Chicago Journal of International Law

Volume 19 | Number 2 Article 3

2-1-2019

The Latin-American Flavor of Enforced Disappearances

Ariel E. Dulitzky

The Latin-American Flavor of Enforced Disappearances

Ariel E. Dulitzky *

Abstract

Enforced disappearances occur when persons are deprived of their liberty by state officials, organized groups, or private individuals acting on behalf of, or with the support, direct or indirect, consent, or acquiescence of the government. The deprivation of liberty is followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty. Consequently, such persons are placed outside the protection of the law. As such, the crime and the human rights violation of enforced disappearance comprise many different types of state repression. Given this multiplicity of scenarios in which enforced disappearances take place, some insist on the danger of over-using the term enforced disappearance, highlighting the need for a definition that separates the Latin American "true" cases of disappearance from those in which the term corresponds to a popular misuse. This Article describes this strong connection between enforced disappearances and Latin America.

The framework elaborated in the cases emanating from Latin American countries grounded the evolution of the very concept of enforced disappearance and the main concerns surrounding those disappearances. Additionally, Latin America is a space where the use of enforced disappearances was (and still is in some areas) widespread, but also a place which developed the most effective responses to overcome them. The second part of the Article presents Latin America as an innovator of human rights norms. As such, the Article challenges traditional understandings of the evolution of human rights. At the same time, the Latin American story shows the need to avoid a one-size-fits-all approach. This Article proposes instead to understand the Latin American influence on enforced disappearances as a normative

* I am grateful for the comments and suggestions by Federico Andreu, Curtis A. Bradley, Elisenda Calvet, Gabriella Citroni, Cath Collins, Bernard Duhaime, Barbara Frey, Lawrence Helfer, Veronica Hinestroza, Mariat Imaeva, Lucrecia Molina Theissen, Gerald Neuman, and Wilder Tyler on different versions of this paper. I am also grateful for the comments and questions by the students of the class *Actualite De Droit Internationale: Disparitions Forcees* taught by Prof. Duhaime at the Université du Québec à Montréal. As always thanks to the invaluable research and bibliographical support of Jonathan Pratter and to Theodore Magee for editing and improving my English. Any mistakes are mine.

transnational and international framework that could operate under diverse cultural and political logics, and that is necessarily conditioned by local particularities and meanings.

Table of Contents

I. INTRODUCTION

Today, from the perspective of victims, the media, courts, and international organizations, the term "enforced disappearance" encompasses many different situations, from certain kidnappings by drug cartels in Mexico[1] to the detention of persons allegedly involved in terrorism by the Central Intelligence Agency (CIA) in "black holes."[2] Enforced disappearances can refer to the North Korean political prisoners detained in forced labor camps,[3] those who went missing in Bosnia during the war in the former Yugoslavia,[4] or those abducted by death squads in El Salvador in the civil war.[5] The International Convention for the Protection of All Persons from Enforced Disappearance considers:

> [E]nforced disappearance . . . 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 or 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.[6]

As such, many different types of state repression comprise the crime and the human rights violation of enforced disappearances. This multiplicity of scenarios in which enforced disappearances take place[7] has led some scholars to warn against the danger of over-using of the term enforced disappearance, highlighting the need to distinguish between the Latin American, "true" cases of

---

1 OPEN SOCIETY JUSTICE INITIATIVE, UNDENIABLE ATROCITIES: CONFRONTING CRIMES AGAINST HUMANITY IN MEXICO, 39–43 (2016).

2 *See, for example*, Edmund Clark & Crofton Black, *The Appearance of Disappearance: the CIA's Secret Black Sites*, FT MAGAZINE (Mar. 17, 2016), http://perma.cc/EAB3-PU5V.

3 Rep. of the Comm'n of Inquiry on Human Rights in the Democratic People's Republic of Korea, ¶¶ 64–73, U.N. Doc. A/HRC/25/63 (Feb. 7, 2014).

4 *See, for example*, *Bosnia and Herzegovina: ECHR Denies Justice to Victims of Enforced Disappearances and Arbitrary Executions*, TRIAL INTERNATIONAL (July 22, 2014), http://perma.cc/9LSX-VEZD.

5 Rep. of the Comm'n on the Truth for El Salvador, transmitted by Letter Dated 29 March 1993 from the Secretary-General Addressed to the President of the Security Council, U.N. Doc. S/25500, at 101–107 (Apr. 1, 1993).

6 G.A. Res. 61/177, International Convention for the Protection of All Persons from Enforced Disappearance, art. 2 (Dec. 20, 2006).

7 Jonah S. Rubin, *Aproximación al Concepto de Desaparecido: Reflexiones sobre El Salvador y España*, 25 ALTERIDADES 9 (2015).

disappearance, or the "original disappeared,"[8] from those in which the term corresponds to a popular misuse.[9]

The first part of this Article explores and describes this strong connection between enforced disappearances and Latin America. Historically, many consider Hitler's "Night and Fog" (*Nacht und Nabel*) Decree of December 7, 1941, as the origin of the modern use of enforced disappearances.[10] However, until the dictatorships and civil wars in Latin America in the 1970s and 1980s, in which governments used enforced disappearances in a systematic (and often coordinated) way, the issue of the disappearance of persons generated neither international concern nor proper national or international judicial response.[11] Indeed, the very term "disappeared" or *desaparecido* to describe victims is a Latin American invention.[12] As one author put it bluntly, the systematic practice of enforced disappearances is the ultimate contribution to the history of human cruelty made by Latin America.[13] The Inter-American Court of Human Rights ("the Court") stated in its first judgment on a case of enforced disappearance:

> Disappearances are not new in the history of human rights violations. However, their systematic and repeated nature and their use not only for causing certain individuals to disappear, either briefly or permanently, but also as a means of creating a general state of anguish, insecurity and fear, is a recent phenomenon. Although this practice exists virtually worldwide, it has occurred with exceptional intensity in Latin America in the last few years.[14]

---

8 *See generally* GABRIEL GATTI, IDENTIDADES DESAPARECIDAS: PELEAS POR EL SENTIDO DE LOS MUNDOS DE LA DESAPARICIÓN FORZADA (2011); DESAPARICIONES: USOS LOCALES, CIRCULACIONES GLOBALES 27 (Gabriel Gatti ed., 2017).

9 Gabriel Gatti, *'Lo nuestro, como en Argentina.' Humanitarian Reason and the Latin Americanization of Victimhood in Spain*, 25 J. LATIN AM. CULTURAL STUD. 147 (2016); Gabriel Gatti, *De un Continente al otro: el Desaparecido Transnacional, la Cultura Humanitaria y las Víctimas Totales en Tiempos de Guerra Global*, 48 POLÍTICA Y SOCIEDAD 519 (2011).

10 TULLIO SCOVAZZI & GABRIELLA CITRONI, THE STRUGGLE AGAINST ENFORCED DISAPPEARANCE AND THE 2007 UNITED NATIONS CONVENTION 4 (2007).

11 José Zalaquett, *The Emergence of "Disappearances" as a Normative Issue*, *in* HUMAN RIGHTS: FROM PRACTICE TO POLICY: PROCEEDINGS OF A RESEARCH WORKSHOP 9–11 (Carrie Booth Walling & Susan Waltz eds., Oct. 2010).

12 *Id.*; *see also* Paola Diaz & Carolina Gutierrez Ruiz, *Resistencias en Dictadura y en Post-dictadura: la Acción Colectiva de la Agrupación de Familiares de Detenido Desaparecidos en Chile*, 8 PANDORA: REVUE D'ETUDES HISPANIQUES 187, 190 (2008) (explaining the origin of the use of the term *detenido-desaparecido* in Chile); AMNESTY INTERNATIONAL USA, DISAPPEARANCES: A WORKBOOK 1 (1981).

13 EMILIO F. MIGNONE & AUGUSTO C. MC DONNELL, ESTRATEGIA REPRESIVA DE LA DICTADURA MILITAR: LA DOCTRINA DEL "PARALELISMO GLOBAL" 9–20 (2006).

14 Velasquez Rodríguez v. Honduras, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 4, ¶ 149 (July 29, 1988).

The challenge of this practice led the region to adopt a definition that since has become a yardstick for many forms of enforced disappearances. The narrative framework elaborated in the stories emanating from Latin American countries grounded the evolution of the very concept of enforced disappearance and the main concerns surrounding those disappearances.[15] The Latin American experience, particularly the one that emerged in the 1970s in Argentina and Chile, and the responses since then helped to create a flexible international framework. Since state forces or non-state actors, which were associated with, supported by, or tolerated by the state, were the perpetrators of disappearances in those early years in Latin America, the definition of enforced disappearances included the state requirement. Today, the definition continues to require a state connection.[16] However, the state element does not necessarily cover certain situations that are currently occurring in certain parts of Latin America and in other regions of the world. Thus, the second part of this Article engages in a discussion of whether the strong Latin American influence on the conception of enforced disappearances brings limitations that create challenges to effectively deal with this crime and human rights violation.

The Latin American framework traveled from one continent to another, through different times, and adapted to diverse places, causes, logics, and needs. This Article demonstrates that understanding the concept, practice of, and reaction to enforced disappearances requires linking them to Latin America. The Article is not a historical, political,[17] sociological,[18] anthropological,[19] or legal[20] study on disappearances in Latin America, although it recognizes the need of taking all those approaches to comprehensively understand and respond to enforced disappearances. Instead, this Article summarizes the relationship

---

15 Barbara A. Frey, *Los Desaparecidos: The Latin American Experience as a Narrative Framework for the International Norm against Forced Disappearances*, 5 HISPANIC ISSUES ON LINE 52, 69 (2009).

16 MARTHE LOT VERMEULEN, ENFORCED DISAPPEARANCE: DETERMINING STATE RESPONSIBILITY UNDER THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE 54–55 (2012).

17 *See, for example*, PILAR CALVEIRO, PODER Y DESAPARICIÓN: LOS CAMPOS DE CONCENTRACIÓN EN ARGENTINA (2004).

18 *See, for example*, ESTELA SCHINDEL, LA DESAPARICIÓN A DIARIO: SOCIEDAD, PRENSA Y DICTADURA (1975–1978) (2012).

19 *See, for example*, DEATH SQUAD: THE ANTHROPOLOGY OF STATE TERROR (Jeffrey A. Sluka ed., 2000).

20 For a pioneering work, see LA DESAPARICIÓN, CRIMEN CONTRA LA HUMANIDAD: JORNADAS SOBRE EL TRATAMIENTO JURÍDICO DE LA DESAPARICIÓN FORZADA DE PERSONAS: FACULDAD DE DERECHO Y CIENCIAS SOCIALES DE LA UNIVERSIDAD NACIONAL DE BUENOS AIRES, 24 Y 25 DE MARZO DE 1987 (Grupo de Iniciativa por una Convención Internacional sobre la Desaparición Forzada de Personas, 1987).

between enforced disappearances and Latin America.[21] The region has always been at the forefront of both the use of, and the combat against, this policy and technique of terror.[22] This Article argues that Latin America is a space where the use of enforced disappearances was (and unfortunately still is in some areas) widespread, but also a place which developed the most effective responses to overcome them. New types of resistance and hope go hand in hand with the demands of truth, justice, reparation, and memory. Latin American countries learned from each other[23] and served as a model for other regions in disappearing people and in confronting those very same disappearances.[24] Latin America has been the site of a series of monumental developments in local, regional, national, and transnational human rights politics alike.[25] As disappearances are still used and the phenomenon has become global,[26] Latin America has not always been the leader or pioneer in responding to certain aspects of enforced disappearances. For instance, Bosnia and Herzegovina adopted the first law on missing persons.[27] Additionally, a 1981 agreement between the Greek and Turkish Cypriot community under the auspices of the United Nations created the first specialized body to search for disappeared people.[28]

---

21 Most of this Article's references will be from Chile and Argentina. Both countries have led, experienced, exported, and shared both the development of enforced disappearances as a systematic practice and responses to them.

22 Molina Theissen & Ana Lucrecia, *The forced disappearance of persons,* KO'AGA RONE'ETA, se.7 (1998).

23 *See generally* José Zalaquett, *Introduction to the English Edition*, REPORT OF THE CHILEAN NATIONAL COMMISSION ON TRUTH AND RECONCILIATION (Phillip E. Berryman trans., 1993).

24 Hum. Rts. Council, Joint Study on Global Practices in Relation to Secret Detention in the Context of Countering Terrorism, ¶ 5, U.N. Doc. A/HRC/13/42. (Feb. 19, 2010).

25 Patrick W. Kelley, *On the Poverty and Possibility of Human Rights in Latin American History*, 5 HUMANITY: INT'L J. HUM. RTS., HUMANITARIANISM, AND DEV. 435, 435 (2014).

26 *See* Hum. Rts. Council, Report of the Working Group on Enforced or Involuntary Disappearances, Note by the Secretariat, U.N. Doc. A/HRC/33/51 (July 28, 2016) (indicating that since its inception in 1980, the Working Group has transmitted a total of 55,273 cases to 107 states. The number of cases under active consideration stands at 44,159 in a total of 91 states). For Europe, see Christos Pourgourides (Rapporteur), Eur. Parl. Ass., *Enforced Disappearances: Report, Committee on Legal Affairs and Human Rights*, 62nd Sess., Doc. 10679 (Sept. 19, 2005) and Gabriella Citroni, Eur Parl. Ass., Comm'r for Human Rights, *Missing Persons and Victims of Enforced Disappearance in Europe* (Mar. 2016); for Asia, see ASIAN FEDERATION AGAINST INVOLUNTARY DISAPPEARANCES, BEYOND TEARS AND BORDERS: TRACKING ENFORCED DISAPPEARANCES, A COMPILATION OF COUNTRY SITUATION REPORTS IN NINE COUNTRIES IN ASIA (2013); and for Africa, see Jeremy Sarkin, *The Role of the International Criminal Court (ICC) in Reducing Massive Human Rights Violations Such as Enforced Disappearances in Africa: Towards Developing Transitional Justice Strategies*, 11 STUD. ETHNICITY & NATIONALISM 130, 132–33 (2011).

27 Tilman Blumenstock, *Legal Protection of the Missing and Their Relatives: The Example of Bosnia and Herzegovina*, 19 LEIDEN J. INT'L L. 773, 779 (2006).

28 Grażyna Baranowska, *Shedding Light on the Fate of the Disappeared? Committee on Missing Persons in Cyprus*, 3 INT'L J. RULE L., TRANSITIONAL JUST. & HUM. RTS. 101, 103 (2012).

The second part of the Article shows that the experience developed in Latin America demonstrates that Latin America created its particular human rights framework to deal with the practice of enforced disappearances. The Latin American experience opened new ways of understanding and reacting to state violence, developing an accepted universal norm against disappearances and clear requirements in terms of truth, justice, reparation, memory, and guarantees of non-repetition. At the same time, the Latin American story shows the need to avoid a one-size-fits-all approach. This Article, utilizing enforced disappearances as a case study, recognizes and demonstrates how national or even regional processes absorb and influence international human rights approaches. This Article proposes to understand the Latin American influence on enforced disappearances as a normative transnational/international framework that could operate under diverse cultural and political logics, and that is necessarily conditioned by local particularities and meanings.

II. THE HISTORICAL ORIGINS OF ENFORCED DISAPPEARANCES OUTSIDE LATIN AMERICA

Many consider Adolf Hitler's "Night and Fog" (*Nacht und Nebel*) Decree of December 7, 1941, which ordered the secret detention and removal of persons who allegedly attacked the Reich, as the origin of the modern use of enforced disappearances.[29] The decree directed that persons covered by the decree, upon capture, to be brought to Germany "by night and fog" for trial by special courts, thus circumventing military procedure and various conventions governing the treatment of prisoners.[30] The decree forbade these prisoners to have contact with loved ones and family members in their homeland. Field Marshal Wilhelm Keitel, Chief of the German Armed Forces High Command, stated in the implementation letter that, "efficient and enduring intimidation can only be achieved either by capital punishment or by measures by which the relatives of the criminal and the population do not know [the prisoner's] fate."[31] Between

---

29 *See* Scovazzi & Citroni, *supra* note 10, at 4–7; LISA OTT, ENFORCED DISAPPEARANCE IN INTERNATIONAL LAW 3 (2011); MARÍA FERNANDA & PÉREZ SOLLA, ENFORCED DISAPPEARANCES IN INTERNATIONAL HUMAN RIGHTS 7 (2006); Brian Finucane, *Enforced Disappearance as a Crime Under International Law: A Neglected Origin in the Laws of War,* 35 YALE J. INT'L L. 171, 175 (2010); Vermeulen, *supra* note 16, at 4–5.

30 RODOLFO MATTAROLLO, NOCHE Y NIEBLA Y OTROS ESCRITOS SOBRE DERECHOS HUMANOS 17–24 (2010).

31 Office of the U.S. Chief of Counsel for Prosecution of Axis Criminality, Nazi Conspiracy and Aggression (1946-1948), Vol. 7, 873, Doc. No. L-90 (1946).

7,000 and 10,000 persons were detained under this decree.[32] The decree described the three elements of what is currently defined as enforced disappearances (deprivation of liberty with State participation followed by the denial of information).

In terms of numbers of victims, the decree was not as prominent as other atrocities committed by the Nazis.[33] The lack of attention to this practice post-War could be explained by the relatively limited number of victims of the "Night and Fog" Decree. Despite the lack of widespread focus, the International Military Tribunal of Nuremberg still convicted Marshal Keitel for his implementation of the "Night and Fog" Decree.[34] Additionally, the American Military Tribunal of Nuremberg in the *Justice* case convicted the main lawyer of the Nazi regime for, among other things, his participation in the Night and Fog Decree,[35] and the Tribunal in the *High Command Trial* declared it to be a war crime and a crime against humanity.[36]

Other authors[37] believe that some of the techniques employed by Joseph Stalin during the Great Purge in the 1930s inspired the Night and Fog decree.[38] Thousands of persons were killed without disclosing any information about their fate.[39] One example of disappearances during the Great Purge is the Katyn massacre: the killing of thousands of Polish soldiers, border guards, police officers, prison guards, and state officials in April of 1940. The Politburo of the Central Committee of the USSR Communist Party ordered the killings in a decision made on March 5, 1940. The decision mandated a special procedure, with

---

32 Rainer Huhle, *Noche y Niebla. Mito y Significado*, *in* DESAPARICIONES FORZADAS DE NIÑOS EN EUROPA Y LATINOAMÉRICA: DEL CONVENIO DE LA ONU A LAS BÚSQUEDAS A TRAVÉS DEL ADN 256, 265 (María Casado & Juan José López Ortega eds., 2014).

33 *Id.* at 261.

34 *See Thirtieth Day—Wed., 9 Jan. 1946*, *in* TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL: 14 NOV. 1945 – 1 OCT. 1946, Vol. 5, 35 (1947); *Ninety-Ninth Day—Wed., 4 Apr. 1946*, *in* TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL: 14 NOV. 1945 – 1 OCT. 1946, Vol. 10, 542–45 (1947); and TRIALS OF WAR CRIMINALS BEFORE THE NUREMBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10, Vol. 3: JUSTICE CASE 1060 (1949) (quoted and explained by Finucane, *supra* note 29, at 176).

35 *See* TRIALS OF WAR CRIMINALS UNDER CONTROL COUNCIL LAW NO. 10, Vol. 10: HIGH COMMAND CASE, *supra* note 34 at 1031–1062.

36 *See id.* at Vol. 11: High Command Case Cont'd, 195.

37 Christopher Hall, *Enforced Disappearance of Persons*, *in* COMMENTARY ON THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT 221, 221 n.292 (Otto Triffterer ed., 2d ed. 2008) (arguing that the Nazis were inspired by Stalin's practice of secret arrest and imprisonment in the Soviet Union).

38 For a detailed account of the terror policy, see ROBERT CONQUEST, THE GREAT TERROR: STALIN'S PURGE OF THE THIRTIES (3d ed. 1973).

39 *Id.*

the sentence of capital punishment being imposed. It also instructed, "the cases are to be considered without the detainees being summoned or the charges being disclosed, and without any statements concerning the conclusion of the investigation or the bills of indictment being issued to them."[40] In 1942 and 1943, first Polish railroad workers and then the German army discovered mass burials near the Katyn Forest. The International Red Cross, at the request of Nazi Germany, established an international commission consisting of twelve forensic experts. That commission conducted the exhumation works from April to June 1943. The remains of 4,243 Polish officers were excavated, of whom 2,730 were identified.[41] The European Court of Human Rights noted:

> The [Polish] had been taken prisoner by the Soviet occupation forces and had been detained in Soviet camps. There is evidence that exchanges of correspondence between the Polish prisoners and their families continued until the spring of 1940, so the families must have been aware that their relatives were alive. After the letters from them stopped coming to Poland, their relatives remained for many years in a state of uncertainty as to the fate that had befallen them . . .[42]

As such, the European Court of Human Rights thus considered that "the situation . . . initially presented the features of a 'disappearance' case."[43]

Finally, others believe that the techniques used by the French in Algeria and Indochina between the 1940s and 1960s were the antecessors of the modern use of enforced disappearances.[44] The colonial French wars in Indochina and Algeria used interrogation and torture as a way to obtain information on the so-called internal enemy. When torture led to death, the French Army hid the bodies, inaugurating the use of enforced disappearances. Enforced disappearances became part of the repressive regime as a way of instilling fear in relatives and in the population in general in order to prevent social mobilization.

However, the instances pre-1970 were rare, disparate, and did not provoke much reaction. In particular, before the events in Latin America there was not an understanding of enforced disappearance as a distinct crime and human rights violation.

---

40 As cited by the European Court of Human Rights (Grand Chamber) in Janowiec and Others v. Russia, App. Nos. 55508/07 & 29520/09, Eur. Ct. H.R., ¶ 18 (2013).

41 *Id.* at ¶ 20.

42 *Id.* at ¶ 182. Except for those identified in 1943 to 1944.

43 *Id.*

44 *See* J. PATRICE MCSHERRY, PREDATORY STATES: OPERATION CONDOR AND COVERT WAR IN LATIN AMERICA 16–17 (2005).

III. THE LATIN AMERICAN PRACTICE EMERGES AS THE MODEL OF ENFORCED DISAPPEARANCES

Despite these earlier examples, only the massive and systematic use of enforced disappearances in the Southern Cone of Latin America in the 1970s brought the issue to the attention of the international community.[45] While there is no exact number due to the characteristics of the crime and the perpetrators' refusal to provide information in their possession, hundreds of thousands of people disappeared in Latin America.[46]

A. The Systematic Use of Enforced Disappearance

Originally, most of the Latin American disappearances occurred as part of a systematic practice of human rights violations, as described early on by the Inter-American Commission on Human Rights (IACHR):

> [S]ome governments continue to refuse to provide information on the fate of persons kidnapped from their homes, places of work, ports or airports or in public thoroughfares, by non-uniformed, heavily armed individuals, traveling in unmarked vehicles and acting with such security and impunity that they are assumed to be forces invested with some authority. The truth is that until now, all the remedies provided for under domestic law, and the innumerable efforts made by family members, friends, institutions, agencies, and by this Commission itself, to find out what has happened to victims of such procedures have been fruitless.[47]

---

45 Chile, Argentina, Paraguay, Uruguay, and Brazil. However, the use of enforced disappearances in Latin America started in Guatemala in the mid-to-late 1960s. In March 1966, 28 opposition leaders were disappeared by Guatemalan Security Forces. *See* PATRICK BALL ET AL., AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE, CENTRO INTERNACIONAL PARA INVESTIGACIONES EN DERECHOS HUMANOS, STATE VIOLENCE IN GUATEMALA, 1960–1996: A QUANTITATIVE REFLECTION, 15–16 (1999); DISAPPEARANCES: A WORKBOOK, *supra* note 12, at 17–30.

46 The Latin American Federation of Associations for Relatives of the Detained-Disappeared (FEDEFAM) held in 1983 that there were more than 90,000 disappeared persons. Ana Camacho, *Más de 90.000 desaparecidos, en Latinoamérica en los últimos años*, EL PAÍS (Feb. 11, 1983), http://perma.cc/XNH3-YEVN. Recently, the Peruvian government raised the number of disappearaed persons in that country to 20,329. *See* Redacción EC, *Cifra de desaparecidos en conflicto interno se eleva a más de 20 mil*, EL COMERCIO (Apr. 23, 2018, 10:53 PM), http://perma.cc/B5FM-C5N4. The National Center for Historic Memory of Colombia reports that 60,630 persons disappeared in that country during the armed conflict. *See* CENTRO NACIONAL DE MEMORIA HISTÓRICA, HASTA ENCONTRARLOS: EL DRAMA DE LA DESAPARICIÓN FORZADA EN COLOMBIA (2016), http://perma.cc/D6WK-6A4C. In Mexico, although there is no official data on the number of forcibly disappeared people, as of October 28, 2018, the total number of missing or not localized persons reported at the state level was 36,265 and 1,170 at the federal level. Of course not all of them are enforced disappearances. *See* REGISTRO NACIONAL DE DATOS DE PERSONAS EXTRAVIADAS O DESAPARECIDAS, http://perma.cc/59D8-MNNL.

47 Inter-Am. Comm'n H.R., Annual Report of the Inter-American Commission on Human Rights 1977, OEA/Ser.L/V/11.43, § II (Apr. 20, 1978).

Despite some differences depending on the country and on the period, in Latin America, most of the enforced disappearances followed a common pattern. Governments selected the victims, deprived them of their liberty, took them to secret detention centers where the victims were generally tortured and usually executed. Security forces would then dispose of the victims' bodies. Government officials denied any involvement or information regarding the whereabouts of the victims. The Inter-American Court described the pattern in the following way:

> "[S]election of the victim, detention, deposit of the victim in a detention center, contingent transfer to other detention center, interrogation, torture, processing of the data obtained, decision to eliminate the victim, physical elimination, concealment of victim´s remains and use of State resources." The common denominator in the whole process was "the denial of the detention itself and denial of any information on what had happened to the arrested person. That is, the victim entered an already established circuit of clandestine detention, which only very lucky people could survive." . . . Generally, groups of 10 or more persons took part in [t]hese violent actions. Detention agents frequently had their faces covered with balaclavas and were wearing black turtlenecks, trousers and dark boots. [...] These abductions were frequently carried out late in the night, while the alleged victim was asleep. In this kind of procedure they used flashlights, long and short firearms, and official vehicles such as those trucks used for the transportation of troops, among others. . . . The complex organization and logistics of the forced disappearance technique required the use of resources of the State, for example: motor vehicles, fuel, premises where to transfer and hide the detainee or to avoid or obstruct his/her being tracked down. . . . As regards the techniques used to destroy any evidence of the crimes committed during the forced disappearance procedure . . . included, inter alia, the mutilation or cremation of victim's mortal remains.[48]

Governments saw most of the victims as opponents and used disappearances as "the highest stage of political repression."[49] Indigenous persons, peasants, community, political and union leaders, students, academics, members of religious communities and priests, military or paramilitary agents (those suspected of collaborating with the enemy), and members of armed opposition groups are among those who were forcibly disappeared.[50] Most of those who disappeared were not immediately killed, but instead tortured in secret detention centers, then executed. Their bodies were thrown into rivers or the sea, mutilated

---

48 La Cantuta v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 162, ¶¶ 80(5)–80(8) (Nov. 29, 2006).

49 CATHOLIC CHURCH, ARCHDIOCESE OF SÃO PAULO, TORTURE IN BRAZIL 204 (Joan Dassin ed., Jaime Wright trans., 1986).

50 As it was described in COMISIÓN PARA EL ESCLARECIMIENTO HISTÓRICO, GUATEMALA: MEMORIA DEL SILENCIO, CONCLUSIONES Y RECOMENDACIONES, App. 1 (1999).

and discarded by the side of the road, buried in unmarked graves, or burnt.[51] While the majority of those disappeared were men, a large number of women disappeared[52] and yet, many times, their disappearances remain invisible.[53] The appropriation of children and changing their true biological identity was another phenomenon developed in the region in those years.[54] For instance, in Argentina several hundred children were born in the military's secret prisons, taken from their mothers and given to families loyal to the military government to be raised and changing their biological identity by inscribing them with different names.[55] In El Salvador, "children were abducted during the execution of military operations after which their families were executed or forced to flee to save their lives. Children were frequently taken away by military chiefs who brought them up as their own children."[56]

The practice of enforced disappearance, within the overall framework of counter-insurgency strategy, pursued among its main objectives: a) to obtain information from the victims, b) to "remove" opposition leaders or guerrilla members with impunity, and c) to intimidate the population.[57] As such, the practice of enforced disappearance offered a number of advantages compared to other mechanisms of counter-subversion. By keeping the person captured alive, it was possible to obtain information, generally through torture, about other members or sympathizers of the subversive organizations and new operational

---

51 Eric Stover & Rachel Shigekane, *The Missing in the Aftermath of War: When Do the Needs of Victims' Families and International War Crimes Tribunals Clash?*, 84 INT'L REV. RED CROSS 845, 849 (2002).

52 *See, for example*, FUNDACIÓN NYDIA ERIKA BAUTISTA PARA LOS DERECHOS HUMANOS, DISCRIMINACIÓN E IMPUNIDAD: DESAPARICIÓN FORZADA DE MUJERES EN COLOMBIA, UN ESTUDIO DE CASOS DEL CONFLICTO ARMADO: 1985–2005 (2015).

53 Comm. on Enforced Disappearances, Concluding Observations on the Report Submitted by Paraguay under Article 29, Paragraph 1, of the Convention, ¶ 34, U.N. Doc. CED/C/PRY/CO/1 (Oct. 20, 2014) [hereinafter Concluding Obs. On the Rep. Sub. By Paraguay]; Hum. Rts. Council, General Comment on Women Affected by Enforced Disappearances Adopted by the Working Group on Enforced or Involuntary Disappearances at its Ninety-Eighth Session (31 Oct.–9 Nov. 2012), ¶ 4, U.N. Doc. A/HRC/WGEID/98/2 (Feb. 14, 2013).

54 As documented by the truth commissions of Argentina and Guatemala, INFORME CONADEP NUNCA MÁS, Chapter II.A (1984); GUATEMALA: MEMORIA DEL SILENCIO, *supra* note 50, at Chapter II: Volume 2, ¶ 451; and COMISIÓN DE LA VERDAD, DE LA LOCURA A LA ESPERANZA: LA GUERRA DE LOS DOCE AÑOS EN EL SALVADOR 118 (1993). *See* Huhle, *supra* note 32.

55 CONADEP, NUNCA MÁS, *supra* note 54, at Chapter II.A.

56 Hum. Rts. Council, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development: Report of the Working Group on Enforced or Involuntary Disappearances: Addendum: Mission to El Salvador, ¶ 23, U.N. Doc. A/HRC/7/2/Add.2 (Oct. 26, 2007).

57 COMISIÓN DE LA VERDAD Y LA RECONCILIACIÓN DE PERÚ, INFORME FINAL, TOMO VI, § 2.3.2.: Objetivos de la desaparición forzada (Objectives of the forced disappearance) (author's trans.) (2003).

plans. The disappeared person usually was executed and disposed of without traces that could point to the authors of the death and torture. To achieve these objectives, it was necessary that the victims have no access to any legal remedies. This was assured by the government's denial of the deprivation of liberty and the absence of information about the whereabouts of detainees. Disappearances generated a strong sense of uncertainty and insecurity in communities and have acted as a deterrent to potential members, militants, or sympathizers of subversive organizations. The practice also had an intimidating effect on family members and the community, who were fearful that they could suffer the same fate. Finally, disappearances discouraged the population and human rights or social organizations from reporting human rights violations, thereby reinforcing in this way the impunity of those responsible for these practices.[58]

Various states coordinated and carried out joint operations to disappear people. Operation Condor is the archetypical representation of this cooperation. Operation Condor consisted of coordinating security and intelligence forces, mainly from Chile, Argentina, Brazil, Uruguay and Paraguay, with the common goal to repress and kill people designated as "subversive elements" beyond the borders of the states themselves.[59] This operation systematized and made more effective coordination between "security forces and military and intelligence services" of the region, and was supported by the CIA.[60] Security and intelligence forces mutually trained or advised each other in the use of disappearances.[61] The official denial rhetoric, the climate of terror, and the covert nature of the crime, all present in the vast majority of the Latin American countries, delayed the general (national and international) awareness of the characteristics of the disappearances and the identity of the perpetrators.[62] The prevalent impunity generated by the absolute control over the judiciary by the repressive regimes not only facilitated the perpetration of enforced disappearances but also exacerbated the delay in the national and international response to disappearances.[63]

---

58 *Id.*

59 Goiburú et al. v. Paraguay, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 153, ¶¶ 61(5)–(7) (Sept. 22, 2006) [hereinafter Case of Goiburú].

60 *Id.*

61 ARIEL C. ARMONY, ARGENTINA, THE UNITED STATES, AND THE ANTI-COMMUNIST CRUSADE IN CENTRAL AMERICA, 1977–1984 (1997).

62 Emilio Crenzel, *From Judicial Truth to Historical Knowledge: The Disappearance of Persons in Argentina*, 2 AFR. Y.B. OF RHETORIC 53, 54 (2012).

63 Enrique Serra Padrós, *Repressão e Violência: Segurança Nacional e Terror de Estado nas Ditaduras Latino-Americanas*, *in* DITADURA E DEMOCRACIA NA AMÉRICA LATINA: BALANÇO HISTÓRICO E PERSPECTIVAS 162 (Carlos Fico, et al. eds., 2008).

B. The Ideological Support for the Use of Enforced Disappearances

The "Counter-insurgency Doctrine," developed by the French army in Algeria and Indochina[64] and the U.S.-promoted National Security Doctrine (which began in Guatemala in the 1960s and then spread to almost the whole continent in the following years), provided the conceptual frame and practical training for the use of enforced disappearances.[65] Anti-communism, promoted by the United States' foreign policy, received firm support from right-wing political parties and from other powerful actors in Guatemala.[66] The U.S. demonstrated its willingness to support strong military regimes and provide military assistance in order to reinforce the national intelligence apparatus and train the officer corps in counterinsurgency techniques.[67] Anti-communism and the National Security Doctrine formed part of the anti-Soviet strategy of the United States in Latin America.[68] The National Security Doctrine merged with the defense of religion, tradition, and conservative values to create the idea of an enemy to the state. Vast sectors of the Catholic Church strongly supported these views, qualifying as communist any position that contradicted its philosophy.[69] The confrontation against an all-inclusive idea of an "internal enemy" became the *raison d'etre* of army and state policies.[70] The state deliberately magnified the military threat of the insurgency and included all opponents, democratic or otherwise, pacifist or guerrilla, legal or illegal, communist or noncommunist, under the banner of "internal enemy."[71] The state was justified to resort to military operations directed towards the physical annihilation or absolute intimidation of this "internal enemy" opposition, through a plan of repression carried out mainly by the army and national security forces.[72] Enforced disappearances, among other abuses, were central to this plan.[73] Human rights defenders were presented as "subversive" and were one of the constant targets of the repression.[74]

---

64 *See* McSherry, *supra* note 44, at 16–17.

65 *See, for example*, GUATEMALA: MEMORIA DEL SILENCIO, CONCLUSIONES Y RECOMENDACIONES, *supra* note 50, at ¶ 13.

66 *Id.*

67 *Id.*

68 *Id.* at ¶ 14.

69 *Id.*

70 *Id.* at ¶ 15.

71 *Id.* at ¶ 25.

72 *Id.*

73 *Id.* at ¶ 83.

74 *Id.* at ¶ 84.

The so-called French school,[75] the military concept based on the experience of Indochina and then practiced in Algeria, also provided ideological support to the use of enforced disappearances. French militaries developed a theory of the counter-insurgency war.[76] They understood that there was no military front as in a traditional war; the enemy was hidden anywhere and everywhere. Like in the National Security Doctrine, the enemy was internal. Hence, any person was suspect. This required new ways to fight a new form of war and to control the population as a whole. Since the supposed internal enemy did not wear a uniform, the "subversive element" could be a peasant, a priest, a shop owner, a student, a teacher, a doctor, a lawyer, an engineer, or a worker. Therefore, strong intelligence agencies had to be available to discover such "enemies." The implementation of the French school also included the use of paramilitary organizations, which found its maximum expression in the Organization of the Secret Army.[77]

The French school also relied ideologically on a strong Catholic fundamentalism that influenced both the French Army[78] and practically all the Latin American armies and the hierarchies of many Latin American Catholic churches.[79] In addition, the French school promoted a theoretical vision of the central power of the army, which led to support for coups and military dictatorships.[80] The French school moved to Latin America through the close French ties to the armed forces of several countries. In 1959, the armies of France and Argentina signed an agreement for the creation of a permanent French military mission in Argentina, whose advisers settled in Buenos Aires, at the headquarters of the Army Chief of Staff.[81] French officers, veterans of Indochina and Algeria, began training and advising the Argentine military. Many Argentinean and Latin American officers also traveled to France to receive training in this doctrine.[82]

---

75 This section is based mainly on Marie-Monique Robin, Escadrons de la Mort: L'école Français (2004).

76 *Id.* at 32–44.

77 *Id.* at 180–95. The Organization was a paramilitary group that operated during the Algerian War with the goal of preventing Algeria's independence from French colonial rule.

78 Mario Ranalletti, *Contrainsurgencia, Catolicismo Intransigente y Extremismo de Derecha en la Formación Militar Argentina. Influencias Francesas en los Orígenes del Terrorismo de Estado* (1955–1976), *in* TERRORISMO DE ESTADO Y GENOCIDIO EN AMÉRICA LATINA (Daniel Feierstein ed., 2009).

79 *See generally* EMILIO F. MIGNONE, IGLESIA Y DICTADURA: EL PAPEL DE LA IGLESIA A LA LUZ DE SUS RELACIONES CON EL RÉGIMEN MILITAR (4th ed. 1987).

80 ROBIN, *supra* note 75, at 183.

81 ROBIN, *supra* note 75, at 207.

82 Daniel Mazzei, *La misión militar francesa en la Escuela Superior de Guerra y los orígenes de la Guerra Sucia, 1957–1961*, 13 REV. DE CIENCIAS SOCIALES 105, 108 (2002).

C. The Current Use of Enforced Disappearances in Latin America

Enforced disappearances continue to occur in high numbers in a limited number of countries[83] and in isolation in others.[84] At present, in some Latin American countries, particularly in Mexico and El Salvador, disappearances occur in other contexts, such as those carried out by gangs,[85] organized crime groups, and drug cartels.[86] Among other things, this raises the issue of whether state participation is required to qualify a disappearance as forced disappearance.[87] Interestingly, the state participation, which came to define enforced disappearances based on the Latin American experience, now presents a challenge to deal with a great number of disappearances taking place in Latin American countries such as Mexico where drug cartels use disappearances as well.[88] Despite the current use of enforced disappearances in Latin America, there are also some

---

83 *See, for example*, HUMAN RIGHTS WATCH, LA CRISIS EN BUENAVENTURA: DESAPARICIONES, DESMEMBRAMIENTOS Y DESPLAZAMIENTO EN EL PRINCIPAL PUERTO DE COLOMBIA EN EL PACÍFICO (2014) (on Colombia); AMNISTÍA INTERNACIONAL, "UN TRATO DE INDOLENCIA": LA RESPUESTA DEL ESTADO FRENTE A LA DESAPARICIÓN DE PERSONAS EN MÉXICO (2016) (on Mexico); *Fiscalía confirma aumento de desapariciones en 2016*, LA PRENSA GRÁFICA (Mar. 21, 2017), http://perma.cc/ZH96-79XA (explaining that the Attorney General of El Salvador confirmed close to 4,000 disappearances in 2016); and Gabriel Leao, *Brazil's Missing People: A Human Rights Crisis*, Americas Program (Apr. 9, 2018), http://www.americas.org/brazils-missing-people-a-human-rights-crisis/.

84 *See, for example*, in Chile, CENTRO DE DERECHOS HUMANOS, INFORME ANUAL SOBRE DERECHOS HUMANOS EN CHILE (2009) 130–35, 324–25 (2009); or in Argentina, Comm. on Enforced Disappearances, Consideration of Reports of States Parties under Article 29 of the Convention: Reports of States Parties under Article 29, Paragraph 1, of the Convention that are Due in 2012, ¶ 14, U.N. Doc. CED/C/ARG/1 (Jan. 22, 2013).

85 Carlos Carcach & Evelyn Artola, *Disappeared Persons and Homicide in El Salvador*, 5 CRIME SCI. 13 (2016).

86 Comm. on Enforced Disappearances, Concluding Observations on the Report Submitted by Mexico Under Article 29, Paragraph 1, of the Convention, ¶ 10, U.N. Doc. CED/C/MEX/CO/1 (Mar. 5, 2015); *Forced Disappearances in Mexico's Drug Wars* (France 24 English broadcast Aug. 31, 2018) (explaining that police work for cartels and forcibly disappear individuals at cartels' behest).

87 Rainer Huhle, *Non-State Actors of Enforced Disappearance and the UN Convention for the Protection of All Persons from Enforced Disappearance*, 26 HUMANITÄRES VÖLKERRECHT—INFORMATIONSSCHRIFTEN/J. INT'L L. PEACE AND ARMED CONFLICT 21 (2013); Irena Giorgou, *State Involvement in the Perpetration of Enforced Disappearance and the Rome Statute*, 11 J. INT'L CRIM. JUST. 1001, 1012 (2013).

88 *See, for example*, Senator Enrique Burgos et al., *Carta de Organizaciones y Familiares Sobre Reforma Art 73 Desaparicion Forzada*, FUNDAR (Apr. 23, 2015), http://perma.cc/CYE3-WSQH (proposing incorporation of disappearances by non-state actors in a Mexican constitutional amendment). The recently adopted Mexican law in fact covers disappearances by state and non-state actors. *See* Ley General En Materia De Desaparición Forzada De Personas, Desaparición Cometida Por Particulares Y Del Sistema Nacional De Búsqueda De Personas, Diario Oficial de la Federación [DOF] 17-11-2017 (Mex.).

encouraging signs. For example, in the context of the "war against terrorism" after September 2001, the CIA's "extraordinary rendition" program was nothing else but the use of enforced disappearances.[89] To date, according to available information, no Latin American country has cooperated with or assisted the CIA in disappearing people through the "extraordinary renditions."[90]

IV. LATIN AMERICA'S INFLUENCES ON THE INTERNATIONAL RESPONSE TO ENFORCED DISAPPEARANCES

The Latin American experience since the 1970s fostered the idea that enforced disappearances are a uniquely egregious human rights violation that needed to be properly considered and conceptualized.[91] As such, the first international reactions and definitions date from the mid-seventies, largely because of the work of Latin Americans and in response to the region's needs and practices.[92] In the 1970s and early 1980s, the international community lacked a universally accepted definition to distinguish enforced disappearances from other violations. Influenced and sometimes led by Latin Americans, Amnesty International,[93] the U.N. Working Group,[94] and the IACHR,[95] in dealing with Latin American situations, carried out essential analysis to define the phenomenon. These efforts also concentrated on establishing legal principles to prevent, investigate, and punish those responsible, as well as to frame the rights of the disappeared person and those of his or her family members. For instance, the Working Group in its first four Annual Reports dedicated a whole section to analyze the "specific human rights denied by enforced or involuntary disappearances;" a section on the special provisions of the rights of children and

---

89 Margaret Sattherthwaite, *Extraordinary Rendition on Disappearances in the "War on Terror,"* 10 GONZ. J. INT'L L. 70, 72 (2006).

90 *See generally* S. REP. NO. 113-288 (2014); OPEN SOCIETY JUSTICE INITIATIVE, GLOBALIZING TORTURE: CIA SECRET DETENTION AND EXTRAORDINARY RENDITION, 61-118 (2013) (listing 54 governments that participated in the CIA program. None were from Latin America).

91 Zalaquett, *supra* note 11.

92 Wilder Tayler, *Background to the Elaboration of the Draft International Convention for the Protection of All Persons from Forced Disappearance*, 62 INT'L COMM'N. OF JURISTS REV. 63, 63–65 (2001).

93 DISAPPEARANCES: A WORKBOOK, *supra* note 12.

94 Howard M. Kleinman, *Disappearances in Latin America: A Human Rights Perspective*, 19 NYU J. INT'L L. & POL. 1033 (1986).

95 The first individual cases on enforced disappearances decided by the IACHR date back to 1975: Caso 1790- Enrique París Roa (Chile) and Caso 1748- deaths or disappearances of 296 persons between November 1971 and the first months of 1972, and Caso 1755- Arbitrary detention of various persons in Guatemala. Paris Roa v. Chile, Case 1790, Inter-Am. Comm'n H.R., Resolution, OEA/Ser.L/V/II.37, doc. 20, corr. 1 (1975); Guatemala, Cases 1702, 1748, and 1755, Inter-Am. Comm'n H.R., Resolution, OEA/Ser. L/V/II.35, doc. 9, rev. 1 (1975).

mothers in cases of enforced disappearances; a section on "the impact of disappearance on health and family life;" a section on the impact of enforced disappearances on the victim's family; and finally a section on the need to establish national bodies for the investigation of reports of enforced or involuntary disappearances.[96]

A. Latin American Impact on the First Responses of the OAS and the U.N.

The Organization of American States' (OAS) and the U.N.'s reactions to disappearances in Latin America laid the groundwork for the international response to enforced disappearances globally.[97] The IACHR, as the autonomous human body of the OAS, denounced disappearances as early as 1974.[98] Undoubtedly, the most important contribution of the IACHR in those early years was its visit[99] and subsequent report[100] to Argentina in 1979 and 1980.[101] The Commission's report was probably the most comprehensive intergovernmental description and understanding of enforced disappearances.[102] The Commission's

---

96 *See* Off. of the U.N. High Comm'r for Hum. Rts., Rep. of the Working Group on Enforced or Involuntary Disappearances, § V, U.N. Doc. E/CN.4/1435 (Jan. 26, 1981); Off. of the U.N. High Comm'r for Hum. Rts., Rep. of the Working Group on Enforced or Involuntary Disappearances, § V, U.N. Doc. E/CN.4/1492 (Feb. 22, 1982); Off. of the U.N. High Comm'r for Hum. Rts., Rep. of the Working Group on Enforced or Involuntary Disappearances, § V, U.N. Doc. E/CN.4/1983/14 (Jan. 21, 1983); and Off. of the U.N. High Comm'r for Hum. Rts., Rep. of the Working Group on Enforced or Involuntary Disappearances, §§ V–VII, U.N. Doc. E/CN.4/1984/21 (Dec. 9, 1983).

97 *See* Hum. Rts. Council, Rep. of Manfred Nowak, Civil and political rights, including questions of: disappearances and summary executions. Submitted Pursuant to Paragraph 11 of Commission Resolution 2001/46, ¶ 43, U.N. Doc. E/CN.4/2002/71 (Jan. 8, 2002).

98 Inter-Am. Comm'n H.R., Rep. on the Status of Human Rights in Chile: Findings of "on the Spot" Observations in the Republic of Chile July 22-August 2, 1974, Ch. 16, OEA/Ser.L/V/II.34, doc. 21 (Oct. 25, 1974).

99 On the visit, see generally Tom Farer, *I Cried for You, Argentina*, 38 HUM. RTS. Q. 851 (2016).

100 *See* Inter-Am. Cmm'n on H.R., Report on the Situation of Human Rights in Argentina, OEA/Ser.L/V/II.49, doc. 19 (Apr. 11, 1980).

101 Robert Goldman, *History and Action: The Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights*, 31 HUM. RTS. Q. 856, 873 (2009).

102 For the work and strategies used by the Commission during those early years, see CECILIA MEDINA QUIROGA, THE BATTLE OF HUMAN RIGHTS: GROSS, SYSTEMATIC VIOLATIONS AND THE INTER-AMERICAN SYSTEM 67-89 (1988) and KLAAS DYKMANN, PHILANTHROPIC ENDEAVORS OR THE EXPLOTATION OF AN IDEAL?: THE HUMAN RIGHTS POLICY OF THE ORGANIZATION OF AMERICAN STATES IN LATIN AMERICA, 1970–1991 105–140 (2004). Interestingly, the Commission rejected the first enforced disappearance case in 1972. On December 16, 1970, lawyer Néstor Martins, and his client Nildo Centeno, were detained in downtown Buenos Aires. Several witnesses observed the detention and claim that it appeared to have been carried out by police or security forces. As the Argentine government did not provide any information on the fate or whereabouts of the victims,

report provided a detailed account of the systematic practice of enforced disappearances in Argentina,[103] and it referred to several specific cases.[104] The report criticized the government's refusal to cooperate with judicial authorities, rendering the writ of habeas corpus ineffective in such cases.[105] The government responded to the Commission's requests for information about the many cases in an "unsatisfactory" manner.[106] Additionally, the Commission challenged the government's justification that the repression was needed to combat terrorism. The IACHR asserted that national security concerns could not justify the use of enforced disappearances or other human rights violations.[107] The IACHR Argentine report, widely disseminated outside Argentina and clandestinely in the country, "was very influential in focusing world public opinion on the human rights abuses in Argentina. The report thus made it difficult for outsiders to claim ignorance of the Argentine situation."[108] "After the Commission's visit, disappearances in Argentina appeared to diminish."[109] While the cause of "the virtual cessation of disappearances following the Inter-American Commission's visit is uncertain[, i]t might have resulted from a change in political climate created by the Commission's investigation[.]"[110,]

Despite the work of the Commission, the OAS General Assembly resisted and failed to take action until 1979, when it declared "that the practice of disappearance is an affront to the conscience of the hemisphere, and is totally contrary to common traditional values and to the declarations and agreements signed by the American states."[111] Although it was not the first regional international institution to address disappearances, in 1983 the OAS General

---

the Commission decided to archive the case, maintaining that "without the provision of evidence on the direct or indirect participation of government representatives or their inaction to suppress crime, international protection can not be invoked." Inter-Am. Cmm'n on Hum. Rts., Annual Report 1972, Ch. III, Case 1701, OEA/Ser.L/V/II/.29, doc. 41 (Mar. 13, 1973).

103 Inter-Am. Cmm'n on H.R., *supra* note 100, at 55–56.

104 *Id.* at 56–116.

105 *Id.* at 122–24.

106 *Id.* at 121.

107 *Id.* at 24–26.

108 David Weissbrodt & Maria Luisa Bartolomei, *The Effectiveness of International Human Rights Pressures: The Case of Argentina*, 1976-1983, 75 MINN. L. REV. 1009, 1023 (1991).

109 *Id.*

110 *Id.* at 1024.

111 OAS General Assembly, Annual Report of the Inter-American Commission on Human Rights, ¶ 3, AG/RES. 443 (Ix-O/79) (Oct. 31, 1979).

Assembly became the first to declare that the practice of enforced disappearance constitutes a crime against humanity.[112]

The Latin American situation moved the U.N. to start dealing with the issue in the mid-seventies.[113] The Commission on Human Rights responded to the situation in Chile by creating an ad hoc Working Group.[114] The ad hoc Working Group provided the first illustration of a case of disappearance in a U.N. document in 1976.[115] The Working Group made an unprecedented mission to Chile in 1978, focusing particularly on cases of enforced disappearances.[116] Additionally, the Human Rights Commission and the Sub-Commission on the Promotion and Protection of Human Rights established several mechanisms. These included a Rapporteur on the Impact of Foreign Economic Aid and Assistance on Respect for Human Rights in Chile (1977);[117] the United Nations Trust Fund For Chile (1978);[118] an Expert on the Question of the Fate of Missing and Disappeared Persons in Chile (1979);[119] and finally, a Special Rapporteur on the Human Rights Situation in Chile (1979-1990).[120] All these mechanisms were unique in that, until their inception, the U.N. had not created working groups or

---

112 OAS General Assembly, Annual Report of the Inter-American Commission on Human Rights, ¶ 4, AG/RES. 666 (XIII-0/83) (Nov. 18, 1983). In contrast, the Parliamentary Assembly of the Council of Europe expressly referred to missing persons for the first time in Recommendation 1056 (1987). EUR. PARL. ASS., *National Refugees and Missing Persons in Cyprus*, 39th Sess., Rec. No. 1056, ¶ 4 (1987). In 1984, the Parliamentary Assembly of the Council of Europe qualified enforced disappearances as "incompatible with the ideals of any humane society" and "a flagrant violation of a whole range of human rights recognised [sic] in the international instruments on the protection of human rights," EUR. PARL. ASS., *Enforced Disappearances*, 36th Sess., Res. 828, ¶¶ 2, 4 (1984). Two years previously, the Parliamentary Assembly had adopted Resolution 774 (1982) on Europe and Latin America—the challenge of human rights in which the practice of enforced disappearance was condemned. EUR. PARL. ASS., *Europe and Latin America: The Challenge of Human Rights*, 34th Sess., Res. 774 (1982).

113 For a brief explanation of the U.N. concern with enforced disappearances prior to 1980, see Off. of the U.N. High Comm'r for Hum. Rts., Report of the Working Group on Enforced or Involuntary Disappearances, ¶¶ 13–25, U.N. Doc. E/CN.4/1435 (Jan. 26, 1981).

114 Human Rights Council Res. 7(c) (XXXI), U.N. Doc. E/CN.4/1179, at 74 (Feb. 24, 1975).

115 Hum. Rts. Council, Report of the Ad Hoc Working Group Established under Resolution 8 (XXXI) of the Commission on Human Rights to Inquire into the Present Situation of Human Rights in Chile, ¶¶ 102–3, U.N. Doc. E/CN.4/1188, (Feb. 4, 1976) (referring to the disappearance of Alphonse-René Chafreau).

116 U.N. Secretary-General, Note Dated Oct. 25, 1978, Protection of Human Rights in Chile: Note by the Secretary-General, § I, U.N. Doc. A/33/331 (Oct. 25, 1978).

117 Human Rights Council Res. 11, U.N. Doc. E/CN.4/1261 (Oct. 10, 1977).

118 G.A. Res. 33/174, at 158 (Dec. 20, 1978).

119 Human Rights Council, *supra* note 117, at 3.

120 U.N. Secretary-General, Note Dated Nov. 21, 1979, Protection of Human Rights in Chile: Note by the Secretary-General, ¶ 7, U.N. Doc. A/34/583/Add.l (Nov. 21, 1979).

special rapporteurs to deal with the human rights situation, much less enforced disappearances, in any country.[121]

The U.N. General Assembly adopted in 1978 the first formal statement on enforced disappearances. Not surprisingly, a Latin American country, Colombia, was the proponent of the resolution.[122] In 1979, the General Assembly entrusted the Commission on Human Rights to consider enforced disappearances. During the same year, after dissolving the ad hoc Working Group, the Commission on Human Rights appointed two experts to study the question of the fate of missing persons in Chile.[123] Latin America's influence on the international response to enforced disappearances continued with the creation in 1980 of the Working Group on Enforced or Involuntary Disappearances, the first specialized thematic human rights mechanism within the U.N.[124] The U.N. created the Working Group largely in response to the disappearances in Argentina and Chile and to the advocacy work of mainly Latin American victims. The creation of the Working Group was done despite fierce resistance from the Argentine dictatorship.[125] It is not surprising that out of the thirteen countries considered during the first year of the Working Group operation, eight were Latin American.[126] The Working Group used its urgent procedure mechanism for the first time for cases of Argentina, Peru, El Salvador, Guatemala, and Bolivia.[127] Similarly, the Working Group's first

---

121 López Cárdenas & Carlos Mauricio, *La desaparición forzada en la dictadura militar chilena y el desarrollo de los primeros mecanismos públicos especiales de las Naciones Unidas*, *in* RESPONSABILIDAD INTERNACIONAL Y DEL ESTADO: ENCRUCIJADA ENTRE SISTEMAS PARA LA PROTECCIÓN DE LOS DERECHOS HUMANOS 1, 6 (Ana Gemma López Martín et al. eds., 2015).

122 G.A. Res. 33/173, at 158 (Dec. 20, 1978). There are some references since 1975 (*see* G.A. Res. 3450 (XXX), at 90 (Dec. 9, 1975) on Cyprus and G.A. Res. 3448 (XXX), at 89 (Dec. 9, 1975) on Chile). However, in the English version, they refer to "missing persons." The term "disappeared" first appears in G.A. Res. 32/118, at 141–42 (Dec. 16, 1977).

123 Reed Brody & Felipe González, *Nunca Más: An Analysis of International Instruments on Disappearances*, 19 HUM. RTS. Q. 365, 367 (1997).

124 Federico Andreu-Guzman, *Le Groupe de travail sur les disparitions forcées des Nations Unies*, 84 INT'L REV. RED CROSS 803, 804 (2002); Corcuera Santiago, *L'experience du Groupe de Travail sur les Disparitions Forcées*, *in* LA CONVENTION POUR LA PROTECTION DE TOUTES LES PERSONNES CONTRE LES DISPARITIONS FORCÉES 21, 22 (Olivier de Frouville & Emmanuel Decaux eds., 2009).

125 IAIN GUEST, BEHIND THE DISAPPEARANCES: ARGENTINA'S DIRTY WAR AGAINST HUMAN RIGHTS AND THE UNITED NATIONS 232 (1990).

126 Off. of the U.N. High Comm'r for Hum. Rts., Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/1435, at 43, 51–71 (Jan. 26, 1981). The Working Group referred to the situation in Argentina, Bolivia, Brazil, El Salvador, Guatemala, Mexico, Nicaragua, Peru, and Uruguay.

127 *Id.*

three visits[128] and even an annual meeting outside the U.N. headquarters[129] were to and in Latin American countries. In sum, the Latin American situation and the work of Latin American organizations in the most difficult circumstances prompted the first reactions at the OAS and U.N. to enforced disappearances. Each of those reactions, namely resolutions, on-site visits, reports, and the creation of special procedures, remain in place today and are some of the main tools to continue dealing with enforced disappearances globally.[130]

B. Latin American Leadership in the Development of the International Normative Framework of Enforced Disappearances

Latin American organizations and countries have driven the progressive development of international law in the fight against enforced disappearances.[131] Since the early 1980s, the Latin American Federation of Families of the Disappeared (FEDEFAM) and other Latin American organizations have promoted the adoption of legal instruments to conceptualize, define and create international mechanisms to deal with this crime.[132]

In 1992, the U.N. General Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance,[133] resulting from the leadership work and contribution of Latin American organizations.[134] In 1994, the OAS adopted the Inter-American Convention on Forced Disappearance of

---

128 The first visit was to Mexico. Off. of the U.N. High Comm'r for Hum. Rts., Report of the Working Group on Enforced or Involuntary Disappearances, ¶¶ 2–9, U.N. Doc. E/CN.4/1492 (Feb. 22, 1982). The next two visits were also to Latin America, to Bolivia in 1984 and Peru in 1985. *See* Nigel S. Rodley, *United Nations Action Procedures Against "Disappearances," Summary or Arbitrary Executions, and Torture*, 8 HUM. RTS. Q. 700, 708 (1986).

129 Matthew Lippman, *Disappearances: Towards a Declaration on the Prevention and Punishment of the Crime of Enforced or Involuntary Disappearances*, 4 CONN. J. INT'L L. 121, 132 (1988).

130 *See* Olivier de Frouville, *Working out a Working Group: A View from a Former Working Group Member*, *in* THE UNITED NATIONS SPECIAL PROCEDURES SYSTEM 223, 259–60 (Aoife Nolan et al. ed., 2017).

131 Patricio Rice, *La Fédération Latino-Américaine des Organisations de Familles de Détenus Disparus (FEDEFAM) et le Projet de Convention*, *in* LA CONVENTION POUR LA PROTECTION, *supra* note 124, at 37, 40–42.

132 For the different initiatives *see* Tayler, *supra* note 92, at 63–69; Yves Laurin, *FIDH*, *in* LE REFUS DE L'OUBLI: LA POLITIQUE DE DISPARITION FORCÉE DE PERSONNES 267, 267–68 (Edmond Jouve ed., 1981); Rodolfo Mattarollo, *Exposicion de Motivos*, *in* LA DESAPARICIÓN FORZADA COMO CRIMEN DE LESA HUMANIDAD: EL "NUNCA MÁS" Y LA COMUNIDAD INTERNACIONAL 142, 148–66 (1989); and Amnesty International, *"Disappearances" and Political Killings: Human Rights Crisis Of The 1990s: A Manual For Action*, 260–64, AI Index: ACT 33/01/94 (1994); *see also* Brody & Gonzalez, *supra* note 123 at 369.

133 G.A. Res. 47/133, (Dec. 18, 1992) [hereinafter *Declaration*].

134 Brody & Gonzales, *supra* note 123, at 369.

Persons,[135] the first international legally binding document on this topic.[136] The region was also at the forefront of the process leading to the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance[137] adopted by the U.N. in 2006.[138]

Latin American initiatives also led to the inclusion of specific rules on disappeared and abducted children and the right to identity in the Declaration, the Inter-American Convention, the International Convention, and the Convention on the Rights of the Child.[139] Latin America also contributed to the creation of the International Criminal Court (ICC) in 1998.[140] Particularly, Latin American Governments and civil society organizations pushed for the inclusion of enforced disappearance as one of the international crimes on which the ICC has jurisdiction[141] as well as the specific content of the elements of the crime of enforced disappearance.[142] It is no surprise that the ICC opened an investigation into Colombia,[143] which includes cases of enforced disappearances. Recently,

---

135 Organization of American States, Inter-American Convention on Forced Disappearance of Persons, June 9, 1994, O.A.S.T.S. No. 68, 33 I.L.M. 1429 [hereinafter *Inter-Am. Convention*].

136 Brody & Gonzalez, *supra* note 123, at 371. Only recently, in 2012, the European Parliamentary Assembly proposed the adoption of a European convention for the protection of all persons from enforced disappearance. *See* Parliamentary Assembly Res. 1868 (2012). *See also* Hannah Russell, *Striving for 'Never Again': A European Convention for the Protection of All Persons from Enforced Disappearances and the Veiled Protection of Article 2 of the ECHR*, 2 INTER-AM. AND EUR. H.R. J. 470 (2016).

137 G.A. Res. 61/177 (Dec. 20, 2006) [hereinafter *International Convention*].

138 *See* Olivier de Frouville, *The Committee on Enforced Disappearances*, *in* THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL, ¶ 12 (Philip Alston & Frederic Megret eds., 2d ed., forthcoming); Olivier de Frouville, *La Convention des Nations Unies pour la Protection de Toutes les Personnes contre les Disparitions Forcées: les Enjeux Juridiques d'une Négociation Exemplaire*, ¶ 5 (Jan.–Dec. 2006) (unpublished article) (on file with author).

139 *Declaration*, *supra* note 133, at art. 20; *Inter-Am. Convention*, *supra* note 135, at art. 12; Convention on the Rights of the Child art. 8, Nov. 20, 1989, 1577 U.N.T.S. 3.

140 JOSÉ A. GUEVARA & TARCISO DAL MASO, LA CORTE PENAL INTERNACIONAL: UNA VISIÓN IBEROAMERICANA (2005); M. CHERIF BASSIOUNI, THE LEGISLATIVE HISTORY OF THE INTERNATIONAL CRIMINAL COURT: SUMMARY RECORDS OF THE 1998 DIPLOMATIC CONFERENCE 13–50 (2005); Eduardo Gonzalez Cueva, *Por qué es aceptable el Estatuto de Roma para los Gobiernos Latinoamericanos*?, *in* LA CORTE PENAL INTERNACIONAL: ENSAYOS PARA LA RATIFICACIÓN E IMPLEMENTACIÓN DE SU ESTATUTO 167 (José Guevara & Mariana Valdés Riveroll eds., 2002).

141 ROY LEE, THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE: ISSUES, NEGOTIATIONS AND RESULTS (1999); Brigitte Suhr, *La Desaparición Forzada de Personas en el Estatuto de Roma y los Elementos de los Crímenes*, *supra* note 140, at 61.

142 William R. Pace & Jennifer Schense, *The Coalition for the International Criminal Court at the Preparatory Commission*, *in* THE INTERNATIONAL CRIMINAL COURT: ELEMENTS OF CRIME AND RULES OF PROCEDURE AND EVIDENCE 705, 716 (Roy S. Lee ed., 2001).

143 Guevara Bermúdez & José Antonio, *La Corte Penal Internacional y América Latina y el Caribe*, 10 ANUARIO DE DERECHOS HUMANOS 17, 29–30 (2014); Jocelyn Courtney, *Enforced Disappearances in Colombia: A Plea for Synergy Between the Courts*, 10.5 INT'L CRIM. L. REV. 679, 679–80 (2010).

several organizations requested the ICC to open an investigation into disappearances in Mexico.[144] Obviously, not all of these international norms coincide with the definition of enforced disappearance, the rights of the victims, and the individual or state responsibilities.[145] However, all those instruments respond to the Latin American pattern of enforced disappearances, as it originally emerged in the '60s and '70s.[146]

C. Latin America Prompts the Development of International Case Law on Enforced Disappearances

Latin America has also influenced the development of international jurisprudence on enforced disappearances. The first case on an enforced disappearance decided by the Human Rights Committee (the Committee) considered the disappearance of a Uruguayan and the rights of his family.[147] Case law on the disappearance and abduction of children developed almost exclusively around Latin American cases.[148] The Latin American influence continues today. For example, the Committee on Enforced Disappearances (CED), created to monitor compliance with the International Convention, issued its first decision on the urgent action procedure (Article 30 of the International Convention)[149] on a Latin American country, and its first visit requested under Article 33 has been for a country in the region.[150] In both cases, the country was Mexico. The first

144 Int'l Federation for Hum. Rts., Mexico Coahuila: Ongoing Crimes Against Humanity: Communication to the International Criminal Court (2016), http://www.fidh.org/IMG/pdf/angmexico_coahuila_ongoing_crimes_against_humanity_fidh-final_a_revisar-1.pdf . *See also* Rodolfo Saenz, *Confronting Mexico's Enforced Disappearance Monsters: How the ICC Can Contribute to the Process of Realizing Criminal Justice Reform in Mexico*, 50 VAND. J. TRANSNAT'L L. 45 (2017).

145 FERNANDA & SOLLA, *supra* note 29, at 30–31 (prior to the International Convention).

146 Frey, *supra* note 15, at 52.

147 H.R. Comm., Eduardo Bleier v. Uruguay, Comm. No. R.7/30, UN Doc. A/37/40, at 130 (Mar. 29, 1982).

148 *See, for example*, Inter-Am. Comm'n H.R., A Study About the Situation of Minor Children of Disappeared Persons Who Were Separated From Their Parents and Who Are Claimed by Members of Their Legitimate Families, in INTER-AM. Y.B. ON HUM. RTS. 476 (1988); Molina Theissen v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 106 (May 4, 2004); H.R. Comm., Darwinia Rosa Mónaco de Gallicchio v. Argentina, Comm. No. 400/1990, UN Doc. CCPR/C/53/D/400/1990 (Apr. 3, 1995).

149 U.N. G.A., Rep. of the Committee on Enforced Disappearances on its Third Session and Fourth Session, ¶ 43, U.N. Doc. A/68/56 (2013).

150 U.N. G.A., Rep. of the Committee on Enforced Disappearances on its Fifth Session and Sixth Session, ¶ 68, U.N. Doc. A/69/56 (2014).

individual case decided by CED was on Argentina.[151] Undoubtedly, the conceptualization of enforced disappearances as a complex form of human rights violations and the correlative state duties to stop those violations[152] are due largely to the Inter-American Court. Since its first three cases on enforced disappearance,[153] the Court has developed a very comprehensive and expansive doctrine on enforced disappearances.[154] The Court contributed to the understanding of:

- the continuous nature of the crime,[155]
- the right to know the truth about the fate or whereabouts of the person,[156]
- the right to, the scope of, and the beneficiaries of reparations,[157]

---

151 Comm. on Enforced Disappearances, Views Approved by the Committee Under Article 31 of the Convention for Communication No. 1/2013, U.N. Doc. CED/C/10/D/1/2013 (Apr. 12, 2016).

152 *See, for example*, Godínez-Cruz v. Honduras, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 5, ¶ 158 (Jan. 19, 1989).

153 Claudio Grossman, *Disappearances in Honduras: The Need for Direct Victim Representation in Human Rights Litigation*, 15 HASTINGS INT'L COMP. L. REV. 363, 370 n. 41 (1992); Juan E. Mendez & Jose Miguel Vivanco, *Disappearances and the Inter-American Court: Reflections on a Litigation Experience*, 13 HAMLINE L. REV. 507, 517 (1990).

154 Cecilia Medina, *Los 40 Años de la Convención Americana sobre Derechos Humanos a la Luz de Cierta Jurisprudencia de la Corte Interamericana*, 5 ANUARIO DE DERECHOS HUMANOS 15, 22–24 (2009).

155 *See, for example*, Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 59 (Sept. 1, 2010) (stating that the violation continues until the fate or whereabouts of the person is established).

156 *See, for example*, Gomes Lund et al. ("Guerrilha Do Araguaia") v. Brazil, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 219, ¶ 201 (Nov. 24, 2010).

157 *See, for example*, Case of Anzualdo Castro v. Peru, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 202, ¶ 239 (Sept. 22, 2009) (ordering that the State must effectively conduct the criminal proceedings in process and any future proceeding in relation to the forced disappearance of the victim; must continue making all the necessary efforts and adopt the administrative and legal measures and public policies that may correspond, to determine and identify the people who disappeared during the internal conflict; adopt the necessary measures to reform, within a reasonable time, its criminal legislation as to forced disappearance of persons; implement a permanent education programs on human rights addressed to members of the intelligence services, the Armed Forces, as well as judges and prosecutors; publish, as of notice of the Judgment in the Official Gazette and in another newspaper with widespread circulation; organize a public act of acknowledgment of international responsibility for the forced disappearance of the victim and to apologize to him and his next-of-kin; erect a plaque in the Museum of Memory, in the presence of the next-of-kin; provide the next-of-kin of the victim with the appropriate treatment by means of health public services, for as long as they need it and including the medicines and pay a compensation for pecuniary and nonpecuniary damage, and reimbursement of costs and expenses).

- the right to justice and the inapplicability of amnesty laws[158] and statutes of limitations,[159]
- the concept of the victim encompassing both the disappeared person and their family members,[160]
- presumptions of violations of rights in cases of enforced disappearances,[161]
- specific evidentiary standards,[162] and
- the shifting of the burden of proof in cases of enforced disappearances.[163]

The Court was also the first (and so far only) international court to proclaim that the prohibition of enforced disappearance and the duty to investigate has attained the status of *jus cogens* giving rise to *erga omnes* obligations.[164] These essential

---

158 *See, for example*, Chitay Nech et al. v. Guatemala, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 212, ¶ 235 (May 25, 2010).

159 *See, for example*, Heliodoro Portugal v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 186, ¶ 205 (Aug. 12, 2008).

160 *See, for example*, Nech, *supra* note 158, at ¶ 229.

161 *See, for example*, Rodríguez Vera et al. (The Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R., (ser. C) No. 287, ¶ 232 (Nov. 14, 2014) (finding it reasonable to presume, "that the victims underwent treatment contrary to the inherent dignity of a human being while they were in the State's custody").

162 *See, for example*, Blake v. Guatemala, Merits, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 36, ¶ 49 (Jan. 24, 1998) (deeming "possible for the disappearance of a specific individual to be demonstrated by means of indirect and circumstantial testimonial evidence, when taken together with their logical inferences, and in the context of the widespread practice of disappearances").

163 *See, for example*, Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 106 (Nov. 22, 2005) (pointing out "that forced disappearance is characterized by its clandestine nature, which requires the State to comply with its international obligations in good faith and to provide all necessary information insofar as it is the State which has control over the mechanisms to investigate incidents that took place within its territory. Consequently, any attempt to shift the burden of proof to the victims or their next of kin is contrary to the international obligations imposed upon the State").

164 *See, for example*, Case of Goiburú, *supra* note 60, at ¶ 84, 93, 128, 129, and 131; Augusto Antônio Cançado Trindade, *Enforced Disappearances of Persons as a Violation of* Jus Cogens*: The Contribution of the Jurisprudence of the Inter-American Court of Human Rights*, 81 NORDIC J. OF INT'L L. 507, 513 (2012). The Court understands that *jus cogens* norms are "nonderogable provisions of international law" *Id.* at ¶ 129. In Barcelona Traction, Light and Power Co., Ltd. (Belgium v. Spain), Judgment, 1970 I.C.J. 3, ¶ 33 (Feb. 5), the International Court of Justice stated in relation to *erga ommes* norms that "In particular, an essential distinction should be drawn between the obligations of a state towards the international community as a whole, and those arising vis-a-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes."

contributions made by the Inter-American system to respond to disappearances in Latin America had a worldwide influence.[165] However, the reasoning of the Court to reach such conclusions, is sometimes problematic although generally, but not always, correct.[166] Authors have criticized the limited and imprecise reasoning,[167] the Tribunal's use of norms over which the Court does not have jurisdiction,[168] and the activist role adopted by the Tribunal that does not provide space for a democratic debate.[169] Other criticism concentrates on the overly extensive criminal/punishment approach,[170] the lack of proper consideration to a

---

165 Gabriella Citroni, *The Contribution of the Inter-American Court of Human Rights and Other International Human Rights Bodies to the Struggle against Enforced Disappearance*, *in* THE INTER-AMERICAN COURT OF HUMAN RIGHTS: THEORY AND PRACTICE, PRESENT AND FUTURE 379, 380–81 (Yves Haeck et al. eds., 2015); Ophelia Claude, *A Comparative Approach to Enforced Disappearances in the Inter-American Court of Human Rights and the European Court of Human Rights Jurisprudence*, 5 INTERCULTURAL HUM. RTS. L. REV. 407, 460–62 (2010).

166 For instance, the Court had many problematic decisions regarding its temporal jurisdiction in cases of enforced disappearances. Francisco J. Rivera Juaristi, *La Competencia* Ratione Temporis *de la Corte Interamericana en Casos de Desapariciones Forzadas: Una Crítica del Caso* Heliodoro Portugal v. Panama, 43 REVISTA JURÍDICA UNIV. INTERAMERICANA DE PUERTO RICO 201, 206–08 (2009); Margaret Popkin, *El Caso de las Hermanas Serrano Cruz de El Salvador y la Interpretación de la Excepción Ratione Temporis*, 1 REVISTA CEJIL 41, 45 (2005).

167 José Zalaquett, *El Caso Almonacid: La Noción de una Obligación Imperativa de Derecho Internacional de Enjuiciar Ciertos Crímenes y la Jurisprudencia Interamericana sobre Leyes de Impunidad*, 3 ANUARIO DE DERECHOS HUMANOS 183, 191 (2007).

168 Gerald L. Neuman, *Import, Export, and Regional Consent in the Inter-American Court of Human Rights*, 19 EUR. J. INT'L L. 101, 114–16 (2008).

169 Roberto Gargarella, *Sin Lugar para la Soberanía Popular: Democracia, Derechos y Castigo en el Caso Gelman*, Seminario en Latinoamérica de Teoría Constitucional y Política Papers 125, 2–4 (2013); ROBERTO GARGARELLA, DE LA INJUSTICIA PENAL A LA JUSTICIA SOCIAL 149–51 (2008).

170 Ezequiel Malarino, *Activismo Judicial, Punitivización y Nacionalización: Tendencias Antidemocráticas y Antiliberales de la Corte Interamericana de Derechos Humanos*, *in* SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS Y DERECHO PENAL INTERNACIONAL 25, 46 (Gisela Elsner et al. eds., 2009); Fernando Felipe Basch, *The Doctrine of the Inter-American Court of Human Rights Regarding States' Duty to Punish Human Rights Violations and Its Dangers*, 23 AM. U. INT'L L. REV. 195, 213–21 (2007); Daniel Pastor, *La Deriva Neopunitivista de Organismos y Activistas como Causa del Desprestigio Actual de los Derechos Humanos*, 1 NUEVA DOCTRINA PENAL 73, 73–75 (2005); Karen Engle, *Anti-Impunity and the Turn to Criminal Law in Human Rights*, 100 CORNELL L. REV. 1069, 1079 (2015).

gender perspective,[171] or how the Court contradicts well-accepted basic criminal law concepts.[172, 173]

Admittedly, the Inter-American Court's analysis of enforced disappearances and the means of combating them has had a strong influence on the broader human rights regime.[174] For instance, in *Timurtaş v. Turkey*,[175] the European Court followed the Inter-American Court's flexible approach to standards of proof in cases of forced disappearances, somewhat abandoning its more demanding approach that has called for proof beyond a reasonable doubt of human rights violations.[176] In the 2009 *Varnava and Others v. Turkey* case,[177] the European Court invoked and followed the practice of the Inter-American Court to maintain the existence of a continuing procedural obligation to investigate enforced disappearances that had begun before the respondent state recognized the Court's jurisdiction.[178] In conclusion, Latin America and the Inter-American system[179]

---

171 Ariel Dulitzky & Catalina Lagos, *Jurisprudencia Interamericana sobre Desaparición Forzada y Mujeres: La Tímida e Inconsistente Aparición de la Perspectiva de Género*, 94 LECCIONES Y ENSAYOS 45, 49 (2015).

172 Caro Coria & Dino Carlos, *La Prueba en el Crimen de Desaparición Forzada de Personas Conforme a la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, *in* SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS Y DERECHO PENAL INTERNACIONAL 127 (Gisela Elsner et al. eds., 2010); Juan Luis Modolell Gonzalez, *El Crimen de Desaparición Forzada de Personas Según la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, 63 DERECHO PUCP 139, 142 (2009).

173 For a few responses to these criticisms, see Oscar Parra Vera, *La Jurisprudencia de la Corte Interamericana Respecto a la Lucha Contra la Impunidad: Algunos Avances y Debates,* 13 NO1 REVISTA JURÍDICA DE LA UNIVERSIDAD DE PALERMO, AÑO 5, 7 (2012); Victor Abramovich, *"Transplante" y "Neopunitivismo": Debates Sobre la Aplicación del Derecho Internacional de los Derechos Humanos en la Argentina*, *in* ACTIVISMO DE LOS DERECHOS HUMANOS Y BUROCRACIAS ESTATALES: EL CASO WALTER BULACIO 249, 251 (Sofia Tiscornia ed. 2008); Leonardo Filippini, *El Prestigio de los Derechos Humanos: Respuesta a Daniel Pastor, in* TEORÍA Y CRÍTICA DEL DERECHO CONSTITUCIONAL, TOMO II: DERECHOS 1207 (Roberto Gargarella ed., 2009).

174 Gerald Neuman, *The External Reception of Inter-American Human Rights Law*, (Special Edition) QUEBEC J. OF INT'L L. 99, 108 (2011).

175 Timurtaş v. Turkey, App. No. 23531/94, Eur. H.R. Rep. ¶¶ 82–86 (1998).

176 Neuman, *supra* note 174, at 109.

177 Varnava and Others v. Turkey, 2009-V Eur. Ct. H.R. 13, ¶ 147 (2009).

178 Neuman, *supra* note 174, at 109. Other cases where the European Court cited the Inter-American Court case law on enforced disappearances include Kurt v. Turkey, 74 Eur. Ct. H.R. 8 (Ser. A) 1152, 67; Silih v. Slovenia, App. No. 71463/01, 09/04/09, Grand Chamber 114, 117 and 149; Marguš v. Croatia, App. No. 4455/10, 27/05/14, Grand Chamber. *See* Eur. Consult. Ass., *References to the Inter-American Court of Human Rights and Inter-American Instruments in the Case-law of the European Court of Human Rights*, http://perma.cc/TW7J-AUF8.

179 For a critique of the overemphasis of the Inter-American system on Latin America and the almost exclusive Latin American influence on the Inter-American system, see generally Auro Fraser, *From Forgotten through Friction to the Future: The Evolving Relationship of the Anglophone Caribbean and the Inter-American System of Human Rights*, 43 REVISTA IIDH 207 (2006); Paolo Carozza, *The Anglo-Latin Divide*

were crucial to the development of the international case law around enforced disappearances. At the same time, enforced disappearances influenced the nature of the Inter-American system.[180]

V. LATIN AMERICA'S DOMESTIC RESPONSES TO ENFORCED DISAPPEARANCES

Uneven domestic efforts in Latin America to develop policies to deal with enforced disappearances accompanied these international responses. The following sections discuss the domestic policy focused on legislation, justice, truth, reparation, and memory. Argentina and Chile took the strongest domestic measures against disappearances.[181] While other nations did take actions, these were clearly insufficient. Nevertheless, Latin America led the global effort and laid the foundation in this area.[182]

A. The Legislative Approach

Latin America leads the process of adopting national legislation on enforced disappearances. Very few countries from other regions have such legislative and constitutional frameworks to deal with and refer to enforced disappearances.[183] Several Latin American constitutions specifically refer to enforced

and the Future of the Inter-American System of Human Rights, 5 NOTRE DAME J. OF INT'L & COMP. L. 153 (2015).

180 CECILIA MEDINA, THE AMERICAN CONVENTION ON HUMAN RIGHTS: CRUCIAL RIGHTS AND THEIR THEORY AND PRACTICE 63 (2d ed. 2014).

181 *See* Jose Zalaquett, *Procesos de Transición a la Democracia y Políticas de Derechos Humanos en América Latina*, *in* PRESENTE Y FUTURO DE LOS DERECHOS HUMANOS 105 (Lorena González Volio ed., 1998) (summarizing the cases of Argentina, Chile, Uruguay, and El Salvador).

182 See Kathryn Sikkink, *From Pariah State to Global Protagonist: Argentina and the Struggle for International Human Rights*, 50.1 LAT. AM. POL. & SOC. 1, 1 (2008); Kathryn Sikkink & Carrie Booth Walling, *Argentina's Contribution to Global Trends*, *in* TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE 301, 308 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006).

183 Some relevant exceptions could be the law establishing the Office of Missing Persons in Sri Lanka, the different Law on Missing Persons from Kosovo, Bosnia and Herzegovina or Croatia. However, most of these laws are on "missing persons" and not on enforced disappearances.

disappearance.[184] A large number of criminal codes in the region[185] include an autonomous crime of enforced disappearance.[186] Of course, the inclusion of such a crime does not necessarily mean that the definition, included in those Latin American criminal codes, is compatible with international instruments.[187] At the same time, the existence of such laws did not necessarily mean that they contributed to the punishment of those responsible for the crime.[188] Mexico has recently adopted the first law in the world to regulate all aspects related to enforced disappearances in a very specific and detailed manner.[189] Given the legal

---

184 Art. 4, Constitución Nacional [Const. Nac.] (Arg.); Constitución Política del Estado [Constitution] Feb. 7, 2009, art. 15.IV and 114.I (Bol.); Constitución Política de Colombia [C.P.] July 4, 1991, art. 12 (Colom.); Constitución Del Ecuador 2008, art. 66.3.c, 80, 120.13, and 129.3 (Ecuador); Constitución Política de los Estados Unidos Mexicanos, CPEUM, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas 27-08-2018 art. 29 & 73.XXI.a (Mex.); National Constitution of Paraguay 1992, art. 5 (Para.); Constitution of the Bolivarian Republic of Venezuela 1999, art. 45 (Venez.). By Law 24.820, Argentina gave constitutional status to the Inter-American Convention on Forced Disappearance of Persons.

185 Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances: Addendum: Mission to Mexico, ¶ 13, U.N. Doc. A/HRC/19/58/Add.2 (Dec. 20, 2011).

186 For the differences, similarities, and difficulties of the Latin American legislation on enforced disappearances *see* Kai Ambos and María Laura Böhm, *El Tipo Penal de la Desaparición Forzada de Personas: Análisis Comparativo-Internacional y Propuesta Legislativa*, http://perma.cc/58M2-JA5F.

187 For problems of the definition of the crime of enforced disappearances in Peru and the challenges in concrete judicial cases, *see* Ivan Meini, *Apuntes sobre la tipificación del delito de desaparición forzada de personas en el Perú*, *in* JUDICIALIZACIÓN DE VIOLACIONES DE DERECHOS HUMANOS: APORTES SUSTANTIVOS Y PROCESALES 99, 100–3 (Víctor Manuel Quinteros ed., 2010); Ivan Meini*, El Concepto Desaparición Forzada en el Delito de Desaparición Forzada de Personas*, *in* JUDICIALIZACIÓN DE VIOLACIONES DE DERECHOS HUMANOS: APORTES SUSTANTIVOS Y PROCESALES 187, 187–90 (Víctor Manuel Quinteros ed., 2010); Luis Vargas, *Tratamiento de la Prueba en el Delito de Desaparición Forzada: Especial Referencia a la Prueba Indiciaria*; *in* JUDICIALIZACIÓN DE VIOLACIONES DE DERECHOS HUMANOS: APORTES SUSTANTIVOS Y PROCESALES 207, 208–210 (Víctor Manuel Quinteros ed., 2010).

188 *See, for example*, Hum. Rts. Council, *supra* note 185; U.N. Comm. on Enforced Disappearances, Concluding Observations on the Report Submitted by Uruguay under Article 29, Paragraph 1, of the Convention, Adopted by the Committee at Its Fourth Session, ¶ 11, U.N. Doc. CED/C/URY/CO/1 (May 8, 2013); U.N. Comm. on Enforced Disappearances, Concluding Observations on the Report Submitted by Paraguay under Article 29, Paragraph 1, of the Convention: Addendum: Information received from Paraguay on Follow-up to the Concluding Observations, ¶¶ 15, U.N. Doc. CED/C/PRY/CO/1/Add.1 (Dec. 31, 2015); Gómez-Palomino v. Peru, Merits, Reparations, and Costs, Order of the Court, Inter-Am. Ct. H.R. (ser. C) No. 136, ¶ 92 (Nov. 22, 2005).

189 Among its key features, the new law standardizes the criminal definition of enforced disappearance, clearly defines the roles of the different government bodies responsible for handling enforced disappearance cases, creates a National Search System and a National Search Commission. Ley General En Materia De Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas, y se reforman y derogan diversas disposiciones del Código Penal Federal y de la Ley General de Salud, Diario Oficial de la Federacion [DOF] 17-11-2017 (Mex.); *see* Zorayda Gallegos, *México Encara la Crisis de los Desaparecidos con una Nueva Ley*,

uncertainty that remains for a person who has been disappeared and for his or her family members,[190] Latin American countries, almost exclusively, have adopted a specific declaration of absence due to enforced disappearance.[191]

These legal provisions are important in many aspects. For instance, recent studies demonstrate that the existence of a national law prohibiting crimes against humanity (including enforced disappearances) doubles the likelihood of initiating a prosecution and increases the chances of successfully convicting the criminals.[192]

B. Latin American Justice Efforts

Latin America is the one region that has made inroads into prosecuting enforced disappearances in national courts.[193] A significant number of Latin American countries have prosecuted officials for enforced disappearances and other acts that constitute international crimes.[194] There are a high number of indictments and trials, including convictions of five former heads of state and a number of high-ranking military, police, and civilian officials for enforced disappearances.[195] No other region in the world can match the Latin American

---

EL PAIS (Oct. 13, 2017, 5:59 PM), http://perma.cc/R82X-U969. An important exception could be the Anti-Enforced or Involuntary Disappearance Act of 2012, Rep. Act No. 10353 (Dec. 21, 2012), http://perma.cc/2447-83J9 (Phil.), which is a very comprehensive law. Another recent Latin American example is the 2016 Peruvian Law on search of disappeared persons. Ley de Búsqueda de Personas Desaparecidas Durante el Período de Violencia 1980-2000, Ley No. 3047, Norma Legal Diario Oficial el Peruano, http://perma.cc/WUE8-L5GB.

190 Hum. Rts. Council, *supra* note 185, at ¶ 2.

191 Law No. 28.413 (Peru); Law No. 24.321, June 8, 1994 (Argentina); Decreto No. 9.140/95, de 4 de Dezembro de 1995, Diário Oficial da União [D.O.U.] de 4.12.1995 (Braz.); Law No. 20377, Agosto 25, 2008, Diario Oficial [D.O.] (Chile); L. 1531, Mayo 23, 2012, Diario Oficial [D.O.] (Colom.); Ley General de Victimas, art. 21, Diario Oficial de la Federación [DOF] 09-01-2013, última reforma DOF 03-01-2017 (Mex.); Uruguay Law No. 17.894. See also in Mexico, the respective laws of the states of Coahuila, Chihuahua and Queretaro.

192 Mark Berlin & Geoff Dancy, *The Difference Law Makes: Domestic Atrocity Laws and Human Rights Prosecutions*, 51 L. & SOC. REV. 533, 560 (2017).

193 Kathryn Sikkink & Carrie Booth Walling, *The Impact of Human Rights Trials in Latin America*, 44 J. OF PEACE RES. 427, 432 (2007) (indicating that fifty-four percent of the human rights trials in transitional periods took place in Latin America comparing with twenty-one percent in Central and Eastern Europe and seventeen percent in Africa).

194 On the legal and judicial challenges faced by lawyers, prosecutors and judges in the early years of the transitional period (among others due to the lack of a specific crime of enforced disappearance, evidentiary difficulties, absence of clear rules of command responsibility), *see generally* MARCELO SANCINETTI & MARCELO FERRANTE, EL DERECHO PENAL EN LA PROTECCION DE LOS DERECHOS HUMANOS (1st ed. 1999).

195 Naomi Roht-Arriaza, *After Amnesties are Gone: Latin American National Courts and the new Contours of the Fight Against Impunity*, 37 HUM. RTS. Q. 342, 342 (2015).

progress in this area. Argentina[196] and Chile[197] are in the vanguard with hundreds of people processed and convicted for enforced disappearances. There are also a few impressive advances in many other parts of Latin America. Courts convicted former heads of state, such as Fujimori in Peru[198] and Bordaberry in Uruguay, in part for their responsibility in cases of enforced disappearances.[199] In Guatemala, courts tried and convicted Ríos Montt for genocide (including acts of enforced disappearances), although his conviction was later partially annulled.[200] In Colombia, as well as in other countries such as Peru[201] and Guatemala,[202] there have been a few important advances, even though there are pockets of impunity and sometimes grave relapses.[203] All these efforts have created a unique and rich (although sometimes problematic)[204] Latin American case law on enforced disappearances.[205] The advances have not been easy[206] and have provoked strong

196 As of December 31, 2017 there were 864 persons convicted for crimes against humanity (including enforced disappearances). CENTRO DE ESTUDIOS LEGALES Y SOCIALES (CELS), PROCESO DE JUSTICIA ESTADÍSTICAS, http://perma.cc/5JM7-2B38. *See* Catalina Smulovitz, "*The Past is Never Dead": Accountability and Justice for Past Human Rights Violations in Argentina*, *in* AFTER OPPRESSION: TRANSITIONAL JUSTICE IN LATIN AMERICA AND EASTERN EUROPE (Mónica Serrano & Vesselin Popovski eds., 2012).

197 Cath Collins, *Chile a Más de dos Décadas de Justicia de Transición*, 51.2 POLÍTICA REV. DE CIENCIA POLÍTICA 79, 80 (2013).

198 RONALD GAMARRA HERRERA, JUZGAR A UN JEFE DE ESTADO: LECCIONES DEL PROCESO AL EXPRESIDENTE ALBERTO FUJIMORI POR DELITOS CONTRA LOS DRECHOS HUMANOS (2010); Jo-Marie Burt, *Guilty as Charged: The Trial of Former Peruvian President Alberto Fujimori For Human Rights Violations,* 3 INT'L J. OF TRANSITIONAL JUST. 384 (2009).

199 GABRIELA FRIED & FRANCESCA LESSA, LUCHAS CONTRA LA IMPUNIDAD: URUGUAY 1985–2011 (2011).

200 OPEN SOCIETY JUSTICE INITIATIVE, JUDGING A DICTATOR: THE TRIAL OF GUATEMALA'S RÍOS MONTT 1–3 (2013).

201 *See, for example*, CARLOS RIVERA PAZ, UNA SENTENCIA HISTÓRICA: LA DESAPARICIÓN FORZADA DE ERNESTO CASTILLO PAEZ (2006).

202 *See, for example*, Jo-Marie Burt & Paulo Estradoa, *Four Retired Senior Military Officers Found Guilty in Molina Theissen Case*, INT'L JUST. MONITOR (May 30, 2018), http://perma.cc/MR6G-WSAP.

203 *See, for example*, Acuerdo Final para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera, opened for signature Nov. 24, 2016, http://perma.cc/8DPC-HCA9 (a peace agreement providing for the creation of a special jurisdiction for peace that will be responsible for trying cases of enforced disappearances that occurred during the internal armed conflict); Hernando Salazar, *Primer General Condenado Por Desaparición Forzada en Colombia*, BBC MUNDO (Apr. 29, 2011) http://perma.cc/RDX3-U3GL.

204 *See, for example*, Uki Goni, *Fury in Argentina over Ruling That Could See Human Rights Abusers Walk Free*, THE GUARDIAN (May 4, 2017, 4:08 PM), http://perma.cc/RUA9-NVMY.

205 DUE PROCESS OF LAW FOUNDATION, DIGEST OF LATIN AMERICAN JURISPRUDENCE ON INTERNATIONAL CRIMES VOL. 1 & 2 (2000).

206 *See, for example*, JEFFREY DAVIS, SEEKING HUMAN RIGHTS JUSTICE IN LATIN AMERICA: TRUTH, EXTRA-TERRITORIAL COURTS, AND THE PROCESS OF JUSTICE (2014) (explaining the advances, challenges and setbacks in justice processes in Guatemala and El Salvador).

political, ethical and legal debates on the viability of justice and the proper balance between truth and justice.[207] More importantly, there is still a long way to go in other countries such as Mexico, Brazil, Honduras, or Paraguay where impunity is prevalent.[208] As the search for justice was not always unidirectional in favor of accountability, on a parallel yet somewhat contradictory track, in the past the region has adopted laws providing amnesty (or laws with similar effects) for those who commit enforced disappearances and other international crimes.[209] In a first wave, most national courts ratified the constitutionality of such laws.[210] In response, Latin American organizations turned to international bodies[211] and the Inter-American system, which led to the development of jurisprudence ruling that amnesty laws were not applicable in enforced disappearances cases and other grave human rights abuses.[212] Additional steps kept prosecutions open in spite of amnesty laws. One strategy was a new round of challenges to those laws, this time

---

207 For earlier debates, *see, for example*, Jaime Malamud-Goti, *Transitional Governments in the Breach: Why Punish State Criminals?*, 12 HUM. RTS. Q. 1 (1990); Juan E. Méndez, *Accountability for Past Abuses*, 19 HUM. RTS. Q. 255, 256 (1997); Carlos Nino, *The Duty to Punish Past Abuses of Human Rights Put into Context: The Case of Argentina*, 100 YALE L.J. 2619; (1991); José Zalaquett, *Confronting Human Rights Violations Committed by Former Governments: Applicable Principles and Political Constraints*, 13 HAMLINE L. REV. 623, 628 (1990).

208 *See, for example*, Concluding Obs. on the Rep. Sub. by Paraguay, *supra* note 53.

209 Robert Norris, *Leyes de Impunidad y los Derechos Humanos en las Américas: una Respuesta Legal*, 15 REVISTA DEL INSTITUTO INTERAMERICANO DE DERECHOS HUMANOS 47 (1992).

210 *See* Corte Suprema de Justicia [C.S.J.] [Supreme Court], 25 Agosto 1990, "Recourse of Inconstitutionality of Decree Law No. 2191" REVISTA GACETA JURIDICA [R.G.J.] No. 27.640, p.15 (Chile); Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 22/06/1987, "Ramón Juan Alberto v. Otros" Fallos 310:1162 (1997-310-1162) (Arg.); Constitutional Chamber of the Supreme Court of Justice of El Salvador, General Amnesty Act for the Consolidation of Peace, Application for Constitutional Review, 24-97 21-98 (September 26, 2000); Sentence-97/21-98 Constitutional Chamber, May 2, 1988. "D., J.; M., N.; M., F.; M., O.; B., J. Complaint. Unconstitutional Law 15.848. Arts. 1, 2, 3 y 4" (F. Nº 112/ 87) and Decision of July 14, 1995 of the Tenth Criminal Chamber of the Superior Court of Lima, Peru. The most recent example of this trend is the decision of the Supreme Federal Court of Brazil. *See* S.T.F., 29.04.2010 (Braz.).

211 Par Engstrom & Gabriel Pereira, *From Amnesty to Accountability: The Ebbs and Flow in the Search for Justice in Argentina*, *in* AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES 97 (Francesca Lessa & Leigh A. Payne eds., 2012).

212 The first IACHR cases were on Argentina, Uruguay and El Salvador in 1992 and several years later, in 2001, the Court ruled in the case of Barrios Altos. Masacre Las Hojas v. El Salvador, Case 10.287, Inter-Am. Comm'n H.R., Report No. 26/92, OEA/Ser.L/V/II.83, doc. 14 at 83 (1993); Argentina, Cases 10.147, 10.181, 10.240, 10.262, 10.309 and 10.311. Inter-Am. Comm'n H.R., Report No. 28/92, OEA/Ser.L/V/II.83, doc. 14 (1992–1993); Uruguay, Cases 10.029, 10.036, 10.145, 10.305, 10.372, 10.373, 10.374 and 10.375, Inter-Am. Comm'n H.R., Report No. 29/92, OEA/Ser.L/V/II.83, doc. 14 (1992); Barrios Altos v. Peru, Merits Judgement, Inter-Am. Ct. H.R. (ser. C) No. 75, ¶ 41 (2001).

based on the decisions of the Inter-American system.[213] Thus, Latin America, this time through its judges,[214] developed very important jurisprudential theories, such as the continuous nature of the crime of enforced disappearance,[215] to avoid the application of statutes of limitation[216] or to overcome, as much as possible, the effects of amnesty laws.[217]

Today, in many Latin American countries, the discussion has moved from the idea of total impunity to the issue of how to prosecute the criminals in enforced disappearance cases.[218] The new issues involved range from prosecuting complex and sensitive kinds of crimes, to organizing trials involving multiple defendants and victims. Prosecutions and trials attempt to go beyond the triggermen and reach the high-ranking military and civilian officials, as well as the financial and political figures who were complicit in the crimes.[219] In addition,

---

213 Lisa J. LaPlante, *Outlawing Amnesty: The Return of Criminal Justice in Transitional Justice Schemes*, 49 VA. J. INT'L L. 915, 974–82 (2009).

214 CATH COLLINS, POST-TRANSITIONAL JUSTICE: HUMAN RIGHTS TRIALS IN CHILE AND EL SALVADOR (2010).

215 *See, for example*, Resolución de la Corte de Constitucionalidad de Fecha 7 de julio de 2009, Expediente No. 926-2008 (Guat.); Angélica González, *Desaparición Forzada en Guatemala el Caso Choatalúm: Tres Resoluciones Importantes, un Mismo Caso*, 13 APORTES DPLF 25 (2010).

216 *See* Fannie LaFontaine, *No Amnesty or Statute of Limitation for Enforced Disappearances: The Sandoval Case before the Supreme Court of Chile*, 3 J. INT'L CRIM. JUST. 469 (2005).

217 *See* Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 24/08/2004, "Arancibia Clavel, Enrique Lautaro s/ homicidio calificado y asociación ilícita -causa no. 259" (Arg.); Constitutional Court of Bolivia, Sentence of November 12, 2001, Case of José Carlos Trujillo; Corte Suprema de Justicia [C.S.J.] [Supreme Court], 8 agosto 2000, "Texto íntegro del fallo de la Corte Suprema" Rol de la causa: 1920-2000, Estudios Publicos, p. 79 (Chile); Corte Constitucional [C.C.] [Constitutional Court], julio 3, 2002, Sentencia C-580/02 (Colom.); Retroactividad de la ley. Es diferente a su aplicacion retroactiva, Pleno de la Suprema Corte de Justicia [SCJN], Semanario Judicial de la Federacion y su Gaceta, Novena Epoca, tomo XX, Julio de 2004, Tesis: P./J. 87/2004, Pagina 415 (Mex.); Constitutional Court of Peru, Sentence of December 9, 2004, File No. 2798-04-HC/TC, Case of Gabriel Orlando Vera Navarrete; Supreme Court of Uruguay, Sentence of April 17, 2002, Case of Gavasso; Supreme Court of Venezuela, Sentence of August 10, 2007, Exp. No. 06- 1656, Appeal Case Review - Marco Antonio.

218 There are exceptions such as Brazil. *See* Nina Schneider, *Impunity in Post-Authoritarian Brazil: The Supreme Court's Recent Verdict on the Amnesty Law*, 90 EUR. REV. OF LAT. AM. AND CARIBBEAN STUD. 39 (2011); Leandro Ayres França, *The Inter-American Court of Human Rights'* Gomes Lund et al. (Guerrilha do Araguaia) v. Brazil Judgment *and the Brazilian Federal Supreme Court Judgment on the Constitutionality and Conventionality of the 1979 Amnesty Law*, 7 INTER-AM. & EUR. HUM. RTS. J. 141, 148–53 (2014). Mexico has a concerning pattern of impunity for both the disappearances that originated in the so-called "Dirty War" of the '70s and '80s and the current ones. *See, for example*, José Antonio Guevara Bermúdez & Lucía Guadalupe Chávez Vargas, *Impunity in the Context of Enforced Disappearance in Mexico*, 14 EUNOMIA, REVISTA EN CULTURA DE LA LEGALIDAD 162 (2018).

219 For instance, the conviction in 2010 of Juan Carlos Blanco, the former Minister of Foreign Affairs of Uruguay for the disappearance of Elena Quinteros. FRANCESCA LESSA, MEMORY AND TRANSITIONAL JUSTICE IN ARGENTINA AND URUGUAY: AGAINST IMPUNITY 149 (2013). In Argentina there are several cases related to the participation or support of businesses and their

there is a final set of issues arising from post-conviction dilemmas related to alternatives to imprisonment and the role of sentencing in enforced disappearances crimes.[220] A new wave of prosecutions is bringing to justice other non-traditional civil actors for their role in the commission of this crime. A federal court in Argentina convicted a priest for his participation in enforced disappearances cases[221] and another Argentinean federal court recently convicted several judges for their complicity in enforced disappearances.[222] Alongside these efforts, Latin Americans also pursued justice in foreign courts for enforced disappearances victims when the amnesty laws or impunity scheme were in place or when the victims or the perpetrators were in a foreign country. Some examples range from the use of the Alien Torts Claim Act in the United States[223] to the invocation of universal jurisdiction in the famous Pinochet case[224] and the conviction of former Argentine naval officer Scilingo in Spain.[225] In some of these cases, Latin American lawyers[226] lead such efforts. Courts in Italy, Sweden, France, Switzerland, Belgium, and Germany have also heard cases of enforced disappearances in Latin America.[227] These Latin American efforts contributed to the development of case law on universal jurisdiction and on the state's responsibility in prosecuting enforced disappearances cases in other countries.

---

executives with the disappearance of many workers and union leaders. *La Fronterita Sugar Company: Six Businessmen Will Be Questioned over Crimes against Humanity*, CENTRO DE ESTUDIOS LEGALES Y SOCIALES (Apr. 25, 2018), http://perma.cc/K7B9-CAGM.

220 Roht-Arriaza, *supra* note 195, at 377–80.

221 *Christian Von Wernich*, TRIAL INT'L (May 31, 2016), http://perma.cc/SB6A-TSVX.

222 *28 Ex-Officials of Argentina's Military Dictatorship Sentenced*, TELESUR (July 26, 2017), http://perma.cc/5L5S-LDKS.

223 Initiated in cases of disappearances with *Forti v. Suarez-Mason*, 694 F. Supp. 707 (N.D. Cal. 1988); *see also Daimler AG v. Bauman*, 571 U.S. 117, 139 (2014); *Xuncax v. Gramajo*, 886 F. Supp. 162 (D. Mass. 1995); BETH STEPHENS ET AL., INTERNATIONAL HUMAN RIGHTS LITIGATION IN U.S. COURTS 167–69 (2008).

224 Juan E. Garcé, *Kissinger and Pinochet Facing Universal Jurisdiction, in* THE PINOCHET CASE: ORIGINS, PROGRESS AND IMPLICATIONS 25–42 (Madeleine Davis ed., 2003).

225 Manuel Marraco, *Scilingo, Condenado a 640 Años de Cárcel Por Delitos de lesa Humanidad Durante la Dictadura Argentina*, EL MUNDO (Apr. 19, 2005, 10:38 PM), http://perma.cc/4SYW-EMST; *See also* Mugambi Jouet, *Spain's Expanded Universal Jurisdiction to Prosecute Human Rights Abuses in Latin America, China, and Beyond*, 35 GA. J. INT'L & COMP. L. 495, 505–8 (2007).

226 Consider, for example, Carlos Slepoy, an Argentine lawyer residing in Madrid, or those with many connections to Latin America such as Manuel Olle, Joan Garces, Ana Maria Chapvez de Seropaj, or Gregorio Dionis. *See* AMNESTY INTERNATIONAL, SWEDEN: END IMPUNITY THROUGH UNIVERSAL JURISDICTION, http://perma.cc/2ZNK-K65R; *see also* Roht-Arriaza, 8ff, 208ff

227 *See generally* FIONA MCKAY, UNIVERSAL JURISDICTION IN EUROPE: CRIMINAL PROSECUTIONS IN EUROPE SINCE 1990 FOR WAR CRIMES, CRIMES AGAINST HUMANITY, TORTURE AND GENOCIDE 18–21, 24–33, 41–43 (1999); Chandra Lekha Sriram, *Revolutions in Accountability: New Approaches to Past Abuses*, 19 AM. U. INT'L L. REV. 301 (2003).

These cases generated or consolidated the cascade[228] or Pinochet effect.[229] This effect meant the opening, reopening, or impetus for human rights trials. However, the so-called Pinochet effect cannot obscure the processes that already existed in Latin America.[230] In a parallel process, some Latin American judges also supported the efforts to obtain justice in cases of enforced disappearances in other countries.[231] Furthermore, some Latin American judges are exercising universal jurisdiction for grave human rights violations, including enforced disappearances in Spain.[232] Some call this process the "Euro-American Human Rights Dialogue."[233]

All of these efforts for justice and the responses at the national, transnational and international levels transformed the view that many Latin Americans had of judges.[234] During the dictatorships and civil wars, judges sided with the government perpetrators of disappearances, systematically rejecting attempts to find justice through habeas corpus.[235] Today, however, many Latin American

---

228 Ellen Lutz & Kathryn Sikkink, *The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America*, 2 CHI. J. OF INT'L L. 1 (2001).

229 NAOMI ROHT-ARRIAZA, THE PINOCHET EFFECT: TRANSNATIONAL JUSTICE IN THE AGE OF HUMAN RIGHTS 118–49 (2005).

230 *See* David Pion-Berlin, *The Pinochet Case and Human Rights Progress in Chile: Was Europe a Catalyst, Cause or Inconsequential?*, 36 J. LAT. AM. STUD. 479 (2004); JUAN GUZMÁN TAPIA, EN EL BORDE DEL MUNDO: MEMORIAS DEL JUEZ QUE PROCESÓ A PINOCHET 488 (2005) (explaining the judicial proceedings against Pinochet in Chile proceeding his arrest in London). *See generally* EDUARDO ALFONSO ROSALES HERRERA, EL JUICIO DEL SIGLO: AUGUSTO PINOCHET FRENTE AL DERECHO Y LA POLÍTICA INTERNACIONAL (2007).

231 Of particular importance are the decisions of the Mexican Supreme Court authorizing the extradition of an ex-military Argentine to Spain for enforced disappearances in Argentina or the Chilean judiciary allowing the extradition of dictator Alberto Fujimori to Peru. *See* ELIZABETH SALMÓN, LA CONDENA DE ALBERTO FUJIMORI Y EL DERECHO INTERNACIONAL DE LOS DERECHOS HUMANOS: UN CAPÍTULO FUNDAMENTAL DE LA LUCHA CONTRA LA IMPUNIDAD EN PERÚ (2014) (the Chilean Supreme Court authorizing the extradition of former President Fujimori to Peru); Luis Benavides, *Introductory Note to Supreme Court of Mexico: Decision on the Extradition of Ricardo Miguel Cavallo*, 42 I.L.M. 884, 884–87 (2003); Javier Dondé-Matute, *International Criminal Law before the Supreme Court of Mexico*, 10 INT'L CRIM. L. REV., 571, 572–575 (2010); *But see* Sentence of December 12, 2007, Constitutional Court (Guatemala), File 3380-2007 (the decision of the Constitutional Court of Guatemala rejecting the request for arrest and extradition of Guatemalan military officers accused of genocide before the Spanish courts).

232 Javier Chinchón, *El tratamiento Judicial de los Crímenes de la Guerra Civil y el Franquismo en España: Una Visión de Conjunto Desde el Derecho Internacional*, *in* 67 CUADERNOS DEUSTO DE DERECHOS HUMANOS 1, 91 (2012).

233 Juan J. Garcia Blesa & Victor L. Gutierrez Castillo, *The Euro-American Human Rights Dialogue and the Crimes of the Francoist Regime*, 6 INTER-AM. & EUR. HUM. RTS. J. 61 (2013).

234 Eugenio Raúl Zaffaroni, *Los Aportes y Desarrollos del Poder Judicial en la Lucha contra la Impunidad*, *in* VERDAD Y JUSTICIA: HOMENAJE A EMILIO F. MIGNONE 47 (Juan E. Mendez et al. eds., 2001).

235 *Landmark Human Rights Convictions for Former Judges*, THE BUENOS AIRES HERALD (July 28, 2017), http://perma.cc/92TQ-EUZX.

judges appointed post-conflict and -dictatorship often confront political powers and question their decisions to ignore the plights of the victims of enforced disappearances.[236] Judges, lawyers, and victims are taking a leading role in dismantling political alliances.[237] In this process, the judiciary is transforming itself into a relevant political actor to deal with disappearances.[238]

The journey for justice has been far from linear. It reveals an array of inventive, flexible, varied, and versatile strategies, including the use of diverse types of litigation at different stages, both nationally and internationally, responding to opportunities and dodging obstacles.[239]

C. Seeking Truth for Enforced Disappearances

The experience of Latin America has helped the families of disappeared persons to be understood as victims of enforced disappearances and as holders of a right to know the truth.[240] As the U.N. Working Group on Enforced Disappearances states, "[t]he right to the truth in relation to enforced disappearances means the right to know about the progress and results of an investigation, the fate or the whereabouts of the disappeared persons, and the circumstances of the disappearances, and the identity of the perpetrator(s)."[241] Latin America also contributed to the understanding of the legal, ethical, moral, and political reason for seeking the truth.[242] The Inter-American System made key contributions to give particular legal meaning to this right and duty.[243] The IACHR summarized the contributions of the Inter-American System to understanding the content of the right to truth in the following manner:

> The first dimension [of the right to truth] is the right of the victims and their family members to know the truth about the events that led to serious

---

236 Alexandra Huneeus et al., *Cultures of Legality: Judicialization and Political Activism in Contemporary Latin America*, *in* CULTURES OF LEGALITY 3 (Javier Couso et al. eds., 2010).

237 *See* COLLINS, *supra* note 214.

238 EZEQUIEL A. GONZÁLEZ-OCANTOS, SHIFTING LEGAL VISIONS: JUDICIAL CHANGE AND HUMAN RIGHTS TRIALS IN LATIN AMERICA 1–26 (2016) (explaining the move from unresponsive to responsive judiciaries in Latin America by responding to the victims' demands for criminal accountability).

239 HELEN DUFFY, STRATEGIC HUMAN RIGHTS LITIGATION: UNDERSTANDING AND MAXIMISING IMPACT 171, 180 (2018).

240 *See generally* Ricardo A. Sunga III, *On Locating the Rights of Lost*, 45 J. MARSHALL L. REV. 1051 (2012).

241 U.N. Working Group on Enforced or Involuntary Disappearances, General Comment on the Right to the Truth in Relation to Enforced Disappearances, U.N. Doc. A/HRC/16/48, at 3 ¶ 1 (2010).

242 *See* José Zalaquett, *La Reconstrucción de la Unidad Nacional y el Legado de Violaciones de los Derechos Humanos,* 2 REVISTA PERSPECTIVAS 385 (1999).

243 Inter-Am. Cmm'n H.R., *The Right to Truth in the Americas*, OEA/Ser.L/V/II.152, doc. 2 (2014).

> violations of human rights, and the right to know the identity of those who played a role in the violations. This means that the right to the truth creates an obligation upon States to clarify and investigate the facts, prosecute and punish those responsible for cases of serious human rights violations, and, depending on the circumstances of each case, to guarantee access to the information available in State facilities and files concerning serious human rights violations.
>
> Secondly, a principle has been established to the effect that the holders of this right are not just the victims and their family members, but also society as a whole. The Commission has maintained that greater society has the inalienable right to know the truth about past events, as well as the motives and circumstances in which aberrant crimes came to be committed, in order to prevent recurrence of such acts in the future.[244]

Latin American courts and tribunals have expressly reaffirmed the right to the truth in cases of enforced disappearances.[245] For instance, the Mexican Supreme Court considered that the right to know the truth allows the relatives of a victim of an enforced disappearance to have access to the content of the criminal investigation, even if the decision was not to prosecute or continue with the investigation.[246] Other regions copied, transformed, and adopted the initiatives undertaken in Latin America since the 1980s. Latin America's methods in particular utilized truth commissions to underscore the practice of enforced disappearances.[247] Truth commissions explained how enforced disappearances took place in each country, the repressive strategies used by governments in carrying out disappearances, the temporal and geographic scope of the practice, the victims of the crime, and the institutional responsibilities for those disappearances. In some cases, truth commissions named specific individuals accused of committing disappearances. Some truth commissions started search

---

244 *Id.* at ¶ 14–15.

245 Corte Suprema de Justicia de la Nacion [CSJN] [National Supreme Court of Justice], 15/10/1998, "Urteaga, Facundo Raúl c. Estado Nacional –Estado Mayor Conjunto de las FF.AA.– s. amparo ley 16.986" (Arg.); Corte Constitucional [C.C.] [Constitutional Court], junio 24, 2003, Sentencia T-249/03 (Colom.); Corte Suprema de Justicia [C.S.J.] [Supreme Court], Criminal Chamber, Decision on appeal, of July 11, 2007, Case Orlando César Caballero Montalvo, Tribunal Superior de Antioquia (Colom.); El Salvador, Supreme Court of Justice, Constitutional Chamber, Judgment 665-2010 of February 5, 2014; Amparo en Revisión 934/2016, Second Chamber, Suprema Corte de Justicia [SCJN], Seminario Judicial de la Federacion y su Gaceta, Decima Epoca, tomo II, Abril de 2017, Tesis: (I Region)8o.50 A (10a.), Pagina 1780 (Mex.) [hereinafter Seminario Judicial de la Federacion y su Gaceta]; Peru, Judgment of March 18, 2004, File No. 2488-2002-HC/TC Piura, Case Genaro Villegas Namuche.

246 Seminario Judicial de la Federacion y su Gaceta, *supra* note 245.

247 *See* PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS (2002).

plans to find those who had disappeared, but with limited success.[248] Truth Commissions as a strategy for accountability came to international attention in the 1980s and early 1990s because of the events in Latin America.[249] Since then, almost all Latin American countries had a truth commission to look into the issue of enforced disappearances.[250] In Mexico, despite the fact that there was never a national truth commission for the events in the so-called Dirty War, there was a local Truth Commission in the State of Guerrero and on December 2018, the new Mexican President created a truth commission to investigate the disappearance of 43 students in 2014 in Ayotzinapa.[251] Latin America also developed several "unofficial" truth projects rooted and driven by civil society groups, as replacements, precursors, or complements to truth commissions.[252] These efforts have been essential to avoid denial or revisionist theories and to dismiss such theories.[253] Truth Commissions have helped to debunk the interpretative monopoly exercised by the perpetrators of the disappearances that denied, relativized, or justified those disappearances.[254] Truth Commissions also have prevented the events of the past from being silenced or forgotten.[255] At the same time, those truth-seeking efforts coexist with unsettling accounts of perpetrators' confessions and explanations.[256] In many Latin American countries, the work of those official and unofficial truth commissions was highly contested and the

---

248 *See generally* TRANSITIONAL JUSTICE IN LATIN AMERICA: THE UNEVEN ROAD FROM IMPUNITY TOWARDS ACCOUNTABILITY (Elin Skaar et al. eds., 2016).

249 ALISON BISSET, TRUTH COMMISSIONS AND CRIMINAL COURTS 48 (2014); Naomi Roht-Arriaza, *Truth Commissions and Amnesties in Latin America: The Second Generation*, 92 AM. SOC'Y INT'L L. PROC. 313, 313–15 (1998).

250 *Truth Commission Digital Collection*, UNITED STATES INSTITUTE OF PEACE (Mar. 16, 2011), http://perma.cc/JP5K-SACN.

251 *See* COMISIÓN DE LA VERDAD DE GUERRERO, INFORME FINAL DE ACTIVIDADES (Oct. 15, 2014), http://perma.cc/F5FH-EUQJ. Paulina Villegas, *Mexico's New President Restarts Investigation Into 43 Missing Students,* N.Y. TIMES (Dec. 3, 2018), http://www.nytimes.com/2018/12/03/world/americas/mexico-missing-students-president.html.

252 Louis Bickford, *Unofficial Truth Projects*, 29 HUM. RTS. Q. 994, 1004–12 (2007) (referring to the Nunca Mas Report in Brazil done by Archdiocese of São Paulo, the Uruguay Nunca Mas Report, prepared by the NGO SERPAJ and the Proyecto de Recuperación de la Memoria Historia, REMHI, project in Guatemala led by the Catholic Church).

253 Martin Imbleau, *Initial Truth Establishment by Transitional Bodies and the Fight against Denial*, *in* TRUTH COMMISSIONS AND COURTS: THE TENSION BETWEEN CRIMINAL JUSTICE AND THE SEARCH FOR TRUTH 159 (William A. Schabas & Shane Darcy eds., 2004).

254 EMILIO CRENZEL, LA HISTORIA POLITICA DEL NUNCA MÁS: LA MEMORIA DE LAS DEASPARICIONES EN LA ARGENTINA (2014); Emilio Crenzel, *The Narrative of the Disappearances in Argentina: The Nunca Más Report*, 32 BULL. LATIN AM. RES. 174–92 (2013).

255 *See* Crenzel, *The Narrative of the Disappearances*, *supra* note 254, at 174-192.

256 LEIGH PAYNE, UNSETTLING ACCOUNTS: NEITHER TRUTH NOR RECONCILIATION IN CONFESSIONS OF STATE VIOLENCE 279–92 (2008).

findings rejected by some governments and/or armed forces.[257] The challengers argued that these truth efforts would reopen past wounds, hamper reconciliation efforts, were one sided, or used flawed methodologies.[258] In order to seek out and identify those who disappeared, as part of the right to know the truth, several Latin American countries developed search techniques, genetic capabilities, and established forensic anthropology teams like those of Argentina, Peru and Guatemala,[259] or specialized services of forensic medicine like in Chile.[260] The use of forensic teams to lead the search for remains of the disappeared spread from Latin America to other parts of the world.[261] Prior to the developments in the region, there were no such specialized forensic teams. Of course, those forensic efforts came with strong ethical, legal, social, and political challenges.[262] As an example, the Argentine Forensic Anthropology Team (EAAF) pioneered this field since its creation in 1984. The EAAF focused on the large number of disappeared persons in Argentina, developing a methodology that would open a "new era of forensic anthropologist involvement in global investigations in the aftermath of political violence."[263] Particularly, the new methodology included developing trust and working closely with families in the search, recovery, and identification of the disappeared in Argentina.[264] The EAAF provided its expertise to assist in Latin American countries: Bolivia, Brazil, Colombia, Chile El Salvador, Guatemala,

---

257 *See, for example*, MARGARET POPKIN, PEACE WITHOUT JUSTICE: OBSTACLES TO BUILDING THE RULE OF LAW IN EL SALVADOR 121–22, 160 (2000) (explaining how the Salvadorian truth commission report was criticized by the military high command and by the President of the country).

258 *Id.*

259 *See* LUIS FONDEBRIDER ET AL., FORENSIC ARCHAEOLOGY: A GLOBAL PERSPECTIVE 369–78, 389–406, 463–78, 499–505 (W.J. Mike Groen et al., eds., 2015); Silva Dutrénit Bielous, *Los Equipos de Antropología Forense en América Latina: Coadyuvantes en el Camino de la Verdad y la Justicia*, 3 PUBLICACIÓN DE LA RED UNIVERSITARIA SOBRE DERECHOS HUMANOS Y DEMOCRATIZACIÓN PARA AMÉRICA LATINA 25 (2012); *see generally* ADAM ROSENBLATT, DIGGING FOR THE DISAPPEARED: FORENSIC SCIENCE AFTER ATROCITY (2015).

260 Isabel Torres Dujisin, *El Rol del Servicio Médico Legal (SML) en la Identificación de los Detenidos Desaparecidos en Chile*, 31 REVISTA ESTUDIOS 157 (2014).

261 Shuala M. Drawdy & Cheryl Katzmarzyk, *The Missing Files: The Experience of the International Committee of the Red Cross*, *in* MISSING PERSONS: MULTIDISCIPLINARY PERSPECTIVES ON THE DISAPPEARED 60 (Derek Congram ed., 2016) (explaining that, in contrast with the rich Latin American history in forensic investigations, Africa and Asia have been slower to initiate large-scale missing persons projects and they still lack strong capacity in forensic science and the array of forensic sciences practiced is limited).

262 Victor B. Penchaszadeh, *Ethical, Legal and Social Issues in Restoring Genetic Identity after Forced Disappearance and Suppression of Identity in Argentina*, 6 J. CMTY. GENETICS 207 (2015).

263 Douglas H. Ubelaker, *A History of Forensic Anthropology*, 165.4 AM. J. PHYSICAL ANTHROPOLOGY 915, 918 (2018).

264 Luis Fondebrider, *Forensic Anthropology and the Investigation of Political Violence: Lessons Learned from Latin America and the Balkans, in* NECROPOLITICS: MASS GRAVES AND EXHUMATIONS IN THE AGE OF HUMAN RIGHTS 41–52 (Francisco Ferrandiz & Antonius C. G. M. Robben eds., 2015).

Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela. Countries from other regions received the support of the EAAF including Angola, Côte d'Ivoire, Cyprus, Democratic Republic of the Congo, Ethiopia, Indonesia, Kenya, Morocco, Namibia, Philippines, Romania, Sierra Leone, South Africa, Sudan, Togo, and Zimbabwe. The EAAF also worked with international efforts in Bosnia, Croatia, Georgia/Abkhazia, Haiti, Iraq, Kosovo, Philippines, and Timor-Leste.[265]

Due to the demands made by family associations, civil society organizations, and allies, Latin America, more than any other region[266] with the exception of the Balkans,[267] also adopted national search plans like in Colombia or Peru[268] or national commissions for search, like in El Salvador, Colombia,[269] and Argentina,[270] in order to search for and identify disappeared persons. Some commissions in Argentina and El Salvador are specialized in searching for disappeared children.[271]

There have also been other legal and institutional developments. For instance, the laws of access to information that proliferated throughout Latin America stipulate that information on human rights violations, including enforced

---

265 Luis Fondebrider, *The Application of Forensic Anthropology to the Investigation of Cases of Political Violence: Perspectives from South America*, *in* HANDBOOK OF FORENSIC ANTHROPOLOGY AND ARCHAEOLOGY 65–74 (Soren Blau & Douglas H. Ubelaker eds., 2016).

266 Patricio Galella, *Privatising the Search and Identification of Human Remains: The Case of Spain*, 1 HUM. REMAINS & VIOLENCE 57 (2015) (highlighting the absence of an official policy aimed at the search of those who disappeared during the Spanish Civil War).

267 *See, for example*, *Western Balkans*, INT'L COMM'N ON MISSING PERSONS, http://perma.cc/M6TQ-DH9Q. However, the search in the Western Balkans was on missing persons during the war and genocide in that area. Some of those missing could qualify as victims of enforced disappearances.

268 *See, for example*, Int'l Comm'n on Missing Persons, Informe de ICMP: Respuesta de Colombia a las Desapariciones Forzadas: Panorama General y Recomendaciones, ICMP.COS.110.3.spa.doc (Apr. 2008); The 2016 Peruvian Law on the Search for disappeared persons mandates the adoption of a National Search Plan. Such plan was adopted on December 25, 2016. MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS, PLAN NACIONAL PARA LA BUSQÚEDA DE PERSONAS DESAPARECIDAS (1980-2000) (2016), http://perma.cc/YVS2-L2GR.

269 For example, the peace agreement in Colombia created the Unit for the Search of Disappeared Persons. Decreto 589, abril 5, 2017, Diario Oficial [D.O.] (Colom.). In El Salvador, there are two commissions: the National Commission for the Search of children who disappeared during the internal armed conflict in El Salvador and the recently created National Commission for the Search of Disappeared People in El Salvador by Presidential Decree No. 33 of August 21, 2017. 63 Gaceta Parlamentaria Anexo IV Número 4884-IV (Oct. 12, 2017).

270 *See* Ministerio del Interior Disposición 1392/98 (Comisión Nacional por el Derecho a la Identidad 2007) (Arg.); Ministerio del Interior Resolución 1392/98 (Comisión Nacional por el Derecho a la Identidad 2007) (Arg.); Law No. 25.457, Sept. 5, 2011, [29.727] B.O. (Arg.).

271 *See, for example*, Comisión Nacional de Búsqueda de Niñas y Niños Desaparecidos Durante el Conflicto Armado Interno, Origen, Misión, Visión, Atribuciones y Resultados Obtenidos por la CNB (May 2016), http://perma.cc/9KWQ-UGB8.

disappearances, cannot be restricted.[272] Some Latin American countries gave ombudspersons a role to search for the disappeared, such as the Human Rights Ombudsman of Guatemala.[273] In some countries, there were even "trials for the truth" (*juicios por la verdad*) whose purpose was "not judgement and condemnation of criminals accused of serious human rights violations, but, rather, via establishment and clarification of facts, knowledge of the victim's fate, coupled with legal recognition of the factual truth."[274] However, despite all these and other initiatives,[275] most of the forcibly disappeared in Latin America are never found, and their fates remain unknown.[276] For instance, the Mexican Government

---

272 Inter-Am. Comm'n H.R., Office of the Special Rapporteur for Freedom of Expression, *The Right to Access to Public Information in the Americas: Inter-American Standards and Comparison of Legal Frameworks*, OEA/Ser.L/V/II.CIDH/RELE/INF. 7/12 ¶ 355 (Dec. 30, 2011); John D. Ciorciari & Jesse M. Franzblau, *Hidden Files: Archival Sharing, Accountability, and the Right to the Truth*, 46 COLUM. HUM. RTS. L. REV. 1, 17-18 (2014).

273 Código Procesal Penal art. 467.2(a) (Centro Nacional de Anàlisis y Documentación Judicial 2014) (Guat.).

274 Sévane Garibian, *Ghosts Also Die: Resisting Disappearance through the 'Right to the Truth' and the Juicios por la Verdad in Argentina*, 12 J. INT'L CRIM. JUST. 515, 518 (2014).

275 Other initiatives to obtain information about the fate or whereabouts of the disappeared failed. For example, the Mesa de Diálogo in Chile. *See* Mario I. Aguilar, *The Disappeared and the* Mesa de Diálogo *in Chile 1999–2001: Searching for Those Who Never Grew Old*, 21 BULL. OF LATIN AM. RES. 413, 417–21 (2002) (explaining that the so-called Mesa de Diálogo brought together military officers, government officials, human rights lawyers and representatives of the Catholic Church for the purpose of gathering information to locate the remaining disappeared. The Armed Forces provided a list of 200 disappeared allegedly containing information of their fate and/or whereabouts). *But see* Elizabeth Lira, *Desaparecidos Otra Vez*, 51 MENSAJE 25 (2002) (explaining that the list provided was incomplete as it did not cover all the disappeared and the location for some of the victims was both vague and more importantly inaccurate in several instances). In Uruguay, the government of President Jorge Batlle (2000–2005) established the first mechanism to investigate disappearances, the Comisión para la Paz (Peace Commission), which officially acknowledged the perpetration of atrocities by state agents and provided information on the fate of some of the disappeared. Eugenia Allier, *The Peace Commission: A Consensus on the Recent Past in Uruguay?*, 81 EUR. REV. OF LATIN AM. & CARIBBEAN STUD. 87, 87–89 (2006). However, the findings of the Commission were discredited when the remains of Professor Julio Castro were found in a military camp despite that the Commission having established that his remains were thrown to the sea. *Torturado, Ejecutado y Desaparecido: El Maestro Julio Castro Sacudió Ayer al Uruguay*, LA RED 21 (Dec. 2, 2011, 4:18 AM), http://perma.cc/GS4N-XXVB.

276 Elizabeth Lira, *Chile, Desaparición Forzada: 1973–2015*, *in* LA VERDAD NOS HACE LIBRES: SOBRE LAS RELACIONES ENTRE FILOSOFÍA, DERECHOS HUMANOS, RELIGIÓN Y UNIVERSIDAD 550 (Miguel Giusti et al. eds., 2015). In the area of recovery and identification of the missing, the Western Balkans probably made more progress than Latin America. *See* INT'L COMM'N ON MISSING PERSONS, BOSNIA AND HERZEGOVINA: MISSING PERSONS FROM THE ARMED CONFLICT OF THE 1990S: A STOCKTAKING (2014) (indicating that a successful combination of civil society engagement, institutional development and scientific innovation has made it possible to account for more than 70 percent of the missing from the conflict in Bosnia and Herzegovina).

recently announced that there are 37,485 disappeared persons in the official registry. However, as of April 2018 only 340 had been positively identified.[277]

D. The Latin American Reaction to Enforced Disappearances in Terms of Reparations and Memory

Latin America also made enormous contributions on the right to and scope of reparations for victims of enforced disappearances.[278] The Inter-American Court has advanced impressive and innovative jurisprudence on the subject.[279] Some of the measures ordered by the Inter-American Court in cases of enforced disappearance include:

- national initiatives to trace disappeared persons
- identification, respect and return of the remains of the disappeared person
- creation of a system for genetic information
- compensation for pecuniary and non-pecuniary damages
- investigation of the crimes and punishments of the perpetrators
- provision of specialized medical and psychological care for the victims
- designation of a day to the disappeared persons
- erection of a monument in remembrance of the disappeared persons
- publication of a bibliographic sketch of the life of the disappeared person
- organization of human rights training for state officials
- public acknowledgement of the disappearance
- publication of parts of the Court's judgment.[280]

---

277 Suzzete Alcántara, *Segob: Van 37 Mil 485 Víctimas de Desaparición*, EL UNIVERSAL (Oct. 10, 2018, 3:29 AM), http://perma.cc/JM4V-2ZLV.

278 *See, for example*, Paulo Abrão & Marcelo D. Torelly, *The Reparation Program as the Lynchpin of Transitional Justice in Brazil*, *in* TRANSITIONAL JUSTICE: HANDBOOK FOR LATIN AMERICA 443 (Félix Reátegui ed., 2011).

279 *See* CLAUDIO NASH ROJAS ET AL., LAS REPARACIONES ANTE LA CORTE INTERAMERICANA DE DERECHOS HUMANOS (1988–2007) (2009); Thomas M. Antkowiak, *Remedial Approaches to Human Rights Violations: The Inter-American Court of Human Rights and Beyond*, 46 COLUM. J. TRANSNAT'L L. 351 (2008). However, the reparations ordered by the Court have not always produced the desired results and have not been free of implementation problems. *See generally,* CARLOS MARTÍN BERISTAIN & CARLOS RAFAEL URQUILLA BONILLA, DIÁLOGOS SOBRE LA REPARACIÓN: EXPERIENCIAS EN EL SISTEMA INTERAMERICANO DE DERECHOS HUMANOS, VOL. 1 & 2 (2008).

280 Vermeulen, *supra* note 16, at 390–93.

Most Latin American countries, to varying extents, granted reparations or designed plans for reparations for victims of enforced disappearances with different levels of implementation and success.[281] This process brought debates, mostly initiated in Latin America and then expanded to other regions, on a broader perspective of reparations beyond financial aspects.[282] Some of the discussions included gender-based approaches to reparations, the possibilities of administrative reparations programs, the non-applicability of statutes of limitation on reparations, memory as a part of reparations, the distinction between reparations and universal public social spending policies, individual vs. collective reparations, or reparations from a cultural perspective, to mention only a few.[283] The region also pioneered the development of important programs and standards for mental health care for the relatives of the disappeared.[284] As it happened with truth and justice initiatives, the reparations programs generated intense debate in the region. The programs created deep divisions in some countries among relatives' organizations, as some felt that accepting reparations meant, "selling"

---

281 *See* ELIZABETH LIRA & BRIAN LOVEMAN, POLÍTICAS DE REPARACIÓN: CHILE 1990–2004 (2005); Lisa Laplante, *Después de la Verdad: Demandas para Reparaciones en el Perú Postcomisión de la Verdad y Reconciliación*, 4 ANTIPODA 119 (2007); María José Guembe, *La Experiencia Argentina de Reparación Económica de Graves Violaciones a los Derechos Humanos*, UNIVERSIDAD DE LA REPÚBLICA URUGUAY, http://perma.cc/EP89-TM74.

282 *See* Sarah Fulton, *Redress for Enforced Disappearance Why Financial Compensation is Not Enough*, 12 J. INT'L CRIM. JUS. 769 (2014).

283 THE GENDER OF REPARATIONS: UNSETTLING SEXUAL HIERARCHIES WHILE REDRESSING HUMAN RIGHTS VIOLATIONS (Ruth Rubio-Marín ed., 2009); THE HANDBOOK OF REPARATIONS (Pablo De Greif ed., 2006); Lisa J. Laplante & Kimberly Theidon, *Truth with Consequences: Justice and Reparations in Post-Truth Commission Peru*, 29 HUM. RTS. Q. 228 (2007); Elizabeth Lira, *Trauma, Duelo, Reparación y Memoria*, 36 REVISTA DE ESTUDIOS SOCIALES 14 (2010); Lieselotte Viaene, *Life is Priceless: Mayan Q'eqchi' Voices on the Guatemalan National Reparations Program*, 4 INT'L J. TRANSITIONAL JUST. 4 (2009).

284 *See generally* PAU PÉREZ-SALES & SUSANA NAVARRO GARCÍA, RESISTENCIA CONTRA EL OLVIDO: TRABAJO PSICOSOCIAL EN PROCESOS DE EXHUMACIONES EN AMÉRICA LATINA (2007) (explaining the different mental health programs available in multiple Latin American countries); PAISAJES DEL DOLOR, SENDEROS DE ESPERANZA: SALUD MENTAL Y DERECHOS HUMANOS EN EL CONO SUR (Daniel Kersner et al. eds., 2002), http://perma.cc/4UUP-3FFK; M. Brinton Lykes & Ramsay Liem, *Human Rights and Mental Health in the United States: Lessons from Latin America*, 46 J. SOC. ISSUES 151, 157–59 (1990); Gregory J. Quirk & Leonel Casco, *Stress Disorders of Families of the Disappeared: A Controlled Study in Honduras*, 39 SOC. SCI. & MED. 1675 (1994); MINISTERIO DE JUSTICIA Y DERECHOS HUMANOS DE LA NACIÓN ARGENTINA, CONSECUENCIAS ACTUALES DEL TERRORISMO DE ESTADO EN LA SALUD MENTAL: SALUD MENTAL Y DERECHOS HUMANOS. CUADERNILLO ORIENTATIVO DIRIGIDO A PROFESIONALES DE LA SALUD MENTAL (2006); Susana Navarro et al., *Consenso Mundial de Principios y Normas Mínimas Sobre Trabajo Psicosocial en Procesos de Búsqueda e Investigaciones Forenses para Casos de Desapariciones Forzadas, Ejecuciones Arbitrarias o Extrajudiciales*, http://perma.cc/4KCK-QVMW (a work which emerged and was developed fundamentally from a Latin American initiative).

their children, providing impunity, or conceding that the disappeared were dead.[285] As in other areas, the implementation of those reparations programs faced many challenges in several countries.[286]

In terms of memory, Latin America has also made significant leading contributions[287] to the "labors of memory," both by the state and by private or public-private initiatives.[288] Museums and memory spaces carry out very important work in this field,[289] because they, along with the construction of memorials, help to recover places symbolic to the disappearances. There has been remarkable production on the theme of memory in areas as diverse as literature,[290] cinema,[291]

---

285 Fernando J. Bosco, *Human Rights Politic and Scaled Performances of Memory: Conflicts among the Madres de Plaza de Mayo in Argentina*, 5 SOC. & CULTURAL GEOGRAPHY 381, 387–92 (2004).

286 *See, for example*, DENNIS MARTINEZ ET AL., WE STRUGGLE WITH DIGNITY: VICTIMS' PARTICIPATION IN TRANSITIONAL JUSTICE IN GUATEMALA 53 (2016) (explaining that the budget of the reparation program in Guatemala was cut in half).

287 United Nations reports explain state and civil society initiatives related to memory. *See* Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances: Addendum Mission to Chile, U.N. Doc. A/HRC/22/45/Add.1, ¶ 49–50 (2013); Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on Its Mission to Peru, U.N. Doc. A/HRC/33/51/Add.3, ¶ 63–66 (2016); Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearance: Addendum Mission to Argentina, U.N. Doc. A/HRC/10/9/Add.1, ¶ 65 (2009).; *But see* Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on Its Mission to Sri Lanka, U.N. Doc. A/HRC/33/51/Add.2, ¶ 64 (2016) (expressing concern that there is no government supported memorial built for the victims of enforced disappearances); Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on Its Mission to Turkey, U.N. Doc. A/HRC/33/51/Add.1, ¶ 51 (2016) (indicating that in the light of political reluctance to come to terms with past enforced disappearances, it is not unexpected to note the absence of official memorial sites or remembrance places in Turkey).

288 *See generally*, ELIZABETH JELIN, LOS TRABAJOS DE LA MEMORIA (2002).

289 *See* RED DE SITIOS DE LA MEMORIA LATINOAMERICANOS Y CARIBEÑOS, http://perma.cc/J8PK-FSH7.

290 *See, for example*, MARIO BENEDETTI, *Desaparecidos, in* GEOGRAFÍAS 121–22 (1984); PATRICIA NIETO, LOS ESCOGIDOS (2012); *see also* Jorge Ladino Gaitán Bayona, *El Arte de la Desaparición Forzada en dos Novelas Colombianas,* 46 ESPÉCULO: REVISTA DE ESTUDIOS LITERARIO (2010), http://perma.cc/8HGN-YBYQ; Lancelot Cowie, *Los Desaparecidos y la Represión de Estado en la Narrativa Argentina Actual*, 16 REVISTA DEL CESLA 195 (2013).

291 *See, for example*, CON MI CORAZÓN EN YAMBO (María Fernanda Restrepo 2015) (following, the disappearance of the Restrepo brothers during the period of León Febres Cordero); NN: SIN IDENTIDAD (Piedra Alada Producciones 2015); *See also, for example*, Verena Berger, *La Búsqueda del Pasado Desde la Ausencia: Argentina y la Reconstrucción de la Memoria de los Desaparecidos en el Cine de los Hijos*, 3 QUADRENS DE CINE: CINE I MEMÒRIA HISTÒRICA 23 (2008); María Noelia Ibáñez, *El Ojo que Espía por las Grietas del Pasado. Una Aproximación al Estudio Sobre el Tratamiento de la Memoria y la Historia Recientes en el Cine Argentino (1983-2009)*, 4 PASSAGENS. REVISTA INTERNACIONAL DE HISTÓRIA POLÍTICA E CULTURA JURÍDICA 384 (2012).

photography[292] or even television soap operas.[293] All those memory initiatives become means of bearing witness, humanizing victims, making horror visible, and bringing understanding. The initiatives encourage reflection and discussion, promote remembrance, express dissent, challenge misleading versions of events, and foster the sensibilization of human rights abuses.[294] For decades, in many Latin American countries, the families and their allies have helped keep the memory of the disappeared alive while the state failed to address it.[295] Of course, because of the contentious nature of memory in many countries, memorials and other memory spaces are often fraught with controversy.[296]

In this field, the Inter-American Court (although with many theoretical and practical gaps) is also contributing to the understanding of memory for enforced disappearances.[297] For instance, in *Radilla Pacheco v. Mexico*, concerning an enforced disappearance, the Court ordered the State to hold a public act of acknowledgment and to place a commemorative plaque of the victim's name in the city where the disappearance occurred. The Court stated that those measures were due "in satisfaction of the memory of [the victim]" and "with the objective of preserving the memory of [the victim] within the community." The Tribunal also ordered "a bibliographical sketch of the life of [the victim], accompanied

---

292 *See, for example*, Gustavo Germano, *Ausencias Brazil,* GUSTAVO GERMANO (2012), http://perma.cc/8SBM-TMNR; Gustavo Germano, *Ausencias Argentina,* GUSTAVO GERMANO (2006), http://perma.cc/8SBM-TMNR; Ricardo Wiesse, *Cantuta*, MICROMUSEO (June 27, 1995), http://perma.cc/N95A-5JA3 (capturing the execution and disappearance of students from the University of La Cantuta); Diego A. Mazorra C., *Fotografía y Memoria: Imágenes y Lugares en la Fotografía de los Desaparecidos en Colombia*, 4 REVISTA COMUNICACIÓN Y CIUDADANÍA 62 (2010); Ana Longoni, *Fotos y Siluetas: Dos Estrategias Constrastantes en la Representación de los Desaparecidos, in* LOS DESAPARECIDOES EN LA ARGENTINA: MEMORIAS, REPRESENTACIONES E IDEAS (1983-2009) 35 (2010); María Elena Rodríguez Sánchez, *La Fotografía y la Representación de la Memoria de las Victimas de Desaparición en Colombia*, 4 REVISTA SANS SOLEIL ESTUDIOS DE LA IMAGEN 216 (2012).

293 Nina Schneider & Rebecca J. Atencio, *Reckoning with Dictatorship in Brazil: The Double-Edged Role of Artistic-Cultural Production*, 43 LATIN AM. PERSP. 12 (2016).

294 Roberta Villalón, *Introduction*, *in* MEMORY, TRUTH, AND JUSTICE IN CONTEMPORARY LATIN AMERICA 1–10 (Roberta Villalón ed., 2017).

295 *Id.*

296 *See, for example*, *Mutilaron "El Ojo que Llora,"* LA REPÚBLICA (Sept 23, 2007, 8:30 PM), http://perma.cc/D4U6-2AWJ (explaining the destruction of part of the memorial called the Eye that Cries in Peru).

297 Ariel Dulitzky, *La Memoria en la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, i*n* LA LUCHA POR LOS DERECHOS HUMANOS HOY, ESTUDIOS EN HOMENAJE A CECILIA MEDINA QUIROGA 581, 581-602 (2017); Maria Chiara Campisi, *From a Duty to Remember to an Obligation to Memory? Memory as Reparation in the Jurisprudencee of the Inter-American Court of Human Rights*, 8 INT'L J. CONFLICT & VIOLENCE 61, 67–69 (2014); Gabriella Citroni, *La Preservación de la Memoria Histórica a la Luz de la Jurisprudencia de la Corte Interamericana de Derechos Humanos*, *in* ESTUDIOS SOBRE MEMORIA: PERSPECTIVAS ACTUALES Y NUEVOS ESCENARIOS 146, 149–153 (Silvana Mandolessi & Maximiliano Alonso, eds. 2015).

either by the reproduction of official documents regarding this case (admissibility reports, orders, expert reports) or with oral testimonies on his trajectory [sic], gathered in situ, for which the State would hire an investigator."[298] Latin America has taken important steps in the systematization, declassification, access, digitization, and reconstruction of archives with documents on disappearances.[299] However, much more needs to be done in order to access a tremendous number of documents that remain undisclosed.[300]

Latin Americans are also starting to promote the development of a legal right to memory[301] and a parallel "obligation to memory." So far, this "obligation to memory" is understood in a narrow sense as the obligation to put in place acts of commemoration and remembrance for past atrocities and is considered a component of the international obligation to provide reparation for victims.[302]

E. Latin American Enforced Disappearances and Their Impact on the Human Rights Movement

Latin America also pioneered and shaped human rights work at national, regional, and international levels based on its reaction to enforced disappearances.[303] Investigations, reforms, and mobilizations around enforced disappearances in Latin America have had an impact on international organizations and human rights movements in other countries.[304] Particularly, the reaction to disappearances in Chile and Argentina in the 1970s "remapped the

---

298 Radilla-Pacheco v. Mexico, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 209, ¶ 353 (Nov. 23, 2009).

299 *See, for example*, ALFREDO BOCCIA PAZ, ROSA PALAU AGUILAR, & OSVALDO SALERNO, PARAGUAY: LOS ARCHIVOS DEL TERROR, LOS PAPELES QUE RESIGNIFICARON LA MEMORIA DEL STRONISMO (1st ed. 2007); KIRSTEN WELD, PAPER CADAVERS: THE ARCHIVES OF DICTATORSHIP IN GUATEMALA 213–56 (2014).

300 *See, for example*, Louis Bickford, *The Archival Imperative: Human Rights and Historical Memory in Latin America's Southern Cone*, 21 HUM. RTS. Q. 1097, 1103–14 (1999) (highlighting the limited efforts to organize and preserve civil society archives in Argentina, Chile and Uruguay).

301 *See, for example*, Catalina Uprimny Salazar, *La Memoria en la Ley de Víctimas de Colombia: Derecho y Deber*, 8 ANUARIO DE DERECHOS HUMANOS 135 (2012); Juan Pablo Vera Lugo, *Transitional Justice, Memory, and the Emergence of Legal Subjectivities in Colombia*, *in* A SENSE OF JUSTICE: LEGAL KNOWLEDGE AND LIVED EXPERIENCE IN LATIN AMERICA 25 (Sandra Brunnegger & Karen Faulk eds., 2016).

302 Campisi, *supra* note 297, at 73.

303 *See, for example*, Elizabeth Jelin, *La Política de la Memoria: El Movimiento de Derechos Humanos y la Construcción Democrática en la Argentina*, *in* JUCIO, CASTIGOS y MEMORIA: DERECHOS HUMANOS y JUSTICIA EN LA POLÍTICA ARGENTINA 103 (Adam Przeworski ed., 1995).

304 MARGARET E. KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS 79 (1998).

terrain of human rights activism."[305] It is not possible to study and conceive of the human rights movement today without analyzing its origins and consolidation during the seventies, eighties and nineties in Latin America,[306] mainly in response to enforced disappearances. Latin America became an "activist workshop… where much of the language of global human rights talk and practice was forged."[307]

Latin American women play a leading, central, and crucial role in this process at the forefront of the struggle for truth, justice, reparations, and the memory of the victims of enforced disappearances.[308] Women and the organizations that they formed and led engendered the human rights movement in Latin America and other parts of the world.[309] In many Latin American countries, mothers are at the forefront of the fight against disappearances. Those mothers used, and at the same time transformed, the traditional role of mothers in Latin American societies to

---

305 Patrick W. Kelly, *The 1973 Chilean Coup and the Origins of Transnational Human Rights Activism*, 8 J. OF GLOBAL HIST. 165, 166 (2013).

306 *See, for example*, KECK & SIKKINK, *supra* note 304.

307 Kelly, *supra* note 305, at 168.

308 For example, in Mexico, Rosario Ibarra de Piedra, whose son disappeared in 1975 and is the director of Comité Eureka, can be cited. *See, for example*, ROSARIO (Rosario Ibarra de Piedra & Claudia Piedra Ibarra 2013). In Peru, Mama Angelica, whose son disappeared in 1983, and the women of the Agrupación Nacional de Familiares de Secuestrados, Detenidos y Desaparecidos del Perú (ANFASEP) in Ayacucho can be cited. *See, for example*, Ronald Gamarra, *A las Madres de ANFASEP*, COORDINADORA NACIONAL DE DERECHOS HUMANOS (Sept. 3, 2008), http://perma.cc/YEU9-FTRR. In Colombia, see Yanette Bautista, whose sister disappeared in 1987 and is director of the Nydia Erika Bautista Foundation. *See, for example*, *Yanette Bautista: 27 Años de Lucha*, PAZ CON MUJERES (Dec. 22, 2014), http://perma.cc/LH6T-NAQ4. In Chile, Sola Sierra Henríquez, whose husband disappeared in 1976, became the first president of the Agrupación de Familiares de Detenidos Desaparecidos (AFDD). *See Sierra Henríquez, Sola (1935-1999),* EDUCARCHILE (Sept. 27, 2007), http://perma.cc/F8XS-AVHW. In Argentina, see Azucena Villaflor, whose son disappeared in 1976 and was one of the founders of the Madres de Plaza de Mayo. She herself disappeared in 1977. *See, for example*, Susana Viau, *La Fundadora de las Madres*, PÀGINA12 (Dec. 9, 2005), http://perma.cc/2GR8-5CYS. In Honduras, see Bertha Oliva de Nativi, whose husband disappeared in 1981, founder of Comité de Familiares de Desaparecidos de Honduras. *See, for example*, Mercè Rivas Torres, *Bertha Oliva de Nativí*, 1325 MUJERES TEJIENDO LA PAZ, http://perma.cc/TDN2-BBUW. In Guatemala, see Aura Elena Farfán, whose brother disappeared in 1984, director of Association of Relatives of Detained and Disappeared of Guatemala (FAMDEGUA). *See, for example*, Almudena Bernabeu, *Aura Elena Farfán*, TIME, http://perma.cc/XH3H-SZ54. For women in other Latin American countries, see Raquel Andrea Vera Salerno & Rosa M. Palau Aguilar, *Luchadoras de Ayer en la Dictadura. Luchadoras de Hoy en Democracia, in* VIOLENCIA DE GÉNERO PROBLEMA ANTIGUO – NUEVOS ABORDAJES EN EL PARAGUAY 403, http://perma.cc/VN3A-C6V7; Luzia Margareth Rago, *A Coragem Feminina da Verdade: Mulheres na Ditadura Militar no Brasil,* 28 CADERNO ESPAÇO FEMININO 103 (2015); DIREITOS HUMANOS: JUSTIÇA, VERDADE E MEMÓRIA 523 (Bethania Assy et al. eds., 2012).

309 Joseph L. Scarpaci & Lessie Jo Frazier, *State Terror: Ideology, Protest, and the Gendering of Landscapes*, 17 PROGRESS IN HUM. GEOGRAPHY 1, 13–19 (1993).

demand truth and justice for their disappeared children.[310] The vast majority of those who disappeared in Latin America (and worldwide) are men. This has important implications for women, as the wives, mothers, sisters, and daughters of the disappeared, who not only had to search for their loved ones but also endured economic, legal, social, and psychological harms because of losing a male family member. Socially, Latin American women were blamed for not taking proper care of the disappeared loved one. Those women were compelled to search for their disappeared family members, even as they struggled to live with perpetual uncertainty. Women put themselves on the front lines of the search for truth about the missing and disappeared, sometimes at great personal risk.[311]

The Mothers and Grandmothers of the Plaza de Mayo in Argentina, the Vicariate of Solidarity in Chile, and many organizations in every country[312] developed new strategies on disappearances that were adopted in other regions.[313] FEDEFAM, founded in 1981, was the first international federation of families of disappeared persons.[314] At least two decades later, in other regions, multiple organizations followed the Latin American human rights movement model, even though disappearances had existed long before in those countries or regions. There were three main types of organizations that emerged since the 1970s in Latin America: organizations of relatives, human rights organizations in general, and Catholic organizations.[315] In addition, Latin American exiles played a crucial

---

310 *See* Cynthia L. Bejarano, *Las Super Madres de Latino America: Transforming Motherhood by Challenging Violence in Mexico, Argentina and El Salvador*, 23 FRONTIERS J. OF WOM. STUD. 126, 132–43 (2002).

311 POLLY DEWHIRST & AMRITA KAPUR, THE DISAPPEARED AND INVISIBLE: REVEALING THE ENDURING IMPACT OF ENFORCED DISAPPEARANCES ON WOMEN, 6–12 (2015), http://perma.cc/F4AY-LEKY.

312 At the risk of leaving crucial organizations unmentioned, see for example AFADEM (Association of Relatives of the Disappeared and Victims of Human Rights Violations) in México; Relatives of the Disappeared and Detained for Political Reasons in Argentina; AFDD (Association of Relatives of Disappeared Detainees) in Chile; ASOFAM (Association of Families of the Disappeared and Martyrs for the National Liberation of Bolivia) in Bolivia; ASFADDES (Association of Relatives of Disappeared Detainees) in Colombia; COFADEH (Committee of Relatives of Detained—Disappeared of Honduras); CODEFAM (Committee of Relatives of Victims of Human Rights Violations) in El Salvador; GAM (Mutual Support Group) in Guatemala; Mothers and Relatives of the Disappeared in Uruguay; Torture Never Again in Brazil; and, ANFASEP (National Association of Families of the Kidnapped, Detained and Disappeared) in Peru..

313 WINIFRED TATE, COUNTING THE DEAD: THE CULTURE AND POLITICS OF HUMAN RIGHTS ACTIVISM IN COLOMBIA 175 (2007); ERNESTO DE LA JARA BASOMBRÍO, UN MOVIMIENTO DE DERECHOS HUMANOS HECHO EN EL PERÚ: BUSCANDO UNA INTERPRETACIÓN DE SU IDENTIDAD: ÉXITOS, FRACASOS, FORTALEZAS, CARENCIAS, TENSIONES, INCERTIDUMBRES Y DESAFÍOS (2003).

314 Mario Ayala, *FEDEFAM: 30 Años de Lucha Contra la Desaparición Forzada, 1981-2011* (Interview with Judith Galarza Campos, Executive Secretary of FEDEFAM (April, 2011)), 2 ALETHEIA 1, 1 (2011).

315 LAS IGLESIAS ANTE LA VIOLENCIA: LOS DERECHOS HUMANOS EN EL PASADO Y EL PRESENTE (Alexander Wilde ed., 1st ed. 2015).

role in developing human rights and solidarity strategies that contributed to the international response against enforced disappearances.[316] The work of these Latin American organizations served as models in other parts of the world, and not only in the area of enforced disappearances.[317] The use of pictures of the disappeared, demonstrations in streets and public parks, local detailed documentation, transmission of information to international partners and organizations, and psychosocial support to relatives of the disappeared were all techniques developed by Latin American organizations. While common precepts and motivations moved those Latin American organizations to evolve in a similar manner, they also diverged in important ways due to different national political contexts. It was not the same for human rights organizations to confront enforced disappearances practiced by a dictatorship, such as in Chile, as those practiced in an electoral but limited democracy with a long history of political violence and the presence of armed insurgencies and drug cartels, such as in Colombia.[318]

VI. CAN THE LATIN AMERICAN EXPERIENCE BE VALID FOR OTHER REGIONS?

Latin America influenced both the development of the concept of and the response to enforced disappearances as an international concern and a specific, complex human rights violation. However, does this experience provide an appropriate global and universal framework for addressing a certain type of state violence that in Latin America is called enforced disappearances? The answer is yes. The model developed to respond to Latin American disappearances is flexible enough that it allows for proper adaptation to different contexts.

However, more research is needed. Does this influential Latin American model limit or constrain us from effectively dealing with disappearances in other contexts? For example, do cases from other regions, which do not fit the "paradigm" of the Latin American cases, fail to get the attention they deserve? Does the Latin American "model," tying the definition of enforced disappearances

316 *See* Carlos María Duhalde, *Una Breve Historia de la CADHU Comisión Argentina de Derechos Humanos*, 5 BIBLIOTECA DE DERECHOS HUMANOS EDUARDO LUIS DUHALDE CENTRO DOCUMENTAL (2014) (explaining the importance of CADHU, a human rights organization run by Argentineans in exile). For Chile, see, for example, Thomas C. Wright & Rody Oñate Zúñiga, *Chilean Political Exile*, 34 LATIN AM. PERSPECTIVES 31, 39–45 (2007).

317 CYNTHIA G. BROWN, THE VICARÍA DE LA SOLIDARIDAD IN CHILE: AN AMERICAS WATCH REPORT 3, 7 (1987); MANUEL BASTÍAS SAAVEDRA, SOCIEDAD CIVIL EN DICTADURA: RELACIONES TRANSNACIONALES, ORGANIZACIONES Y SOCIALIZACIÓN POLÍTICA EN CHILE (1973-1993) (2013); Gülsüm Baydar & Berfin İvegen, *Territories, Identities, and Thresholds: The Saturday Mothers Phenomenon in İstanbul*, 31 SIGNS: J. OF WOMEN IN CULTURE & SOC'Y 689, 691 (2006) (explaining that Turkish mothers of disappeared took their model from the Mothers of Plaza de Mayo).

318 Alexander Wilde, *Human Rights in Two Latin American Democracies*, *in* SUSTAINING HUMAN RIGHTS IN THE TWENTY-FIRST CENTURY STRATEGIES FROM LATIN AMERICA 35 (Katherine Hite & Mark Ungar eds., 2013).

to a state action or omission, obscure other similar practices, such as those perpetrated by irregular armed groups, organized crime groups, and terrorist organizations? Does the Latin American emphasis on the criminal nature of enforced disappearance make it more difficult to conceive the violation mainly as an act of creating the conditions in which families were (and are) not able to search successfully for their loved ones? This section will start to respond to some of these questions while calling for further research to be conducted in order to analyze the strengths and challenges posed by the strong Latin American influence in enforced disappearances.

A. The Latin American Framework Encompasses Different Types of Enforced Disappearances

One of the main lessons from Latin America is that the definition of enforced disappearance, as modeled precisely to respond to the practice in that region, is flexible and comprehensive enough to accommodate differences in the crime and the responses to it.[319] The three major elements of enforced disappearance (deprivation of liberty, action by state agents or private actors with the State's cooperation or acquiescence, and the denial of such deprivation of liberty or information on the fate and whereabouts of the persons disappeared) provide sufficient room to cover many different types of disappearances. However, despite many commonalities, enforced disappearances are contextualized forms of violence.[320] Internal political, economic, historical, ethnic, and military factors in the different countries produced different modalities of state terror. As a result, local manifestations of state terror, including enforced disappearances, have varied significantly in Latin America (and in other parts of the world). Although disappearances became a widely practiced form of terror throughout the region, not all Latin American governments perpetrated enforced disappearances in the same way, nor did disappearances play the same repressive role in all Latin American countries.[321] The differences, in terms of both disappearances and the reactions to them, are not just geographic or temporal, but also related to institutions, politics, social factors, economics, conflicts and repression.

---

319 Radhika Coomaraswamy makes the same argument on the general framework and local adaptations of international law of human rights in general. *See* Radhika Coomaraswamy, *Women and Children: The Cutting Edge of International Law*, 30 AM. U. INT'L L. REV. 1, 25, 34–37 (2015).

320 In relation to genocide, see Susanne Karstedt, *Contextualizing Mass Atrocity Crimes: Moving Toward a Relational Approach*, 9 ANN. REV. L. & SOC. SCI. 383, 393–94 (2013).

321 Cecilia Menjívar & Nestor Rodríguez, *State Terror in the U.S.-Latin American Interstate Regime*, *in* WHEN STATES KILL: LATIN AMERICA, THE U.S. AND THE TECHNOLOGIES OF TERROR 3, 21 (Cecilia Menjívar & Nestor Rodríguez eds., 2005).

The international law definition modeled on the Latin American experience (as recognized by both treaty law and case law) allows the consideration of enforced disappearances in its many forms. By limiting its core contours to the three elements (deprivation of liberty with State participation and denial of information), the concept covers disappearances carried out predominantly in urban areas against middle class persons, as happened in Argentina,[322] or those which occurred on a massive scale in rural areas, such as in Peru,[323] or against indigenous people, like in Guatemala.[324] It encompasses disappearances that occurred during civil wars, like in El Salvador[325] and Colombia,[326] under military dictatorships such as in Uruguay,[327] or in authoritarian regimes such as Peru in the time of Fujimori.[328] The framework that emerged in Latin America also allows for responses to enforced disappearances that occur in an isolated manner (or sometimes in a more generalized manner, as currently happens in Mexico) in democratic contexts. The Latin American-influenced framework includes everything from enforced disappearances that were a central repressive tool of dictatorships such as in Argentina to those in which only a few of the thousands of political prisoners disappeared, as in Uruguay.[329] The Latin American model has responded to and today is again required to respond to enforced disappearances in the context of migration.[330] In countries such as Mexico and El Salvador, Latin Americans are adapting the shared experience in order to address

---

322 *See, for example*, the list of professions and occupations of those who disappeared in Argentina. *Listas de Detenidos-Desaparecidos y Asesinados en Argentina*, DESAPARECIDOS, http://perma.cc/X7F3-TRLF.

323 Comisión de la Verdad y la Reconciliación, *Las Desapariciones Forzadas*, 6 INFORME FINAL 57, 79 (2003), http://perma.cc/3R5Y-VEEU (stating that the majority of enforced disappearances took place in rural areas).

324 Pinzón González & Mónica Esmeralda, *Psychosocial Perspectives on the Enforced Disappearance of Indigenous Peoples in Guatemala*, *in* MISSING PERSONS: MULTIDISCIPLINARY PERSPECTIVES ON THE DISAPPEARED 102, 108–14 (Derek Congram ed., 2016) (explaining the particular impact of enforced disappearances in an indigenous community in Guatemala).

325 Belisario Betancur et al., *From Madness To Hope: The 12-Year War In El Salvador: Report Of The Commission On The Truth For El Salvador*, UNITED STATES INSTITUTE OF PEACE (2001).

326 Inter-Am. Comm'n H.R., Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia, OEA/Ser. L/V/II, doc. 49/13 (Dec. 31, 2013).

327 INFORME DE MADRES Y FAMILIARES DE URUGUAYOS DETENIDOS DESAPARECIDOS, A TODOS ELLOS (2004), http://perma.cc/74W4-FH6Z.

328 Comisión de la Verdad y Reconciliación, *supra* note 323, at 78–79, 112–114.

329 *See* FRANCESCA LESSA, MEMORY AND TRANSITIONAL JUSTICE IN ARGENTINA AND URUGUAY: AGAINST IMPUNITY 31–47 (Jonathon G. Allen & Maria Guadalupe Arenillas eds., 2013) (comparing the situation in Argentina and Uruguay).

330 *See* Hum. Rts. Council, Rep. of The Working Group on Enforced or Involuntary Disappearances on Enforced Disappearances in the Context of Migration, U.N. Doc. A/HRC/36/39/Add.2. (2017).

and deal with disappearances perpetrated by gangs and organized crime groups.[331] From the point of view of those responsible, the framework of enforced disappearances that emerged in Latin America is also broad enough. In addition to the disappearances practiced directly by the Latin American security forces, there were paramilitary groups, vigilante or self-defense groups, mafia-type organizations, and organized criminal groups. Those non-state actors had (and have) a wide range of different structures and ideologies. Those groups operate according to different incentives and with distinct relationships and support, coordination and/or tolerance from the state.[332] As such, the Latin American model encompasses disappearances carried out exclusively or mainly by the armed forces (such as in the Southern Cone in the seventies) or by local police forces, to those practiced by private or non-state actors with the cooperation, tolerance or acquiescence of the state (like many of those that happened in Colombia or currently occur in Mexico). In addition, the framework that emerged in Latin America is sufficiently flexible to understand enforced disappearances in the context of the doctrine of national security, the fight against terrorism, combating drug trafficking or organized crime. It also allows for the inclusion of enforced disappearances practiced as part of systematic plans and crimes against humanity (such as those carried out in the execution of Operation Condor[333]), as acts within a practice of genocide (as in Guatemala[334]) or as mere isolated incidents (such as disappearances in the Dominican Republic[335]).

B. The Latin American Contextual Approach to Understand and Respond to Enforced Disappearances

Responding to enforced disappearances that occur in such different contexts requires careful examination of the particular situations. While Latin American countries have learned valuable lessons from similarities in each other's experiences, there are important differences.[336] Each particular national and temporal context creates opportunities for fighting enforced disappearances, while at the same time, the context shapes objectives and poses constraints or obstacles for doing so. The variations in contexts affect the specific and concrete

---

331 *See* Carcach & Artola, *supra* note 85; Robin, *supra* note 75, at 32.

332 *See generally* INTERNATIONAL CENTER FOR TRANSITIONAL JUSTICE, JUSTICE MOSAICS: HOW CONTEXT SHAPES TRANSITIONAL JUSTICE IN FRACTURED SOCIETIES (Roger Duthie & Paul Seils eds. 2017), http://perma.cc/UT3A-DMCQ.

333 Goiburu case, *supra* note 60, at 61–73.

334 *See generally* Memoria del Silencio, *supra* note 65.

335 González Medina and Family v. Dominican Republic, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 240 (Feb. 27, 2012).

336 *Id.* at 3.

responses that are most appropriate and feasible in each given setting.[337] However, both the definition of enforced disappearance and the requirements to secure justice, truth, reparation, memory and guarantees for victims are universal and not subject to contextual changes. In other words, the phenomenon of disappearances finds its roots in the political structure of the society in which it occurs.[338] Thus, it is important to be attentive to the different contexts, manifestations, spatial and temporal patterns, as well as local and regional dynamics of enforced disappearances in different parts of the world.[339] States do not always act as monolithic structures in their involvement in campaigns of terror, including the use of disappearances. Contradictions can exist between different state institutions. While some state institutions, such as the security forces, terrorize citizens through disappearances or by blocking justice efforts, other state agencies, such as courts or ombudspersons of the same state apparatus may be genuinely working on improving human rights conditions, on locating disappeared persons, and on advocating for the release of prisoners.[340] For instance in Peru, human rights organizations during many years used the Ombudsman because it "has been the only State body to consistently and continuously study the issue of enforced disappearance, identify progress or setbacks, and systematize the practice of disappearance and the State's response to it."[341]

Argentina, during the 1980s, and Chile, during the 1990s, tried to deal with enforced disappearance in the context of a relatively strong state, a healthy economy, and educated victims. During the 1990s, El Salvador and Guatemala attempted to address disappearances committed during recently ended destructive civil wars, seeking to promote the rule of law in contexts of weaker states and greater poverty, and in the latter a profound racism against indigenous populations.

In parallel, the Latin American experience demonstrates that there is not a template or "toolkit"— that is, a narrow set of measures to be uniformly applied

---

337 *Id.* at 1, 8, 20.

338 Howard M. Kleinman, *Disappearances in Latin America: A Human Rights Perspective*, 19 N.Y.U. J. INT'L L. & POL. 1033, 1033–1042 (1987).

339 Roschanack Shaery, *The Local Politics of the Lebanese Disappeared*, 262 MIDDLE E. REP. 2, 4–5 (2012) (explaining the particularities of the phenomenon of enforced disappearances carried out by Syrian forces in Lebanon and the dynamic of the relatives' efforts to find their loved ones in Syria and Lebanon); Caroline L. Payne & M. Rodwan Abouharb, *The International Covenant on Civil and Political Rights and the Strategic Shift to Forced Disappearance*, 15 J. HUM. RTS. 163, 182–84 (2016) (arguing that in some countries, but not in others, increased international scrutiny could move their repressive techniques from extrajudicial executions to enforced disappearances, as they are more difficult to prove).

340 Menjívar & Rodriguez, *supra* note 321, at 21.

341 Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on its Mission to Peru, U.N. Doc. A/HRC/33/51/Add.3, at ¶ 17 (2016).

wherever enforced disappearances have occurred. Policymakers and practitioners need to consider context when assessing, advocating, shaping, and/or designing responses to fight enforced disappearances. The Latin American involvement with enforced disappearances reveal the validity of the basic principles of truth, justice, reparations, memory, and guarantees of non-repetition while taking a contextualized perspective that suits local needs and realities.[342] The reactions to enforced disappearances need to merge those global and universal principles with the local realities on the ground and the local and micro-perspectives and needs.[343]

The contextualized approach to enforced disappearances allows the understanding that both the crime and the response to disappearances in terms of prevention, eradication, justice, truth, reparation, and memory are temporal processes that evolve over time.[344] In different countries and regions, the practice and response do not follow the same paths. The evolution in the use and resistance to disappearances is also determined geographically within the countries themselves.[345] The temporal and contextualized approach to enforced disappearances also allows for a new understanding of the phenomenon in order to better comprehend all its dimensions and to better respond to the needs of the victims.[346] For instance, the inter-American jurisprudence on disappearances has permeated different Latin American countries in different ways, with Argentina as an example of a traditionally more open country and Guatemala as more

---

342 From international truth commissions such as in El Salvador to purely national ones in the rest of the region or with truth commissions limited to deal exclusively with enforced disappearances (as in Argentina) to commissions with broad mandates (as in Peru). See footnotes 290-300 and accompanying text. In Asia, for example, Sri Lanka so far has chosen to create inquiry commissions rather than Truth Commissions. *See* Wasana Punyasena, *The Facade of Accountability: Disappearances in Sri Lanka*, 23 B.C. THIRD WORLD L. J. 115, 135−139 (2003).

343 Sylvia Karl, *Rehumanizing the Disappeared: Spaces of Memory in Mexico and the Liminality of Transitional Justice*, 66 AM. Q. 727, 733 (2014).

344 Alberto L. Zuppi, *Swinging Back and Forth Between Impunity and Impeachment: The Struggle for Justice in Latin America and the International Criminal Court*, 19 PACE INT'L L. REV. 195, 196 (2007).

345 Comm'n on Hum. Rts., Rep. of the Working Group on Enforced or Involuntary Disappearances Addendum, Rep. on the Visit to Peru by Two members of the Working Group on Enforced or Involuntary Disappearances, ¶¶ 35–61 U.N. Doc. E/CN.4/1986/18/Add.1 (1985) (explaining how enforced disappearances took place in Ayacucho and describing the socio-economic context and different actors in that part of Peru.).

346 *See, for example*, Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances, Addendum Study on Enforced or Involuntary Disappearances and Economic, Social, and Cultural Rights, ¶¶ 3, 4, U.N. Doc. A/HRC/30/38/Add.5 (explaining that the Working Group "has not treated the relationship between enforced disappearances and economic, social and cultural rights in a comprehensive and systematic way" and that "there is a need to make the link between enforced disappearances and economic, social and cultural rights clearer and more explicit, and to shed light on how states should address this relationship").

resilient to the influence of the Inter-American Court's decisions.[347] In terms of justice, the paths, progress, and setbacks in Latin America have been completely different with more pronounced advances in countries such as Chile and almost complete impunity in Honduras.[348] Moreover, the Latin American human rights movement evolved in different ways during and after the periods of the systematic use of disappearances.[349] The victims and their allies in Latin America created the human rights framework to respond to the particular terror practice of enforced disappearances. As such, they opened new ways of understanding and reacting to state violence, creating a specific international law framework. This Article proposes to understand the "Latin American" model and its influence on enforced disappearances as a normative transnational/international framework that covers a specific type of state violence (enforced disappearances) and requires clear responses to it in the form of truth, justice, reparation and memory. In challenging and responding to enforced disappearances, the Latin American model recognizes how national or even regional processes absorb and influence international human rights approaches.[350] Socioeconomic, political, cultural, and even religious conditions determine the ways in which repressive practices develop and how people respond to them. For example, the power held by perpetrators during political transitions, or victims' profiles, or their ability to mobilize, is essential for understanding the dynamics in transitional justice processes. The same is true whether disappearances occur when the victims are remote, isolated, or marginalized or whether, conversely, they reside in urban centers or are middle class.[351] In other words, a multiplicity of political, legal, institutional, social, internal, and international factors influences the responses to enforced disappearances.[352] This approach supports the arguments made by Naomi Roht-

---

347 DUE PROCESS OF LAW FOUNDATION, VICTIMS UNSILENCED: THE INTER-AMERICAN HUMAN RIGHTS SYSTEM AND TRANSITIONAL JUSTICE IN LATIN AMERICA 7, 71 (2007), http://perma.cc/6RFX-UV3K.

348 *See, for example*, Francesca Lessa et al., *Persistent or Eroding Impunity? The Divergent Effects of Legal Challenges to Amnesty Laws for Past Human Rights Violations*, 47 ISR. L. REV. 105, 120–22 (2014).

349 *See, for example*, COLETTA A. YOUNGERS, VIOLENCIA POLÍTICA Y SOCIEDAD CIVIL EN EL PERÚ: HISTORIA DE LA COORDINADORA NACIONAL DE DERECHOS HUMANOS (1st ed. 2003).

350 *See generally* THE PRACTICE OF HUMAN RIGHTS: TRACKING LAW BETWEEN THE GLOBAL AND THE LOCAL (Mark Goodale & Sally E. Merry eds., 2007); Peggy Levitt & Sally Merry, *Vernacularization on the Ground: Local Uses of Global Women's Rights in Peru, China, India and the United States*, 9 GLOB. NETWORKS 442, 455, 457 (2009).

351 Inter-Am. Comm'n H.R., Justice and Social Inclusion: The Challenges of Democracy in Guatemala, OEA/Ser.L./V/II.118, doc. 5 Rev. 1 ¶ 213–34 (Dec. 29, 2003) (explaining how justice and reparation efforts in Guatemala are less effective in the case of indigenous peoples due to structural racism, among other factors).

352 TRANSITIONAL JUSTICE IN LATIN AMERICA: THE UNEVEN ROAD FROM IMPUNITY TOWARDS ACCOUNTABILITY 299, app. 1 (Elin Skaar et al. eds., 2016).

Arriaza in the context of transitional justice, which advised against the "pronounced" temptation to "extrapolate a 'formula' that can be applied, with few changes, to any and all situations."[353] However, the approach insists that the rights to truth, justice, reparation, memory, and guarantees of non-repetition of victims of enforced disappearances must be adequately addressed by applying those international standards while recognizing the need to consider each situation on its own merits and particularities in order to develop tailored policies accordingly. For instance, the basic right to know the truth about the fate or whereabouts of a disappeared person requires this contextualized approach, including considering the family situation and the cultural, religious, and social context.[354] The same is valid with respect to the memorialization or burials, exhumations, identification.[355] The concept of victim-centered approaches to enforced disappearances and a victim's participation on which international standards insist,[356] require one to understand the victim's needs that are highly context-specific, local, and are emotional, psychological, and spiritual constructs.[357]

By contextualizing the practice of enforced disappearances, it is easier to understand some of the differences between Latin America and other regions, and to highlight the similarities. This contextualized approach could shed light on explaining why unlike Latin America, Asia did not support the creation of the ICC or the inclusion of the crime of enforced disappearance in the Rome Statute.[358] Similarly, a contextualized analysis may explain how enforced disappearances affect women differently given cultural, religious, or ethnic contexts,[359] or the

---

353 Naomi Roht-Arriaza, *The New Landscape of Transitional Justice*, *in* TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH VERSUS JUSTICE, 1, 12 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006).

354 Jay D. Aronson, *The Strengths and Limitations of South Africa's Search for Apartheid-Era Missing Persons*, 5 INT'L J. TRANSITIONAL JUST. 262, 271 (2011) (explaining that the Missing Persons Task Team in South Africa only investigates cases that are explicitly "political" in nature).

355 *See* Margriet Blaauw & Virpi Lähteenmäki, *'Denial and Silence' or 'Acknowledgement and Disclosure'*, 84 INT'L REV. RED CROSS 767, 775–79 (2002).

356 *See, for example*, Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on its Mission to Sri Lanka, U.N. Doc. A/HRC/33/51/Add.2, at ¶ 70 (2016).

357 Simon Robins, *Towards Victim-Centered Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal*, 5 INT'L J. OF TRANSITIONAL JUST. 75, 77–80 (2011); SIMON ROBINS, FAMILIES OF THE MISSING: A TEST FOR CONTEMPORARY APPROACHES TO TRANSITIONAL JUSTICE 28 (2013).

358 Lasse Schuldt, *Southeast Asian Hesitation: ASEAN Countries and the International Criminal Court*, 16 GERM. L. J. 75, 87–103 (2015).

359 Jeevasuthan Subramaniam et al*., Implications of Enforced Disappearances on Women-Headed Families in the Northern Province, Sri Lanka*, 4 INT'L J. HUM. & SOC. SCI. 236, 238–41 (2014) (explaining how the cultural, ethnic and social contexts influence the identity of women wives of disappeared, the so-called half-widows).

differences in their healing processes.[360] Context could provide an answer as to why broader definitions of disappearances including non-state actors are used more often in certain parts of Asia than in Latin America (with the possible exception of Mexico).[361] Understanding the particular contexts could provide the reasons why there are more unreported disappearances cases in Africa or Asia[362] than in Latin America.

C. The Latin American model supports the calls for a domestic adaptation of universal principles

The Latin American model explained so far gives support to different theoretical literature that calls for embracing local realities in the process of adopting universal human rights standards or incorporating legal norms and institutions developed in other countries or regions. Anthropologists such as Sally E. Merry and Richard Wilson insist on the processes of domestication or the explanation of local uses and resignifications of universal human rights concepts; in this case, enforced disappearances. Merry and Wilson explain the dynamics and diversity of social actors participating in the translations from global or universal practices and perceptions to the local spaces. In these processes, attention should be paid to the victims' subjectivity, perpetrators, origins, causes, and consequences of violence, the meaning of that violence, and the social mobilization that victims generate.[363] That is precisely what we apply in this Article. As Ferrándiz explains, there is a process of "legal download" in the use of the concept of enforced disappearances in the Spanish context. That legal download refers to the various ways, modalities, and channels for the transfer and translation of international law

---

360 Naomi Kinsella & Soren Blau, *Searching for Conflict Related Missing Persons in Timor-Leste: Technical, Political and Cultural Considerations*, 2 STABILITY 1, 5–6 (2013) (explaining that in East-Timor some families do not want to have DNA tests carried out and that burials rituals are possible even without the body or remains of the disappeared person, something that does not happens in Latin America).

361 Comm'n on Hum. Rts., Civil and Political Rights, Including the Questions of: Disappearances and Summary Executions, Question of Enforced or Involuntary Disappearances, Rep. of the Working Group on Enforced or Involuntary Disappearances, Addendum, Mission to Nepal 6–14 December 2004, U.N. Doc. E/CN.4/2005/65/Add.1, at ¶ 25 (2005) (describing that disappearances are carried out both by the state and by insurgents).

362 *See, for example*, Fred Ross III & Jae Chun Won, *North Korean Kidnappers: A Response to Illegal Abductions by the Democratic People's Republic of Korea Before the Working Group on Enforced and Involuntary Disappearances*, 9 REGENT J. INT'L L. 277, 283−84 (2013) (explaining that the requirement of consent of the family to present cases to the Working Group may be unenforceable in certain contexts such as that of North Korea).

363 *See, for example*, Sally E. Merry, *Transnational Human Rights and Local Activism: Mapping the Middle*, 108 AM. ANTHROPOLOGIST 38 (2006); Richard Ashby Wilson, *Afterword to "Anthropology and Human Rights in a New Key": The Social Life of Human Rights*, 108 AM. ANTHROPOLOGIST 77 (2006).

to national or local contexts.[364] Ferrándiz describes the need to understand the historical, sociological, legal, or even symbolic differences and parallels of particular forms of repression. However, it is perfectly legitimate to integrate these historical experiences, with all their particularities, with the international legal concept of enforced disappearance. The opposite would be to argue that the only legitimate possibility of applying the concept of enforced disappearances is to the social context in which it took the first steps of its classification and jurisprudence.[365] In our case, that is the Latin American context. The historical and political contexts and short, medium, and long-term social, legal, and political responses that each disappearance generates deserved proper attention but do not challenge the need to have a universal international framework.[366] In fact, the definition and responses to enforced disappearances that developed mainly in Latin America have been transplanted to other parts of the world. For example, every Saturday at noon a group of mothers holding passport-type pictures and generally covered with white headscarves gather for half an hour at a central location in Istanbul to protest the disappearance of their children. These Turkish Saturday Mothers used as their model the Mothers of Plaza de Mayo in Argentina, who also held weekly meetings (every Thursday at 3:30) of silent protest at the Plaza de Mayo, a public square in front of the presidential palace.[367] While the definition and key obligations in terms of truth, justice, reparations, and memory remain, the concrete applications in different contexts have been adapted. The legal-transplant literature has demonstrated that changes in transplanted institutions indicate adjustments for domestic conditions.[368] In fact, transplants not adapted to local contexts are unlikely to be effective.[369]

The legal transplant theory demonstrates that "original laws and institutions are revised through conversations about the rationales for and objectives of the transplant. As a result, imported legal rules are recast through selected invocations and stylized interpretations of the original."[370] Those changes indicate that the appropriateness of these rules has been considered and modifications were made to take into account domestic legal practice or other initial conditions. Transplants

---

364 Francisco Ferràndiz, *De las Fosas Comunes a los Derechos Humanos: El Desapariciones Forzadas en la España Contemporànea*, 19 REVISTA DE ANTROPOLOGÍA SOCIAL 161, 163 (2010).

365 *Id.* at 175.

366 *Id.* at. 177.

367 Baydar & İvegen, *supra* note 317, at 691.

368 Matiangai V.S. Sirleaf, *The Truth about Truth Commissions: Why They Do Not Function Optimally in Post-Conflict Societies*, 35 CARDOZO L. REV. 2263, 2265–67, 2290 (2014).

369 Karen J. Alter, Laurence R. Helfer & Osvaldo Saldías, *Transplanting the European Court of Justice: The Experience of the Andean Tribunal of Justice*, 60 AM. J. COMP. L. 629, 634–35 (2012).

370 *Id.* at 635.

always involve a degree of adaptation or domestication that is the necessary counterpart of the transplantation.[371] In fact, the case of enforced disappearances as a conceptual framework for a certain type of state violence and to demand truth, justice, reparations, and memory have overcome the so called "transplant effect" in which local actors resist transplanted ideas and institutions.[372] While it is true that in many countries both within and outside Latin America there is resistance from those holding power or from supporters of human rights abusers, there is also an acceptance of the legal framework developed in Latin America as a way to understand and respond to enforced disappearances. However, both in Latin America and in other parts of the world we see that there are local adaptations to this framework that may indicate that importers are considering local needs and making adjustments that increase the likelihood of the transplant's success.[373] For instance, the laws creating mechanism for the search of disappeared people in Peru and Sri Lanka reflect these contextual differences. In Peru, the law seeks to "prioritize the humanitarian approach during the search for disappeared persons in the period of violence 1980-2000"[374] while in Sri Lanka the so called Office of Missing Persons has the duty to "provide for the searching and tracing of missing persons."[375] The different contexts allowed Peru to refer to disappeared persons during the armed conflict in the country while Sri Lanka can only mention "missing" persons without any references to the conflict.

As the social, economic, and institutional context in which enforced disappearance originally developed often differs remarkably between origin and transplant country, those differences create fundamentally different conditions for effecting the imported legal order in the latter.[376] Thus, the point is not to return and use the framework from the "original" disappeared of the Southern Cone of Latin America, but accept that the model has traveled and adapted to different contexts and needs. Alternatively, as Maximo Lager explains, the framework has been translated to be applicable in other contexts.[377] Thus, the transfer of legal institutions from one system to the other can be understood as translations from one system of meaning to the other. Langer understands that legal transplantation

---

371 Michele Graziadei, *Legal Transplants and the Frontiers of Legal Knowledge*, 10 THEORETICAL INQUIRIES L. 723, 728–29 (2009).

372 Daniel Berkowitz et al., *The Transplant Effect*, 51 AM. J. COMP. L. 163, 167–68 (2003).

373 *Id.*

374 *Ley de Búsqueda de Personas Desaparecidas Durante el Período de Violencia 1980–2000*, EL PERUANO (June 22, 2016), http://perma.cc/CRJ6-DWRM.

375 Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, 2016 (Act No. 14/2016) (Sri Lanka), http://perma.cc/2VMJ-GKLB.

376 Berkowitz et al., *supra* note 372, at 171.

377 Máximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 HARV. INT'L L. J. 1, 33–35 (2004).

of ideas, policies, and institutions is a creative process that involves the creation of new meaning rather than just mechanical duplication. The concept of enforced disappearances is translated and transformed to a new environment by its interaction with the local circumstances.[378]

VII. ENFORCED DISAPPEARANCES AND LATIN AMERICA AS NORM INNOVATOR

Revisiting the relationship between Latin America and enforced disappearances serves another important purpose. It challenges the idea that the global north is the place where ideas and strategies on how to confront violations committed in the global south are developed. Paolo Carozza, a scholar who writes eloquently to highlight the Latin American contributions to the human rights movement, said:

> [E]ven among human rights enthusiasts and activists, Latin America has long been regarded as the object of human rights concerns more than a contributor to human rights thinking. Or rather, its "contributions" have been perceived almost exclusively in negative terms. For example, the creativity of its repressive regimes in fashioning new forms of abuse, like the "disappearance," provoked the governments and human rights organizations of Europe and North America to come up with new norms and institutions to address the problems. … But the affirmative dimensions of human rights in Latin America, instead, have much more often been seen to be tarnished and inferior copies of grand, rich European ideas.[379]

Traditionally, scholars have analyzed (or criticized) how rules, norms, and policies normally diffuse from the center to the periphery, for example, from developed to developing countries, from the north to the south, or from the west to the east.[380] This Article challenges this traditional understanding while differing from the analysis done by Merry, Wilson, and others. In that sense, the history of enforced disappearances presents an alternative account to the traditional approach to evolution of the human rights idea and movement, as Latin America is placed in the central and leading role in developing a proper framework, which then diffused throughout the world. Rather than presenting Latin America as the recipient and vernacularizer of universal norms, this paper shows the region and

---

378 *Id.*

379 Paolo Carozza, *From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights*, 25 HUM. RTS. Q. 281, 283 (2003).

380 *See, for example*, Duncan Kennedy, *Three Globalizations of Law & Legal Thought: 1850-2000*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT: A CRITICAL APPRAISAL 19 (David M. Trubek & Alvaro Santos eds., 2006). For instance, the most traditional human rights casebook dedicates more than 40 pages to explaining the Western origin of the idea of individual rights and only a dozen or so pages to "Human Rights and Competing Ideas." *See* LOUIS HENKIN ET AL., HUMAN RIGHTS 55–98, 99−112 (2d ed. 2009).

its human rights movements as "international rule innovators," "norms entrepreneurs," and "global human rights protagonists."[381] In the case of enforced disappearances, there is a phenomenon that Langer has termed "diffusion from the periphery,".[382] Under this model,

> [A]ctors in peripheral or semi-peripheral countries articulate and have a crucial role in the diffusion of rules, norms, and policies to other central or peripheral countries. … Diffusion from the periphery may transpire in different forms and may be facilitated by many factors that vary depending on the case-study under analysis. Possible contributing factors include common problems, common political and social processes, and common external shocks. Contributing factors may also include external imposition, pressures, and incentives; emulation; benefits that the reforms may bring to international, transnational, and domestic elites; campaigns by transnational networks; and so on."[383]

The contribution of Latin America to the international conceptualization and the reaction to enforced disappearances "illustrates the potential for important global human rights protagonism in the creation of new international norms and practices from a [region] outside the wealthy global north."[384] Latin American human rights movement activists and Latin American governments are among the most important protagonists in the area of domestic human rights activism given the extensive Latin American innovations in terms of enforced disappearances.[385] "Often, [Latin Americans] were not emulating tactics they discovered elsewhere but were developing new tactics. On a number of occasions, they have then exported or diffused their institutional and tactical innovations."[386] Latin America never was a passive recipient of international action on enforced disappearances (as there was none in its origins). As such, the region is not simply an interpreter or translator of global human rights standards. Rather, Latin America should be seen as, if not the leader, at least an important international and central protagonist in the enforced disappearances realm, involved actively in creating and modifying the domestic and international framework for dealing with enforced disappearances. The Latin American contributions in terms of defining and conceptualizing the crime, developing the international normative framework and devising legal, judicial, and policy responses to the different aspect of the complex

---

381 Kathryn Sikkink, *Latin American Countries as Norm Protagonists of the Idea of International Human Rights*, 20 GLOB. GOVERNANCE 389, 390 (2014).

382 Màximo Langer, *Revolution in Latin American Criminal Procedure: Diffusion of Legal Ideas from the Periphery*, 55 AM. J. OF COMP. L. 617, 618 (2007).

383 *Id.* at 624.

384 Sikkink, *supra* note 182, at 1.

385 *Id.* at 22.

386 *Id.* at 22–23.

human rights violations involved in cases of enforced disappearances were and continue to be central in understanding and fighting this phenomenon.

This situation is not surprising as Latin America has a long tradition of being an active participant in the creation of human rights standards and institutions.[387] For instance, from the very inception of the Universal Declaration, Latin America brought to the table an insistence of incorporating economic, social and cultural rights.[388] More importantly, Latin America had a different understanding of the reasons to have an international human rights declaration. Latin America pursued the codification of human rights at the international level to:

> [R]educe the scope of diplomatic protection, making non-intervention and sovereign equality stronger rather than weaker…[H]uman rights did not merely compensate for adverse consequences but also reshaped the very same international legal structure that produced the adverse consequences: from intervention to non-intervention and from diplomatic protection based on a standard of civilized justice (inequality) to a more limited right to diplomatic protection based on national treatment (equality), measured by human rights that empowered states to adopt social and redistributive policies.[389]

Those were different goals and projects than the ones promoted by the Western, Northern countries. The case of enforced disappearances extended the Latin American "tradition of legal thinking and political imagination."[390] In the early 1970s and 1980s there was no norm establishing a right not to be disappeared, no legal definition of the phenomenon, no case law around it, much less international institutional mechanisms to respond to disappearances. Latin American families, lawyers, and activists developed multiple advocacy strategies to change, influence, and develop the existing international legal landscape. Rather than being passive spectators of the international theater, Latin Americans became writers, directors, producers, and actors of the international response to enforced disappearances. In addition, their strategic advocacy promoted the transformation of the international legal system to respond to the needs and reality present in Latin America.

---

387 KATHRYN SIKKINK, EVIDENCE FOR HOPE: MAKING HUMAN RIGHTS WORK IN THE 21ST CENTURY 55 (2017) (explaining the crucial role that Latin America played in the origins of the Universal Declaration of Human Rights).

388 Mary Ann Glendon, *The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea*, 16 HARV. HUM. RTS. J. 27, 30–39 (2003).

389 Arnulf Becker Lorca, *Human Rights in International Law? The Forgotten Origins of Human Rights in Latin America*, 67 UNIV. OF TORONTO L. J. 465, 493 (2017).

390 Arnulf Becker Lorca, *International Law in Latin America or Latin American International Law? Rise, Fall, and Retrieval of a Tradition of Legal Thinking and Political Imagination*, 47 HARV. INT'L L. J. 283 (2006).

VIII. CONCLUSION

Understanding Latin America's relationship to enforced disappearances is important, given the role that the region has held in discussions about the definition and responses to enforced disappearances on a global scale. Prior to the events in Latin America in the 1970s, there was no general category for the human rights abuse of enforced disappearances. There were different practices with similar elements: deprivation of liberty by state agents followed by the denial of such detentions and kidnappings. Latin America created and popularized the category of enforced disappearance. Latin America made an immense contribution to the fight against enforced disappearances and to the human rights movement in general. While eliminating political opponents has long been a strategy of those in power throughout the world, the Latin American story and its ability to captivate international attention has forever left its imprint on international law defining enforced disappearances. In sum, the need to frame a distinct legal norm and the content of that normative prohibition against enforced disappearances are deeply connected to the Latin American experience.

The international norms outlawing, preventing, and punishing the use of enforced disappearances might never have existed but for the Latin American experience. The Latin American narrative provided the urgency for the international community to address the crime through its own distinct frame, as a separate violation that was more than the sum of its criminal parts. It was the human stories that emanated from Latin America that demanded an international call for action.[391] Latin America has played a prominent role in enforced disappearances, as a source of innovation and a progenitor both in developing and perfecting this heinous crime as well as in construction of the national, transnational, regional, and international responses to it. In this sense, the first part of this Article, by presenting a "generalized Latin American approach" to enforced disappearances could appear as contradicting the second section of the Article that proposes taking a contextualized approach to disappearances. The Article reconciles the two sections by stating that the Latin American model provides the framework but does not place limits on the ways in which enforced disappearances are perpetrated nor the responses to them. However, despite the similarities and generalizations that we have presented, there are profound dissimilarities between different historical moments in which the disappearances occur, between countries (the methodology used, who the victims or perpetrators were, to name a few) or between sub-regions (with marked differences between the disappearances in the Southern Cone and Central America). Many of the advances, developments, or "wins" have not happened in a uniform manner. Chile

391 Frey, *supra* note 15, at 52.

and Argentina are at the positive end of the continuum, of course moving at different speeds and vicissitudes, while other countries, such as Honduras, are making less progress.[392] Others have had both improvements and regressions, like Guatemala[393] or Peru.[394] In others, progress coexists with the continuation of enforced disappearances, like Colombia.[395] Finally, there are other countries where progress on past disappearances has been extremely limited and the current situation has worsened. This is the case in Mexico.[396] "Every member of a transnational network or movement, no matter how supranational or widespread," Alison Bruey posits, "emerges from and acts within a local context or contexts that inform his or her political and cultural understandings, interpretations, and decisions."[397] At the end of the day, the Latin American

---

392 Emily Braid & Naomi Roht-Arriaza, De Facto *and* De Jure *Amnesty Laws: The Central American Case*, *in* AMNESTY IN THE AGE OF HUMAN RIGHTS ACCOUNTABILITY: COMPARATIVE AND INTERNATIONAL PERSPECTIVES 182 (Francesca Lessa & Leigh A. Payne eds., 2012).

393 For instance, in a decision in late September 2008, a court unanimously found that the Guatemalan State, and more specifically the Guatemalan army, committed genocide and crimes against humanity, including enforced disappearances, against the Maya Ixil population during the *de facto* government of Efraín Ríos Montt (1982-1983). However, in a split ruling, the majority opinion acquitted a former military intelligence chief of all charges. *See* Jo-Marie Burt & Paulo Estrada, *Court Finds Guatemalan Army Committed Genocide, but Acquits Military Intelligence Chief*, INT'L JUST. MONITOR (Sept. 28, 2018), http://perma.cc/SPE8-XYAP.

394 The case of former president Fujimori is an example of this back and forth. He was sentenced to 25 years in prison for 25 death-squad killings and two enforced disappearances in 2009. Fujimori was pardoned in December 2017 by Pedro Pablo Kuczynski, Peru's president at the time. Emily Sullivan, *Peru's Supreme Court Overturns Pardon Of Former President Alberto Fujimori*, NPR (Oct. 5, 2018, 4:55 AM), http://perma.cc/QMV7-W63W. On June 15, 2018, the Inter-American Court ruled that the Peruvian courts must review whether the pardon granted constitutes an unnecessary and disproportionate impact on the right of access to justice of the victims of the Barrios Altos (massacre) and La Cantuta (enforced disappearance and extrajudicial execution) cases. *Peru: Inter-American Court Rules That the Peruvian Courts Should Review the Pardon Granted to Fujimori*, AMNESTY INT'L (June 18, 2018, 10:14 AM), http://perma.cc/7SZG-QQZY. In early October of 2018, Peru's Supreme Court overturned the medical pardon stating that Fujimori must return to jail to serve his sentence for crimes against humanity, which cannot be pardoned under Peruvian and international law. Sullivan, *supra* note 394. Less than a week later, Peru's Congress rushed through a law to allow convicted women over the age of 70 and men over 75 to move freely within their home province wearing an electronic tag. Fujimori, 80 years old, would benefit from that law. John Quigley, *Peru's Congress Passes Bill to Grant Fujimori House Arrest*, BLOOMBERG (Oct. 11, 2018, 8:02 PM), http://perma.cc/3PVE-RDJT.

395 *See, for example*, Committee on Enforced Disappearances**,** Concluding Observations on the Report Submitted by Colombia under Article 29 (1) of the Convention, U.N. Doc. CED/C/COL/CO/1, at 4 and 8 (the Committee welcomes the measures adopted by Colombia to address issues related to enforced disappearances, while expressing concern due to the fact that numerous cases of enforced disappearance continue to be reported in various parts of the country).

396 Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances Addendum Mission to Mexico, U.N. Doc. A/HRC/19/58/Add.2 (2011).

397 Alison Bruey, *Transnational Concepts, Local Contexts: Solidarity at the Grassroots in Pinochet's Chile, in* HUMAN RIGHTS AND TRANSNATIONAL SOLIDARITY IN COLD WAR LATIN AMERICA 120, 136 (Jessica Stites Mor ed., 2013).

experience demonstrates that rather than focusing on a static formula, toolkit, or blueprint, it may be more appropriate to place the rights of the victims at the center of the strategy and think on the processes of how to guarantee them. In order to secure the victims' rights to justice, truth, reparations, memory, and guarantees of non-repetition, Latin Americans looked for opportunities to advance discussions, shaping the ways in which enforced disappearances are dealt with. Latin Americans put victims on the international (and many times on the national) agenda and kept them there. In that process they created spaces for entry points and developed innovative ways of dealing with enforced disappearances according to changing circumstances.[398] Although the Latin American change from widespread use of enforced disappearance to an improved situation is still fragile, uneven, and incomplete, it is remarkable. The region proved its ability to "define and depict the problem, making it comprehensible and compelling to audiences nationally and internationally" as an essential prerequisite to develop effective legal action to challenge enforced disappearances.[399] The Latin American experience with enforced disappearances provides important and inspirational lessons on the ability of civil society networks—especially family members, human rights advocates, and the professionals allied with them—to change law, policy, and political consensus through creativity and perseverance.[400] However, as Colombian scholar Liliana Obregon has said in relation to Latin America and its contribution to human rights in general:

> [T]he difficult part of this seemingly happy ending is that despite institutional growth, the sophistication of the lawyers, and the many individual successes in ending or repairing certain violations, the acts of horrendous violence, outrageous discrimination, and incredible injustice continue to occur in the region.[401]

The aim here is not to glorify or to romanticize Latin America, the Latin American human rights movement, or the Latin American governments. The enforced disappearances problems certainly have not been resolved in the region. The reports of the Working Group[402], the Inter-American Commission,[403] and

---

398 Duthie & Seils, *supra* note 332, at 30.

399 Duffy, *supra* note 239, at 173.

400 Roht-Arriza, *supra* note 195, at 343.

401 Liliana Obregon, *The Universal Declaration of Human Rights and Latin America*, 24 MD. J. INT'L L. 94, 97 (2009).

402 *See, for example*, Hum. Rts. Council, Rep. of the Working Group on Enforced or Involuntary Disappearances, Addendum, Follow-up report to the recommendations made by the Working Group, Missions to Mexico and Timor Leste, U.N. Doc. A/HRC/30/38/Add.4 (2015) (expressing concern about the deterioration of the situation in Mexico) at 6.

403 *See, for example*, Inter-Am. Comm'n H.R., Democratic Institutions, the Rule of Law and Human Rights in Venezuela: Country Report, Report No. 209/17, OEA/Ser.L./V/II, at 365, 369 (2017) (referring to the disappearance of 20 persons in 2016).

other human rights organizations demonstrate the many ongoing issues related to enforced disappearances that are still unsolved. Despite significant similarities and progress among Latin American countries at the normative level in establishing the rights of victims of enforced disappearances and important shared experiences at the level of practice, deep differences arise in what the UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence has called the "implementation gap."[404] This gap refers to the frequency with which measures to address enforced disappearances remain unimplemented or only partially implemented.[405] Even so, when we situate Latin America in a global human rights context, its many innovations stand out.[406]As enforced disappearances continue and are globalized, societies that now face the same challenges are equipped with intellectual resources, policy, and activism models they can use without having to create them from scratch, as Latin America did.[407] The challenge is how to continue adapting and contextualizing the model to other modalities of disappearances in the region as well as to the realities and needs in other regions while securing the rights to justice, truth, reparations, and memory of victims of enforced disappearances.

404 Pablo de Grieff (Special Rapporteur on the Promotion of Truth, Justice, and Reparation and Guarantees of Non-Recurrence), *Rep. on the Promotion of Truth, Justice, Reparation and Guarantees of Non-Recurrence*, UN Doc. A/69/518, para. 6, 48, 81 (Oct. 14, 2014).

405 *Id.*

406 Sikkink, From Pariah, *supra* note 182, at 2.

407 Sikkink & Walling, *supra* note 182, at 301.