

Enforced Disappearance
Determining State Responsibility under the International
Convention for the Protection of All Persons from
Enforced Disappearance

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Convention for the Protection of All Persons from
Enforced Disappearance

Marthe Lot Vermeulen



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PREFACE

The topic of enforced disappearance was first presented to me during one of my LLM classes given by Prof. Françoise Hampson at the University of Essex. The sharp contrast between on the one hand the importance of holding states accountable for this human rights violation and on the other hand the states' attempt to cover-up all the evidence, including the disappeared person him or herself, intrigued me from the beginning. The numerous questions around this cruel 'perfect crime of no information' motivated me to plunge into the topic for my PhD and learn to swim in the academic world.

Writing a PhD might seem a lonely experience at first but for me, the opposite has fortunately proven to be true, both in good times and bad times. In particular, there are a number of people without whom the process would not have been such an inspiring, stimulating and gratifying experience.

First of all, I would like to thank my supervisors, Prof. Jenny Goldschmidt, Prof. Fried van Hoof and Prof. Cecilia Medina Quiroga for their support and willingness to share their expertise. Their incisive comments, even from across the ocean, have provided me with a constructive learning experience throughout the process. A special thank you to Jenny for being my main supervisor and for her encouragement and faith in the project. My thanks also go to the members of the reading committee, Prof. Antonio Cançado Trindade, Dr. Gabriella Citroni, Prof. Cees Flinterman, Prof. Manfred Nowak and Prof. John Vervaele, for the time and effort they took reading through the manuscript and for providing me with much appreciated comments on the final draft.

Throughout the process of writing my dissertation, I feel fortunate and honoured to have been able to work with and meet a number of wonderful people with a great wealth of expertise and experience. I would like to thank Mr. Hugo Argente, Madre Elia Espen, Prof. Daniel Feierstein, Judge Sergio García Ramírez, Dr Philip Grant, Judge Lucila Larrandart, Prof. Martín Lozada, Judge Margarette Macaulay, Dr. Ernesto Moreau, Mr. Ewoud Plate, Dr. Andrea Pochak, Judge Daniel Rafecas, Judge Carlos Rozanski, Dr. Oswaldo Ruiz Chiriboga, Dr. Pablo Saavedra Alessandri, Judge Diego García Sayán and Mr. Jan de Vries for sharing their views and experiences with me. In addition, I would not have been able to do the research without the enjoyable and excellent Spanish classes given to me by Marta Lammen, a teacher that has inspired me in many ways. Carolina and María Thompson were in particular of great assistance in conducting interviews in Argentina. My thanks also go to the Inter-American Court of Human Rights for giving me the opportunity to gain insight into how the Court operates by being a member of the legal team of Francisco Rivera.

The Netherlands Institute of Human Rights (SIM) has been an extremely inspiring and pleasant environment for me to conduct this research. I owe a big thank you to Hanneke van Denderen, Esther Heldenbergh-Bode and Marcella Kiel for taking care of the small and bigger organisational matters that are involved in writing a dissertation. I would also like to express my gratitude to Saskia Bal for her advice on a variety of topics. Moreover, I am grateful to Peter Morris and Klaartje Hoeberechts of the Wiarda Institute for helping me during the final stage of realising this book. My PhD colleagues at SIM, Ramona Biholar, Diana Contreras Garduño, Masha Fedorova, Katharine Fortin, Jayshree Mangubhai, Brianne McGonigle Leyh, Hana van Ooijen, René Rouwette, Sarah Speekenbrink and Yanqing Hong, ensured that I was looking forward to come to SIM every day. I feel proud to be part of this PhD generation of the SIM family. I would like to thank Brianne and Diana for their helpful comments on draft sections of my work.

Great encouragement has come from my paranimpfen, Hana and Katharine. I would like to thank Hana for being an irreplaceable roommate, dear friend and a faithful colleague for more than six years. I will never forget the many pleasant talks and witty e-mails that always put a smile on my face. I would like to thank Katharine for her precious friendship, humour and emotional support. The many intriguing discussions with her have shaped my thoughts on and understanding of complex academic issues. Both of them have been indispensable for enjoying the ups and enduring the downs that come with writing a PhD. Another person that deserves a special thank you is Antoine Buyse; he filled our room with concentration and with lovely conversations while enjoying cookies and tea.

I would like to thank my family, family-in-law and friends with all my heart. Without their support and attentiveness, I would not have been able to complete this project. I am especially grateful to my parents, Ike and Erwin, for being unconditionally supportive and always willing to read and comment on my work, notify me about interesting articles and think along with me on the topic of my PhD. I would also like to thank my dear friends Julia and Clare for their valuable comments on previous draft sections of the manuscript. I am indebted to Ian for his excellent suggestions to improve the drafts.

Last but not least, I cannot but acknowledge that without Arjan, my husband, I would have still been in the painful process of finalising my manuscript now. Not only did his willingness to spend long nights programming on the computer save me a tremendous amount of time and mistakes when working on the footnotes but his capacity to put matters into perspective has also pushed me forward to completing the manuscript on time. I love him, if not only for that. Livia-Mae, our daughter, has had her share in counter-balancing the thinking process with her heart-warming smile and enthusiasm that fills my heart with joy every day. I am looking forward to walking the path of life and career with them at my side.

Utrecht, February 2012

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LIST OF ABBREVIATIONS

ACHR	American Convention on Human Rights
AI	Amnesty International
APT	Association for the Prevention of Torture
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CED	Commission on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEH	Commission for Historical Clarification (Guatemala)
CEJIL	Center for Justice and International Law
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
CoM	Committee of Ministers of the Council of Europe
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
DPPED	Declaration on the Protection of all Persons from Enforced Disappearance
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
FEDEFAM	Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecidos
GPO	General Prosecutor's Office
HRC	Human Rights Committee
HRW	Human Rights Watch
IACFD	Inter-American Convention on Forced Disappearance of Persons
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICAED	International Coalition against Enforced Disappearances

List of Abbreviations

ICCPR	International Convention on Civil and Political Rights
ICESCR	International Convention on Economic Social and Cultural Rights
ICJ	International Court of Justice
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ILC	International Law Commission
IOWG	Intersessional Open-ended Working Group
NGO	Non-governmental organisation
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
OP	Optional Protocol
PACE	Parliamentary Assembly Council of Europe
UDHR	Universal Declaration of Human Rights
UN Charter	Charter of the United Nations
UN Sub-Commission	Sub-Commission on the Promotion and Protection of Human Rights (before 1999, known as the Sub-Commission on Prevention of Discrimination and Protection of Minorities)
UN	United Nations
UNComHR	United Nations Commission on Human Rights
UNGA	United Nations General Assembly
UNHRCouncil	United Nations Human Rights Council
UNSC	United Nations Security Council
UNWGEID	United Nations Working Group on Enforced and Involuntary Disappearances
USA	United States of America
VCLT	Vienna Convention on the Law of Treaties