The right to life,

A case research on how article 4 of the American Convention on Human Rights is connected to the act on forced disappearance, according to the Inter-American Court on Human Rights

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SUMMARY

The aim of this paper is to evaluate how the right to life has a connection with the forced disappearance of persons, according to the Inter-American Court on Human Rights. In order to reach this purpose, a legal dogmatic approach and a case study is used, in the light of a legal theory. The research concerns relevant cases that the Inter-American Court on Human Rights has been confronted with, and, to clarify the contextual importance, a brief explanation on the surroundings is provided. With the grave human rights violations committed by State authorities in mind, the thesis shows that the standard of proof, and principle of state responsibility, becomes of importance, in order to be able to determine whether the right to life is violated in cases of forced disappearance. The essay will conclude that the issue prevails defectiveness in relation to preventing and protecting human rights in cases of forced disappearance of persons.

Keywords: Inter-American Court on Human Rights; Forced Disappearance, The Right to Life; Standard of Proof; State Responsibility; Legal Uncertainty

SAMMANFATTNING

Syftet med uppsatsen är att utreda hur rätten till liv har ett samband med tvångsförsvinnande enligt den Inter-Amerikanska Domstolen om Mänskliga Rättigheter. För att uppnå uppsatsens syfte genomförs en rättsutredning kring gällande rätt, där en rättsdogmatisk metod och fallstudie applicerats. Uppsatserna kommer vidare att analyseras mot bakgrund av en rättsvetenskaplig teori, där relevant rättspraxis som den Inter-Amerikanska Domstolen om Mänskliga Rättigheter bemött samt en kortfattad genomgång av kontexters påverkan. Under utredningen av de konventionella källorna finns vissa krav för att uppfylla om en stat kan hållas ansvarig. Utifrån det och med de grova mänskliga rättighets kränkningarna staten utfärdat i åtanke, är bevisbördan och statsansvar av stor relevans för att klargöra sambandet mellan rättigheten och handlingen. Uppsatserna avslutas med att konkludera att det råder brister
i hur den Inter-Amerikanska Domstolen om Mänskliga Rättigheter arbetar mot att förvara och skydda Mänskliga Rättigheter i fall som berör tvångsförsvinnande.

Nyckelord: Inter-Amerikanska Domstolen om Mänskliga Rättigheter; Tvångsförsvinnande, Rätten till livet; Bevisbörd; Statsansvar; Orättsäkerhet
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Glossary

American Convention: The American Convention on Human Rights

Inter-American Commission or Commission: The Inter-American Commission on Human Rights

Inter-American Convention on Forced Disappearance: Inter-American Convention on Forced Disappearance of Persons

Inter-American System or the System: The Inter-American System on Human Rights

I/A Court H.R. or the Inter-American Court or the Court: The Inter-American Court on Human Rights

OAS: Organizations of American States
CHAPTER 1
INTRODUCTION

1.1 BACKGROUND

“Once life is lost, what does there remain to protect?”
(Ebert, Sijniensky, 2015, 343).

The right to life and the obligation to prevent acts to violate the individual right, is to be considered as a fundamental human right, that should be guaranteed for every individual, as enshrined within Article 4, paragraph 1 of the American Convention on Human Rights (hereinafter, the American Convention). However, different historical, social and cultural contexts impact on how the right can be respected, and how life could be defined differs. Throughout the history, the Inter-American System on Human Right (Inter-American System or the System) has been facing struggles, such as governments and non-governmental organizations violating human rights. State authorities began to systematically practice the act of forced disappearance of persons, as some of the victims’ disappeared was perceived as a threat against the regime by the time of the event. In this regard, States of the Inter-American System refuse to cooperating and try to eliminate any evidence in order to keep the impunity for those responsible for committing such acts. Several people’s whereabouts is still unknown (Goldman, 2009, 867).

The seriousness of the act of forced disappearance was later on recognized by the Inter-American Commission on Human Rights (Commission or the Inter-American Commission). Neither in the regional, nor the international, the right to security from crime, interpersonal or social violence are not particularly protected and a significant number of these complaints violate the essential human right: the right to life. Thereof, it was concluded that many of the State Members of the Inter-American System did not meet the international human right standards. Member States fail their positive obligations to prevent, protect and investigate
such violation in order for everyone to enjoy their rights and freedoms, as well to comply with the international responsibility (Goldman, 2009, 883, Shawn, 2014, 274f).

Many of the petition submitted to the Inter-American Court on Human Rights (hereinafter the Court or the I/A Court H.R.) regards this matter and are still defined as a continuing violation. The positive right to respect life and the negative warranty not to die, is considered as a violation when the disappearance of persons has occurred, according to the Court. Yet, it becomes paradoxical that the remains of the bodies missing is still nowhere to be found, where the Court have to make a determination on a presumption. The following thesis will therefore examine, how the I/A Court H.R. argue whether the act of forced disappearance of persons in relation to the right to life as embodied within Article 4, paragraph 1 of the American Convention on Human Rights (OEA/Ser.L/V/II. Doc. 57, 2009, at para 43).

1.2 PURPOSE

The purpose of the thesis is to analyse how the right to life has a connection with the act of forced disappearance of persons, according to the Inter-American Court on Human Rights. In order to fulfil the aim of the thesis, this research will analyse in what way the act of forced disappearance of persons constitute a violation against Article 4 (1) of the American Convention. If so, what kind of evidence do the Court require State Parties to provide and what difficulties does the Court confront in regards of the States’ responsibilities, set forth within Article 1 and Article 2 of the American Convention? To be able to examine what the Court finds necessary when determine whether the right to life is violated in cases of forced disappearance, it becomes of importance to primarily define the rights within the American Convention, Inter-American Convention on Forced Disappearance of Persons, as well as identifying the principles of law. Secondly, different cases will be analysed. That is, to identify the evidence required and the difficulties the Court confront, when ruling in cases of whether a violation against the right to life exist in cases of forced disappearance of persons.
1.3 RESEARCH QUESTION

The following questions that will be analysed are:

*How does the Inter-American Court on Human Rights argue whether the right to life is violated in cases of forced disappearance of persons?*

Sub-questions:

*What kind of evidence demonstrates that forced disappearance violates the right to life?*

*What difficulties does the Court confront regarding the Member States’ responsibility in cases of forced disappearance?*

1.4 DELIMITATIONS

This research concerns a complex legal area and must therefore be limited (Sandgren, 2009,118). Taking that into consideration, I will not focus on how Article 4 (1) will affect and compensate the individuals nor the procedure of who may submit a petition. In addition, I will briefly present the discourse of the international community. Although, neither focus on the usage of the International Human Rights law nor different legal principles of International Law. Moreover, violation of Article 4 (1) of the American Convention in relation to the act of forced disappearance, as well as State responsibility embodied within Article 1 and Article 2 of the American Convention, will affect several other rights and obligations in the legal system. However, those affects lie outside the scope of this thesis.

Furthermore, the essay will recognize how the act of forced disappearance is illustrated in relation to the right to life, according to the I/A Court H.R.. In this regard, a sociological perspective will not be considered, i.e. how the domestic law contradicts with human rights
law. Neither a philosophical approach will be utilised. Concerning, neither in what way the Court define that an individual human right could concern several persons, nor a bio-political analysis or a discussion regarding if a foetus is considered as a legal entity and thus, justified the protection recognized in the American Convention. Although there are current research concerning these areas, there is an absence of a legal analysis concerning how the Court argue whether that forced disappearance of persons constitute a violation against Article 4 (1) of the American Convention. Since the purpose of this thesis is to research when the I/A Court H.R. considers the right to be violated, the legal dogmatic approach in relation to a case study, are best intended. Partly because it advocates the use of legal material which serves as a delimitation in the field of research, and partly on how the approach comply with the thesis purpose and research question.

1.5 PERSPECTIVE AND METHOD

1.5.1 METHOD

To get a clearer understanding of the subject at issue of the research, a legal dogmatic approach and a case study research will be applied. The collected material will be examined through the positivistic paradigm, whereas the information will be objectively analysed. The positivistic paradigm will provide the researcher to assume the information laid down is interpreted as being real. Additionally, the researcher’s moral standpoints ought to be hold separated from the legal doctrine. Furthermore, an inductive approach will be utilised, given that the material was first gathered, and then explained. The inductive approach will reduce the researcher bias when selecting the chosen material (Sandgren, 2009, 118f; 131, Wacks, 2006, 19f).

The first approach mentioned, concerns the research of current law laid down in written and unwritten Inter-American rules. Where the legal doctrine sources will be used and analysed, as a basis for the study. The aim of using the dogmatic approach is to interpret the content of the law, where the material usually is examined through a legal positivistic perspective (Sandgren, 2009, 20; 117f). By using a dogmatic method, the paper will achieve what the
legal approach desires: clarity, structure and an understanding of the applicability of law. Legal science uses a great deal of analysis and systematics of legal concepts. Jurisdiction describes current legal rules in different areas and the structure of these areas. In this way, it describes the alleged outer system of the Court. It also develops normative positions that justify and criticize different parts of current law. Righteousness and criticism result in the so-called external system of the Court. In addition, the methodology strives towards to understand the legal interpretation and application of law, as well as the interaction between such. Thus, the dogmatic approach is best intended in order to fulfil the purpose, and answer the research question at hand (Sandgren, 2009, 20, Strong, 2014, 2f; 10).

Secondly, this thesis will use a case study in order to outline the aim of the research, i.e., how the Inter-American Court argue that the forced disappearance violate the right to life, with the standard of proof and State responsibility in mind. The method will provide a profound knowledge concerning a particular phenomenon and thereof, is preferable given that the method focuses on just one or a few instances of things, that is to be analysed. One of the strengths of using the case study approach concerns the in-depth study. The usage will, therefore, entail a qualitative method concerning the connection between forced disappearance and Article 4 to the American Convention, rather than quantitative research. Keeping this in mind, the case study in relation to the qualitative method will enable the researcher to analyse the content of the different cases and legal sources in an objective matter, with the purpose to achieve a valuable and unique insight. Therefore, it is to be considered beneficial in relation to the purpose of this thesis, as it strives towards an in-depth study, as it is concerning the connection between the right to life is and cases of forced disappearance of persons (Denscombe, 2010, 52ff; 55; 62, Strong, 2014, 11).

Furthermore, the aim of using a case study, is to clarify the general by analysing the particular in order to increase awareness, which is different from other approaches. Moreover, the case study strategy does not focus on how one collect the information needed, nor on how the analysis should be addressed. Rather on the purpose and the objects of the thesis, and thereby, preferable events that cannot be based on statistical evidence. By analysing the object of the thesis, with the in-depth knowledge, it would generally give a better understanding on how the Court argue regarding the connection between forced disappearance of persons and
Article 4 to the American Convention, which in turn will identify certain key issues that affect, and has an impact, on the generalization aspect (Denscombe, 2010, 52ff; 55; 62, Strong, 2014, 11).

Nonetheless, the methods has been criticized. For instance, the case study is argued to be too subjective, to have difficulties concerning the limitation of material, and to be unable to provide reliable information in relation to generalization; hence, it cannot be based on one or a few instances of phenomena (Denscombe, 2010, 62f). As for the dogmatic approach, if the researcher adhere to this method, there is a risk that the analyse becomes too limited, where the law will be applicable as it is, even if it ought to be morally wrong. In this regard, a usage of the method could be presumed to limit an analysis. Consequently, the combination of the methods will enhance each other, given their strengths in relation to their weaknesses (Sandgren, 2009, 118ff).

With that in mind, the different approaches selected will inspire and support each other, i.e., to understand the particular it is necessary to understand the context. The multiple methods of this thesis will also capture the complexity of the event, as the in-depth study in relation to the legal doctrine would interact with the purpose of this thesis. For instance, the dogmatic approach will argue for the usage of legal sources, thus, constraints the boundaries of the case study and thereof, provide a clear account of what the material shall concern. The case study will enhance the profound content analysis, in terms of different cases the Court has been confronted with, and thereby allow the thesis to deal with the fragilities and the difficulties of the complex social, cultural, and political environment that must be understood. Moreover, regarding the legal clarification of the material provided, the objectivity perspective in relation to the profound nature of a case study, are best intended in relation to the purpose of the essay, as the approaches will outline the legal status of Article 4 (1) of the American Convention, the definition of forced disappearance of person in a detailed analyse. That is, in order to achieve a generalization with a valuable, and unique, insight in the current issue at scope (Denscombe, 2010, 62; Sandgren, 2009, 118ff; Strong, 2014, 10).

1.5.2 PERSPECTIVE
The thesis will lack the usage of empirical material and have an unclear relation to theory formation (Sandgren, 2009, 14f; 161f), e.g. as both a sociological and philosophical theories advocates. Nonetheless, the inconsistency a legal theory, is preferable, as it strives towards a generalization and systemization, as well as it examines the development of different legal sources and clarify the scope of such. Additionally, it delimitates the field of research, predetermine usage of material, and achieves a clear structure throughout the thesis. It also aims to analyse the different legal concepts, in written and unwritten matters, and provide a detailed analysis concerning the Court’s argumentation and application of the law, e.g. a definition of standard of proof or whether State’s relate to the principle of State responsibility. Therefore, it will function as a theory formation beneficial in relation to the purpose of the thesis, hence, to identify how the Court interpret the law, in relation to the current event (Sandgren, 2009, 71; 75f).

Moreover, the legal theory is used to clarify and, in this sense, follow the problem posed. It also consists of an academic research from which, the questions of the thesis are verbalized and examined. By using a legal theory, the thesis will obtain a deeper understanding of the legal reasoning, the legal system and the legal institutions of the Inter-American System. Hence, to achieve a profound knowledge in how the Court argue whether the right to life is violated in cases of forced disappearance, as well as identify the justification concerning the standard of proof and how the principle of State responsibility evokes challenges before the Court. An enhanced theorizing of law, benefits the practise of law, in which will be supported by the chosen methods of the paper. Thereof, the theory chosen will administrate the outcome of the thesis, and the methodology, entails the working strategy in order to attain a conclusion (Sandgren, 2009, 71; 79 – 82; 87).

1.6 RESEARCH STATUS

The chosen research field of the essay, are two rewritten and re-debated subjects. Hence, the systematic practice exerted by the State authorities in Latin America during the 1980s, violating fundamental human rights (Goldman, 2009, 883). With this in mind, there is much existing research concerning the act of forced disappearance and how the Court adapt, as well as research concerning the right to life in relation to a specific group of people, such as
children or indigenous people. However, there is not much research concerning how the Inter-American Court argue, when ruling in cases of the act of forced disappearance and the right to life, as well as the standard of proof or State responsibility in cases of the event. Thereby, previous research that is to be considered relevant for the aim of this thesis and research question, will be used in this paper, *inter alia* Ebert and Sijeniskky (2015), Goldman (2009), Medina, Quiroga (2015) and Rota (2009).

In this regard, previous research emphasize *inter alia* a political and social dimension, where development and the Inter-American System legitimacy as such, is defined as an important aspect. Among others, Par Engstrom (2017) emphasize how the Inter-American System influence the Member States’ domestic legislation which in turn, stresses the legitimacy of the regional human right system. In addition to the foregoing, the research of Israel de Jesus Butler (2004) is another example how previous research emerge. The research concerns, at the time, a recent Advisory Opinion and contentious cases of the Inter-American Court. The author analyse how the Court define violation against migrant workers and children. Juan Luis Modolell González (2010) briefly addresses the jurisprudence of the Court regarding the act of forced disappearance, where an analyzation on how the act should be identified, in State’s that have ratified the regional Inter-American Convention, as well as other treaties and Conventions, such as the Rome Statute of the International Criminal Court.

Life and the seriousness of the act of forced disappearance are, as the introductory part mentioned, a major subjects. Thereby, important to define where previous research will be valuable for this paper. Additionally, previous research will provide an understanding, as the dogmatic approach and the case study strategy, advocates, as well as increase my knowledge of how the historical context influence the Court regarding: a) the right to life; b) the act of forced disappearance and; c) the connection between them.

### 1.7 MATERIAL

In order to answer the research questions and fulfil the aim of this thesis, generally accepted sources of law will be used. The sources are as follows: legislations, conventions, cases
concerning the right to life and forced disappearance (a case-law presentation will be made in section 1.7.1), and legal doctrine, such as the report concerning United Nation Working Group on Enforced or Involuntary Disappearances or the International Convention on Civil and Political Rights General Comment No. 6: Article 6 (Right to Life) (Sandgren, 2009, 118; 120; 128f, Strong, 2014, 7; 9f). The material the thesis will examine, are relevant legal sources, in particular Article 4 (1) (Appendix 3), Article 1 (Appendix 1) and, Article 2 (Appendix 2) of the American Convention and the Inter-American Convention on the Forced Disappearance of Persons (hereinafter the Inter-American Convention on the Forced Disappearance) (Appendix 5). Moreover, documents and resolutions from inter alia the Inter-American Commission, the European Convention, and International Conventions by the United Nation, has been reviewed but will not be used as a base for this research, as it is beyond the scope of this essay. Nevertheless, the documents are valuable since it has been assisting, due to the international input on the subject, as well as exposing cases significant for the research. The knowledge of the underlying principles of law constitute the raw material, in which Statues and cases constitute binding legal authority. Thereby, the material selected provides an in-depth understanding in order to be able to meet the purpose of this thesis and recognize the applicability of law in relation to the research question (Strong, 2014, 7; 9f).

1.7.1 CASE-LAW PRESENTATION

As above-mentioned, the primary material analysed concerns different cases the Inter-American Court has been opposed with. The selection of chosen cases emphasizes the act of forced disappearance in relation to the right to life. By analysing the selection of material, the thesis will be able to present how the Court apply the law, as well as identify important elements when ruling whether the forced disappearance of person is violating Article 4 (1) of the American Convention or not. Moreover, cases concerning the act in relation to Article 4 of the American Convention are many, thereby, the collected cases set forth in Chapter III, has been selected meticulously. In this regard, previous research has been valuable as some of the cases are re-written and re-debated (Denscombe, 2010, 57f).

Furthermore, the cases analysed were thereafter, chosen in accordance with the purpose and
research question of the thesis, following the criteria:

(1) The cases provided are not randomly selected. Each of them provides a distinctive features, in which affect forced disappearance and whether the right to life (Article 4, American Convention) is violated.

(2) The distinctive features provided within the different cases, are particularly essential in terms of how the Court argue whether forced disappearance violates the right to life, and thereof, contains crucial element supporting the purpose of this thesis.

(3) The cases selected affect different outcomes i.e. in some cases the Court found that a violation of the right to life exist in cases of forced disappearance, but some cases did however, not meet the requirements in order to violate the right to life in cases of disappeared persons.

(4) The selection of cases also provides different countries, different years and different context of forced disappearance within the hemisphere. This will illustrate, if the Court is to be considered legitimate, when determine whether a violation against the right to life is violated in relation to forced disappearance of persons. As well as aiming to identify if the case-law practice evolved over time.

The cases selected, fulfilled the foregoing presented criteria, where the content of all the cases were analysed, reread and re-reviewed. For instance, the case of Velásquez Rodríguez v. Honduras, case of Godínez Cruz v. Honduras and, the case of Fairen Garbi and Solis Corrales v. Honduras, are three of the first cases that the Court was confronted with, in which all of them illustrate the issue at hand. Thereof, all of them are relevant, hence, the definition of both the act of forced disappearance and the scope of standard of proof was founded. Additionally, the Court decided that a violation does not exist in the case of Fairen Garbi and Solis Corrales v. Honduras and the Case of Blake v. Guatemala. Consequently, it will also reflect the question concerning evidence necessary, as well as identify similarities and difficulties between such. Further on, some of the cases illuminates the difficulties concerning
the unwillingness to cooperate, where the findings of the interpretive principle of the Court can be generalized and thereof, analysed. In order to keep the credibility of the material chosen, general accepted sources of law will be used in this regard, as described in section 1.7 of the thesis (Denscombe, 2010, 57f).

Finally, in this way, the in-depth study of the cases, serves the aim of this paper, as it strives towards analyzing what evidence demonstrate that the right to life is violated in cases of forced disappearance, as well as a reflection of State Responsibility. That is, in order to answer the question concerning how the Court argue whether the right to Life is violated in cases of forced disappearance of Persons (Denscombe, 2010, 57f).

1.8 THESIS OUTLINE

The research is structured as follows. Firstly, Chapter II concerns an examination of different documentations concerning a) the international point of view regarding the act and the rights and guarantees; b) an understanding of the Inter-American institution within the Inter-American System in order to create a context, that further will be applicable to analyse the Inter-American System as such; c) a clarification of the legal scope of the act – forced disappearance of persons – and the clarification of the legal scope on the human rights violated – the right to life (Article 4), the obligation to respect (Article 1) and the duty to take necessary measurement (Article 2) – according to the Inter-American System. Secondly, Chapter III will set forth an account on relevant cases affecting the act of forced disappearance and the violation of life. Aiming to analyse the negative right and positive duty that the Court has been confronted with, in order to analyse how the I/A Court H.R. reason in the present event. Thirdly, chapter IV will be concluded by a critical discussion regarding, how the Inter-American Court on Human Rights considers a) the State responsibility; b) Standard of proof. In order to attain a conclusion regarding the research question of the thesis. Finally, Chapter V will present a conclusion, wherein the finding will be summarized and discussed.
CHAPTER 2
INTERNATIONAL LAW

To be able to analyse the aim of this research, the following chapter will clarify the scope of the interpretation of the current event, examine how the Court adapt to such and try to address the purpose of this thesis: how does the Inter-American Court argue whether the act of forced disappearance violates the right to life, as enshrined within the American Convention? Additionally, this section will present the different stakeholders within the regional human rights system, their function in the light of the context of which the Court has its foundation. As well as a brief introduction concerning the International input on the subject.

2.1 INTRODUCTION OF THE RIGHT TO LIFE AND FORCED DISAPPEARANCE OF PERSONS

The first international declaration concerning forced disappearance was adopted in 1992. The issue as such, however, was examined already in 1970’s and further developed within the framework of the United Nations System on Human Rights. For example, the United Nation Working Group on Enforced or Involuntary Disappearances was adopted by resolution 20 (XXXVI) of 29 of February 1980, aiming to examine questions relevant to enforced or involuntary disappearance of persons. As a result of the working group and the perception of a deficiency of an established protection, the Convention of the Protection of All Persons from Enforced Disappearance was adopted in 2007. The purpose of the International Convention concerns to addresses a universally agreed definition on forced disappearance, as well as to emphasize the obligation the State Parties undertake to prevent, investigate and punish such violations. Hence, considering the observation of the seriousness the act entails (Lundberg, 2010, 217, Shawn, 2014, 241). Furthermore, the International Convention on Civil and Political Rights General Comment No. 6: Article 6 (Right to Life) stresses the protection against arbitrary deprivation of life in this regard. Where the Human Rights Committee

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1 Enforced disappearance and the term forced disappearance refers to the same event. The first mentioned, is in general used within the legal framework of the International law while the second is rendering within the legal framework of the Inter-American System and will therefore be applied in this research.
considers that all State Parties should take the necessary measurements in relation to prevent, protect and punish such acts from occurring. In addition, it was stressed to prevent unlawful killings of persons deprived of their freedom performed by their own security forces (General Comment No. 6, paragraph 3).

With this in mind, there are some similarities between the international and the Inter-American regional System. The rights are fundamentally those protected within the different Convention inter alia European Convention on Human Rights and the International Convention on Civil and Political Rights, however, there are some different approaches. To be able to understand the Inter-American case-law, it becomes important to take into account the systematic and gross abuses that the Court usually has been confronted with. For instance, most State Parties of the Organization of American States (OAS) were governed by an era of national security States during the 1970’s. Hence, the cases the Court has been opposed with, regarded systematic and gross human rights abuses from the very beginning. State authorities, breached the human rights guarantees set forth in the American Convention, pursuant to Article 27 to the American Convention, which allows State to bypass the obligation set forth within the American Convention. Consequently, individuals could not enjoy the guarantees and freedoms set forth by the Inter-American System, where State Parties neither assumed its obligation embodied within the American Convention, nor its international responsibility (Ebert, Sjiniensky, 2015, 351, Lundberg, 2010, 219, Shawn, 2014, 273f).

2.2 THE INTER-AMERICAN SYSTEM

The Inter-American System on Human Rights is a creation of the Organization of American States, where the principle on Human Rights is considered as the foundation of the System (Charter of the OAS, chapter I and II.). The protection of Human Rights is to be found in the American Declaration of the Rights and Duties of Man (1948) and the American Convention on Human Rights (1969). The Inter-American System has established two main units responsible for the promotion and protection of Human Rights, i.e. Inter-American Commission on Human Rights and the Inter-American Court on Human rights. Currently the OAS have 35 Member States, and 23 of them are State Parties to the American Convention.
Twenty have opted to accept the I/A Court H.R. jurisdiction in accordance with Article 62 of the American Convention\(^2\) (Lundberg, 2010, 213; 216).

### 2.2.1 INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

Inter-American Commission addresses human rights condition and violations in relation to Member States of the OAS, as the foregoing section mentioned. It first started to operate in 1960 by observing human rights conditions and later on processing specific complaints of human rights violations. In accordance with section two of the American Convention, the main function of the Commission is to promote the respect and defense of human rights by *inter alia* develop awareness of human rights among the region (Article 41 (a), American Convention), give recommendation to Member States in relation to adoption of measurement in favor of human rights (Article 41 (b), American Convention), and take action on petitions and communication pursuant to its authority (Article 41 (f); 44; 45, American Convention). Furthermore, the Commission holds hearings on problematic areas of concern, requesting proper measurement of human rights abuses, submitting applications to the Court and publishes studies and reports. For example, reports on admissibility and friendly settlements (Article 41; 42; 43, American Convention, Shawn, 2014, 273 – 277).

In accordance with Article 61 paragraph 1, only State Parties and the Commission have the right to submit a case to the Inter-American Court. The complaints concern all rights embodied within the American Convention made by State Members of the Convention. Additionally, the Commission may as well undertake alleged violations of the American Declaration on Human Rights and other regional human rights treaties, made by OAS Member State, that are not yet parties of the American Convention. Nevertheless, the conclusion and recommendation set forth by the Commission are not legally binding (Shawn, 2014, 273).

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\(^2\) Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay. Both Venezuela and Trinidad and Tobago had accepted the jurisdiction of the Court but withdrew 2012 and 1998. See [http://www.oas.org/dil/treaties_B32_American_Convention_on_Human_Rights_sign.htm#Trinidad%20and%20Tobago](http://www.oas.org/dil/treaties_B32_American_Convention_on_Human_Rights_sign.htm#Trinidad%20and%20Tobago) for more information concerning the reservation from Member States (2018 – 04 – 02).
2.2.2 INTER-AMERICAN COURT ON HUMAN RIGHTS

The Inter-American Court is a judicial body within the Inter-American System. The Court was established by the American Convention in order to comprise all cases concerning the interpretation and prevention of the rights enshrined within the American Convention (Article 62, American Convention). Thirty-nine years after its creation, the Court has been facing obstacles, such as poor cooperation with the Commission and the State Members. In 1979, the I/A Court H.R. first started to operate and issued several advisory opinions, but it was not until April 1986 the Commission submitted the first contentions case: Velasquez Rodriguez v. Honduras. In spite of these struggles, the I/A Court H.R. has found itself adjudicate a range of rights protected by the American Convention, from extrajudicial execution and forced disappearance cases, to labor, land, and freedom of expression rights. It has also a contentious and advisory jurisdiction (Goldman, 2009, 883, Medina, Quiroga, 2015, 188f).

Unlike the Commission the I/A Court H.R. have limited mandate since the Court only may decide cases brought against one of the Member States’. However, the demand is that the States have accepted the jurisdiction of the I/A Court H.R., the American Convention or other treaties concerning the protection of human rights (Article 64 paragraph 1, American Convention). The Court, may consult with Member States’ of the OAS with advisory opinions regarding compatibility of any of its domestic laws irrespective the State concerned has ratified the American Convention (Article 64 paragraph 2 American Convention).

Taking the political and social struggles the Inter-American System has been confronted with in consideration, the development of human rights interpretation also has been inadequate. Hence, the mistrust in the Court makes it difficult for Member States to fulfill their obligation to prevent, investigate, and protect their citizens and the I/A Court H.R. to exercise its jurisdiction and promote human rights. When a situation of mistrust occur, the State often reject the Court and withdraw from its doctrine; e.g., Venezuela denounced the American Convention (Goldman, 2009, 858; 883, Medina, Quiroga, 2015, 118f, 121).
2.2.3 BEFORE THE COURT

When submitting a petition, it has to be subject to the requirement set forth in Article 46 of the American Convention. The conditions affect *inter alia* that all remedies under domestic law have been exhausted, that the petition is filed within a period of six months from the notification of the final judgment, that it cannot be a subject for another international proceeding and that the petition contains personal record, such as name, nationality and signature (Article 46 paragraph 1, American Convention). In this regard it is of importance that the requirements set forth in Article 48 and Article 50 of the American Convention are completed, in order for the Court to hear a case (Article 61 paragraph 2 American Convention). Additionally, the petition has to be submitted by a State Party or the Inter-American Commission, given that the State Party have recognized the Court’s jurisdiction (61 paragraph 1, American Convention). The petition, has to concern an alleged violation against the human rights protected by the American Convention and State Parties of the Convention undertake to comply with the judgment of the Court (Article 68 paragraph 1 American Convention). In relation to the foregoing, the Court has the mandate to determine if the concerning State or State Parties violates the international responsibility (Gómez-Palomino v. Peru, IACtHR, Ser. C No. 109 [Gómez-Palomino v. Peru, 2005, at para 27]. Any person or group of persons, or non-governmental entity legally recognized in one or more of the OAS States, may submit a petition, where the Commission can allege the violation of any human rights embodied within the American Convention (Article 44, American Convention, Shawn, 2014, 276f).

2.3 THE RIGHT TO LIFE, ARTICLE 4

ACCORDING TO THE INTER-AMERICAN SYSTEM

Similarly, to the Article 2 of the European Convention on Human Rights and Article 6 of the International Convention on Civil and Political Rights, Article 4 (1) of the American Convention claims that every person should have the respect to life and that the right shall be

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1 In 1969 the American Convention on Human Rights was adopted trough a conference held in San Jose, Costa Rica. The document set forth a complex discussion concerning the right to life. However, the document is written in Spanish only and therefore cannot be applied to the research (OEA/Ser.K/XVI/1.2, 1969).
protected by law. In this regard, State Parties undertake the obligation to set forth the general duties and respect in relation to Article 1 and Article 2 of the American Convention. Given that, the article has a positive obligation for State Parties to prevent violations against Article 4 (1) and, the negative warranty for individuals not to die, including against the actions of private individuals. When deciding what the positive obligation should entail, the Court made references to documents and case-laws made by the European Court on Human Rights and the United Nation Human Right Committee. Where the Court found inter alia the State Parties’ duty to generate measurement required, in order to prevent a violation against the right to life by State security. It was also confirmed that a State that is tolerating extra judicial-killing produces a State of impunity, thereof, aggravate the protection of Article 4 (1) to the American Convention (Jesus, Butler 2004, 138, Rota, 2009, 133).

The Inter-American Commissions report on citizen security and human rights (2009, at para 107), emphasizes the two main struggles for the Member States, regarding the duty to prevent. The first struggle stresses the lack to adopt appropriated and effective measurement in relation to the protection against actions of private parties, who violate the right to life. The second, recalls the security unit’s usage of lethal force beyond international recognized principles. Where the Court has been emphasizing State Parties positive obligation, given that, State authorities involvement is problematic to prove (Ebert, Sijniensky, 2015, 351, OEA/Ser.L/V/II.131 Doc. 35, 2008, 10f). According to the obligation set forth within the article, the Court in its first case Velásquez Rodríguez indicated the importance of the State’s duty to take responsible measurement, in order to promote and prevent violations against the human rights embodied within the American Convention.

Moreover, the Court additionally stressed that a serious investigation has to be carried out, where the State have to identify and punish those responsible, as well as compensate the victims for the violation of such. Especially, such cases involving a violation against the right to life in accordance with Article 1 of the American Convention (Velásquez Rodríguez v. Honduras, IACtHR Ser. C No.4 [Velásquez Rodríguez v. Honduras], 1988, at para 174). In this regard, the Court found that the agreement the State Parties’ to the American Convention undertake, when ratifying the Convention, is as well obligated to prevent situations that could result in a violation against the right to one’s life (Velásquez Rodríguez v. Honduras, 1988, at para 188). With that in mind and, according to Article 27 of American Convention (see Appendix 4), State Parties of the American Convention has as well accepted that Article 4 (1)
is infrangible, i.e. Member States are not allowed to violate the right to life in times of war, when public danger or threats against the sovereignty occur. Henceforth, the positive and the negative duty embodied within the scope of the article entails to identify, prosecute and punish those responsible for violating the right. Further on, the Commission stresses that State Parties’ insufficiency is the cause of impunity, which produces an uncertainty within the Inter-American System (OAE/Ser.L/V/II, Doc. 57, 2009, at para 109; 112).

2.3.1 STATE RESPONSIBILITY,
ARTICLE 1 and ARTICLE 2 OF THE AMERICAN CONVENTION

A violation against a legally binding obligation results in a legally responsibility, in both international law and domestic law. The negative and the positive duty set forth in Article 4 (1) of the American Convention establish Member States’ obligation to respect the rights provided in the Convention, Article 1, American Convention, (Appendix 1) as well as adopt necessary legislative to give effect to those rights and freedoms presented within the legal framework of the Convention, Article 2, American Convention, (Appendix 2). The first article of the American Convention concerns two obligations: 1) to respect the rights invoked within the American Convention and; 2) to guarantee those rights. To guarantee those rights, is divided into four parts, i.e. prevention, investigation, punishment and reparation. According to the Courts’ decision, Article 1 applies to all the cases, although never alone but in combination with other rights such as the right to life. As for the obligation set forth within Article 2 of the American Convention, it emphasizes the obligation of compliance of their domestic law, where the duty was discussed particularly in the case of Ticona Estrada et al.s v. Bolivia. Within the case, the Court recalls that the obligation constitutes as a "customary law" (Rota, 2009, 131f). In relation to Article 4 (1) of the American Convention, it does not only refer to incorporate the guarantee into domestic legislation. It also requires that State institution, such as the army or the police, should protect the fundamental human right. Taking this into account, the State Parties undertake the duty to prevent, the obligation to respect the freedoms and guarantees of every individual, the obligation to ensure the fundamental human rights as enshrined within the American Convention and the importance to take necessary measurements in order to counter human rights violations, when entering the American Convention (Jesus, Butler, 2004, 138, Lundberg, 2010, 231).
The obligation set forth within the scope of these articles underline, the principle of *due diligence*, i.e. the international responsibility to take necessary measures in order to prevent, even if the perpetrator is a private person or cannot be identified. In this regard, the State Party could be held responsible for the human rights violation, in cases of forced disappearance of person. Hence, the duty to prevent (Lundberg, 2010, 225). The Inter-American Commission consider the conceptual framework of citizen security as an important aspect in this regard, and therefore, of relevance to define. Henceforth, the Commission indicates that the concept of security is one essential function for the State, but emphasize that the concept of security has evolved throughout the history. Furthermore, it is stressed that security, as for today, is not only concerning to address violations, additionally, it deals with creating an environment conductive to peaceful coexistence (OAE/Ser.L/V/II, Doc. 57, 2009, at para. 18; 20). In this regard, the I/A Court H.R. has indicated that the obligation to respect (Article 1, American Convention) is essential in determining whether a violation of the human rights can be recognized and alleged to a State Party. The Court also indicates, that the positive duty to organize not only the domestic legal effects but also the need for a government to conduct (Article 2, American Convention), hence to be ensured the free, judicial, and full enjoyment of the human rights as a State citizen (Velásquez Rodríguez v. Honduras, 1988, at para. 165 – 167).

### 2.4 FORCED DISAPPEARANCE

**ACCORDING TO THE INTER-AMERICAN SYSTEM**

"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 authorization, 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 [;] This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not
been determined” (Ticona Estrada et al. v. Bolivia, I/A Court H.R., Ser. C No. 76 [Ticona Estrada et al. v. Bolivia], 2008, at para 54)

The *case of Velásquez v. Honduras* was the first case concerning forced disappearance of persons committed by State authorities, submitted to an international human rights tribunal. It became important to identify the act that violated numeros human rights, as well as to claim a State responsibility in this regard. The case stresses, a broad definition concerning the international responsibilities as well as the importance to prevent, protect and punish for the sever human right violations the act entails (Lundberg, 2010, 224). On the twenty-fourth regular session of the General Assembly of the OAS, the Inter-American Convention on the Forced Disappearance was adopted, which entered into force in 1996. The Convention on Forced Disappearance reaffirms, that forced disappearance of persons violates numerous infringements and essential human rights embodied within the American Convention and stresses the importance to help State Parties to prevent, punish and eliminate such abuse from occurring (Preamble, 1996 A-60). Hence, in order to determine if a State have an international responsibility in cases of forced disappearance of persons, the jurisprudence of the American Convention is not sufficient. The investigation must therefore turn to the Inter-American Convention on Forced Disappearance (Shawn, 2014, 275f).

The definition, embodied within the Inter-American Convention on Forced Disappearance of Persons, implies certain requirements to meet. State Parties undertake *inter alia* to not practice or tolerate forced disappearance of person, even in state of emergency (Article I (a)), to punish within their jurisdiction those responsible for such acts (Article I (b)) and take necessary measurement in order to assume its commitment in relation to the Inter-American Convention on the Forced Disappearance. Furthermore, forced disappearance is deliberated to be the act depriving a person its freedom, perpetrated by State security forces, in relation to denying information on the whereabouts of persons (Article II). However, the punishment is to be determine by the lack of political will to prosecute such violation; hence, not by the lack of the act itself (Modolell González, 2010, 479).

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The State Parties of the Inter-American Convention on Forced Disappearance also agreed, that the processing of alleged violation submitted by the Inter-American Commission becomes a subject to the procedure established within *inter alia* the American Convention (Article 13, Inter-American Convention of forced Disappearance). In this regard, the Court shall adopt provisional measurements on cases of extreme and urgent necessity, relevant for the damages, in order to prevent inhumane treatments (Article 63, paragraph 2, American Convention). Moreover, the Inter-American Commission shall urgently address the corresponding government when receiving a petition, or a communication, where the Commission has to request the government to provide possible information on the victims’ whereabouts (Article 14, Inter-American Convention on Forced Disappearance, Shawn, 2014, 275f).

Whit the aforementioned in mind, and also taking the seriousness of the act into account, it became of importance for the Court to establish a common definition of the act for Member States to address, subsequent that the State Parties of the Convention on Forced Disappearance, incorporate the definition into domestic legislation and to know what elements the act requires. Nonetheless, the general criterion to avoid impunity and prevent human rights are inadequate, as the guiding character of the act is not limited (Modolell González, 2010, 479).

**2.5 THE INTERPRETATIVE PRINCIPLES OF THE INTER-AMERICAN COURT ON HUMAN RIGHTS**

In order to get a clearer understanding of the cases the Court has been confronted with, it is important on the one hand, to understand the context in which the Court were founded and developed. On the other hand, principles established by the Court in order to rule human rights cases, with the purpose to protect and prevent human rights. Therefore, the following section will briefly narrate essential principles, in relation to when the Inter-American Court make its assessment on cases of forced disappearance.

Firstly, the principle of *pro persona* stresses that the protection of the individual as the main object and aim of the interpretative rule when analysing case by case. In this regard, the Inter-
American Court has established a common rule on interpretation. Carlos Enrique Arevala Narváez and Paola Andrea Patarroyo Ramírez frame it as follows:

“i) human right treaties are live instruments whose interpretation must go hand in hand with evolving times and current living conditions, ii) the process of interpretation must be “consistent with the general rules of interpretation set forth in Article 29 of the American Convention, as well those set forth in the Vienna Convention on Treaty Law [...], and finally, when interpreting the Convention it is always necessary to choose the alternative that is most favourable to protection of the rights enshrined in said treaty, based on the principle of the rule most favourable to the human being.” (Arévalo Narváez, Patarroyo Ramírez, 2017, 315).

Secondly, the Court has established itself to holds the authority to use international treaties and principles, as to the international principle of *jura novit curia*. For instance, the *Osman test*, set forth by the European Court on Human Rights, imply the positive obligation on the State authorities to protect an individual or individuals, whose life are at risk from violating acts of a third party. Therefore, the determination made by the Court has to adapt in respect of the circumstances on the specific case. Thus, a State could be held internationally responsible due to the knowledge of the risk to one’s life, or if the State ought to know of the structural risk on hand. Henceforth, the Court has the power and the duty to apply the juridical provision relevant to the proceeding and fulfil the aim to ensure all person the free and full enjoyment on human rights (Ebert, Sijniensky, 2015, 356f; 353, Godínez-Cruz, 1989, at para 176).

Thirdly, and most importantly when ruling whether a violation on human rights embodied within the American Convention is at hand or not, are States’ legal responsibility when ratifying the American Convention. The obligation set forth emphasizes the prevention of human right violation, in addition to the usage of the means at their disposal to investigate and punish those responsible. In this regard, the Court have the authority to take provisional measurement, i.e. extraordinary remedies in severe cases, such as the risk of one’s life and forced disappearance (Lundberg, 2010, 223f; Shawn, 2014, 279).
Finally, the writ of *Habeas Corpus* is important when determining whether a violation against the right to life, set forth in Article 4 (1) of the American Convention in relation to the act of forced disappearance. The Court has in this regard, declared that a writ of *Habeas Corpus* is a non-infringement judicial guarantee for the protection embodied within the American Convention as it concerns valued evidence, which in turn emphasize the obligations the State Parties undertake when ratifying the American Convention, as well as the international principle of *restitution in integrum*. The letter regards the redemption to the next of kin (Lundberg, 2010, 224, Shawn, 2014, 278).
CHAPTER 3
CASE-LAW OF THE INTER-AMERICAN COURT

The following chapter will set fourth different cases the Inter-American Court has been confronted with. The cases presented, will be described and analysed based on their influence on established law. The section aims to find the common terms in relation to the research question, identify what elements the Court considerers important while ruling, how the Court interpret on whether the act has violated the right to life, and try to recognize what the Court finds difficult to address. Additionally, the section will put forward the chosen cases in chronological order with the purpose to uphold what the dogmatic approach strives towards: clarity and structure, and the case study: an detailed analyse in relation to the aim of this thesis.

3.1 CASES BEFORE THE INTER-AMERICAN COURT

Velásquez Rodríguez v. Honduras (1988)

In 1981, a petition against Honduras was received by the Inter-American Commission, confirm that severe human rights violations were performed by the State against its population. The petition reaffirms, that Angel Manfredo Velásquez Rodriguez (Velásquez) was arrested by members of the security force dressed in civilian clothes, that drove an unlicensed car. According to several eyewitnesses, the detention took place on the afternoon of September 12, 1981, where Velásquez was accused for alleged political crimes. However, the police and security forces denied the detention of Velásquez, and in 1986, he was still missing and the Commission decided to submit the case to the Court with reason that the State of Honduras did not offer sufficiently proof and emphasized that such acts are the most serious violation against the right to life as stated in Article 4 (1) of the American Convention and the right to personal liberty, Article 7 of the American Convention (Velásquez Rodríguez v. Honduras, 1988, at para 3 –10). The Court found that during the period of 1981 to 1984, a practice of disappearance was carried out by State officials, that Velásquez was one of the
disappearance persons, and that the State of Honduras failed its legal duty to prevent, protect and punish those responsible (Velásquez Rodriguez, 1988, at para 148).

According to the I/A Court H.R., forced disappearance is a complex form of human rights violation that violates many of the rights enshrined within the American Convention. Additionally, it was confirmed that the arbitrary detention constitutes as an infringement violation against the right to life, Article 4 (1), American Convention. Given that the practice of disappearance often involves secret execution without trial, where the standard of proof is eliminated in order to ensure impunity for those responsible. Moreover, it was stated that the act of forced disappearance constitutes not only a serious scope of human rights violation, but also abuse the concept of human dignity and the foremost fundamental principle of which the Inter-American System is based on (Velásquez Rodriguez, 1988, at para 150; 155; 157; 158).

Thereof, the Court made the decision that the disappearance qualify as a violation against the right to life, due to States’ obligation, as held in Article 4 (1) of the American Convention in relation to Article 1 to the American Convention. Moreover, the Court recognized that a State Party could be held responsible if the violation was committed even though the relevant person could not be identified. In this regard, States responsibility is judged by its absence of due diligence regarding its obligation set forth by Article 1 of the American Convention (Velásquez Rodriguez v. Honduras, 1988, at para. 176).

Additionally, the duty to prevent in relation to responsibility of a State was addressed. The Court examined the obligation embodied within the American Convention and thereof, it could be established as an international responsibility. In this regard, the Court reaffirms that any violation of the rights enshrined in the American Convention, performed by public authority, is imputable to the State (Velásquez Rodríguez v. Honduras, 1988, at para 162). Furthermore, the act of forced disappearance, even though the act is carried out by a private person or the State Party, could hold the State internationally responsible for such acts due to the lack of diligence to prevent violations from occurring (Velásquez Rodríguez v. Honduras, 1988, at para 171; 176).

*Case of Godínez-Cruz v. Honduras (1989)*
The case was submitted to the Inter-American Court on April 24, 1986, stressing the disappearance of Saúl Godínez (Godínez), where the Commission requested the Court to determine whether the State of Honduras violated *inter alia* the right to life, Article 4 (1) American Convention (Godínez Cruz v. Honduras, IACtHR, 20 January 1989, Ser. C No. 5 [Godínez Cruz v. Honduras], 1989, at para 1; 2). According to the petition filed, Godínez disappearance on July 22, 1982, after leaving his home with a motorcycle on his way to work. Moreover, the application states that an eyewitness identified three men, one dressed in military uniform and two of them in civilian clothes, taking the man into custody and placed him, and a motorcycle, in a vehicle without a licence plate. The eyewitness emphasized that the man looked like Godínez (Godínez-Cruz v. Honduras, 1989, at para 3).

In the Case of Godínez-Cruz v. Honduras, the I/A Court H.R emphasizes the standard of proof; thus, the State Party delivered some documents of evidence in support of its objections, but none of its merits, e.g. the State of Honduras attempted to show that the witnesses are too objective, where, the next of kin have an interest in the present case. As to the Commission, offered a lot of evidence concerning a well-known publication made by the Supreme Court of Honduras, as well as the Armed Forces of the Government. Consequently, the Court had to evaluate if a violation is present or not, due to the lack of evidence which complicates the procedure. In this regard, it was clarified that circumstantial and convincing evidence concerns *inter alia* the elucidation of the systematic act of kidnapping, that no one knows the whereabouts, the fails to investigate the disappearance and the elimination of evidence and the untrue facts about the current disappearance provided by the authorities. Giving the rule of procedure, the I/A Court H.R is dependent on States cooperation – if the State refuse to abet, it will obstruct the Court and the Commission’s aim regarding to prevent human rights. In this regard, the high ranking of the statements are important, insofar as they verify along with the testimonies, where the circumstantial evidences to be especially valued (Godínez-Cruz v. Honduras, 1989, at para 136; 137; 143; 147; 148; 149; 152).

Furthermore, the Court found that there was a forced disappearance, due to the lack of compliance by the State of Honduras and the lack of investigation, where the circumstantial evidences coincide with the practice and the government failed to guarantee human rights, as the obligations set forth within Article 1 and Article 2 of the American Convention. Thereof, the Court decided that the context in which the disappearance occurred and the lack of proof in relation to the whereabouts, could be considered that Godínez has been killed even
though the body is nowhere to be found (Godínez-Cruz v. Honduras, 1998, at para 191 – 195).

*Case of Fairén-Garbi and Solís-Corralles v. Honduras (1989)*

The case of Francisco Fairén-Garbi (Fairén-Garbi) and Yolanda Solís-Corralles (Solís-Corralles) v. the State of Honduras, concerns two Costa Rican citizens. Fairén-Garbi was a student and a public employee, and Solís-Corralles was a teacher. They disappearance in the State of Honduras while traveling to Mexico passing the Republic of Nicaragua (Nicaragua), Honduras and Republic of El Salvador (El Salvador). The case is one of the few rulings where the Court could not find that the State of Honduras is responsible for the disappearance of these persons. Although, the Government of Nicaragua provided evidence that proved that Fairén-Garbi and Solís-Corralles indeed left Nicaragua for the State of Honduras the day they disappeared (Fairen Garbi and Solis Corralles v. Honduras, IACtHR, Ser. C No. 6 [Fairen Garbi and Solis Corralles v. Honduras], 1989, at para 3).

As the above-mentioned case, the Court stresses to define the burden of proof due to the lack of recognition of such in the American Convention. Therefore, the Court has to rely on the evidence provided and requires that the standard of proof will consider the seriousness of the responsibilities concerning the grave and inhumane violation committed. Hence, the nature of the act of forced disappearance seeks to eliminate any evidence, where circumstantial or indirect evidence are necessary. The Court, also included that logical inference becomes vital when determining whether a violation occurred or not (Fairén-Garbi and Solís-Corralles v. Honduras, 1989, at para 125; 127; 130).

In so doing, the Court recalls previous cases, among others the case of *Velasquez Rodriguez v. Honduras* and *Godínez-Cruz v. Honduras*, where the Court defined the legal nature of forced disappearance and what characteristic features the act of forced disappearance of persons possesses. Furthermore, the Court affirms the violation on human rights as a complex matter that has to be understood and faced as an integral problem. Hence, it is an act that is continuing to violate many other rights embodied within the American Convention. Rights which State Parties are obligated to respect, prevent, investigate and obligated to punish those responsible (Fairén-Garbi and Solís-Corralles v. Honduras, 1989, at para 149 – 158; 157 –
165). Moreover, the Court describes that the act of forced disappearance often implies a secret execution, without a trial, and thereby results in a violation against the right to life. Where Article 1 of the American Convention thereafter becomes of relevance given the obligation the State Parties commenced to maintain (Fairén-Garbi and Solís-Corrales v. Honduras, 1989, at para 150).

The lack of valid evidence; however, raises difficulties in relation to whether the State is rightfully responsible. The Court stresses that the aforementioned, can serve as a principle given that the practice of forced disappearance is a violation of the American Convention. In this regard, the I/A Court H.R may make a presumption that the State of Honduras is responsible for the act that violates the lives of Fairén-Garbi and Solis-Corrales. However, the evidence provided cannot prove that the forced disappearance of Fairén-Garbi and Solis-Corrales. Although, it can be verified that the State of Honduras violated the obligation embodied within Article 1 of the American Convention, but had not evidence strong enough to find that Fairén-Garbi and Solis-Corrales disappeared within the said timeframe (Fairén-Garbi and Solís-Corrales v. Honduras, 1989, at para 153 – 161).

Case of Blake v. Guatemala (1998)

In 1995, the Commission filed a petition regarding the forced disappearance and murder of the U.S. citizen Mr. Nicholas Blake (Blake) against the Republic of Guatemala (Guatemala). The Commission claimed that Blake had disappeared from the first time of the arrest made by the patrol in 1985 until 1992, the day on which his remains was found. According to the State of Guatemala, the death of Blake cannot constitute a forced disappearance, even though his remains was found with evidence confirming the systematic action. The State added, that murder is a common crime and not a violation against a human right, such as the right to life (Blake v. Guatemala, IACtHR, Ser. C No. 36 [Blake v. Guatemala], 1998, at para 1; 60).

Taking this into account, the Court stresses previous cases, stating that a judgment can be based on other than direct evidence, such as previous cases emphasized. Hence, the evolution of evidence before a human right tribunal are broader in accordance with this criterion (Blake v. Guatemala, 1998, at para 49 – 51). Thus, the Court reaffirmed the multiple violation of this act and that the forced disappearance of persons is a case until the disappearance is entirely
solved (Blake v. Guatemala, 1998, at para 55). Moreover, it is considered as one of the most serious and cruel human rights violations, according to the Court, not only because the person is deprived of its freedom but also as it violates the integrity and security of one’s life. Henceforth, the Court stresses the importance of taking necessary measurement to avoid such acts (Blake v. Guatemala, 1998, at para 66).

Additionally, the Court has to examine the question of imputability, where the Court has to determine whether the civil patrol should be considered to be agents of the State or not, which in turn, assess if the violations could be imputed to the State (Blake v. Guatemala, 1998, at para 68). The Court observes that the death occurred during the forced disappearance, with the evidence provided. It was also observed, that there were two people missing during those circumstances and both remains were found. Nevertheless, the Court only had the competence to rule on the acts and effects, due to that the State of Guatemala had not recognized its jurisdiction. Therefore, the Court cannot hold the State of Guatemala responsible in relation to Article 4 (1) of the American Convention. Although, the State Party fails its obligation in relation to Article 1 of the American Convention, i.e. the State Party’s duty to investigate (Blake v. Guatemala, 1998, at para 52; 83 – 86).

Case of Bámaca-Velásquez v. Guatemala (2000)

Mr. Efrain Bámaca-Velasquez (Bámaca-Velásquez) was a commander in one of the guerilla groups seated in Guatemala. In 1992, the Guatemalan Army captured and tortured him; his whereabouts have since been unknown. The case put forward, follow a series of testimonies, some which was made by former combatants, which differs from other cases concerning forced disappearance of persons (Bámaca-Velásquez v. Guatemala, IACtHR, Ser. C No. 70 [Bámaca-Velásquez v. Guatemala], 2000, at para 118; 119). According to the Inter-American Commission, the State of Guatemala systematically captured guerilla group members, in order to gather valued information. The detention was kept a secret and the detained were tortured. Thereof, the Commission argued that the acts constitute a violation of forced disappearance of persons which often resulted in an extra-judicial killing. Yet, the State adhered that Bámaca-Velasquez was a prisoner of war; hence, not a case of such systematic practices (Bámaca-Velásquez v. Guatemala, 2000, at para 124; 126).
As stated, the act of forced disappearance often involves secret execution, without a trial, following the elimination of valuable evidence in order to ensure the impunity of those responsible (Bámaca-Velásquez v. Guatemala, 2000, at para 130). Thereof, the Court recalls the Case of Blake, which emphasize that if one could find that the State in question used the practice of forced disappearance and that a person can be connected to such, through either circumstantial or indirect evidence, or by pertinent logical inference, this specific disappearance could be proven (Case of Blake v. Guatemala, 2000, at para 49). Taking this into account, the Court finds, due to both circumstantial and indirect evidence, that the requirements set forth has been proven. Among others, it was confirmed that it was an army practice to capture guerillas within Guatemala and that some of the combatants were collaborating with the army at the time, in order to provide the information needed (Bámaca-Velásquez v. Guatemala, 2000, at para 121; 132). With the evidence confirmed, the Court recognized that the Article 4 (1) of the American Convention was violated. Given that the security forces of Guatemala executed Bámaca-Velasquez while he was secretly detained, and that the evidence provided indicates that Bámaca-Velasquez presumably is dead. The Government of Guatemala incorporated several judicial procedures in order to not be held responsible for violations against the American Convention. These attempts were, however, carried out by State Agents (Bámaca-Velásquez v. Guatemala, 2000, at para 121; 132; 137; 146).

Since the State claimed that they cannot be held responsible for the case of Bámaca-Velasquez, subsequently he was a prisoner of war and not a victim. The Court recalls United Nations Human Rights Committee, General Comment No. 6, and stresses that such the act is not only concerning to prevent and punish those responsible. It also indicates to prevent arbitrary killings made by their own security force. With the foregoing in mind, the Court found that a violation against Article 4 (1) and Article 1 of the American Convention, in relation to Common Article 3, constitute such violation and, could thereof, impute the responsibility to the State. Hitherto, the State have not provided any defense concerning the violation to the right to life, not identified the persons criminally responsible (Bámaca-Velásquez v. Guatemala, 2000, at para 137; 146; 172; 203 – 211).

Case of Gómez-Palomino v. Peru (2005)
The case concerns the disappearance of Mr. Santiago Gómez-Palomino (Gómez-Palomino). The petitions filed emphasizing the disappearance of Gómez-Palomino in 1992, arguing that the Peruvian Military Organization known as Colina Group deprived Gómez-Palomino of his freedom. The whereabouts of Gómez-Palomino is nowhere to be found, and the Court has to determine whether the Republic of Peru (Peru), could be held guilty for the human rights violation concerning Gómez-Palomino, as well as the mental violation against the next of kin (Gómez-Palomino v. Peru, 2005, at para 1 – 3).

As the foregoing cases, it is of importance to provide relevant evidential document laid forward by the different parties. Where the next of kin is considered useful in relation to insofar supplying information on the alleged violation and consequences entitled. However, the evidence provided by the next of kin is not considered as valued before the Court, the reason being it is not objective and often have a direct interest in the event. Nevertheless, the violation and the seriousness of the act of forced disappearance of persons, also constitute a mental and moral violation to the next of kin, i.e. a direct consequent of the act. In this regard, the Court stresses the duty to investigate due to the above-mentioned as the violation not only affect the victim, but also the next of kin (Gómez-Palomino v. Peru, 2005, at para 49; 61). Insofar, the judicial remedy of habeas corpus becomes of relevance, since it is creating an environment inconsistent with the effective protection of the right to life and other human rights (Gómez-Palomino v. Peru, 2005, at para 54.1).

In accordance with the Peruvian domestic legislation, Article 320 of the Criminal Code defines what the act of forced disappearance constitutes, where the act requires to be “duly proven”. Giving the Peruvian requirements, such definition provides a severe interpretation to address in relation to the present case and makes it difficult for the Court to determine whether the conduct meets the constitutional definition of the act. Hence, the domestic legislation requires a certain standard of proof, thus, it attempts not to leave evidence or traces of the victim (Gómez-Palomino v. Peru, 2005, at para 87). Taking this into account, the Court recalls that the complex practice constitutes a violation due to the general obligations that the State of Peru did not undertake when accepting the Inter-American jurisdiction. For instance, the obligation set forth within the different legal frameworks, e.g., American Convention, the Convention of Forced Disappearance nor the international responsibilities. Henceforth, the obligation imposed upon the State to adapt the necessary measurement in order to effectively prevent human rights violation. The serious act involves multiple-violations enshrined within
the American Convention and requires a set of acts to be carried out, such as detained from one’s personal integrity and security to his life, which leaves the victim defenseless. The Court held the State responsible for the obligation concerning the implement of the common definition of the forced disappearance of persons into domestic law (Gómez-Palomino v. Peru, 2005, at para 52 paragraph 2; 90 – 99).


Mr. Agustin Goiburú Giménez, Mr. Carlos José Mancuello Bareiro and the brothers Mr. Rodofo Feliciana and Mr. Benjamín de Jesús Ramírez Villalba (Goiburú et al.) disappeared, whose remains are nowhere to be found. According to the I/A Court H.R, the case has a unique historical importance, i.e. it occurred in the context of a systematic practice of arbitrary detention perpetrated by the security force of Paraguay, as well as the forced disappearance correspond to the modus operandi\(^5\) (Goiburú et al. v. Paraguay, Ser. C No. 153 [Goiburú et al. v. Paraguay], 2006, at para 60(49); 62).

As to the historical context, and what has been confirmed concerning the “national security doctrine”, the code name "Operation Condor" was given to the alliance of security forces and intelligence service (Goiburú et al. v. Paraguay, 2006, at para 64). The development of the Operation Condor, supported by the domestic institutional structure, had the purpose to achieve a series of political and economic goals that would reaffirm the bases of the conspiracy in order to terrorize the population (Goiburú et al. v. Paraguay, 2006, at para 63; 65f). In this regard, the Court recalls the status of \textit{jus cogens}\(^6\); hence, the systematic action behind the disappearance of persons and the connection between such, results in that the disappeared person ends up in a defenseless position where there also is an entrance for other serious violations, such as the right to life. In relation to this, the Court stresses the insufficiency, where the above-mentioned underlines that the forced disappearance of persons respond to the need for the States responsibility set forth in Article 1 of the American Convention. Thereof, the case emphasize the significance to take into account the effects over time and to keep in mind the consequences the act entails (Goiburú et al. v. Paraguay, 2006, at para 80 – 85).

\(^5\) \textit{Modus Operandi}, is a pattern or method of procedure in relation to a single criminal act in more than one crime.

\(^6\) A set of principle which imply that no derogation is permitted in accordance with international law (Shawn, 2014, 587).
Unanimously, the Court found that it is clear that a violation against Article 4 (1) as well as Article 1 of the Convention and a violation against the Inter-American Convention on Disappearance of Persons exists. In which the internationally responsibility to protect human rights, the need to investigate the multiple-violation the complex nature of the act, as well as the usage of the official position to violate the respect of the rights. Hence, it was confirmed as a systematic state-terrorism at an inter-state level existed, where the act committed is considered as a gross rejection on which the Inter-American System has its foundation (Goiburú et al. v. Paraguay, 2006, at para 80; 82; 94; 197).

Case of Ticona Estrada et.al v. Bolivia

The case, concerns the alleged forced disappearances of Renato Ticona Estrada (Ticona Estrada) and his brother Hugo Ticona Estrada who was detained by the Army Patrol in 1980, the Plurinational State of Bolivia (Bolivia). The petition submitted, relates to the impunity and the denial of the disappearance, as well as the lack of the reparation set forth in Article 1 of the American Convention and the duty to adapt domestic legal provision enshrined within Article 2 of the American Convention. Further, the principle of *ratione temporis* was emphasized by the Court, hence; it cannot hear the alleged violation concerning the brother Hugo Ticona Estrada (Ticona Estrada et al. v. Bolivia, 2008, at para 2; 3).

In the *Ticona Estrada et al.s v. Bolivia* case, the Court recalls the definition of forced disappearance as presented in the Inter-American Convention on Forced Disappearance of Persons. In particular: a) a deprivation of freedom; b) due to the direct intervention made by governmental officials; and c) State Partis’ non-cooperation in relation to the victims’ whereabouts (Ticona Estrada et al. v. Bolivia, 2008, at para 54; 55). Additionally, the Court states, that the act of forced disappearance is a multiple-violation and complex as it can constitute an infringement violation of both inhumane treatment and personal freedom. Thereof, even if no evidence is provided, the State could be held responsible for the violation of the right to life (Ticona Estrada et al. v. Bolivia, 2008, at para 62; 63). Moreover, the Court reaffirms that forced disappearance often have a secret execution without a trial, followed by

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the elimination of the victims’ remains or any other relevant material evidence in order to ensure the impunity. Thereby, the Court concludes that the impunity often involves torture where the State Party has failed the obligation set forth in Article 1 of the American Convention. In this regard, and with the confirmation of the State of Bolivia, the act of forced disappearance has represented to violate the right to life, as the Court observes the information confirming the seriousness of the systematic pattern of human rights violations that existed in Bolivia at the time (Ticona Estrada et al. v. Bolivia, 2008, at para 59; 60; 61; 63).

Moreover, the Court stresses that the act of forced disappearance of persons constitute certain requirements, as above-mentioned. However, to hold detainees in a recognized place of detention does not constitute as an element embodied within the act, rather a guarantee to not have one’s human rights violated under such circumstances. Consequently, the tribunal cannot find the State responsible for the violation set forth in Article XI of the Inter-American Convention on Forced Disappearance of Persons. However, the State Party did fail to comply with the duties established in Article I (a) of the Convention on Forced Disappearance of Persons (Ticona Estrada et al. v. Bolivia, 2008, at para 67).
CHAPTER 4
ANALYSIS

In order to determine how the Court argue whether forced disappearance violates the right to one’s life, this chapter will set forth a discussion in relation to the material provided in the foregoing sections. The general principles set forth within Chapter II of this thesis becomes crucial in this regard. For instance, the positive obligation concerning the State authorities duty to protect an individual or individuals, whose life are at risk in relation to the principle of pro persona, in which it is confirmed the protection of the individual as the main object and purpose when ruling in cases of forced disappearance and the right to life. Consequently, the knowledge of the risk to one’s life, or if the State ought to know of the structural risk at hand, could hold a State internationally responsible. In this regard, section 4.1 concerns State’s responsibility regarding the event. The section will provide a discussion concerning the struggles regarding the State unwillingness to cooperate in relation to vague definitions and directives made by the Court, which in turn indicates the failure to maintain its regional and its international obligations. Further on, section 4.2 concerns the issue of Standard of proof, where the definition of such will be presented. In this regard, the development of what the standard of proof constitute, as well as the legal uncertainty which is created in this matter, are identified.

Therefore, the research question and the sub-questions that is to be answered reads as follows:

*How does the Inter-American Court on Human Rights argue whether the right to life is violated in cases of forced disappearance of persons?*

*What kind of evidence demonstrates that forced disappearance violates the right to life?*
What difficulties does the Court confront regarding the Member States’ responsibility in cases of forced disappearance?

4.1 STATE RESPONSIBILITY

It is clear that the right to life is considered as a fundamental human right, that should not be violated, according to Article 4 (1) and Article 27 to the American Convention. The definition as such, could easily be clarified and therefore, is to be applicable in cases of forced disappearance. As i.e. the case of Bámaca-Velásquez v. Guatemala shows, and as indicated within Article 27 of the American Convention; a State Party cannot violate the right to life even if there is a time of war. The seriousness of violating the legally responsibility is, as stated, an issue under the Inter-American System, as well as international and national law. When violating such legally binding obligation, one has to be hold legally responsible. Considering this, the Court has been opposed with struggles. Hence, the State Parties to the American Convention does not maintain its obligation concerning the duty to prevent, protect, and punish those responsible, as well as taking all measurements necessary in order to keep its obligation. As set forth in Article 1 and Article 2, in relation to Article 4 of the American Convention and the Inter-American Convention on Forced Disappearance of Persons.

To hold this legally obligation, the State Parties undertake inter alia to investigate, prevent, protect, respect, and punish those responsible. However, it also includes taking all measurements in relation to legal, political, administrative, and cultural nature, in order to ensure human rights. This obligation must be complied with diligently in order to avoid impunity, as the impunity encourages the repetition of human rights violations. The obligation to ensure the free and full exercise of human rights, is not fulfilled by the existence of a legal system, as it strives towards making it possible to comply with this obligation. Hence, it also requires the government to conduct itself, as to effectively ensure the free and full exercise of human rights, e.g. as stated in the case of Blake where the Court made the judgment to hold the State of Guatemala responsible for its obligation set forth within Article 1 and Article 2 to the American Convention. Nevertheless, a violation against the right to life cannot be determine due to that the State had not accepted the jurisdiction of the Court. Working under
these assumptions, one of the main difficulties regards the unwillingness to cooperate. Hence, the State does not maintain this responsibility, since the Member State is the one who, presumably, is the offender behind the act. Which in turn, indicates that the act of forced disappearance is not considered as a violation against human rights as embodied within the American Convention.

The disappearance of persons, which is not directly imputable to a State, can regardless lead to a violation against the international responsibility. Given the lack of due diligence to prevent the violation or to respond to it as required by the Convention, as recognised in the case of Velásquez Rodríguez v. Honduras. The seriousness of the act, constitutes as a violation of different legal interests, that still continues depending on the will of the offender. In this regard, the act of forced disappearance is considered as a continuing violation of a complex multiple human right violation, where the continuing violation constitutes as long as the fates and whereabouts of the victim still is unknown. Consequently, the duty the State Party undertake still composes a continuing violation and thereof, the continuing obligation entailed within the scope of the violation, until the remains of the person missing is to be found. Keeping this in mind, the Court often recalls the principle of habeas corpus as a mandatory judicial guarantee. However, State Parties fail this obligation and, the Court often hold the State responsible for a violation against the right to life and a failure in keeping its international responsibility, even though there is an absence of crucial evidence, such as the principle mentioned. Apropos to this, it is not emphasized to define in what way the right to life is violated in relation to the forced disappearance. It is rather analysed if the State in question have assumed the obligation they undertook when entering the American Convention. It could be questioned, however, if the vague definition and directive made by the Court concerning the current event, creates an environment of insecurity regarding the responsibilities the State Parties are obligated to protect?

Moreover, when analysing the connection between the Article 4 (1) and forced disappearance of persons, the I/A Court H.R. recalls that a judgment cannot simply be founded on the risk of a person’s life, as the facts presented within the cases, constitute as legit proof. It creates a broader interpretation for the Court to adapt and permits I/A Court H.R to operate despite the uncooperative environment. Yet, the various directives and vague definition of such, result in making it difficult for the Court, as well as for the State Parties of the Inter-American System to comply with and, thereof, reduces the credibility of the Court. For example, the Case of
Fairén-Garbi and Solís-Corrales v. Honduras states that the act of forced disappearance is a violation against the American Convention, however, when analyzing case by case in relation to the legal framework, it is clear that the act is not an issue of the American Convention. It is rather an act that violates the rights and freedoms embodied within the American Convention. As for the different requirements within domestic, regional and international human rights law, concerning the definition of the act and whether it constitute a violation against the right to life differs. As especially shown in the case of Goiburú et al. v. Paraguay.

Taking this into account, it is to conclude the importance of Article 1 of the American Convention and Article 2 of the American Convention in relation to the vague definitions, as they are utilised as two of the key subjects when making the judgment whether the right to life is violated in cases of forced disappearance or not. Since, the Court emphasize the lack of investigation in relation to the acts committed and how effective the measurements from the State Party are. Which in turn, stresses the dilemma concerning that the act of forced disappearance is often not considered as a violation within the domestic legislation. For example the case of Bámaca-Velásquez, the State argued that they did comply with their obligations set forth within the American Convention, as an investigation was made with the confirmation that the person missing was a prisoner of war. Keeping this in mind, the act is neither consider as a violation against human rights, as the interest of the State Parties lies in keeping the impunity of those responsible. Thus, without the human right protection, a lawless ruling is lawful and violation against human rights is not considered as a violation. If, the necessary measurement needed is provided, a common definition of the act incorporated into domestic legislation and are as well investigated, both the Court and the State can submit to its obligation, in relation to clarify the scope of the act and the right. In addition, it would interact with the aim of the Inter-American System: to protect human rights. Consequently, the vague definition of the evidence, when illustrating the act of forced disappearance and the Article 4 of the American Convention, creates a legal uncertainty due to vague definitions, improbability of responsibility, and refusal to enforce this responsibility within the legal framework of the Inter-American Court on Human Rights.

The act of forced disappearance leaves the person missing in a defenseless position. The insufficiency, in this regard, underlines that the act respond to the need for the State responsibility set forth in Article 1 of the American Convention, since the right to life hold the status of jus cognes.
4.2 STANDARD OF PROOF

Of what have been identified from the above-mentioned chapters, the act of forced disappearance is defined as a serious violation against multiple human rights. The act refers to a violation committed by security forces, where standard of proof is highly relevant in order to hold a State Party responsible for violating any human right embodied within the American Convention. Usually, forced disappearance is practiced systematically, where the different cases provided within Chapter III of the thesis, follow a similar pattern, the so called *modus operandi*. The person disappeared, is often considered as a threat against the government, where the act often ends in an extra judicial-killing, that is hard to prove. The person’s whereabouts is nowhere to be found and those responsible eliminate the evidence to keep its impunity. Considering this, the Inter-American Convention of Forced Disappearance of Persons, contains a detailed definition of the element embodied within the act and of who shall be held guilty, as set forth in the Inter-American Convention on Forced Disappearance of Persons. Nonetheless, the standard of proof has become of an issue for the Court to address. As the elimination of valued evidence and the information needed to allow the determination, of the whereabouts, is not provided. Thereof, it constitutes as a continuing violation, as stated in the first case the Court was confronted with.

With the elimination of evidence in relation to the uncooperative environment in mind, the I/A Court H.R. decided that circumstantial and convincing evidence as especially important in claims of forced disappearance, as stated in i.e. the case of *Godínez-Cruz v. Honduras*. Which further on were specified, in terms of an indication or even a presumption, to also be considered as legitimate evidence, given that the evidence provided could hold a State responsible. Taking that into consideration, the Court recognized it as a necessary aspect to take into account, while determine whether a right to life is violated or not. The evolution of evidence became broader, which in turn brings redemption, that also results in an increasing reliance to the I/A Court H.R.. However, to make a decision due to a presumption regarding whether a State Party violated the right to life, in relation to the act of forced disappearance of persons, emphasize the dilemma of lack of investigation in relation to the standard of proof.
Additionally, it also creates an environment of legal uncertainty, which in turn question the legitimacy of the Court.

For instance, in the first case the Court was confronted with, was followed by two other judgements that involved disappearances in Honduras, i.e. the *Godinez-Cruz v. Honduras* judgement and the *Fairen Garbi and Solis Corrales v. Honduras* judgment. The three cases were similar, in which the cases were practised in the same manner: the systematic disappearance of persons, committed by the same State authority, during a specific period of time which was publicly known. The persons missing were defined as a threat against the State and the whereabouts is still unknown. The case of *Godinez-Cruz v. Honduras* reached a similar decision to the case of *Velásquez Rodríguez v. Honduras*, while the case of *Garbi and Coralles v. Honduras* came to a different conclusion. As stated in Chapter III, the case of *Garbi and Coralles v. Honduras* involved two Costa Rican citizens who disappeared in the State of Honduras, where circumstantial evidence was provided. Yet the Court held that an establishment of a general practice of disappearances made by the government is insufficient. Due to the lack of evidence and the unknown whereabouts of the subjects at scope, it was argued that the persons disappeared were not victims of the systematic practice accomplished by the State of Honduras. The Court found, that to make a legal presumption on a specific person, other evidence is necessary and thereof, the I/A Court H.R. could not hold the State of Honduras responsible. The risk to one’s life was not considered as the only legit evidence.

Pursuant to the foregoing, the subject stresses a vague definition in relation to the standard of proof, which furthermore nurtures the issue of the legal uncertainty and injustice amongst the cases. The requirement set forth in the definition of the act of forced disappearance, were observed in the letter. Although, it has been emphasized, that the severe and inhumane violation in relation to the continuous uncooperative approach, do decelerates the improvement of the custom of the Court, which in turn complicates the working procedure for the Court. This is observed in the *case of Bámaca-Velásquez v. Guatemala*. However, the infringement right embodied within Article 4 of the American Convention, Article 2 of the European Convention, Article 6 of the International Convention on Civil and Political Rights, and as the right to life is internationally considered as the legal status of *jus cognes*. Evidence that indicates that even a risk of one’s life should be regarded as a serious matter, that is to be infringeable and, thereof, is to be seriously investigated.
Keeping this in mind, the serious act of forced disappearance violates fundamental rights, such as the right to life. Section 2.5 of the thesis, regarding the General principles of the Inter-American Court on Human Rights, states that one of the foremost important principle established, stresses the protection of the individual as the main object and aim of the interpretative rule when analysing case by case. Additionally, the principle of *pro persona* emphasizes that the Court is to adopt the alternative most favourable to the protection of the human rights. Furthermore, the seriousness of the act is as well concerned within the international responsibility, as specified in the foregoing section. In this regard, the case of *Garbi and Coralles v. Honduras* could be considered as a misjudgement. Hence, the right to life cannot be derogated, as it is defined as a *jus cognes* rule and where necessary measurement in relation to investigation are essential.

As to the absence of investigation, Article 1 and Article 2 of the American Convention is considered as a crucial aspect when determine the event, as above-mentioned. Nevertheless, it could be questioned if the Court by itself, is failing its own obligations set forth by law, in written, as well as un-written law? Which in turn questions the legitimacy of the Court. For instance, in the case of *Velásquez Rodríguez v. Honduras*, the Court affirms that the act of forced disappearance constitute as a continuing violation until the persons whereabouts is found. In relation to the principle adopted, the I/A Court H.R. stresses that the obligation to investigate continues until the fate of the victim has been established and the remains located. The body shall henceforth be returned over to the family. If the State fails this obligation, the State is obligated to use the means to inform the relatives of the whereabouts. Considering this, the State is to inform the location of the victim’s remains. If the right to life, as stated in Article 4 of the American Convention, should be a non-violated right, as indicated within Article 27 of the American Convention. In relation to the aim on which the Inter-American System has its foundation, as well as the importance of the redemption for the next of kin. Thus, it becomes of relevance to question why the Court rule that the right to life is violated in cases of forced disappearance, which is made in the most cases, on a presumption? To make a judgment based on a presumption, could be considered to encourage the issue of impunity of those responsible and, a failure to keep its responsibility in relation to investigate. Hence, the obligation to investigate is no longer needed, given that the Court made the judgment that a violation against the right to life in relation to forced disappearance of persons, exists. In this regard, the Courts ability to apply the current law, is vague. Hence, the principles established contradict with each other.
CHAPTER 5

SUMMARY

In my research, I have been using a legal dogmatic approach and a case study concerning how the Inter-American Court on Human Rights argue whether forced disappearance of persons violate the right to life, Article 4 to the American Convention. In order to achieve the aim of this thesis, I have chosen to analyse the cases in the light of standard of proof and State Parties’ responsibilities to be able to answer the research question, along with its sub-questions set forth:

*How does the Inter-American Court on Human Rights argue whether the right to life is violated in cases of forced disappearance of persons?*

*What kind of evidence demonstrates that forced disappearance violates the right to life?*

*What difficulties does the Court confront regarding the Member States’ responsibility in cases of forced disappearance?*

5.1 CONCLUSION

To conclude, this investigation focuses primarily on the question concerning how the Inter-American Court argue whether the act on forced disappearance violates the right to life. Given the material analysed, it is considered to be vague. There is an absence of standard of proof, State responsibility in relation to the States’ uncooperative approach and vague and inconsistent directives given by the Court. Thereof, an environment of a legal uncertainty is created when analysing cases concerning whether forced disappearance violates the right to life.
The practice of forced disappearance is a violation that infringe multiple rights embodied within the Inter-American Conventions, such as the right to life. Forced disappearance often involves a secret execution without trial, followed by an elimination of the body in order to remove any material evidence and to keep the impunity of those responsible. The Court finds this as a flagrant violation of the right to life as recognized in Article 4 (1) of the American Convention. The life of the person disappeared, however, is in most cases of this research, violated even though the victims’ remains are nowhere to be found, where the judgment is based on a presumption. This presumption, is made by circumstantial, convincing, or indirect evidence provided by State Parties that refuse to provide the evidence needed to hold as State Party responsible. In this regard, the establishment of new principles are incorporated by the Court. However, these principles are contrary in relation to each other. For example, the Court established that the act is a continuing violation until the body is found and thereof, a legitimate evidence to rule that the right to life is violated. Nonetheless, it was pronounced in the latter cases, that the risk to one’s life was not considered as the only legit evidence, which in turn contravenes with the obligations the State Parties undertake when accepting the Inter-American Conventions: to protect human rights. A legal uncertainty prevails as well as the Courts credibility decreases in relation to the current event.

As for the State responsibility, Article 1 and Article 2 of the American Convention, are two important key subjects, when ruling cases of forced disappearance and the right to life. Notwithstanding, if the Court does not have the authority or the evidence needed to declare that the right to life is violated in the case of forced disappearance. The State can be hold responsible for not complying with neither the obligation of the American Conventions nor its international responsibility, due to the duty to protect, prevent and punish those responsible, as well as take necessary measurements needed to protect the human rights. Thus, not only to incorporate the definition of the human rights set forth in the Conventions, it also emphasize the administrative, political, judicial, social, and cultural measurements. That is to say, that a State cannot justify the forced disappearance of persons in relation to a violation to the right to life by arguing that the person missing was a prisoner of war. A violation to Article 4 of the American Convention, implies both a negative and a positive duty, as well as it constitutes as an inviolable right, even in times of war or even if one is considered as a threat to the government. So, when the life is
lost, what does there remain to protect?

5.2 FURTHER RESEARCH

As stated in section 1.6, there are much previous research concerning how the right to life can be violated in relation to a specific situation or a specific group of people, as well as for the seriousness of Forced Disappearance of Persons. Nevertheless, there is an absence of research concerning the connection between them. Suggestions for further research could involve an investigation regarding the legal uncertainty in relation to cases of forced disappearance, within the Inter-American System concerning other areas that may be violated. Furthermore, with a more generous time constraint more cases could have been analysed, in order to achieve an even deeper understanding, and detect a narrower conceptualization, of the topic at hand.
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Electronic sources


# Table of Cases


APPENDICES

Appendix 1

Article 1: Obligation to Respect Rights, American Convention

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Appendix 2

Article 2: Domestic Legal Effects, American Convention

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Appendix 3

Article 4: Right to Life, American Convention

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.
3. The death penalty shall not be reestablished in states that have abolished it.

4. In no case shall capital punishment be inflicted for political offenses or related common crimes.

5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women.

6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority.

**Appendix 4**

**Article 27 Suspension of Guarantees**

1. In time of war, public danger, or other emergency that threatens the independence or security of a State Party, it may take measures derogating from its obligations under the present Convention to the extent and for the period of time strictly required by the exigencies of the situation, provided that such measures are not inconsistent with its other obligations under international law and do not involve discrimination on the ground of race, color, sex, language, religion, or social origin.

2. The foregoing provision does not authorize any suspension of the following articles: Article 3 (Right to Juridical Personality), Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 6 (Freedom from Slavery), Article 9 (Freedom from Ex Post Facto Laws), Article 12 (Freedom of Conscience and Religion), Article 17 (Rights of the Family), Article 18 (Right to a Name), Article 19 (Rights of the Child), Article 20 (Right to Nationality), and Article 23 (Right to RSQ-24-2.indd 159 SQ-24-2.indd 159 26.5.2005 14:31:34 6.5.2005 14:31:34 160 Documents Participate in Government), or of the judicial guarantees essential for the protection of such rights.

3. Any State Party availing itself of the right of suspension shall immediately inform the other States Parties, through the Secretary General of the Organization of American States, of the provisions the application of which it has suspended, the reasons that gave rise to the suspension, and the date set for the termination of such suspension.
Appendix 5

INTER-AMERICAN CONVENTION
ON FORCED DISAPPEARANCE OF PERSONS

Preamble
The Member States of the Organization of American States signatory to the present Convention,

DISTURBED by the persistence of the forced disappearance of persons;

REAFFIRMING that the true meaning of American solidarity and good neighborliness can be none other than that of consolidating in this Hemisphere, in the framework of democratic institutions, a system of individual freedom and social justice based on respect for essential human rights;

CONSIDERING that the forced disappearance of persons is an affront to the conscience of the Hemisphere and a grave and abominable offense against the inherent dignity of the human being, and one that contradicts the principles and purposes enshrined in the Charter of the Organization of American States;

CONSIDERING that the forced disappearance of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights;

RECALLING that the international protection of human rights is in the form of a convention reinforcing or complementing the protection provided by domestic law and is based upon the attributes of the human personality;

REAFFIRMING that the systematic practice of the forced disappearance of persons constitutes a crime against humanity;
HOPING that this Convention may help to prevent, punish, and eliminate the forced disappearance of persons in the Hemisphere and make a decisive contribution to the protection of human rights and the rule of law,

RESOLVE to adopt the following Inter-American Convention on Forced Disappearance of Persons:

**Article I**

The States Parties to this Convention undertake:

a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;

c. To cooperate with one another in helping to prevent, punish, and eliminate the forced disappearance of persons;

d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

**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 authorization, 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 III**

The States Parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.
The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

**Article IV**

The acts constituting the forced disappearance of persons shall be considered offenses in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances:

a. When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction;

b. When the accused is a national of that state;

c. When the victim is a national of that state and that state sees fit to do so.

Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.

This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.

**Article V**

The forced disappearance of persons shall not be considered a political offense for purposes of extradition.

The forced disappearance of persons shall be deemed to be included among the extraditable offenses in every extradition treaty entered into between States Parties.

The States Parties undertake to include the offense of forced disappearance as one which is extraditable in every extradition treaty to be concluded between them in the future.

Every State Party that makes extradition conditional on the existence of a treaty and receives a request for extradition from another State Party with which it has no extradition treaty may consider this Convention as the necessary legal basis for extradition with respect to the offense of forced disappearance.

States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offense as extraditable, subject to the conditions imposed by the law of the requested state.
Extradition shall be subject to the provisions set forth in the constitution and other laws of the request state.

**Article VI**

When a State Party does not grant the extradition, the case shall be submitted to its competent authorities as if the offense had been committed within its jurisdiction, for the purposes of investigation and when appropriate, for criminal action, in accordance with its national law. Any decision adopted by these authorities shall be communicated to the state that has requested the extradition.

**Article VII**

Criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrator shall not be subject to statutes of limitations.

However, if there should be a norm of a fundamental character preventing application of the stipulation contained in the previous paragraph, the period of limitation shall be equal to that which applies to the gravest crime in the domestic laws of the corresponding State Party.

**Article VIII**

The defense of due obedience to superior orders or instructions that stipulate, authorize, or encourage forced disappearance shall not be admitted. All persons who receive such orders have the right and duty not to obey them.

The States Parties shall ensure that the training of public law-enforcement personnel or officials includes the necessary education on the offense of forced disappearance of persons.

**Article IX**

Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions.

The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties.

Privileges, immunities, or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

**Article X**
In no case may exceptional circumstances such as a state of war, the threat of war, internal political instability, or any other public emergency be invoked to justify the forced disappearance of persons. In such cases, the right to expeditious and effective judicial procedures and recourse shall be retained as a means of determining the whereabouts or state of health of a person who has been deprived of freedom, or of identifying the official who ordered or carried out such deprivation of freedom.

In pursuing such procedures or recourse, and in keeping with applicable domestic law, the competent judicial authorities shall have free and immediate access to all detention centers and to each of their units, and to all places where there is reason to believe the disappeared person might be found including places that are subject to military jurisdiction.

**Article XI**

Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

**Article XII**

The States Parties shall give each other mutual assistance in the search for, identification, location, and return of minors who have been removed to another state or detained therein as a consequence of the forced disappearance of their parents or guardians.

**Article XIII**

For the purposes of this Convention, the processing of petitions or communications presented to the Inter-American Commission on Human Rights alleging the forced disappearance of persons shall be subject to the procedures established in the American Convention on Human Rights and to the Statue and Regulations of the Inter-American Commission on Human Rights and to the Statute and Rules of Procedure of the Inter-American Court of Human Rights, including the provisions on precautionary measures.

**Article XIV**

Without prejudice to the provisions of the preceding article, when the Inter-American Commission on Human Rights receives a petition or communication regarding an alleged
forced disappearance, its Executive Secretariat shall urgently and confidentially address the respective government, and shall request that government to provide as soon as possible information as to the whereabouts of the allegedly disappeared person together with any other information it considers pertinent, and such request shall be without prejudice as to the admissibility of the petition.

**Article XV**

None of the provisions of this Convention shall be interpreted as limiting other bilateral or multilateral treaties or other agreements signed by the Parties.

This Convention shall not apply to the international armed conflicts governed by the 1949 Geneva Conventions and its Protocol concerning protection of wounded, sick, and shipwrecked members of the armed forces; and prisoners of war and civilians in time of war.

**Article XVI**

This Convention is open for signature by the member states of the Organization of American States.

**Article XVII**

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article XVIII**

This Convention shall be open to accession by any other state. The instruments of accession shall be deposited with the General Secretariat of the Organization of American States.

**Article XIX**

The states may express reservations with respect to this Convention when adopting, signing, ratifying or acceding to it, unless such reservations are incompatible with the object and purpose of the Convention and as long as they refer to one or more specific provisions.

**Article XX**

This Convention shall enter into force for the ratifying states on the thirtieth day from the date of deposit of the second instrument of ratification.

For each state ratifying or acceding to the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day from the date on which that state deposited its instrument of ratification or accession.
Article XXI

This Convention shall remain in force indefinitely, but may be denounced by any State Party. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. The Convention shall cease to be in effect for the denouncing state and shall remain in force for the other States Parties one year from the date of deposit of the instrument of denunciation.

Article XXII

The original instrument of this Convention, the Spanish, English, Portuguese, and French texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward certified copies thereof to the United Nations Secretariat, for registration and publication, in accordance with Article 102 of the Charter of the United Nations. The General Secretariat of the Organization of American States shall notify member states of the Organization and states acceding to the Convention of the signatures and deposit of instruments of ratification, accession or denunciation, as well as of any reservations that may be expressed.