations.

In December 1966, the **International Covenant on Civil and Political Rights (ICCPR)** was adopted by the General Assembly of the United Nations. According to this Covenant State Parties should, in accordance with the principles of the United Nations Charter, recognize the equal and inalienable rights of all members of humankind and the foundations of freedom, justice, and peace in the world. The ICCPR states in the introducing chapter of 1966’s covenant that states parties shall agree on the articles by:

> “Recognizing that these rights derive from the inherent dignity of the human person, Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights”

Regarding the use of military tribunals in Mapuche cases, where the defendants were not accused of grave violence against person, violates the guarantee of fair trials stated in the ICCPR. According to article 9.3 of the covenant:

---

135 UN/Res/1541, *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*, 1960
136 Art. 15 of the Universal Declaration on Human Rights
137 International Covenant on Civil and Political Rights, p.172
138 Ibid. p.173
“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.”

Mapuche cases have incorporated long pre-trial detention, secret investigations and ‘faceless’ witnesses which implies that this article have not been followed by the Chilean State. The question thus remains how these measures used against Mapuche activism may be motivated, a discussion that will be developed in chapter seven. The United Nations Human Rights Committee also claims that “pre-trial detention should be an exception and as short as possible.” Chile ratified the ICCPR in 1972, under the Allende administration.

After these general conventions on human rights a shift occurred within the international community in which the indigenous peoples started to become bearers of their own rights. The indigenous people where thus officially recognized in 1982 when the Working Group on Indigenous Populations was established, a subsidiary body within the UN that consists of experts with a monitoring role. This group was established in Geneva for representatives of indigenous organizations and governments to exchange views on a wide range of issues concerning indigenous rights.

The most well-known convention on indigenous rights, and also the explicit one, that treats solely the rights of indigenous peoples is the ILO Convention No. 169, of 1989. This Convention replaces the previous Convention No. 107, which was a first attempt to codify international obligations of States in respect to indigenous and tribal populations in 1957. The Convention No. 107 was ratified by 27 countries. However, it had a substantial assimilationist approach that reflected the development discourse of the time. During the 1970s, the UN began to examine the issues of the convention in more detail, and when indigenous peoples became more visible at the international level the methods began to be questioned. A Committee of Experts convened in 1986 and concluded that “the integrationist approach of

---

139 Art 9.3 of the International Covenant on Civil and Political Rights
140 General Comment No. 08: Right to liberty and security of persons (Art. 9)
141 Symonides J., 2000, Human Rights: Concept and Standards, p.317
142 DPI Press Kit, Indigenous people: Challenges facing the international community
the Convention was obsolete and that its application was detrimental in the modern world.\textsuperscript{143} It was then revised during 1988 - 1989, through the adoption of Convention No. 169.\textsuperscript{144}

The ILO Convention No.169 thus applies to tribal peoples and peoples that are regarded as indigenous. Article 1b state that it applies to:

\begin{quote}
“Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.”\textsuperscript{145}
\end{quote}

The Convention further puts pressure on governments to take the responsibility for developing, coordinating, and to take systematic action to protect the rights of the indigenous people and to guarantee respect for their integrity. These people have to be granted the same benefits from rights and opportunities provided by national laws as other members from the population. The governments shall respect human rights and when applying the conditions of the Convention, Art 6a states that the governments shall:

\begin{quote}
“Consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly.”\textsuperscript{146}
\end{quote}

In regards to land-rights, the indigenous peoples’ ownership and possession shall be recognized. Art.18 further states that “adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.”\textsuperscript{147} As regards to administration and participation within political agencies of the indigenous communities Art.33 states that:

\begin{quote}
“The governmental authority responsible for the matters covered in this Convention shall ensure that agencies or other appropriate mechanisms exist to administer the programmes affecting the peoples concerned, and shall ensure that they have the means necessary for the proper fulfilment of the functions assigned to them.”\textsuperscript{148}
\end{quote}

\textsuperscript{143} ILO Convention No.107
\textsuperscript{144} Ibid.
\textsuperscript{145} Art. 1b of the ILO Convention No.169
\textsuperscript{146} Art. 6a of the ILO Convention No.169
\textsuperscript{147} Art. 18 of the ILO Convention No.169
\textsuperscript{148} Art. 33 of the ILO Convention No.169
Chile is a member of the ILO since 1919 and ratified this convention the 15th of September 2008, during the government of Michelle Bachelet. However, as many conflicts have gone by between the Mapuches and the Chilean government, questions of its implementation have been made. As regards to Art.33 there is no institutional representation of the indigenous people in Chile, other than CONADI which is only a governmental development body. In this regard, the ILO writes in 2012:

“The Committee invites the Government to provide information in its next report on the outcome of the consultations on indigenous institutions and the manner in which indigenous peoples’ concerns and priorities were taken into account. The Committee requests the Government to provide precise information on the manner in which the effective participation of indigenous peoples is ensured in the institutions administering programmes affecting them, as required by Article 33 of the Convention.”

The ILO also has questions regarding the human rights and fundamental freedoms that are stated in Article 3 of the convention. With regard to the 87-day hunger-strike, in 2010, the ILO reveals its concern about the serious dispute between the Chilean government and the Mapuche people. In 2010 the ILO Committee notes with ‘interest’ that the modification made, which was adopted on 30 December 2010, modified the jurisdiction of military tribunals. Minors may in no event be subject to the jurisdiction of military tribunals as defendants, yet they retain the right to assistance to take action in military courts as victims or initiators of penal action. The Chilean government states in its report in 2011 that cases against the Mapuche individuals for terrorist crimes have been reclassified and should be considered as ordinary crimes. The detailed information provided to the ILO showed proceedings against Mapuche individuals. The ILO hence request:

“The Government to provide updated information in its next report on the cases that are being tried in which there are still Mapuche defendants. Taking into account the concern expressed by indigenous organizations, the Committee invites the Government to indicate the measures adopted to prevent the use of force or coercion in violation of the human rights and fundamental freedoms of the peoples concerned.”

---

150 Ibid.
151 Ibid.
In September 1991, the World Bank adopted the **Operational Directive OD 4.20 on Indigenous Peoples**. The directive describes policies and processing procedures that affect indigenous communities with the following objectives:

- Ensure that indigenous people benefit from development programs
- Avoid possible adverse effects on indigenous people caused by Bank-assisted activities
- Respect for their dignity, human rights and cultural uniqueness
- Establish legal recognition of the traditional land tenure system of indigenous people
- Direct consultation and incorporation of indigenous knowledge

To become a member of the Bank, under the IBRD Articles of Agreement, a country must first gain membership in IDA, IFC and MIGA. Ultimately Chile had become member of all three in 1988. However, since it is only a directive its articles are only of recommendatory character and not legally binding. Nevertheless, this directive reflects how indigenous people’s right has evolved as a matter of great concern, not only to the United Nations but to the whole international community.

The **Rio Declaration on Environment and Development** was established a year after the World Bank’s directive. According to the first principle of this declaration, human beings are at the centre of concern for sustainable development. They are entitled to a life in harmony with nature. Principle 10 further states that environmental issues are best handled with the participation of all concerned citizens. Furthermore, it specifically brings up the role of the indigenous people in principle 20 which states that:

> "Indigenous people and their communities and other local communities have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development."

The Rio Declaration was established by a United Nations Conference in which all member states were represented, however, since it is a declaration the states are not legally bounded to the results of it.

---

152 World Bank, Operational Directive OD 4.20 on Indigenous People
153 World Bank, Member Countries
154 Principle 10 of the Rio Declaration on Environment and Development
The two UN resolutions A/RES/48/163 of 1993 and the following A/RES/49/214 in 1994 are both parts of the **International Decade of the World’s Indigenous People**. The General Assembly here proclaimed a planning for the decade in partnership with indigenous people. It was at the World Conference on Human Rights in Vienna in 1993 that the General Assembly decided to make the year 1994 the start of the decade for the indigenous people. Hence, the objective was:

“To strengthening international cooperation for the solution of problems faced by indigenous people in areas such as human rights, the environment, development, education and health.”

The Decade would then serve as a time to improve the livings of the indigenous people through the United Nations System with the cooperation of governments, IGOs, and NGOs. The way to accomplish these goals was through the Programme of Activities which consisted of the following points for the governments to review:

(a) “Contributing to the United Nations Trust Fund for the Decade;
(b) Preparing relevant programmes, plans and reports in relation to the Decade, in consultation with indigenous people;
(c) Seeking means, in consultation with indigenous people, of giving indigenous people greater responsibility for their own affairs and an effective voice in decisions on matters which affect them;
(d) Establishing national committees or other mechanisms involving indigenous people to ensure that the objectives and activities of the Decade are planned and implemented on the basis of full partnership with indigenous people;”

The decade would then be a time to improve the lives and livings of the indigenous people through the United Nations System, which was supposed to be carried out by totally 8 actors where each actor decides what the other actors are supposed to accomplish. The results of this decade, with consideration to Chile, have been ambiguous. The Mapuche organizations have tried to work for a better education system where their needs and wishes should be considered, including a Mapuche University. However, their fight for a Mapuche

---

155 A/RES/48/163, International Decade of the World’s Indigenous People
156 Point 20 of the A/RES/50/157, Program of Activities for the International Decade of the World’s Indigenous People
157 Member States, indigenous peoples’ organizations, United Nations observances, the Coordinator, the Centre for Human Rights, international development agencies, non-governmental organizations and regional organizations.
University was not fulfilled by the Chilean government during the Decade. Nevertheless, a change in idea towards an open-airs university made it happen, and the first class was held 12 of January 2013.\textsuperscript{158}

One of the Decade’s goals was to:

\textit{“Create documentation centres, archives and in situ museums concerning indigenous people, their cultures, laws, beliefs and values, with material that could be used to inform and educate non-indigenous people on these matters. Indigenous people should participate on a preferential basis in the administration of these centres.”} \textsuperscript{159}

The Mapuche organizations were during the Decade actively participating in promoting their culture and traditions through different mediums such as publications, lectures and workshops. However, with regards to promoting the Programme of Activities of the Decade, it was hard for the Mapuches since they were not informed of the International Decade of the World’s Indigenous People’s existence. The goals that they did achieve were due to the fact that it was part of their day-to-day work anyhow. Regarding the Chilean government it established indigenous development plans with a focus on industry, production, infrastructure, and living conditions. Furthermore, the government provided relevant financial support to these sectors. However, there are plenty of goals that the government did not achieve such as an institutional representation for the Mapuches and a review regarding the application of anti-terrorist legislation.\textsuperscript{160}

The international community continued to promote the rights of the indigenous people, and in the year 2000 the World Intellectual Property Organization (WIPO) established the \textbf{Cartagena Agreement: Decision 486 – Common Provisions on Industrial Property}. This decision is about the biological and genetic heritage and traditional knowledge. According to this decision Member States has to protect their industrial property in a manner that safeguard and respect the biological and genetic heritage, and the traditional knowledge of indigenous or local communities. Member States shall recognize the right and competence of indigenous people when deciding on matters that may concern them.\textsuperscript{161} Chile joined the WIPO in 1975.\textsuperscript{162}

\textsuperscript{158} Aconcagua Summit 2011, \textit{Mapuche Universidad al Aire Libre},
\textsuperscript{159} Point 58 of the A/RES/50/157, \textit{Program of Activities for the International Decade of the World’s Indigenous People}
\textsuperscript{160} A/RES/50/157, \textit{Program of Activities for the International Decade of the World’s Indigenous People}
\textsuperscript{161} WIPO, 2000, \textit{Cartagena Agreement: Decision 486 – Common Provisions on Industrial Property}
\textsuperscript{162} WIPO, Member States
In September 2002 the United Nation reaffirmed the important role of indigenous people in sustainable development by the Johannesburg Declaration on Sustainable Development.\textsuperscript{163}

On the 107th planetary meeting in 2007 the General Assembly adopted the 61/295 United Nations Declaration on the rights of Indigenous People (UNDRIP). This declaration contains 45 Articles, all of which consider the rights of indigenous people. It revises human rights, nationality, and the right to participate in their political and cultural lives. The two articles brought up for this study are Art. 39 and Art.45:

Art. 39:

“Indigenous people have the right to have access to and prompt decision through mutually acceptable and fair procedures for the resolution of conflicts and disputes with States, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall take into consideration the customs, traditions, rules and legal systems of the indigenous people concerned.”\textsuperscript{164}

Art. 45:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations.”\textsuperscript{165}

The UNDRIP was adopted by Chile in 2007. As the ratification of the ILO Convention No.169 the adoption of the UNDRIP also took place under Michelle Bachelet administration.

Another important step for the indigenous people of Latin America is the Organization of American States’ (OAS) Doctrine and Jurisprudence of the IACHR on Indigenous Rights. This doctrine is constantly revised and reported on by the IACHR which is the Inter-American Commission on Human Rights of the OAS. The Commission writes in Chapter three of the Doctrine that it has had to intervene in hundreds of cases of alleged violations of indigenous people’s rights, who have been harmed or killed by state-agents in the course of the repression of dissident movements that occurred in the 1980s and early 1990s. Some of these cases were regarded as ‘massacres’, since the killings were indiscriminate and in some cases massive penalties were directed towards activities of rebellious groups.\textsuperscript{166} Hence, the

\textsuperscript{163}Ch. 1 of the Johannesburg Declaration on Sustainable Development
\textsuperscript{164}Art. 39 of the United Nations Declaration on the rights of Indigenous People
\textsuperscript{165}Art. 45 of the United Nations Declaration on the rights of Indigenous People
\textsuperscript{166}Ch. 3 of the Doctrine and Jurisprudence of the IACHR on Indigenous Rights
establishment of this doctrine was a response to the unjust treatment of indigenous people in Latin America.

The international community has thus gone through a shift in were indigenous people became bearers of civil and political rights in the 1980’s. This was particularly clear with the ILO Convention No. 169 in 1989 that solely revises the rights of indigenous peoples. Nevertheless, many of the programs that the UN has established in order to improve the lives of the indigenous peoples have failed to incorporate the indigenous people per se. The Mapuches in Chile were for example not even aware of the International Decade of the World’s Indigenous People’s existence. Important to say is that even though the international community supports the indigenous rights in wording they may not always do so in action. Often because there may be a tension between the Member States and the indigenous peoples living there and perhaps some countries have not even acknowledged the mere existence of indigenous peoples within their country’s borders. To give an example, the World Bank was involved in the Belo Monte project in Brazil, a project that was consequently destroying the Brazilian rainforest. The indigenous people Kayapo organized a massive demonstration in Altamira against the projects of series of dams in the Xingu River, built for the Belo Monte project. A letter was sent by the civil society that concluded that the current state of the World Bank’s decisions contradicts its operational policy and other standards of transparency. The Kayapo tribe finally managed to convince the World Bank to cancel financing the Belo Monte project, and the project has since 2011 been halted and resumed several times.167

167 Raoni.com, Belo Monte: The role of Banks
7. The Three Active Actors in the Land Conflict in Southern Chile

This chapter analyses the empirical findings through the theories described in the theoretical framework. It starts with the development of the international community in regards to indigenous peoples and minority rights, these are analysed chronologically from the UN Charter to the UNDRIP. The second section consists of the governmental politics and the motivation of the anti-terrorist law. The third section regards the Mapuche cases and the terrorist edict. The fourth and last section of this chapter, analysis the three actors: the Mapuches, the Chilean Government and the International Community through World System Theory.

7.1 The International Community

The vision of the international community is to some degree clear as the indigenous people became bearers of their own rights in the 1980’s. Before that time indigenous people was supposed to benefit from the human rights stated in the UN Charter and the Universal Declaration of Human Rights, from 1945 and 1948. What can be directly interpreted from these law-texts are that the people (in this case indigenous people) should be treated just in respect to their political, economic, social and educational advancement, and moreover protected against abuses, which is stated in Art.73 of the Charter. In many indigenous cases these laws have not been respected and remnants from colonial times have not been dealt with. Because of this, the International Labour Organization made a revision of the former Convention No. 107 that the assimilation approach are no longer acceptable doctrines for governments to exercise. Hence, indigenous people should hold the option to choose to integrate or to maintain their cultural and political integrity.

It was not until the 1980’s that indigenous peoples became bearers of their own rights. After the 1980’s it can be said that it followed a boom regarding the rights of indigenous peoples, and not only the UN started to recognize the conflict between market-forces and indigenous rights, but also other IGOs and NGOs. Hence, the World Bank adopted the Operational Directive OD 4.20 on Indigenous Peoples in 1991. Although it is only a directive it clearly shows the attempts of the World Bank to respect the rights of the indigenous people and also to look upon them as an asset that can contribute by their particular knowledge and
practices. The Rio Declaration that followed also started to recognize the indigenous people as an asset in their vital role in environmental management and development. Nevertheless, as stated in chapter six, the wordings of the international community are not always followed by action. Because of this, the indigenous peoples are left out there to take matters in their own hands in form of demonstrations, hunger-strikes, and other protests.

The international community can be said to follow the theories of Kymlicka in which they indirectly show that the familiar system of common citizenship rights within liberal democracies, such as the standard set of civil, political and social rights, is not sufficient to accommodate the valid interest people have in virtue to their ethnic identity. The international community, by its law in form of conferences, directives and agreements, give redemption to the indigenous people by the establishment of group rights. So while they should be treated equally to other citizens they also benefit from more particular group-rights.

The rights that concern indigenous people have gone from universal human rights to more specific indigenous rights. The human rights that in particular can be interpreted as beneficial for indigenous people are the UN Charter Art.73 which concerns “people who have not yet attained a full measure of self-government”\(^{168}\). This article highlights the significance of respecting their cultural, educational, and political rights, and supports the idea of governmental assistance for these peoples to reach the goal of self-determination. This article is certainly a product of the colonial world but should still be considered in the current situation of the Mapuches. The Chilean state should assume responsibility for the Mapuches and to “assist them in the progressive development of their free political institutions”. Historically, Art.73 has not been followed by the Chilean state, and even less so before the democratic shift. Under the period of Pinochet the dominant politics was everything but in favour of the Mapuches and the issue of self-government was definitely not on the political agenda. In contrary, the associations that were established by the Mapuches were prohibited and they were further marginalized by the loss of territory. The only period of time (before the democratization process) that the Chilean state did follow this article of the Charter was during the presidency of Salvador Allende. At that time the Mapuches were both given back land and got political representation in form of the Institute for Indigenous Development.

The upcoming Universal Declaration of Human Rights in 1948 further highlights the right to hold and change ones nationality. A right that was taken away from the Mapuches by the Pinochet government when they where ‘forced’ to become Chileans. The three types of

\(^{168}\) See page 48
groups that Jorge M. Valadez describes, the accomodationist group, the autonomist group and the secessionist group are useful for analyzing this prohibition of indigenous identity. As described in the theory-chapter the accomodationist group wants to integrate into the majority society whilst the autonomist group seeks autonomy within the state-territory, and lastly the secessionist group wants independence or to be integrated into a different state. The Mapuches are here categorized as parts of the autonomist group, a group that seeks shifting degrees of autonomous self-determination within the boundaries of Chile. Rather than seeking political integration they want cultural and political autonomy. According to the UDHR the Mapuches should have the right to choose their nationality but since the Pinochet government treated them as parts of the accomodationist group (which at that time was the only principled alternative) they were forced to become Chilean nationals. They are still not recognized as Mapuches in the Chilean constitution why I believe that the view of the Mapuches as accomodists is something that has labelled them up to today.

Art. 73 of the UN Charter and the Universal Declaration of Human Rights are thus categorized as part of the indigenous people’s substantive rights as it reflects their desire for autonomy and territorial rights, described by Erica-Irene A. Daes. They are universal but clearly miss the procedural rights that should be established in order to implement them. Art. 73 did however receive its procedural rights alongside when the ‘Ley Indígena’ was in place, during the government of Allende and Aylwin. Part of the indigenous people’s procedural rights is however the International Covenant on Civil and Political Rights, passed in 1966. This covenant is of great importance to the Mapuches in Chile. It protects their right to a fair trial and their right to pursue their cultural and social customs. It is highly important for the Mapuche case in particular because of the application of the anti-terrorist law which directly violates the right of a citizen to have a fair trial. The Mapuches are thus not treated as regular citizens (and not recognized as indigenous people) as they have been exposed to military tribunals when ‘ordinary’ crimes have been committed. The Mapuches is thus, in my opinion, identified somewhere in a gray zone: not being treated as regular citizens nor recognized as indigenous people.
The three laws: the UN Charter, the Human Rights Declaration and the Covenant on Civil and Political rights were all established before 1977 when the universal recognition of indigenous people took place, and the indigenous people emerged as a distinct group in international human rights. So the first three conventions or treaties on the timetable above were all adopted before the democratization process in Chile. It is not surprising that during the dictatorial time these universal laws were not implemented correctly nor perhaps even considered in national legislation. The struggle for economic growth was perhaps issues far higher on the political agenda than the political and civil rights of the indigenous people. These peoples were not seen as part of the Chilean population as they were portrayed as cruel savages with an identity that was anti-western. To give the indigenous people political representation and recognizing them in the constitution would be highly controversial at that time. Even if the Chilean State had other priorities at the beginning of the 19th century and in the era of Pinochet, the international community headed at a different direction and gave the indigenous people universal procedural rights by recognizing them internationally. The United Nations officially recognized indigenous people in 1982, when the Working Group on Indigenous Populations (a special forum of human rights experts) was established in Geneva for representatives of indigenous organizations and governments to exchange their views. After this the boom followed with the ILO Convention No.169 as the start.

So why did this boom of indigenous rights appear, why did they become bearers of their own group-specific rights? The answer to this question is neither clear nor uncomplicated. One of the major political developments that challenge contemporary states is the granting of group-specific rights to ethnocultural minorities. Valadez claims that group-specific rights are significant in many ways since they provide a social context where meaningful choices can be
made. Identities are important to protect because they provide a background of shared values, practices and understandings where ethnocultural identity and its cultural context make it possible for members to exercise autonomy and moral agency. Valadez believes that identity is important because it provides an ‘effortless belonging’ in which individuals are accepted as members of a national community, it provides a feeling of self-worth. Political institutions then become understandable and meaningful. They provide a certain degree of transparency and facilitate participation of minority cultures. In the case of the Mapuches in Chile this types of rights would then function as Valadez claims, in order to promote a feeling of self-worth and participation within the Chilean State. If these rights were to be followed by the Chilean State then perhaps the Mapuches would feel more included and thus less prone to use violence to regain the right to their ancestral lands.

Furthermore, indigenous people should be given particular ethnocultural rights because of historical injustices. The indigenous people will continue to pursue an important role in the international sphere as their particular knowledge will become increasingly significant for the issue of scarce resources. This issue was also recognized through the World Bank directive and the Rio Declaration. Therefore it is even more important that the member countries of the international organizations implement the international laws that are already in place.

Daes further claims that “qualitative changes are required in the distribution of political authority and legislative jurisdiction.” Hence, to guarantee the right of the indigenous people participation is needed in both domestic and international political institutions. The Working Group of Indigenous Populations is an example of this recognition and to some extent CONADI in Chile, yet CONADI has no decision-making power.

The international community has thus gone through a shift were indigenous people should be given ethnocultural rights, as understood, due to historical injustices, their increasing importance in a world of scarce natural resources, and because these types of minority rights provide a possibility for members to exercise autonomy and moral agency. As seen, however, it is not that easy to establish laws and conventions that then will be ratified and followed by the member states. Indigenous people are not part of the traditional ownership- society as they have a different relation to their ancestral land. This may be looked upon as an obstacle for national security and if given the right to self-determination the indigenous people would occupy a territory out of state (in this case Chilean) control, and therefore the Mapuches become victims to the application of anti- terrorist legislation.
7.2 The Chilean State

Chile did ratify the ILO Convention No. 169 in year 2008, but its implementations have been questioned. The Mapuches feel that the Chilean government are dealing with the land tenure problem in southern Chile in an immoral way. The use of the anti-terrorist law is unjust and has also wakened great concern in the international community.

Since the start of the new nation Chile in 1819 the Mapuche people have been tackled as a problem by the Chilean State. They were first forced to move from the northern parts of their territory in order for the new state to exploit coal. Secondly, they were portrayed as underdeveloped in the media and became subject for assimilation policies under the government of Pinochet. At that time Pinochet annulled the law no. 17.729 which was established by the government of Salvador Allende (1970-1973). The law that restored 70,000 hectares of Mapuche land was thus abolished and instead the decree 2.568 opened the land for commercial exploitation. Pinochet aimed at replacing the community property-based system and this as I observe it is due to the, in Pinochet’s eyes incomprehensive, traditional ways of the indigenous people. Because the Mapuches do not work in ways that accumulate more capital it was seen as a drawback for the economic development of the country. In order to become more competitive with the aim to become a core-state the Pinochet government thus opened up indigenous land for exploitation.

During 1984 the anti-terrorist law was established in order to cope with violent (and non-violent) opposition to the military dictatorship. But as the aggressive attempts from Mapuche to recover their ancestral land increased, a response from the Chilean government was inevitable. Under the presidency of Lagos, the anti-terrorist law was modified and first applied to individuals in the Mapuche community. So why did the government take such a harsh response against the land tenure problems in southern Chile? The answer to me is clear, it is a sovereign instrument. The aim of a state is to administrate its population through its sovereignty. In order to accomplish a common good for all the population, laws have been implemented in order to guarantee the security of this population. Important to clarify is that in this population the Mapuches are, as I observe it, again excluded and seen as an incomprehensive people which should be assimilated into the Chilean society. It is a paradox that the most native people of Chile, the indigenous people, are perceived as the most non-Chilean people within the state. The anti-terrorist law thus functions as a sovereign instrument for a population where the Mapuches are excluded. The anti-terrorist law both functions to secure the territory of Chile, so that no area is out of state control, and to the common good of the population. The ‘old-fashioned’ way of the Mapuche agricultural measures do not
accumulate capital and take part in the export of the country. The state thus works as a guarantor for the capitalist mode of production that favours private appropriation and exploitation of the territories demanded by the Mapuche community. The territorial demands are thus not only a struggle against the private sectors in particular, but also against the national sovereignty. By opening the land to private landowners and companies the land is thus more beneficial for improving the GDP of the country, and therefore the rest of the population, which also reflects the elements of World System Theory. The minority (the Mapuches) have to adjust for the overall common good, if they resist they become a threat to the sovereign power of the state.

Regarding Chile’s sovereignty internationally, the problem that appears in this conflict is that today we live in a more global world and the international community has more power than in previous times. The UN in particular has violated the sovereignty of Libya in 2011 in order to protect human rights. According to Brown the walls built around state-borders are signs that sovereignty is corroding. The anti-terrorist law in Chile may thus function as a wall that separates ‘us from them’, where it also reveals an unstable sovereignty of the Chilean state.

The case of Chile is thus problematic since even though one can understand the motivation of the anti-terrorist law it violates the right of fair trial stated in the Covenant on Civil and Political Rights, and it also violates the right that indigenous people should have in relation to their land. The land rights of the Mapuches are clearly stated in the ILO convention no. 169, and “adequate penalties shall be established by law for unauthorised intrusion upon, or use of, the lands of the peoples concerned, and governments shall take measures to prevent such offences.” The Chilean State should thus definitely not encourage the exploitation of the lands of the Mapuche. Then again, during the government of Allende and since Chile became a democratic country there has been measures taken in order to recognize the rights of the Mapuches. The indigenous law no. 19.253 was re-established by president Aylwin after the end of the Pinochet government. The law says that those people who historically have occupied and possessed the lands (Mapuches, Aimaras, Rapa nui or pacuenses, Atacameñas, Quechuas, Collas, Kawahkar and Yámana) always, as their rights are inscribed in the Register of Indigenous Land, are entitled to this property. The establishment of the indigenous law and the public discourse of Piñera who by example said that: “it should be completely clear that this fight is not against the Mapuche people. It’s with a minority of violent terrorists who must
be fought with everything the law allows\textsuperscript{169}, shows that there are attempts at redeeming the reputation of the Mapuches, or perhaps to keep a positive façade internationally. This is, as I observe it, also a way of using the sovereign power in a try to calm down the Mapuches. By using this type of public discourse and creating laws that favours the Mapuche, the government try to rule its population in order to keep violence down. But in order for this tactic to work the government should try harder in implementing the articles stated in law 19.253 and also give the Mapuches recognition in the constitution. Applying the anti-terrorist law, in my opinion, is not an appropriate instrument to cope with the problems of the land-conflict in southern Chile.

The Chilean State, as described in this section, has been ambivalent in regard to indigenous rights law and how it has perceived the Mapuches historically. The use of the anti-terrorist legislation is here understood as to protect the Chilean sovereignty and thereby to guarantee its economic growth.

7.3 The Mapuches

As seen in this study the situation of the Mapuches is a rather complex issue since they both benefit from the indigenous law no.19.253 and suffers from the application of the anti-terrorist law no.18.314. The Chilean State has in many ways tried to recognize the rights of the Mapuches and their importance for the country’s national culture by for example ratifying the ILO Convention No. 169 and creating the CONADI, but at the same time they criminalize the Mapuches in a controversial way. The efforts of the democratic Chilean State have been insufficient and they are still not recognized in their national constitution.

Today 28 Mapuches are imprisoned in Chile under the anti-terrorist statute. Why are the Mapuches treated as terrorist when for example students that arm barricades are not? As described in the previous section the motivation of the law is clear as to protect the sovereign status of the Chilean nation. Students do not fit the criteria to become a threat to national security. But it is still questionable how the Mapuches can be regarded as terrorists. A terrorist act must be a violent act committed by non-state actors who target civilians and non-combatants in order to provoke fear designed for a political cause. The Mapuches clearly have a political cause as they demand the right to their ancestral land. However there has never been any target on persons. The Mapuches have always targeted the forest, equipment or buildings of the private companies in the region. The inclusion of fire attacks in the anti-terrorist law no. 18.314 is less serious and do not directly impose threat to the life, liberty or

\textsuperscript{169} See page 46
physical integrity of a person. The only case that could be considered as a terrorist attack is the one in January 2013 when two persons were killed. However, it does not explain the application of the anti-terrorist law since it began in 2002. Until 2013 there had been no deaths caused by Mapuche activists in the conflict in Araucanía. However, many Mapuches have died due to police violence. So when the law was implemented there had been no deaths involved, why it is not reasonable why the Mapuches are being classified as terrorists. The law has only been applied the last decade which perhaps is a result from the expanding notion of exceptional crimes, due to 9/11 in 2001. Gardell describes that there is no crime that requires special terrorist laws for murder, arson attacks and to detonate bombs since these crimes already are prohibited in the ordinary criminal code. The classification of Mapuches as terrorists may thus be a way around the normal juridical proceedings creating a space where democracy does not pertain. Therefore the concept of terrorism, in my opinion, has been stretched a bit too far when it starts to include activism of indigenous people to recover their ancestral land. The classification is a way for the Chilean State to legitimize neglect of human- and democratic rights when it is considered to be in the national interest. Something the international community, in my opinion, should be strongly against.

The situation of the Mapuche people has taken radical turns due to colonization and shifts at the governmental level. They have gained rights as well as lost rights both historically and in recent times. The lack of state action to carry out the demands of the Mapuche people has triggered a long-going conflict in the Araucanía region. As shown in this study they have not benefited from social, cultural and economic rights, they have not been given a proper Mapuche University, and they have not achieved representation at the governmental level. However, in the political discourse both domestically and internationally the Mapuche situation has been brought to the surface and promises have been made as to reconsider the application of the anti-terrorist law. Chile is a newly born democracy if one compares to countries like Sweden or Norway. Both of these countries have a higher Human Development Index than Chile and are ranked higher on the democracy index but have still not ratified the ILO Convention no. 169. In comparison to these two countries, this indicates that Chile has ratified the ILO Convention and also the UNDRIP to improve their international reputation, and do not really possess the political resources to implement it.

Chile is lacking in the participatory level on the democracy index which is why I believe that by giving the Mapuches representation at the governmental level and recognition in the constitution could ease the conflict in the Araucanía region. According to Deas there are both collective and individual aspects to how to protect indigenous rights. Rights of equality,
identity and independence are generally exercised through collective institutions. In practice these rights do not have any meaning unless the indigenous people are free to create and maintain these institutions. In regards to procedural rights self-determination cannot be achieved without constitutional reforms, why it is important that the Chilean Government reviews this in regard to the Mapuche situation.

The Mapuches has undergone stages where they have benefitted from indigenous rights law and suffered from anti-terrorist legislation. In this section, the Mapuches have been regarded as treated unjust due to the terrorist classification. The anti-terrorist law has further been understood as a way around the normal juridical proceedings creating a space where democracy does not pertain. The concept of terrorism has thus been stretched too far when it starts to include activism of indigenous people to recover their ancestral land.

7.4 History and the Three Actors Intertwined

The Mapuches is a people who survived the colonization by the Spaniards due to protective warfare. They managed to live for decades side by side with the Spaniards through several agreements between the two ‘nations’. As the Spaniards at last were defeated and the Chilean state became a fact the land of the Mapuches was in danger. The economic needs of the new state led to exploitation of coal in the northern part of the Mapuche territories, driving the indigenous southwards. The occupation of the indigenous lands continued and they were subject to assimilationist policies forcing them to learn Spanish and become ‘Chileans’. However during the government of Salvador Allende (1970-1973), the Mapuches’ rights took a turn with the new general agrarian reform. These laws led to the restoration of 70,000 hectares of their land and the Allende government gave them preferential treatment. By law No. 17.729 they also gained an executive body: Instituto de Desarrollo Indígena (Institute for Indigenous Development). However, with the Pinochet government the Mapuche situation took a drastic turn. In the period of Pinochet’s military government the law No. 17.729 was annulled and the anti-terrorist law No. 18.314 was established. Pinochet then created neoliberal economic policies that open the Mapuche land for commercial needs. Wallerstein would describe this as natural for the world economic system where the globalized capitalism is spread. The Mapuche territory was thus opened for exploitation in order for the country to become competitive in the global trade system. Large timber companies came to the territory and Chile developed as a semi-peripheral state. One can say that before when the Mapuches where working the land they had not yet commodified their products. When opening the land for foreign investors and settlers the capitalist sought to accumulate more capital and the
production process got linked together in complex commodity chains. The accumulation pace was thus dependent on competition with a higher reward to those that was better at following this capitalist system namely the ‘new settlers’. Before Pinochet and Allende the land had already been exploited by mining and so forth, however during the Pinochet government the objective of the Chilean State took a real turn towards officially becoming more capitalistic and thus striving for more economic growth. However, at the end of the Pinochet period the international community had started to recognize the indigenous people as rights-bearing people and in combination with the democratic government of Aylwin the Mapuches started to regain some of their rights. However, in 2002 the anti-terrorist law was first applied against the Mapuches. It has in this study been understood as to protect the sovereignty of Chile but questioned as to how the Mapuches fit the classification of being terrorists. Since my argument is that Mapuches do not fit the concept of terrorism, Chile violates the Covenant on Civil and Political Rights and the right for all citizens to fair trials.

The international community went through a shift in rethinking the role of indigenous people, however they do not always practice what they preach and the indigenous people are often left to take matters in their own hands, as seen by the 87-day long hunger strike. However, I believe that without this shift in the international community the struggle of the indigenous people would be even more difficult.

Today Chile belongs to the semi-periphery and is still probably striving to become a core state according to the World System Theory. Since the Mapuche land has been exploited even before the Pinochet era there are investors and settlers that also have been working the land for several decades. Hence the anti-terrorist law today may serve the purpose to protect the sovereignty of the Chilean State and those non-members of the Mapuche community living in the area. However I believe it hard to justify the application of the anti-terrorist law for an arson attack. I doubt that a ‘regular’ Chilean citizen committing the same crime would be tried in military court. The Mapuches are thus dealt with outside the notion of ‘Chilean population’, an issue that probably is culturally rooted dating back from colonialist times and worsened under the era of Pinochet.

The actions of the Mapuche community may to some extent be controversial and violent, but one has to remember the many victims that the Mapuches in recent history have suffered. As Valadez describes, indigenous peoples should be given group-rights because of historical injustices. However, the conflict is neither easily solved nor easy to understand. The modern Chilean State has given back rights to the Mapuche community while at the same time have neither given them recognition in the constitution nor representation at the governmental
level. This together with the application of the anti-terrorist law can of course be understood as already mentioned as protecting the sovereignty and as a wall that separates the majority from the minority, hence being a sign of Chile’s sovereign vulnerability. But it may also, even today, be understood as opening the land for a greater competition in the world economic trade. According to Wallerstein uneven development is neither a recent phenomenon nor a mere artefact of the capitalist world-economy it is one of capitalism’s basic components. Thus in order to ‘solve’ the conflict one would have to dissolve the capitalist system first (which is highly unlikely to occur). However I believe, as already mentioned, that by giving the Mapuche recognition and representation at the governmental level one could ease the conflict. Constitutional recognition of the Mapuche is something that the State explicitly has in its public discourses and the State is thus reviewing this issue. It is important to remember that Chile is a new democracy and hopefully we will see a change in the notion of terrorism and the terrorist-application against the Mapuches. The cultural heritage from the Pinochet era is still present in Chile and it will always be a part of Chile’s historical heritage. A transformation from dictatorship to a democracy is never a fast process and the issue of indigenous people’s rights has never been easily solved.
8. Conclusion

My understanding of the conflict between indigenous rights and the exploitation of land, through the Mapuche case, is that the tensions between the majority and the indigenous people of Chile began when Chile became an independent state, and was worsened with the application of the anti-terrorist law. The political conduct of the Pinochet government resulted in the opening of the market, and according to World System Theory, this behaviour is rather natural. In order to gain competitiveness in the world-economy the territory of the Mapuches was opened up to large timber companies. Of course this led to a discontent and a feeling of being oppressed in the Mapuche community. Some policies of Pinochet, as regards to assimilationist methods, were applied that resulted in several Mapuches moving into the cities and becoming ‘Chileans’. However, as others decided to fight for their territorial rights, the Lagos government modified the anti-terrorist law in 2002 in order to protect the state’s sovereignty and to continue their struggle for economic growth. Nevertheless, the conflict is not as simple as here described. As Chile now is a democracy (or flawed democracy) some of the Mapuches’ territorial rights have been restored. The laws that the Mapuches previously had benefited from (during the Allende period) were modified and reformed as Law No. 19.253 by the presidency of Aylwin. In his campaign he promised the recognition of the indigenous people in Chile and the CONADI was established which monitors the development of the indigenous people. However, as the cases described in this study shows, the anti-terrorist law have been applied since 2002 and is still applied up to this day.

The international community began to recognize the indigenous people as bearers of their own rights in the 1980s which has resulted in observations of the Chilean behaviour that is not very positive. International Survival highlighted the hunger-strike as very astonishing in regards to the treatment of the Mapuches in Chile, and the ILO Committee has also given reports that are not satisfied with the representation of the Mapuches at the governmental level. So while the Chilean government tries to rectify for historical injustices they neither have given the indigenous people recognition in the constitution nor a representative body at the governmental level.

The use of the anti-terrorist law may be understood as an instrument to control the Mapuche communities in order to safeguard the Chilean sovereignty, creating a wall between
‘us and them’. The non-members of the Mapuche community (private land-owners and companies) are here seen as playing a part in the export and thus the prosperity of the Chilean state, whereas the Mapuches are not part of this picture. Chile has not recognized the Mapuches in the constitution which in this study is understood as a cause of colonialist times and the Pinochet period. The Mapuches were displayed as savages, and treated as part of the accommodationist group, which is an image that probably remains up to this day.

The democratic process that Chile has experienced is a process which still needs some adjustments. As the Economist Intelligence Unit describes, Chile is a flawed democracy and it is in the participation category that it is failing. This does, however, not replace the fact that the anti-terrorist law violates Art.9.3 of the Covenant on Civil and Political Rights and the right to fair trial for all citizens (where the Mapuches should be included). The notion of exceptional crimes has become an instrument for legitimizing the neglect of human rights and democratic principles. The terrorist-classification has thus been stretched too far regarding its application on indigenous people in Chile. The Chilean government should thus be held accountable for its actions and the Mapuches charged of crimes under the anti-terrorist law should be re-tried in ordinary civil courts as they have Chilean citizenship.

The international community have given the indigenous people recognition and I believe that one has to keep in mind the words of Valadez, where indigenous people should be given ethnocultural rights because of historical injustices and since their significance at the international level is increasing. As the world’s natural resources become scarcer the international community has highlighted this issue through its conventions (e.g. the Rio Declaration) and recognizes the importance of indigenous knowledge. Many indigenous people in today’s world have survived because of their skill to adjust to new situations. A skill that, in my opinion, never should be undermined.

The theories chosen for this study have been fruitful for understanding the situation of indigenous rights and the exploitation of land. Wallerstein’s theories are applicable on the Mapuche case and the analysis is relevant for other indigenous situations. In addition to Wallerstein, the concepts of sovereignty and terrorism have served to understand the motivation of the anti-terrorist law. Moreover, the concept and standards of minority- and human rights have been fruitful for describing the legal documents and the evolution of the international community. Other theories, such as democratic theories or historical institutionalism could have been valuable for understanding this conflict but would not have
given this study its distinctive entry point. Previous research\textsuperscript{170} uses methods and theories that differ to the analysis made for this study, which implies that Wallerstein provides a potential new approach to the indigenous rights’ field. World System Theory has in this study presented an indicator for the conflict between indigenous rights and the exploitation of land in the Araucanía region in Chile.

My concluding words for this study are that although the conflict within Chile and its strive for economic growth is a complicated issue, with many ups and downs over the history, I believe that this conflict could be eased through Mapuche recognition and political representation, which the Chilean government today is reviewing. The anti-terrorist law, on the other hand, I believe needs more adjustment to Chile’s only 20 years of democracy and one can only hope that the future will perceive a suitable end to its application against the Mapuches in Chile.

9. References

Books and articles


Carter D., 2010, *Chile’s Other History: Allende, Pinochet, and Redemocratisation in Mapuche Perspective*, Studies in Ethnicity and Nationalism: Vol. 10, No. 1


Wallerstein I., 1985, Den Historiska Kapitalismen, 1st ed, Arbetarkultur, Stockholm


Newspapers & Broadcasting

Comunidad Mapuche Temucuicui, 2010-10-03, Razones fundamentales para continuar la huelga de hambre, 2013-03-29, 13:05

Diario Uchile, 2010-10-27, Se retrasa proyecto de reconocimiento constitucional a pueblos indígenas, 2013-07-27, 18:11
http://radio.uchile.cl/noticias/88529/

El Cuidadano, 2010-09-16, Se unen 3 personas más a la huelga de hambre de los presos políticos mapuche, 2013-04-07, 16:05
http://www.mapuche.info/index.php?kat=1&sida=1345

El Mercurio, 1993-09-12, Promulgada ley de trato especial a los indígenas, 2013-03-15, 14:02
http://www.emol.com/

El Mercurio, 2010-07-12, Reos mapuches iniciaron huelga de hambre en cárcel de Concepción, 2013-04-07, 10:00

El Mercurio, 2010-10-08 Mapuche de Angol y Victoria deponen huelga tras acuerdo con el Gobierno, 213-04-08, 14:04

Foro Escandinavo por los Derechos de los Pueblos Indígenas, 2010-07-26, Huelga de hambre prisioneros políticos mapuches de Angol, 2013-04-07, 13:52

Foro Escandinavo por los Derechos de los Pueblos Indígenas, 2010-10-11, PPM, ante termino de la huelga de hambre, 2013-04-01, 16:20

http://www.lanacion.cl/noticias/site/artic/20130111/pags/20130111151723.html
La Nacion, 2010-07-12, Mapuches en huelga de hambre para exigir garantías judiciales, 2013-04-10, 15:02

La Tercera, 2013-01-09, Amplían detención del segundo sospechoso en atentado en Vilcún y anuncian que será formalizado junto a su hermano, 2013-05-03, 08:09

http://meli.mapuches.org/spip.php?article2956

Radio Bio Bio, 04-01-2013, Aunque no lo crean, soy mapuche y no soy terrorista, 2013-03-27, 10:30
http://www.biobiochile.cl/2013/01/04/aunque-no-lo-crean-soy-mapuche-y-no-soy-terrorista.shtml

Radio Cooperativa, 2010-10-01, Comuneros mapuche depusieron huelga de hambre tras 81 días, 2013-03-29, 11:22
http://www.mapuche.info/index.php?kat=1&sida=1624

Webpages

Aconcagua Summit 2011, Mapuche Universidad al Aire Libre, 2013-04-17, 11:17
http://www.aconcaguasummit.org/proyectos/pueblosoriginarios

CONADI, 2011, Ley Indígena No. 19.253, Edited by the “Comité de Difusión del Sistema Integral de Información y Atención al Ciudadano(a) SIAC”, 2013-08-01, 10:10
http://www.conadi.gob.cl/documentos/LeyIndigena2010t.pdf

CONADI, Misión Institucional, 2013-05-02, 16:21

DPI Press Kit, Indigenous people: Challenges facing the international community, 2013-05-16, 10:40
http://www.un.org/rights/50/people.htm

ILO no 169, Ratification by country, 2013-04-16, 15:02


ILO Convention No.107, 2013-06-15, 12:00

OAS, Member States, 2013-04-15, 08:15
http://www.oas.org/en/about/member_states.asp


Raoni.com, Belo Monte: The role of Banks, 2013-05-15, 15:36

The Economist Intelligence Unit, Democracy Index 2010, Limited 2010, 2013-05-03, 18:21


UN Security Council, SC/10200, Approves ‘No-Fly Zone’ over Libya, ‘All Necessary Measures’ to protect civilians, 2013-07-21, 12:02

UNPFII - Backgrounder 1: Indigenous Peoples - Lands, Territories and Natural Resources, 2012-12-06, 09:10
http://social.un.org/index/IndigenousPeoples/UNPFIISessions/PreviousSessions/Sixth.aspx

WIPO, Information by Member State: Chile, 2013-04-17, 13:48

World Bank, Member Countries, 2013-04-16, 17:03
http://www.worldbank.org/wb/about/print_member_countries.html

International Conventions and Laws


Covenant on Civil and Political Rights, 1966

ILO Convention No.169, 1989

Johannesburg Declaration on Sustainable Development, 2002

OAS: Doctrine and Jurisprudence of the IACHR on Indigenous Rights

RES 54/109, International Convention for the Suppression of the Financing of Terrorism, 9/12/1999

Rio Declaration on Environment and Development, 1992
UN Charter, 26/06/1945

UN/Res/1541, *Principles which should guide Members in determining whether or not an obligation exists to transmit the information called for under Article 73e of the Charter*, 1960


Universal Declaration of Human Rights, 1948


**National Laws**

Law No. 18.314: Anti-terrorist Law

Law No. 19.253: Indigenous Law

Law No. 20.519: Modifications of Law No. 18.314
Appendix

Araucanía Region

Source: Google Maps: https://maps.google.se/maps?q=araucania&ie=UTF-8&hl=en&gl=se&ei=ipkIUvGqJTY4OTS94HeCA&ved=0CJsBElYD