

Human Rights: From Practice to Policy

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The Emergence of “Disappearances” as a Normative Issue

Presentation by José (Pepé) Zalaquett

“Disappearances” emerged as human right problem in the 1970s, in the height of the Cold War—and initially in Chile and Argentina. Eventually we realized that Guatemala had engaged in similar practice in the 1960s, and other countries as well. In fact, Hitler’s “Night and Fog” decree is a remote precedent of the practice. I claim the term “disappearance” was coined in Chile, because at one point those of us working for the Peace Committee (the ecumenical organization that preceded the Vicariate of Solidarity) noticed that we were no longer receiving information concerning the whereabouts of some prisoners we were representing. Colleagues from the Peace Committee’s Information Department came to us and said, “There are 131 people who have disappeared.” And we started using that term. We filed a massive habeas corpus for these 131 people, and the courts didn’t know what to do about that. At that time the Chilean courts pretended they did justice and we pretended we asked for justice. We lost every one of thousands of legal cases. Given the judiciary’s subservience to the military regime, the real product of our legal work was the cumulative impact of it in the long run and to “do something” for the victims, as their relatives desperately demanded.

In Chile, the systematic practice of “disappearances” lasted from 1973 to 1977, with about 1,300 people disappeared. That is in addition to the 2,000 people who were killed outright in extra-judicial executions. The practice of disappearances was also taken up in Argentina at a much larger scale and likewise lasted for four years, from 1976 to 1980.

What was the rationale for this practice? In both countries I believe the stance of the military rulers went more or less like this: “Our countries are sufficiently mature, and public opinion sufficiently sensitized, that we cannot afford a parade of coffins or firing squads. Yet, these people are internal enemies. The Cold War has moved into our backyard, and we are fighting an internal enemy. They are fighting a dirty war, and we have to fight back with a dirty war.” That was the feeling among the military. In their view, the younger, the more intellectually prepared, and the more militant, the worse. Such opponents were seen as irredeemable. Yet, because society would not accept a “parade of

coffins,” the rulers felt they had to kill those deemed as dangerous opponents and bury them in secrecy, thinking that eventually their relatives would forget. Of course they had themselves forgotten to read Antigone... In fact, relatives *never* give up searching for their loved ones. And especially mothers.

Eventually the military authorities realized that their strategy was backfiring. International public opinion was so incensed that at one point both countries, Chile and Argentina ceased to resort systematically to disappearances.

The Role of Amnesty International

By the mid to late 1970s, the international community had become well aware of the practice of disappearances, and Amnesty International recognized that it had become widespread—across Latin America but also in places as distant as the Philippines. So in 1980 Amnesty International convened a meeting in Racine, Wisconsin, at the Johnson Foundation’s Wingspread Conference Center, attended by people from all over the world. Ann Blyberg of AI-USA organized the meeting. At that meeting we tried to hammer out the concept of disappearances and devise strategies to oppose it. Conceptually, we had to distinguish “disappearances” from behaviors that in some ways were similar and common: people gone missing—which happens in every society; men missing in action—which happens in every war; incommunicado detention; irregular incommunicado detention; and abduction. We also realized that enforced disappearance was a complex crime, involving several crimes that were always present and other crimes that one had every reason to believe had also been perpetrated. Disappearance, we observed, always involved the crimes of arbitrary detention or abduction, obstruction of justice, and cruel treatment for the families who didn’t know the whereabouts of their kin. The other crimes that were almost certainly involved included torture, killing, and illegal disposal of the bodies. Disappearance, just like other complex crimes such as apartheid or ethnic cleansing, presupposes a cluster of behaviors that are comprised within such elaborate criminal practice. You can identify killing, rape or other criminal components of the practice, but the overall crime is defined by a sense of purpose. The purpose of ethnic cleansing is self-evident; apartheid, of course, was

implemented to enforce a regime of institutionalized racial discrimination. The practice of disappearance was devised to get rid of undesirables without leaving traces and without having to account for them. And of course it failed its purpose.

From Campaign Efforts to International Treaties

Amnesty International produced a book on disappearances, based on the proceedings of the Wingspread Seminar on Disappearances [published in 1981 by Amnesty International USA as *Disappearances: A Workbook*]. After that there was a lot of campaigning against the practice and much work aimed at creating normative standards to prevent disappearances. Through these efforts by the human rights movement, inter-governmental institutions (IGOs) were energized. In 1992 the UN General Assembly adopted a Declaration against enforced disappearances, and then developed a treaty. The UN Convention for the Protection of All Persons from Enforced Disappearances was approved in 2006, and the last time I checked it had nineteen ratifications out of twenty required to enter into force.

In the meantime, the Organization of American States (OAS) produced its own Convention in 1994, because this problem in Latin America was particularly acute. It was quickly ratified and entered into force in 1996. This Convention states the following, in substance: The crime of disappearances involves an abduction or arbitrary detention by State authorities acting themselves or vicariously through death squads or other groups, followed by an absence of acknowledgement or information about the whereabouts or fate of the victim, thereby depriving them of the protection of law. That's the concept. The OAS Convention also indicates that systematic disappearances is a crime against humanity, anticipating the definition of the 1998 Statute of Rome that so characterizes disappearances when they occur in a context of generalized or systematic attack against a civilian population and with knowledge of that attack. The conventions on enforced disappearance establish that this practice is not a political crime, thereby allowing for extradition. They also establish the right of States to institute extraterritorial jurisdiction, mainly to assert the right to prosecute these crimes even if they have not been committed in their territory—*if* the victim is a national of their country, the alleged

perpetrator is a national of their country, or if an alleged perpetrator ended up landing in their country and they must either extradite or prosecute that person (*aut dedere aut judicare*).

Following all of these efforts and legal developments, in Chile and Argentina the issue of disappearances has been acknowledged and its criminal nature accepted by the whole society. And internationally, even for those people whose approach to human rights violations is that you have to “break eggs to make an omelet”—to use this tired and grotesque metaphor—the lesson is that this doesn’t pay, you will have the problem of the mothers marching, or whatever, for 30 years or more. So, they feel “It’s not worth it.”

In sum, in this field there has been a kind of victory in normative terms, in campaigning terms, in conceptual terms, and in terms of acknowledgement.

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Glossary

AI (and Amnesty) – Amnesty International. Founded in 1961, AI is one of the oldest and most prominent transnational human rights organizations, with international headquarters in London. The organization relies on 3 million members and supporters in 150 countries to carry out its work, and policies are vetted through complex processes and structures that involve membership in the decisions. (See *ICM, IEC, IS, AI mandate, and Secretary General* below.)

IGO – Inter-governmental organization. Organizations whose members are nation states—such as the United Nations, the European Union, and the Organization of American States.