

Committee/Council: Social, Humanitarian and Cultural Committee

Issue: Eliminating enforced disappearances

Student Officer: George – Evangelos Laios

Position: Deputy President

Introduction

Enforced disappearances are a huge threat to even the most basic human rights, and, especially in the middle of the 20th century, the practice was a very common phenomenon, since no legislation that focused specifically on it existed.

However, many people are not familiar with the term “enforced disappearance”. What is the meaning of such an ominously sounding phrase? In simple terms, it could be described as a practice which is secretly used by many governments throughout the world: Essentially, an enforced disappearance is the undisclosed abduction of a person by a State itself or by an organized group of people, with the State being aware of or even having issued the abduction to take place. The ultimate aim of the enforced disappearance is to ensure that the abductee is not protected by the law. Naturally, the practice in question is also commonly used to silence political opponents of authoritarian regimes.

Nowadays, enforced disappearances are internationally considered to be a criminal offence, but that still does not prevent the phenomenon from taking place. As such, it is up to us and the UN to find more solid and permanent solutions in order to combat the issue.

Through this Study Guide, you will learn the history of both the cruel practice and the relevant legislation. You will also find out what the UN has done so far in its efforts to limit the phenomenon and get to view official resolutions on the topic.

Definition of Key-Terms

Enforced/Forced disappearance

According to the **official legal definition** which was used by the UN’s General Assembly in the [Declaration on the Protection of All Persons from Enforced Disappearance](#), an enforced disappearance (also referred to as a “forced disappearance”) takes place when **“persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals**

acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law.”

A more updated definition would be the following, which originates from the second Article of [the International Convention for the Protection of all Persons from Enforced Disappearance](#): **“Enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support, acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”**

In other words, an enforced disappearance is a phenomenon in which a person is abducted or held captive by an individual, an organisation or a “political power” that not only has the approval of a country’s government, but also later denies the fact that the abduction took place/that the person’s liberty has been limited or refuses to reveal the abductee’s location. The aim of the abduction is to keep the abductee unprotected by the law, eventually “silencing” them.

It is often implied that this act is sometimes accompanied by the murder of the victim, usually with their body never being found, the result of which is the victim still being considered missing.

Habeas Corpus

In Latin, this expression literally means “that you have the [right to a] body”. In legal terms, if a writ of habeas corpus is issued for a specific prisoner, they will be brought to court, which will then decide whether their imprisonment in the first place was rightful and legitimate according to the national and international legislation.

An interesting fact about the “Habeas Corpus” is that it dates back to 1215, when it was first established through the Magna Carta.

Crimes against humanity

A crime against humanity is a crime which is part of an extensive or systematic attack and is committed on purpose, with its targets being either a specific citizen or a certain part of a civilian population. Crimes against humanity can take place both during peace as well as war periods.

Statute of Limitations

After a crime takes place, there is a maximum amount of time for legal actions to be taken. When that time elapses, the criminal act can no longer be discussed in a court (and if it does, for some reason, get discussed upon, the defense may point out the fact that the time for legal actions has elapsed) and no actions regarding the prosecution of the guilty party can be taken. In other words, after that time is over, the crime “expires”.

The amount of time ranges from court system to court system, and is set by certain laws known as the “**Statute of Limitations**”.

Do note that in certain court systems, some types of criminal acts, most notably **murder**, are not subject to a statute of limitations, meaning that they never “expire” and that the suspected party can always be tried for the crime.

Background Information

History

The phenomenon of enforced disappearances was officially considered a threat to human rights in the 1970s, when it occurred primarily in Chile and, on a lesser extent, in Argentina. Many Human Rights Lawyers suddenly could neither come in contact with the defendants they represented in court nor get to know their exact whereabouts, although the defendants were supposedly still held in custody. In order to describe the occurrence, the term “(enforced) disappearance” was coined.

The lawyers filed a habeas corpus for a staggering 131 “people who had “disappeared”, yet their attempt to bring justice failed.

However, this was not the first time the phenomenon was encountered. In the 1960s quite a few citizens suddenly started disappearing. Usually the victims were left-wing political activists or activists supporting Human Rights. In fact, during the Guatemalan Civil War (1960-1996), the Guatemalan government used enforced disappearances as a systematic practice of terror, with the first victims being several associates of the left-wing political Party of Labour (1966).

But the phenomenon is even older than that. Another prime example of enforced disappearances being used as a means of silencing political opponents and dissidents is the infamous “Night and Fog” (“Nacht und Nebel” in German) directive

issued by Adolf Hitler himself in 1941. The aim of the directive was to kill or imprison the aforementioned opponents and, in the latter case, the condition as well as the whereabouts of the victims were not made known even to their close relatives.

Enforced disappearances have taken place countless times, in countless areas, and for countless reasons and excuses. The most important examples of mass enforced disappearances are listed in the "[Major Countries and Organisations Involved](#)" section below.

Enforced disappearance in the law

In the era prior to the *Declaration on the Protection of All Persons from Enforced Disappearance*, which was adopted by the General Assembly on the 18th of December 1992, there was no set **international** legislation on how enforced disappearance should be dealt with. However, although the term "enforced disappearance" does not make a direct appearance in international humanitarian law, the act itself violates many other laws, such as the *prohibition of murder*, the *prohibition of arbitrary deprivation of liberty*, the *prohibition of torture and other cruel or inhuman treatment* as well as *the prohibition of the act of murder*. Other human rights the phenomenon violates include the *right to recognition as a person before the law* and the *right to a fair trial and to judicial guarantees*. As such, enforced disappearances were **only indirectly** considered to be crimes.

All this changed with the adoption of the *Declaration on the Protection of All Persons from Enforced Disappearance* in 1992. The convention in question ensured that the criminal law of the UN Member States would treat the act of enforced disappearance as an offence.

Declaration on the Protection of All Persons from Enforced Disappearance, Article 4.1:

1. ***"All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness."***
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Moreover, the convention made it clear that in case acts of enforced disappearance are **systematic and widespread**, they constitute a **crime against humanity**, since the phenomenon fits the definition of a crime against humanity. The result of this is that these criminal acts **will not be subject to a statute of limitations**, as the **Rome Statute of the International Criminal Court**, which was adopted in 2002, states.

Major Countries and Organisations Involved

Chile

In 1973, a military coup took place in Chile and the military seized control of the country (Coup d'état). After banning leftist parties and indirectly making other political parties powerless, the military-based government set its eyes on rebellious civilians as well as their relatives and acquaintances. About 3000 citizens became victims of enforced disappearances during the dictatorship period.

Moreover, Chile was one of the many countries in which "Operation Condor" took place. This operation was a project aimed at eradicating communists and any sources of soviet ideology in South America – Bear in mind that all this took place during the Cold War era. It also served another purpose: Suppressing any movements by dissidents in the South American countries. The program was first conceived as an idea in 1968, but was fully implemented in 1975. The operation was materialized through the collaboration of certain South American governments (such as Argentina, Bolivia, Brazil, Chile, Paraguay, Uruguay) with the USA and, subsequently, the CIA. Enforced disappearances as well as assassinations of those who were considered threats were a common phenomenon. As such, this was yet another factor that caused the number of cases of enforced disappearance to rise quite radically.

Officially, Operation Condor was considered to be but a conspiracy theory, until its existence as a methodical operation was indeed proven in 2016, when 18 Argentine military officers who allegedly participated in the operation were found guilty of the accusations¹.

Argentina

Argentina was another country where "Operation Condor" was put into effect. This means that the number of enforced disappearances in the country was bound to rise greatly. Furthermore, the so-called "Dirty War of Argentina", a war against socialism which took place from 1974 to 1983, was another cause for many cases of enforced disappearance, with the victims being communists and dissidents.

¹ ["Guilty Verdict Reached in Operation Condor Trial." Guilty Verdict Reached in Operation Condor Trial. nsarchive.gwu.edu/NSAEBB/NSAEBB551-Operation-Condor-Verdict:-GUILTY!/. Accessed 5 July 2017.](http://nsarchive.gwu.edu/NSAEBB/NSAEBB551-Operation-Condor-Verdict:-GUILTY!/)

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Syria

In the late 1970s, Syrian president Hafez al-Assad was confronted with the public's disapproval due to many of his absolute policies. The number of rebels and dissidents started rising, and, along with it, the number of disappearing people kept rising as well, having reached a staggering 17,000 people by the end of Assad's rule.

Sri Lanka

Sri Lanka has been plagued by the phenomenon of enforced disappearances for a long time. The country in question was the place where a civil war broke out in 1983. The war ended after 26 years, namely in 2009. During the conflict, many people who were considered to be linked to the rebel group "*Liberation Tigers of Tamil Eelam*" (LTTE) became the victims of not only enforced disappearances, but also of assassinations. Other victims include leftists as well as Human Rights activists. Hitherto, the number of cases in Sri Lanka ranges between 60,000 and 100,000, according to Amnesty International.

Amnesty International

Amnesty International is an organisation striving for both the release of disappeared captives as well as for abolishing the practice of enforced disappearance. It calls for the ratification of human rights treaties and also tries to raise public awareness about the phenomenon via media campaigns. The organisation also invites governments to adopt specific measures in order to track the missing victims and ultimately rescue them or make the location of their death public, in case they are not alive. The proposed guidelines include measures such as, but not limited to:

- Providing financial compensation and rehabilitation assistance to survivors and to the families of victims
- Extensive investigations
- Promotion of fair trials

International Coalition Against Enforced Disappearances (ICAED)

The ICAED is a coalition of [several human rights organizations](#) the goal of which is the promotion and ratification of the International Convention for the Protection of All Persons from Enforced Disappearance. In order to achieve that goal, the coalition tries to coordinate the actions its members carry out in order to maximize their impact. It officially became active on the 26th of September 2007 in Geneva.

Working Group on Enforced or Involuntary Disappearances & Committee on Enforced Disappearances

Both of these bodies operate under the jurisdiction of the UN. For more information about them, please refer to the "[Relevant UN Treaties, Resolutions and Events](#)" section.

Timeline of Events

Date	Description of event
16 December 1977	The General Assembly "expresses its indignation at the incessant [enforced] disappearance of persons" through resolution 32/118
29 February 1980	The Commission on Human Rights adopts resolution 20 (XXXVI), which proposes the creation of a Working Group on Enforced or Involuntary Disappearances
18 December 1992	The GA adopts the groundbreaking Declaration on the Protection of All Persons from Enforced Disappearance
20 December 2006	The GA adopts the International Convention for the Protection of All Persons from Enforced Disappearance and creates the <i>Committee on Enforced Disappearances</i> , which shall ensure that the proposed measures are being followed
26 September 2007	The International Coalition Against Enforced Disappearances becomes active
21 December 2010	The GA adopts resolution 65/209, which declares the 30 th of August the annual International Day of the Victims of Enforced Disappearances (starting in 2011)

Relevant UN Treaties, Resolutions and Events

Note: I personally suggest that you skim through the three last resolutions on your own and see the proposed measures in all their glory, since the resolutions themselves are not extremely long and, as such, one can easily read them through. Doing so will greatly raise the level of the debate.

[Commission on Human Rights Resolution 20 \(XXXVI\) – 29 Feb. 1980](#)

This resolution, which was adopted by the Commission on Human Rights in 1980, proposes, amongst other measures, the establishment of a Working Group on Enforced or Involuntary Disappearances. Originally, this group would only remain active for a year, however, the project's duration as well as the group's duties were both extended through further resolutions (General Assembly resolution 33/173 - 20 December 1978 & Human Rights Council Resolution 16/16 - 24 March 2011). To date, it still exists, with its main aim being recording statistics about the phenomenon as well as helping the families of disappeared people determine the fate or the location of the victim.

[Declaration on the Protection of All Persons from Enforced Disappearance \(A/RES/47/133\) – 18 Dec. 1992](#)

This resolution is of the utmost importance. It officially made the practice of enforced disappearance an offence under the criminal law of Member States, thus finally creating a legal basis for the issue at hand. It also mentions how specific cases of the phenomenon shall be dealt with from a legal perspective. As such, this resolution finally allows for the act of enforced disappearance **itself** to be made illegal, instead of what happened in the past, when such an act was -eventually- considered illegal but **only because it violated several human rights**.

[International Convention for the Protection of All Persons from Enforced Disappearance \(A/RES/61/177\) – 20 Dec. 2006](#)

This resolution is another milestone in the fight against the phenomenon of enforced disappearances. Although it does resemble the Declaration on the Protection of All Persons from Enforced Disappearance quite a bit, it is much more detailed and it actually reaffirms that the previously proposed measures are still into effect. It also includes new measures, most notably **the creation of the Committee on Enforced Disappearances**, the role of which is to ensure that the measures proposed in the resolution are being followed.

[International Convention for the Protection of All Persons from Enforced Disappearance \(A/RES/65/209\) – 21 Dec. 2010](#)

This resolution does not really propose any new, groundbreaking measures, instead it simply thanks the Member States for ratifying A/RES /61/77 and expresses the fact that the UN will continue its efforts on combatting the issue. One thing this resolution does propose, however, is **the establishment of an *International Day of***

the Victims of Enforced Disappearances. According to the resolution, this day shall be celebrated annually on the 30th of August, starting in 2011.

Previous Attempts to solve the Issue

Although organisations are trying to stop the practice of enforced disappearances, it is the UN that has set the basis for the eradication of the issue. Even the ICAED's goal is to promote an UN resolution. **Since governments were -and are- involved in the phenomenon** (as explained in the definition of an "enforced disappearance"), **one cannot expect a national response to the issue.** The response will have to be international, and that can only be achieved through a body like the United Nations. The UN has already tried to make the practice in question illegal as a means of limiting it and it has also proposed guidelines on how cases of enforced disappearance should be dealt with through its resolutions (Declaration on the Protection of All Persons from Enforced Disappearance & International Convention for the Protection of All Persons from Enforced Disappearance). However, the effort to tackle the issue began quite recently (after all, the International Convention for the Protection of All Persons from Enforced Disappearance was adopted in 2006!), which means that, besides these resolutions, there are not enough solutions have been proposed or put into action yet.

Possible Solutions

We still have a long way to go before we actually manage to combat the issue of enforced disappearances. However, it is undeniable that there are certain solutions that, in the long run, may prove to be a step in the right direction. Such solutions include:

- Prevention hotlines and a permanent international UN body like the Working Group on Enforced or Involuntary Disappearances, which shall focus only on locating victims of the criminal act in question:

As weird as it may sound, the majority of enforced disappearances cannot be combatted because of two reasons:

- a) The country's government is often involved in the act
- b) The victim's absence is not immediately reported, which delays investigations

In order to tackle exactly these aspects of the issue, the aforementioned measures could be of assistance. An international body would remain unaffected by the government's stance on the disappearance, while a secure hotline could enable citizens to report cases of enforced disappearance quickly, efficiently, and discreetly, which would make tracking the victim much faster and easier without putting their family's and/or acquaintances' lives at risk.

- Raising public awareness in the affected areas:
The citizens of regions where such incidents are frequently reported are often not aware of all the rights they have as human beings or of some steps the UN and other organisations have taken in order to assist them in limiting the impact of the issue. As such, campaigns with the aim of raising public awareness in those areas could help these people cope better when confronted with the issue.. Such campaigns could potentially include:
 - Workshops that would be organized with the help of relevant UN bodies or NGOs. These workshops would be to attend and would inform citizens regarding their rights as human beings as far as the topic of enforced disappearances is concerned. The workshops could also serve as a means of teaching people in the affected areas which steps are to be taken by them in case an acquaintance or they themselves experience the cruel "phenomenon".
 - Media campaigns (wherever possible). Informing people about the issue through the press -this even includes informative flyers/pamphlets- as well as through media like the television or the internet in areas where such an approach is feasible would help the UN spread the word quickly, more efficiently and also on a wider scale.

- Forwarding the issue to the Security Council
Under the UN Charter (Chapter VII - [Articles 39 & 41](#)), the Security Council may impose several forms of sanctions (=penalties that do not involve the use of armed force) to the governments of countries that the Council has deemed are threatening global peace. These include economic limitations as well as embargoes. As such, forwarding the issue to the Security Council would enable the UN to potentially limit the number of cases of enforced disappearance by imposing the aforementioned sanctions if such an action is considered appropriate.

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