

NGO Contributions to Eradicate Enforced Disappearances in Latin America

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6.1 Introduction

This chapter describes the long process of awareness that led to the creation of the International Convention for the Elimination of Enforced Disappearance, as well as the role and influence of non-governmental organizations (NGOs) on that process. For this purpose, research was carried out on the origins of some of the organizations of the civil society present in Latin America, which were created in the 1960s and 1970s in response to the Cold War, and which spread around the world after the end of the Second World War and the new division of the world agreed upon by the winning countries at the Yalta Conference of 1945 and the Paris Peace Treaties of 1947.

The analysis reviewed the national and international organizations that assisted developing countries and in turn allowed them to influence the model of society that was being developed under the threat of a third nuclear world war. During the Second World War, Nazi Germany issued a decree known as 'Night and Fog'¹ to fight against local resistance, whereby the system of enforced disappearance, torture and death was applied. It was also used in the colonies during liberation wars in the 1950s and 1960s.

When Latin America was almost completely under dictatorships, Chile, Argentina, Uruguay, Paraguay, Brazil, Peru and Bolivia in the Southern Cone, with tentacles extending outside Latin America to operate in the United States, Italy, France and Spain,² launched Operation Condor in order to persecute opposition activists and armed

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¹ Issued on 7 December 1941 by Field Marshal Wilhelm Keitel.

² www.cipdgob.ar/pdf/Operacion-Condor.pdf.

organizations.³ The Operation consisted in the coordination of governments and their intelligence agencies aimed at the detection in their territories of those who were escaping from their own countries. They were unlawfully arrested and, without any legal procedure, sent back to be tortured and then executed or thrown alive from planes into the sea.

Operation Condor was a multilateral agreement between the national security dictatorships of the Southern Cone within the continental counterinsurgency system In November 1975, Argentina, Bolivia, Chile, Paraguay and Uruguay signed a pact that allowed their security forces to coordinate repression against Southern Cone political exiles outside their national borders and to target prominent leaders . . . even in Europe and the United States . . . Brazil joined soon after . . . Ecuador and Peru subsequently joined.⁴

As a result, in 1980, the relatives of the victims began to seek a way to achieve first the identification of this offence as an autonomous offence and then the adoption of an international convention for its punishment. In this chapter, the testimonies about such actions were first analyzed first and then a description is provided about how, at the beginning of this century, a series of concomitant actions gained momentum, as a result of which, the United Nations (UN) convened a Drafting Group for what ended up being the long-awaited international convention. Finally, there is a brief analysis of the current state of those NGOs that fought hard for such Convention; the current solidarity organizations, their new perspective and interests; and the update of a utopian fight for the appearance of new challenges and the need for the recognition of new rights. Those people from the recent past who were essential creators of the present are herein remembered.

They base their accounts on memory. In this regard, Vera Carnovale⁵ reminds us about the fact that: ‘The past is remembered even if the memory is always contemporary; it is renewed every day, it is invented in order to develop its identity and erased to do without useless material.’

In *Historia, memoria y fuentes orales*, Carnovale et al. cite Mary Carruthers,⁶ who reflects on the act of forgetting: ‘To forget is another

³ S. Calloni, *Operativo Cóndor, Pacto Criminal* (Ciencias Sociales UBA, 2001).

⁴ Centro Internacional para la Promoción de los Derechos Humanos (CIPDH), Dirección Nacional del Sistema Argentino de Información Jurídica (2015), p. 18.

⁵ V. Carnovale et al., *Historia, memoria y fuentes orales* (CeDinCi Editores, 2006).

⁶ M. Carruthers, *The Craft of Thought, Meditation, Rhetoric, and the Making of Images* (Cambridge University Press, 1998), pp. 400–1200, cited by Carnovale.

aspect of the act of remembering because the act of forgetting on purpose allows for creativity. The disadvantage of memory is not the act of forgetting, but the disorder, the absence of guidelines, the dispersion or fate.'

This chapter consists of research about a historic stage of a generation that is giving way to new people with their new rights, their new fights and their new utopias.

6.2 International Solidarity in Latin America in the 1960s and 1970s

6.2.1 *Solidarity Is the Tenderness of the People*

This section⁷ briefly reviews the international solidarity organizations that helped the civil society in the different countries where there was resistance to authoritarianism.

6.2.1.1 World Council of Churches (WCC)

The Human Rights Office for Latin America was created in 1975, at the 5th Assembly of the WCC held in Nairobi, whose theme was 'Jesus Christ Frees and Unites', in order to direct the collaboration of the evangelical churches with Latin American countries that were suffering brutal repression.⁸

Presbyterian Pastor Charles Harper, born in the United States, but who lived in Brazil since he was a child, was a leading figure responsible for the process of encouraging solidarity in Latin America. His mission was to support those churches and groups that were facing difficult situations in the repressive context of Latin America. Harper's commitment to human right defenders facing dictatorships in their countries considerably exceeded the responsibility for social care, and he was personally and physically involved in the actions performed.

On 4 October 1982, in Argentina, a *Marchapor la Vida* (March for Life) was organized by the existing human rights organizations: the Permanent Assembly for Human Rights (APDH, for its Spanish acronym), the Ecumenical Movement for Human Rights (MEDH, for its

⁷ Based on Ministerio de Relaciones Exteriores, Comercio Internacional y Culto, Testimonios de la Solidaridad Internacional (2007), p. 120, cited by Belela Herrera.

⁸ M. T. Piñero, *Iglesias Protestantes y Terrorismo de Estado* (Facultad de Ciencias Sociales, Universidad de Buenos Aires I), p. 10.

Spanish acronym), Madres de Plaza de Mayo (Mothers of the Plaza de Mayo), Abuelas de Plaza de Mayo (Grandmothers of the Plaza de Mayo), Familiares de Detenidos y Desaparecidos por Razones Políticas y Sociales (Relatives of Disappeared and Arrested People for Political and Social Reasons), Service, Peace and Justice (SERPAJ, for its Spanish acronym), the Liga Argentina por los Derechos del Hombre (Argentine League for Human Rights) and the Centre for Legal and Social Studies (CELS, for its Spanish acronym).

Since the march was prohibited, repression was expected. Harper travelled especially for this occasion and, on said day, he led the march together with the leaders of the different organizing NGOs and the representatives of the religious creeds. The march could not reach the seat of the executive power as planned, but it was not repressed, and it had a great national and international impact.

Based on the gathered information, the World Council of Churches filed complaints in different forums. The most important forum was the Commission on Human Rights of the United Nations, where the CMI has an advisory status. The Director of the Commission of the Churches on International Affairs (CIAI, for its Spanish acronym), Leopoldo Nilus, was in charge of the relationship with the United Nations. The CMI also had an office in New York, attended the United Nations General Assembly sessions and also filed complaints for human rights violations in Latin America.⁹

Furthermore, the presence of Latin American refugees in different countries led the local churches to participate in the actions against the military dictatorships. However, the member churches of the Council and the Council itself played a role of support and pastoral care with those who went into exile in such countries.¹⁰

In Chile, the WCC helped the Fundación de Ayuda Social de las Iglesias Cristianas (Christian Churches Social Aid Foundation, FASIC), an ecumenical organization; the Vicariate of Solidarity, together with the Catholic Church; and the Servicio Evangélico para el Desarrollo (Evangelical Service for Development, SED), an institution of the Pentecostal Church. In Brazil, it took an active part in solidarity actions with the churches and the popular organizations.

The Human Rights Office of the Council helped the Coordinadora Ecueménica de Servicio (Service Ecumenical Coordinator, CES) and

⁹ Ibid., p. 11.

¹⁰ Ibid.

Clamor, an ecumenical organization created by Archbishop Paulo Evaristo Arns from São Paulo to assist the flood of refugees from Chile, Argentina and Uruguay who arrived in Brazil.

Protestants and Catholics worked together in the defence of human rights in the Comité de Iglesias para Ayudas de Emergencia (Churches Committee for Emergency Aid, CIPAE) from Paraguay, and in the Service, Peace and Justice from Uruguay. In Central America, an office of the World Council of Churches (WCC) carried out important work by filing complaints for the human rights violations in Nicaragua, Guatemala, Honduras and El Salvador, as well as by assisting the refugees who were escaping from political persecution and the killing of leaders and indigenous communities.

6.2.1.1 Diakonia

Diakonia is a Swedish non-profit organization founded in 1966. In 1973, the Centro Evangélico de Acción Social (Evangelical Centre of Community Welfare, CEAS) was active. The Centre was formed by the Iglesia Evangélica del Río de la Plata (Evangelical Church of the River Plate, IERP), the Presbyterian Church and the Iglesia Evangélica Misionera Argentina (Argentine Evangelical Missionary Church, IEMA), which performed its actions among the people of shanty towns and the Comité Interluterano de Diakonía (Diakonia Inter-Lutheran Committee, CID), backed by the Lutheran Council of the River Plate composed of the IERP, Evangelical churches and the Lutheran and Scandinavian churches to respond to the floods in the northeast of Argentina. Just like the preceding commissions, the Comisión Argentina para los Refugiados (Argentine Commission for Refugees, CAREF) was also established to act in relation to the contingency, as a support for the activity in Chile and, at least at the beginning, the individuals involved planned the work for the short term.¹¹

During the Latin American dictatorships, it was called Acción Ecueménica Sueca (Swedish Ecumenical Action, AES), and afterwards it was called Diakonia.¹² Paraguay, Peru, Bolivia, Guatemala, Honduras, Nicaragua, Colombia and Argentina were the Latin American countries in which Diakonia was present with local and Swedish workers.

¹¹ N. Casola, *Territorio de Refugio. Comisión Argentina para los Refugiados* (CAREF), p. 7, available at www.aacademica.org/000-040/15.

¹² A. Gauding, *Es mejor encender una luz que maldecir la oscuridad* (1991).

In line with such initiatives, in December 1974, Pastor Juan Cobrdo promoted the creation of the *Diaconía Evangélica Argentina* (Argentine Evangelic Diakonia, DEA). The goal was that the AED gradually be assigned all the tasks performed by the CEAS, CID and CAREF, to which new projects could be added. The aim of the initiative was to concentrate efforts and resources to make the task more efficient in view of the huge difficulties that existed for aid to be received.¹³ Another common initiative was the creation of the *Consejo Consultivo de Iglesias* (Advisory Council of Churches, CCI) in 1978 as a response to the fact that it was not possible that all the members of the *Federación Argentina de Iglesias Evangélicas* (Argentine Federation of Evangelical Churches, FAIE) would pronounce against State terrorism.

A summary of Diakonia's role in the work for human rights, in relation to democracy and human dignity, states that:

The human rights organisations and their representatives have saved many human lives . . . For obvious reasons, there are no well-documented data on the number of people saved from being abducted, killed, tortured or exiled. However, it is not an exaggeration to note that the human rights organisations, in some cases, were especially relevant to the end of dictatorships and the return to democracy in several countries.¹⁴

Even during the dictatorships, *Frikyrkanhjälper* (Free Churches Aid) funded the aid that the victims of the dictatorships and their families received through informal channels, which were opened by *Frikyrkanhjälper* with the collaboration of different churches. Furthermore, *Frikyrkanhjälper* took part in the creation of different organizations that were useful for the coordination of actions against the repressive structure, which, through the Operation Condor, subjected the entire Latin American territory to unlawful repression. *Frikyrkanhjälper* called lawyers who were human rights activists in their countries and formed the *Asociación de Abogados Latinoamericano para la Defensa de los Derechos Humanos* (Latin American Human Rights Lawyers' Association, AALA).

The Association was formed by Belisario Dos Santos Jr, from Clamor, São Paulo; Roberto Cuellar, a Salvadorian, who was a distinguished president of the Inter-American Institute of Human Rights (IIHR) after

¹³ CAREF, Report, December 1974.

¹⁴ Gauding, *Es mejor encender una luz que maldecir la oscuridad*, p. 18.

the return to democracy; and the author of this chapter, among other Latin American lawyers.

In some contexts, such as in Central America during the military dictatorships period in the 1980s, Diakonia created spaces of political action that must be analyzed within the social and political context.

As Anna Karen Gaudin said:

A first reflection is that in Diakonia we enjoyed during the critical years of the military dictatorships, a very large autonomy on the part of our directors, to decide on projects that we considered a priority. In this way we also assumed very great responsibilities. The other side of this medal is that we were left alone to resolve eventual political, institutional and personal confrontations. Working in conflictive countries in matters ambiguously called 'internal affairs', requires taking precautions that, in difficult moments, became heavy Certainly, as the sharing of risks with others grew, so did the bonds of friendship. That is why, to a large extent, the human bonds created cannot be erased, neither by distance nor by time.¹⁵

6.2.1.2 Ford Foundation

The Ford Foundation's solidarity was reflected in its support for human rights movements and its accompaniment during the transition to democracy.

The presidents and leaders of the Ford Foundation decided that human rights were an explicit and main priority in their agenda. Thereafter, the Ford Foundation worked explicitly on the creation of the so-called human rights lobby in Washington, DC, and supported organizations such as Amnesty International (created in 1961; winner of the Nobel Peace Prize in 1977); the Washington Office on Latin America (WOLA, founded in 1974 as a result of the coup d'état in Chile); and Human Rights Watch (previously known as Helsinki Watch in 1978), which were involved in the organization. Omar Torrijos (Panama), the Nicaraguan Sandinistas, Guillermo Ungo (El Salvador), Daniel Oduber (Costa Rica), Anselmo Sule (Chile) and Leonel Brizola (Brazil), among many others, were also actively involved.

The Ford Foundation funded the formation of the Asociación Latinoamericana de Derechos Humanos (Latin America Human Rights Association, ALDHU) composed of the subsequently elected president of

¹⁵ Ibid., p. 19.

Colombia, Carlos Andrés Pérez;¹⁶ César Verduga,¹⁷ Secretary-General of ALDHU and then Minister of the government of Ecuador; the ever remembered leader of the APDH and co-founder of CELS, Emilio Mignone; and the author of this chapter, among many others.

According to Calandra,¹⁸ who cites the Programa de la Fundación Ford para Latinoamérica y el Caribe (Ford Foundation's Latin American and Caribbean Programme), during 1959–83, the Ford Foundation gave 250 million dollars for programmes supporting the development of civil society organizations.¹⁹ According to Richard Magat,²⁰ social sciences and interdisciplinary research – mostly intended for private and non-public entities, including independent NGOs – received support in those years.

At that time, the position was adopted by President Jimmy Carter and the policy, executed by the Secretary for Human Rights, Patricia Derian, was critically important for the fight against dictatorships. The refusal to sell weapons to the non-democratic governments of the region can be highlighted, as well as the talks held so that the Argentine dictatorship would accept the visit from the Inter-American Commission on Human Rights (IACHR) in 1979.

In 1985, Patricia Derian's in-person testimony at the Trial of the Juntas was particularly important, because she was President Carter's Secretary of Human Rights and in that capacity played a fundamental role in the relationship between the US government and the Latin American dictatorships. Her testimony in Case 13, for which the first three military juntas that governed Argentina between 1976 and 1983 were prosecuted and convicted, was particularly important.²¹

¹⁶ He had to resign after protests against his administration.

¹⁷ An economist and politician who was two times minister of the government of Ecuador.

¹⁸ Benedetta Calandra (PhD, Roma Tre University, 2005; MA, University of London, 2000). Researcher and Associate Professor in History of the Latin America, University of Bergamo, Italy, Department of Foreign Languages, Literatures and Cultures. Her lines of research are contemporary history of Latin America, memory and human rights, political exile, cultural relations between United States and Latin America.

¹⁹ The Ford Foundation's Latin American and Caribbean Programme, Discussion paper For the Board of Trustees Meeting as a Committee of the Whole, FFA No. 008856, 28 March 1984.

²⁰ <http://prabook.com/web/richard.magat/219083>.

²¹ She recounted how they convinced the Argentine dictatorship to receive the IACHR in 1979. The IACHR report was lapidary for the dictatorship's aggressive foreign policy of denying the existence of the disappeared.

6.3 The Path of the International Convention

At the Coloquio de París (Paris Colloquium) of 1981,²² exiles and jurists, including many from Latin America, presented their project for the Convention and set out the need for renewing the mandate of the Working Group on Enforced or Involuntary Disappearances (WGEID) created by the UN in 1980.²³ At that event, the first draft of the Convention was prepared and actions to promote its drafting were agreed upon. During the Colloquium, not only the legal discussions but also cultural activities were important. The Théâtredu Soleil from Arianne Mouchkine organized a march in the streets of Paris with the silhouette of the disappeared.²⁴

Lawyers from Asamblea Permanente por los Derechos Humanos (APDH) and Madres de Plaza de Mayo also presented projects conceived by them for the creation of a Convention on Enforced Disappearance, among which was a project that had been conceived by the ever-remembered Alfredo Galletti, Esq. and Alberto Pedroncini, Esq., among others, can be highlighted. Emilio Mignone and Augusto Conte, members of APDH and then founders of Centro de Estudios Legales y Sociales (CELS), made a very well-founded presentation on the repressive strategy of the military dictatorship: 'La doctrina del paralelismo global.'²⁵

Argentine writer Julio Cortázar was present at that event and, in an ever-remembered discourse expressed his opinion about the detained-disappeared: 'This meeting is about that ghostly population, so close and so far at the same time. Above and below the legal considerations, the analyzes and normative research in the field of domestic and international law, we are talking about that people of the shadows.'²⁶

Rodolfo Mattarollo²⁷ describes that, from exile, work was done for the Colloquium, in two concomitant lines: (1) the filing of complaints and (2) political-legal reflection. Those in charge of such work were the

²² Held in the Senate and the National Assembly of Paris, 31 January and 1 February 1981.

²³ Commission on Human Rights, Resolution 20 (XXXVI), 29 February 1980.

²⁴ Cited by Rodolfo Mattarollo in *Estrategia represiva de la dictadura militar* (Colihue, 2006).

²⁵ Mignone, Emilio, Conte, Augusto, Colihue, (2006).

²⁶ J. Cortázar, *Negación del Olvido en Proyecto de Convención Internacional para la Protección de todas las personas contra las Desapariciones Forzadas, Serie Debates y Nuevos Desafíos* (Ministerio de Justicia y Derechos Humanos, 2006).

²⁷ Ministerio de Relaciones Exteriores, *Testimonios de la Solidaridad Internacional* (2007), p. 235 et seq.

Comité Argentino de Información y Solidaridad or CAIS (Argentine Committee of Information and Solidarity); the Comisión Argentina de Derechos Humanos or CADHU (Argentine Commission on Human Rights) with representation in Spain, France, Mexico and the United States; and the Grupo de Abogados Argentinos Exiliados en Francia (Group of Argentine Lawyers Exiled in France, GAAEF).

The preparatory work for participation in the Paris Colloquium motivated the various human rights organizations that had been created in Latin America to connect and discover common interests.

In Latin America, the Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos or FEDEFAM (Latin American Federation of Associations for Relatives of the Detained-Disappeared) was created in 1982, thus committing the victims' relatives to the vanguard of this fight.

There were many problems that had to be solved to achieve the drafting of the International Convention. Recognizing them, at a FEDEFAM's Congress held in 1985, the president of the Federation, Chilean Pamela Pereira, made a presentation in which she argued about the reluctance by the United Nations to draft a convention on enforced disappearance:

Until now, the United Nations has devoted considerable effort. However, year after year, every time we go to Geneva, we are at odds with the two blocs of power The actual situation in the Commission on Human Rights is that no matter how many political criteria we present, we are at odds with the management of power by the big powers.²⁸

The situation changed to another important person for the fight against enforced disappearances: Louis Joinet. The expert joined in 1988 the then Subcomisión de Promoción y Protección de los Derechos Humanos (Subcommission on the Promotion and Protection of Human Rights). His main responsibility was to assist the Commission on Human Rights at that time in performing studies on human rights affairs and make recommendations on prevention, discrimination and fundamental freedoms. As one of the 'experts of the Commission', he drafted a project for the Declaration on Enforced Disappearance,²⁹ which was one of the fundamental precedents for the drafting of the finally approved text.

²⁸ P. Pereira, *El desaparecimiento forzado como crimen contra la humanidad* (Lithobinder CA, 1987).

²⁹ Resolution 47/33.

In 1988, the Subcommission, through its Working Group on Detention, decided to take into account the project conceived by Joinet.

This was discussed in the context of a seminar organized in 1988 by the International Commission of Jurists (ICJ), with the participation of members of the Working Group on Detention, experts of the Subcommission and representatives of the relatives of the disappeared and civil society organizations from all over the world. The text that resulted from the seminar was approved by the Subcommission and then submitted to the Commission on Human Rights for its consideration. The Commission formed an Intersessional Open-ended Working Group to continue with the preparation of the document before it was submitted to the General Assembly for approval, which finally occurred on 18 December 1992, by Resolution 47/133, whereby the 21 Articles of the Declaration were enshrined.

This was not done until 2001, when the Commission on Human Rights issued a resolution whereby an expert was appointed to study the complete international law in force and to determine whether there were any gaps that would truly justify a specific Convention on the enforced disappearance offence. Manfred Novak, the appointed expert, stated categorically in his opinion that there were no appropriate defences against enforced disappearance in the international legal system. Therefore, the creation of a formal mechanism of meetings was approved by the Resolution of 2002 of the Commission on Human Rights, when Novak submitted his report.³⁰

To approve the formation of an Intersessional Open-ended Working Group for the drafting of a legally binding instrument to punish the enforced disappearance offence, a resolution of the Commission on Human Rights was necessary. It was named like this to avoid mentioning the term 'convention' because there were many States that were against adopting another convention on the grounds that it would lead to greater reporting responsibilities for the States Parties.

The Open-ended Group met two or three times a year between 2003 and 2006. The drafting work was not easy, not only due to the strong opposition from some States but also because of the global mobilization of the victims that resulted from such opposition among NGOs around the world. The Asian Federation Against Involuntary Disappearances (AFAD) was chaired by Munir Said Thalib and its

³⁰ E/CN.47/2002/71, 8 January 2002.

Secretary-General was Aileen Bacalso. Both took a highly active part in the meetings for the drafting of the Convention. Munir was murdered on 7 September 2004, while on a trip from the Philippines to Geneva to take part in one of the meetings of the Drafting Group of the Convention. The Dutch authorities intervened and determined that he had been poisoned during the flight and reported it to the Philippines. Until now, this offence remains unpunished, and no investigations are being conducted.

The moment when the endearing French Ambassador Bernard Kessedjian announced the approval of the project for the International Convention for the Protection of All Persons from Enforced Disappearance was the end of four years of debates in which more than sixty States and dozens of NGOs from around the world took part.

Among the non-governmental organizations, the following are worth mentioning Federación Asiática contra las Desapariciones Involuntarias (Asian Federation Against Involuntary Disappearances AFAD), Madre de plaza de mayo (Mother of Plaza de Mayo), Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights APDH), Comisión internacional de juristas (International Commission of Jurists CIJ), Amnesty International, Human Right Watch and Fédération internationale des droits de l'homme (International Federation of Human Rights).

There were discussions about the definition of the enforced disappearance criminal offence, the commission of such offence by State agents and whether such offence can be committed by non-State agents as well. The agreements reached about such issues resulted in the current drafting of Articles 2 and 3 of the Convention.³¹

On 23 September 2005, the text of the International Convention for the Protection of All Persons from Enforced Disappearance was adopted by the Intersessional Working Group. Despite the initial opposition, the adoption of a Convention was approved during the years of debate.

³¹ Art. 2 of the ICPPED: 'For the purposes of this Convention, "enforced disappearance" is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support 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.' Art. 3 of the ICPPED: 'Each State Party shall take appropriate measures to investigate acts defined in Art. 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.'

There was a strong opposition to keeping all the Committees of the Conventions in force and, in the same line of reasoning, it was proposed to disband them and unite them in a kind of Chamber with a few experts who would try to ensure that the States Parties complied with all the Conventions. The States were overloaded with work because they had to prepare more reports and, furthermore, the expenses of the Office of the High Commissioner for Human Rights or OHCHR were to be reduced.

In spite of the fact that these debates were concomitant with those held in the Drafting Group of the current Convention on Enforced Disappearance, the creation of a Committee composed of ten independent experts was finally agreed upon. As a result of the negotiation, an Article for the evaluation of the functioning of the Committee was approved, which provides that: 'A Conference of the States Parties will take place at the earliest four years and at the latest six years following the entry into force of this Convention to evaluate the functioning of the Committee and to decide ... whether it is appropriate to transfer to another body ... the monitoring of this Convention.'³² The reasoning was not to create a new Committee, which would require the States Parties to prepare more reports.

The evaluating Conference took place in Geneva in December 2016 five years after the Committee was created and began to meet. At the Conference, the adoption of the following resolution was agreed upon: 'The Conference of the States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance decides that the Committee on Enforced Disappearances continue to monitor the International Convention for the Protection of All Persons from Enforced Disappearance in accordance with the functions defined in Articles 28 to 36.'³³

The Committee has jurisdiction over an urgent instrument called 'International Habeas Corpus' by jurist Rodolfo Mattarollo, which involves the power to receive communications from persons who are subject to the jurisdiction of one of the States Parties. If the Committee receives information about a serious breach of the Convention committed by a State Party, it may request the State Party to carry out a visit to the country concerned and present a report to the plenary of the

³² Art. 27 of the ICPPED.

³³ Available at www.ohchr.org/es/events/2016/1st-conference-states-parties-international-convention-protection-all-enforced.

Committee on Enforced Disappearances (CED) with recommendations to the State Party.³⁴

6.4 The Secret Procedure of Resolution 1503 and the Latin-American Dictatorships

The Chilean military coup of 1973 was characterized by the high international exposure of its repressive actions and the political actions taken by the exiled, which, with hard and coordinated work, got the United Nations to appoint a Special Rapporteur. The situation in Chile was discussed simultaneously by the Subcommission on Prevention of Discrimination and Protection of Minorities, the Commission on Human Rights and the General Assembly of the United Nations.³⁵ Upon the consideration of the case by the Subcommission,³⁶ the Commission was requested to analyze the situation in Chile at its annual session of February 1975. Due to the severity of the cases analyzed by the Commission on Human Rights in 1977 (known today as the Human Rights Council), Antonio Cassese from Italy was appointed as Special Rapporteur.

Furthermore, due to the huge number of complaints and the testimony of many Chileans who took up exile, investigations began to be carried out under the secret procedure established by Resolution 1503,³⁷ whereby the existence of ‘a persistent context of clear and duly proven violations of human rights and fundamental freedoms’ was analyzed. Within the context of the secret procedure, it was proposed and approved by a majority vote to take the case up in public consideration by the Commission on Human Rights. In February 1975, the then Commission created a special mechanism for Chile, a Working Group with the following five members: G. Allana (Pakistan), L. Benites (Ecuador), A. Dieye (Senegal), F. Ermacora (Austria) and J. Kamara (Sierra Leone). When the Working Group finished its work in 1979, the Commission appointed special rapporteurs.³⁸

³⁴ Art. 33(1) of the ICPPED.

³⁵ S. Cerda, *La situación de los derechos humanos en Chile* (2022).

³⁶ Resolution 8 (XXVII), 21 August 1974.

³⁷ Procedure for examining communications relating to violations of human rights and fundamental freedoms Resolution 1503 (XLVIII) of the Economic and Social Council (ECOSOC), adopted in plenary session on 27 May 1970.

³⁸ A. Dieye (Senegal) 1979–83; R. Lallah (Mauritius) 1983–5; and F. Volio Jiménez (Costa Rica) 1985–90.

In addition, the General Assembly asked the Commission in 1974 to constantly monitor the situation in that country and took it up in public consideration in the Third Committee on an annual basis.³⁹ Thus, since 1974, the case has always been taken up in public consideration in the Subcommission and the Commission on Human Rights, both with headquarters in Geneva, and in the Third Committee of the General Assembly with headquarters in New York. In 1979–80, the Commission on Human Rights created a special mechanism along with an Independent Expert to examine the situation of disappeared persons or persons whose whereabouts were unknown.⁴⁰

Furthermore, communications received under the secret procedure continued to be treated confidentially and only analyzed by the Situation Group. The role of the Protection Procedures of the United Nations is an example of the variety of alternatives that can be provided in situations of massive and systematic gross violations.

Among the activists and organizations defending human rights in Chile, the Vicaría de la Solidaridad (Vicar of Solidarity) stood out. It was a body of the Catholic Church created by Pope Paul VI at the request of Cardinal Raúl Silva Henríquez to replace the Pro Peace Committee. Its function was to provide assistance to the victims of the military dictatorship.⁴¹

In Argentina, a paradigmatic case was that of former legislators Mario Abel Amaya and Hipólito Solari Yrigoyen, who were disappeared and brutally tortured. Due to strong international pressure, the Argentine military dictatorship was forced to stop the disappearance of these political and social leaders. In order to do so, they simulated a procedure in which alleged irregular forces threw them out at a roadside. Thus, they pretended that they were rescued by the armed forces, but instead of being released, they were detained in official prisons without charge or trial. Mario Abel Amaya died in prison as a result of torture and Hipólito Solari Yrigoyen was expelled and took up exile in France. Upon his return, he was appointed Itinerant Ambassador by President Raúl Alfonsín, the first president after the return to democracy, who, upon taking office on 10 December 1983, set up, under decree, the National Commission on the Enforced Disappearance of Persons (CONADEP, for

³⁹ Resolution 3219, 6 November 1974.

⁴⁰ Austrian Expert F. Ermacora.

⁴¹ <http://archivodigital.londres38.cl/index.php/vicaria-de-la-solidaridad#>.

its Spanish acronym) and ordered the prosecution of the Military Juntas. The political opposition was against both measures.

Argentina's case was considered under the same secret procedure as Chile's.⁴² However, there was a big difference in the outcome because there was never a vote on whether to take up the case of the Argentine dictatorship. The reason for this was that the Soviet Union and the bloc of its allies always voted in favour of the dictatorship in order to prevent the case from being taken up in public consideration.⁴³ This support was based on the fact that the USSR was suffering a worldwide boycott of grain sales, which the Argentine military government did not comply with and thus negotiated trade in exchange for impunity.

6.5 Theo Van Boven and the Creation of the Working Group on Enforced or Involuntary Disappearances (WGEID)

Theo van Boven served as the UN Director of Human Rights (1977–82). His hierarchical position today would be comparable to that of High Commissioner for Human Rights. From his position, he promoted successful international action against Argentine State terrorism. According to the jurist's account to the author of this chapter, in 1980, after meeting a delegation from the Madres de Plaza de Mayo and after learning of the political reasons why the Argentine dictatorship could not be taken up in public consideration, he promoted the establishment of the Working Group on Enforced and Involuntary Disappearances to request all UN States Parties to provide specific information on the situation of disappeared persons in their territories. The WGEID still continues to work intensively against enforced disappearances around the world.

The eight organizations that are recognized as historical in Argentina are: La Liga Argentina por los Derechos del Hombre (The Argentine League for Human Rights)⁴⁴ created in 1937, Servicio de Paz y Justicia (Peace and Justice Service)⁴⁵ created in 1974, Asamblea Permanente por los Derechos Humanos (Permanent Assembly for Human Rights)⁴⁶ created in 1975, Movimiento Ecumenico por los Derechos Humanos

⁴² M. T. Piñero, *Exiliados, denuncias y organismos internacionales*, p. 12.

⁴³ K. McKeague, *Extraña alianza: Relaciones cubano-argentinas en Ginebra, 1976–1983*.

⁴⁴ www.ligaporlosddhh.com.

⁴⁵ <https://serpaj.org.ar>.

⁴⁶ www.apdh-argentina.org.ar.

(Ecumenical Movement for Human Rights)⁴⁷ created in 1976, Madres de Plaza de Mayo (Mothers of Plaza de Mayo)⁴⁸ created in 1977, Abuelas de Plaza de Mayo (Grandmothers of Plaza de Mayo)⁴⁹ created in 1977, Familiares de Detenidos y Desaparecidos por Razones Políticas y Gremiales (Relatives of the Detained and Disappeared for Political and Trade Union Reasons) created in 1976 and Centro de Estudio Legales y Sociales (Center for Legal and Social Studies)⁵⁰ created in 1981. This measure would later cost him his job. He worked as a professor in his native Netherlands for many years, but he never gave up the fight for human rights. He also served as the chairman of the European Human Rights Foundation and the director of the Commission of the Churches on International Affairs of the World Council of Churches. In 2002, Theo van Boven joined the United Nations again but this time as Special Rapporteur against Torture.

The Commission on Human Rights was the main political body dealing with human rights issues at the United Nations. It was established in 1946 and was active until 24 March 2006, when the current Human Rights Council began its work.⁵¹ As part of the reform process of the Commission towards the current Human Rights Council, the Subcommission on the Promotion and Protection of Human Rights was replaced by the Advisory Committee. The reform process of the Commission on Human Rights began in 2004. On 24 March 2006, the Commission met for the last time at its 62nd session and referred its pending work to the newly established Human Rights Council for consideration at its inaugural meeting in June 2006.⁵² The General Assembly's decision to replace the sixty-year-old CHR with the Council stemmed from a proposal made in the Report of the High-Level Panel on Threats, Challenges and Change, which was presented in December 2004. This report was prepared by a commission appointed by Kofi Annan, UN Secretary-General at the time, which was tasked with

⁴⁷ www.derechos.net/medh/.

⁴⁸ <https://madres.org>.

⁴⁹ <https://abuelas.org.ar>.

⁵⁰ <https://www.cels.org.ar/web/>.

⁵¹ See more in M. H. Halperin and D. F. Orentlicher, 'The New UN Human Rights Council' (2016) 13, 3 *Human Rights Brief*.

⁵² Commission on Human Rights, Procedural resolution on the closure of the work of the Commission, UN Doc. E/CN.4/2006/L.2, 2, 4, 27 March 2006, available at www1.umn.edu/humanrts/closure.html.

assessing the best way in which the UN could face security threats.⁵³ In 2006, the General Assembly passed Resolution 60/251 by which the Council was created, and the Commission was terminated.⁵⁴

The negotiation of this resolution was conducted in New York and almost no consultation with delegations in Geneva were conducted. There, the reduction from fifty-three to forty-seven Member States was agreed. As a result of these negotiations, the Latin American and Caribbean Group went from eleven members in the Commission to eight representatives in the current Council. Africa went from fifteen to thirteen Member States and the Western Group went from ten to seven Member States. When the Commission was active, the distribution of the fifty-three Member States was as follows: fifteen from Africa, twelve from Asia, five from Eastern Europe, eleven from GRULAC and ten from Western countries. As of 2006, the Council has forty-seven Member States: thirteen from Africa, thirteen from Asia, six from Eastern Europe, eight from GRULAC and seven from Western countries. This distribution has created a new balance that ensures a fairer distribution of power. Currently, both the GRULAC and the Group of Western countries must necessarily negotiate with Africa and Asia in order to move forward with proposals or projects.

A debate was held about whether the Council would be made up only of countries that respected human rights or whether it could be made up of all UN Member States. It was rightly decided that any State Party to the UN can be elected to the Human Rights Council for a four-year term, with only one consecutive re-election. In addition, the Universal Periodic Review (UPR) was established for all States Parties, in which all countries are reviewed by their peers on the human rights situation in their respective territories. On 7 April 2005, the Secretary-General expressed his support for the universal review by stating as follows: 'Its main task would be to evaluate the fulfilment by all States of all their human rights obligations. This would give concrete expression to the principle that human rights are universal and indivisible.'⁵⁵ It was made clear that the

⁵³ Report of the High-Level Panel [appointed by the UN Secretary-General] on Threats, Challenges and Change (2004) *A More Secure World: Our Shared Responsibility*, available at www.un.org/secureworld/.

⁵⁴ Personal interview with Argentine diplomat Sergio Cerdá on 21 October 2022, who participated in all the negotiations in Geneva on the transformation of the Commission into a Council.

⁵⁵ Secretary-General's Address to the Commission on Human Rights, available at www.un.org/apps/sg/sgstats.asp?nid=1388#.

Council can also identify those who commit gross human rights violations and carry out a special review.⁵⁶

During its many years of existence, the Commission met for forty-five days between February and March each year. It reported to the Economic and Social Council (ECOSOC) and was eventually elevated to a Council and so directly reports to the General Assembly. Its issues are considered by the Third Committee. In order to have more time and ability to address issues, the Council's agenda and the issues of concern were expanded. In addition, under a General Assembly Resolution,⁵⁷ it was established that: 'The Council shall meet regularly throughout the year and schedule no fewer than three sessions per year, including a main session, for a total duration of no less than ten weeks, and shall be able to hold special sessions, when needed, at the request of a member of the Council.'⁵⁸

Currently, the Council meets three times a year, in March, June and September, to discuss a broad and varied agenda where the special procedures present their reports to the plenary of the Council and an interactive dialogue with States Parties and specialized NGOs is held. In this regard: 'The Human Rights Council has three main qualities different from the Commission: a) its quasi-permanent character, b) the fact that it is a subsidiary body of the General Assembly, and c) a greater vocation for universal monitoring of the protection of human rights.'⁵⁹

The participation of non-governmental organizations has been maintained and they are still allowed to participate in the interactive dialogue, and the participation of National Human Rights Institutions (NHRIs) has been increased and strengthened.⁶⁰ The time allotted for speeches of one and a half minutes for all speakers is too short to allow for a more in-depth analysis of each topic. However, the variety of voices offers a variety that makes up for the limited time. Moreover, the Rapporteurs,

⁵⁶ The General Assembly 'decides also that the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon'.

⁵⁷ AG Resolution 60/251.

⁵⁸ UN Doc. A/RES/60/251, 10, 3 April 2006.

⁵⁹ J. S. Cerda, *La Reforma de las Naciones Unidas en Nuevos Derechos del Hombre* (EUDEBA, 2011), p. 47.

⁶⁰ M. Abraham, *Building the New Human Right Council*, no. 33, August 2007, Friedrich Ebert.

the Committees of the Conventions and the Office of the High Commissioner have carried out outstanding work.

It should be noted that on 29 June 2006, in its first resolution, the Council adopted the International Convention for the Protection of All Persons from Enforced Disappearance,⁶¹ which was subsequently approved by the General Assembly on 20 December 2006.⁶²

6.6 The Elements of the Enforced Disappearance Criminal Offence in the International Convention, the Inter-American Convention and the Rome Statute

In 1994, the Organization of American States (OAS) adopted the Inter-American Convention on Forced Disappearance of Persons⁶³ (hereinafter referred to as Inter-American Convention), which precisely defines this criminal conduct as an autonomous offence.

In the preparation of the Convention, the OAS consulted the various NGOs registered as civil society organizations and those with consultative status at the United Nations on the elements of the crime of enforced disappearance. Many of them made written inputs that contributed to the definition adopted in Art. 2 of the Convention.

The American Convention establishes the following definition:

Article II: For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the State or by persons or groups of persons acting with the authorisation, support, or acquiescence of the State, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance establishes:

For the purposes of this Convention, 'enforced disappearance' is considered to be the arrest, detention, abduction or any other form of

⁶¹ Resolution 1/1 of the Human Rights Council, 29 June 2006.

⁶² GA Res. 61/177, UN Doc. A/RES/61/177, 20 December 2006. The General Assembly had deferred consideration of this Convention to its 61st session, where it was finally approved unanimously.

⁶³ Adopted in Belém do Pará, Brazil, on 9 June 1994, at the twenty-fourth regular session of the General Assembly of the Organization of American States (OAS).

deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorisation, 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.

Article 3 establishes the responsibility of the State in the event that a similar act is committed by non-State agents: 'Each State Party shall take appropriate measures to investigate acts defined in Article 2 committed by persons or groups of persons acting without the authorisation, support or acquiescence of the State and to bring those responsible to justice.'

According to the International Convention, the responsibility for enforced disappearance lies with the State and when it is committed by non-State agents, the State is obliged to investigate and punish the crime.

The Rome Statute was approved at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.⁶⁴ The Statute established the creation of the International Criminal Court. This made a qualitative leap in international criminal law. The International Criminal Court tries persons, *inter alia*, for the commission of crimes against humanity. The conventional and thematic international system for the protection of human rights protects persons from abuses committed by States through their agents.

Human rights analyze the responsibility of States and strive to ensure that they comply with international commitments to respect the universality of human rights. Article 7 of the Rome Statute establishes the crimes against humanity and determines that they shall mean 'any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack'.

In turn, subsection (i) defines 'enforced disappearance of persons' as 'the arrest, detention or abduction of persons by, or with the authorisation, support or acquiescence of, a State or a *political organisation*, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time' (emphasis added).

⁶⁴ It took place in Rome, 15 June–17 July 1988.

According to this author's opinion, the incorporation of 'a political organisation' among the possible perpetrators of enforced disappearance is a mistake. This definition sought to absolve States of their responsibility for acts of commission or omission in violation of human rights. This is a matter of international criminal law and not human rights, and it will be up to the Court to establish precedent that clarifies the true scope of the term.

Finally, international humanitarian law enshrined in the Geneva Conventions of 1949 governs the conventional law of war, and the Additional Protocols of 1977 deal with irregular armed forces, their responsibilities and rights. As regards the scope of the International Convention, for the first time in international human rights law, the right not to be subjected to enforced disappearance has been explicitly formulated with all the corresponding consequences and obligations for States. While the Convention was in force, this did not prevent the current chairperson of AFAD from being abducted and reported disappeared for more than a week, despite the vigorous international action requiring his safe return. This fortunately happened and he still serves as the chairperson of the Federation. His former Secretary-General currently serves as the president of the International Coalition against Enforced Disappearances (ICAED).

The Convention includes the right to truth as a collective value of society as a whole and the right of relatives to recover the mortal remains of their loved ones. It also establishes very important guarantees regarding the prohibition of secret detention, which is highly significant too as a fundamental principle of human rights.

The Convention incorporates a broad concept of victims by also including kith and kin and even lawyers. It confirms the right to obtain reparation and the right of children to recover their true identity, which is contained in Article 3 (1) of the Convention on the Rights of the Child that states that the best interests of the child shall always be a primary consideration.

The strong position of some States wishing to include non-State agents among those responsible for enforced disappearance provoked heated discussions. Finally, this was settled by establishing the concept of enforced disappearance in Article 2 of the Convention, which can be exclusively perpetrated by agents of the State or with the support or acquiescence of the State. It is clear that, at the time of its adoption, the criterion was that only agents of the State can violate human rights and it is the responsibility of States Parties to adopt legislation that provides for

the punishment of conduct similar to enforced disappearance but committed by individuals.⁶⁵

Another issue that prompted interpretation and an interpretative declaration by the CED was that the last paragraph of Art. 2, which states that the conduct punished places the person outside the protection of the law, led the same States Parties that opposed the Convention and wanted to incorporate non-State agents into the definition contained in Art. 2 to argue that placing the person outside the protection of the law is a fourth element required for the criminal conduct to be met and not a consequence of:

- deprivation of liberty
- by agents of the State
- followed by a refusal to acknowledge the deprivation of liberty.

Louis Joinet's report included the prohibition of amnesties and pardons for those responsible for enforced disappearances and their accomplices, as well as military⁶⁶ or special tribunals and the State's obligation not to restrict access to information.

6.7 Conclusion

This chapter has analyzed the significance of the NGO's involvement in fighting against enforced disappearances of Latin American dictatorships from the 1960s and 1970s to the present day. They have played an important role in the establishment of the WGEID, drafting the ICCPED, as well as demonstrated the strength of international solidarity. The NGOs in Latin America, while being at the forefront of developing legal solutions to address enforced disappearances, deeply benefitted from worldwide support. This solidarity is now brought forward by NGOs to other regions and contexts, in which people are experiencing widespread disappearances.

We live in a world with tremendous advances in sciences and arts that coexists with wars, massive displacements and great inequalities. Therefore, the new generations of social activists, politicians, scientists and academics committed to their time are called upon to keep alive the hope in this third decade of the twenty-first century. In this way, the old

⁶⁵ Art. 3 of the ICCPED.

⁶⁶ H. Ravenna, *Justicia militar: Juez natural o fuero especial, en educación y derechos humanos* (Centro Editor de América Latina, IIHR, 1989).

NGO structures are being replaced by new organizations with actions adapted to the new times.

However, when paths are closed or strength declines, the memory of those Madres de Plaza de Mayo, heartbroken and crying out for their children, continues to mark the path in the collective memory of the people.