

THE LEGAL FOUNDATIONS OF ENFORCED DISAPPEARANCE AS A CRIME AGAINST HUMANITY: AN ANALYSIS OF INTERNATIONAL JURISPRUDENCE

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ABSTRACT

The enforced disappearance is a crime against humanity which violates multiple human rights of the victims. Enforced disappearance can be defined as the arrest, detention or abduction against the will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law. This crime became the serious matter of discussion after the Second World War. During the war, Hitler used it as a tool to fight against his enemies. The enforced disappearance was categorized as a crime against humanity in first time by the Nuremberg Trials¹. Later many tribunals and international legal documents established enforced disappearance as a crime against humanity which violate multiple human rights of victims. This study is focused on concepts of crime of enforced disappearance. The objective of this

¹ Hereinafter referred to as NMT.

study is to establish nature of enforced disappearance as a crime against humanity which violate multiple human rights of the victim.

Keywords: crime against humanity; enforced disappearance; international military tribunal; international criminal court; international convention for the protection of all persons from enforced disappearance 2006.

OS FUNDAMENTOS JURÍDICOS DO DESAPARECIMENTO FORÇADO COMO CRIME CONTRA A HUMANIDADE: UMA ANÁLISE DA JURISPRUDÊNCIA INTERNACIONAL

RESUMO

O desaparecimento forçado é um crime contra a humanidade que viola múltiplos direitos humanos das vítimas. Pode ser definido como a prisão, detenção ou sequestro contra a vontade da pessoa, ou qualquer outra forma de privação de liberdade, praticada por agentes de diferentes ramos ou níveis de governo, ou ainda por grupos organizados ou indivíduos particulares atuando em nome do governo, ou com seu apoio, consentimento direto ou indireto, ou aquiescência, seguido da recusa em revelar o destino ou o paradeiro das pessoas envolvidas, ou em reconhecer a privação de sua liberdade — o que as coloca fora da proteção da lei. Esse crime passou a ser um tema de grande relevância após a Segunda Guerra Mundial, quando Hitler o utilizou como instrumento de perseguição contra seus inimigos. O desaparecimento forçado foi classificado pela primeira vez como crime contra a humanidade nos Julgamentos de Nuremberg. Posteriormente, diversos tribunais e documentos jurídicos internacionais consolidaram o desaparecimento forçado como crime contra a humanidade, por violar múltiplos direitos humanos das vítimas. Este estudo tem como foco os conceitos relacionados ao crime de desaparecimento forçado. O objetivo é demonstrar a natureza do desaparecimento forçado como crime contra a humanidade que atenta contra diversos direitos humanos da vítima.

Palavras-chave: crime contra a humanidade; desaparecimento forçado; tribunal militar internacional; tribunal penal internacional; convenção internacional para a proteção de todas as pessoas contra o desaparecimento forçado (2006).

1 INTRODUCTION

The Second World War is considered a turning point in the history of the development of the international criminal law and the human rights law. After The War, different tribunals like International Military Tribunal (IMT), US Military Tribunal at Nuremberg (NMT) etc., were established to punish the persons who were responsible for The War and the huge human rights violations committed during The War. The judgments of those tribunals and other international documents adopted by the United Nations (UN) are a strong base for the

development of the international criminal law and the protection of the victims' rights. The first initiative taken in this direction after the Second World War was the adoption of the principles of the Nuremberg Charter in 1946. The Nuremberg Trials helps to create and codify many principles of international criminal law as well as the principles of human rights law. The crime of enforced disappearance and the human rights violations associated with it was come to the attention of the international criminal law after the Second World War. During the Nuremberg Trial the IMT established the practice of enforced disappearance as a war crime which violates multiple human rights of the victims and later the NMT declared the practice of enforced disappearance is a crime against humanity which violate numerous human rights of the victims under the international law. The victims of enforced disappearance not only the person subject to deprivation of liberty is the victim but also all persons who suffered any direct harm due to the crime are the victims of enforced disappearance. This study is focused on the concepts of crime against humanity under international law and the practice of enforced disappearance.

2 RESEARCH METHODOLOGY

This study adopts a doctrinal research methodology, focusing on the analysis of legal frameworks, international conventions, and jurisprudence regarding the crime of enforced disappearance. The primary materials for this research include international legal documents, tribunal judgments, and conventions, such as the Nuremberg Charter, the Rome Statute, the International Convention for the Protection of All Persons from Enforced Disappearance, and related UN declarations. Secondary sources, including books, journal articles, and case law commentaries, are used to interpret and analyze the development and application of the laws concerning enforced disappearance as a crime against humanity. This qualitative research examines how international tribunals, including the International Military Tribunal (IMT) and National Military Tribunal (NMT), and later, the International Criminal Court (ICC), have defined and categorized enforced disappearance. The research also includes comparative analysis, comparing various international legal instruments and definitions of enforced disappearance to assess their scope, application, and limitations. Legal precedents, particularly those set during the Nuremberg Trials and the Rome Statute's adoption, are crucial to understanding the evolution of this crime under international criminal law.

3 OBJECTIVES

The primary focus of this paper is to examine the significant events and legal developments that contributed to recognizing enforced disappearance as a crime against humanity under international law. It aims to identify and analyze the major instances that led to the formalization and classification of enforced disappearance within the framework of international criminal jurisprudence. The following are the specific objectives:

1. To Examine the Concept of Enforced Disappearance as a Crime Against Humanity
2. To analyze the Evolution of Enforced Disappearance in International Law
3. To Compare Definitions of Enforced Disappearance in Various International Legal Instruments
4. To analyze the Legal Protections Afforded to Victims of Enforced Disappearance
5. To Critically Appraise the Role of International Criminal Tribunals in Addressing Enforced Disappearance

4 RESULT AND DISCUSSION

4.1 Enforced Disappearance

The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the UN General Assembly, is the first international legal document dealing with the practice of enforced disappearance. The Declaration does not give any definition for the practice of enforced disappearance, but in the preamble, it explains the manner in which the enforced disappearance occurs. According to it, enforced disappearance occurs when, “persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organised groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which

places such persons outside the protection of the law”². On the analysis of the explanation relating to the manner of occurrence of the enforced disappearance under the declaration, it can be seen that the Declaration considers the enforced disappearance as an act that is almost similar to the act defined by the UN International Convention for the Protection of All Persons from Enforced Disappearance 2006. Both definitions share the same meaning but in different dimensions. Article two of the Convention defined the practice of enforced disappearance as follows, “enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law”³.

On the comparison of the definitions of the Declaration and The Convention, it is possible to find that elements like deprivation of liberty, involvement of government officials, at least by acquiescence, refusal to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person and placing a person outside the protection of the law are common in both definitions. The definition given by The Convention is considered as most accepted under the international human rights law. Hence, the practice of enforced disappearance can be defined for this research as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person outside the protection of the law.

4.2 Crime Against Humanity Before the Second World War

The history of crime against humanity starts from the development of the Martens clause by Fedore Fedorovitch Martens, who was a well-known jurist who specialized in international law and was representative of the Hoge Conference on the Law of War⁴.

² Declaration on the Protection of All Persons from Enforced Disappearance 1992, Preamble.

³ International Convention for the Protection of All Persons from Enforced Disappearance 2010, Art. 2

⁴ LIPPMAN, M. Crimes against humanity. *Boston College Third World Law Journal*, Boston, v. XX, n. 10, p. 109–173, 1997.

Martens' clause was incorporated in the eighth paragraph of the Hague Convention of 1907. According to the cases which are not covered by the convention, "the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established among civilised peoples, from the laws of humanity, and the dictates of the public conscience"⁵. It says that in situations where the convention is silent, the state should follow the principles of the law of the nations which are evolved by the usage which the civilised people follow in their relations or law of the humanity or the dictate of public conscience. It is very clear from the Martens Clause that the states are responsible for showing respect for the law of humankind. But the Martens clause remained silent until the Nuremberg trials. The Nuremberg trial gives new dimensions to this concept.

Later, the concept of crime against humanity was discussed by the Commission on the Responsibilities of the Authors of War and Enforcement of Penalties, which was created by the Preliminary Peace Conference which met at Versailles in 1919⁶. The Paris Peace Conference appointed a fifteen-member commission to conduct an inquiry to find out the liability of those responsible for the First World War. The commission invoked the concept of crime against humanity. It concluded that the German Empire and the Allies were responsible for the violation of all laws and customs of the war and the law of humanity⁷. They also make it clear that Germany and the Allies purposefully violate all laws and principles of war and humanity⁸. The Commission limits the concept of the law of humanity. It dictates of humanity to aggravated violations of customs and the law of war, which were directed against civilians and prisoners of war.⁹.

The Commission, on the report, recommended to extend the criminal liability to the head of the states and other higher officials and the commission, makes clear that the immunity given to the head of the states and other higher officials in their municipal court is not binding for the international law¹⁰. According to the Commission Report, every person's guilty of offences against the laws and customs of war or laws of humanity is liable to

⁵ Convention (IV) respecting the Laws and Customs of War on Land and its annexe: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, Preamble para 8 accessed from <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=BD48EA8AD56596A3C12563CD0051653F>

⁶ LEVIE, H. S. Report of the commission on the responsibility of the authors of the [First World] War and on enforcement of penalties. 29 March 1919. Retrieved from: <https://digital-commons.usnwc.edu/cgi/viewcontent.cgi?article=1917&context=ils>.

⁷ *Ibid*, 1979.

⁸ LIPPMAN, 1997.

⁹ LIPPMAN, 1997.

¹⁰ LEVIE, 1979, p. 178.

criminal prosecution¹¹. The concept of punishment by the tribunal based on war crimes and violations of principles of humanity was criticised by many states like America. The American representatives contented that the law or customs of war are settled and specific and can be found in the books of authority and the practice of nations, but the law of humanity is with individual and hence must be excluded from the legal considerations¹². As a result of these arguments The Treaty of Versailles as well as other post-First World War peace pacts, gives importance to the predictable parameters of the code of conflict¹³. But The First World War and the developments that happened in association with that relation to the law of humanity were the foundation of the developments in the concept of crime against humanity and the drafting of the Nuremberg Charter.

4.3 Crime against Humanity and IMT

The concept of crime against humanity became debatable after the Second World War. In 1944, American President Franklin Delano Roosevelt castigated Adolf Hitler for committing a crime against humanity by using the name of the German people¹⁴. In his statements, the President shows his concerns relating to the human rights violations during the Second World War and large-scale systematic murder of Jews. The vast human right violations committed by the Hitler and his government during the war were make the world to think about a system to prosecute and punish the persons responsible for that. Those discussions resulted in the creation of an International Military Tribunal. The Tribunal was created according to the provisions of The Nuremberg Charter. This Charter played an essential role in the conceptualisation of crime against humanity.

The development and conceptualization of crime against humanity is a significant milestone in the history of the development of international law. The development of the concept of crime against humanity makes the responsible persons liable under international law. It is important to note that the persons committing a crime against humanity cannot escape from the liability with the privilege of the domestic law of the states because persons committing a crime against humanity are liable irrespective of the domestic law and privileges. Article 6 of the Charter deals with the jurisdiction of the IMT. According to Article

¹¹ LEVIE, 1979, p. 178.

¹² LIPPMAN, 1997, p. 175.

¹³ *Ibid.*

¹⁴ *Ibid.*

6, the IMT has the power for the trial and punishment of the war criminals for the offences committed in their capacities as well as the members of any organisations or groups¹⁵. Article 6 also specifies that the tribunal has jurisdiction over the crimes like a crimes against humanity, crimes against peace and war crimes and all leaders, organizers, instigators and all other persons who participated in the formulation and execution of above-mentioned crimes are responsible for all actions and damages connected with the crime¹⁶. The Charter also pointed out that the official status of defendant is not immunity for them for escaping from the liability. The Charter makes it clear that argument “following the order of a superior” could not to free the defended for his or her liability¹⁷.

In the case of crime against humanity The Charter has a significance role. IMT was the first tribunal which has the jurisdiction to deal with the crime against the humanity after the post war period. The charter gives a definition for the concept of crime against humanity. The Charter defined the crime against humanity as the murder, enslavement, extermination, deportation and any other inhuman act committed against any civilian population committed before or during the war and also includes the persecution on the political, religious or racial ground in the execution or in connection with the crime within the jurisdiction of the IMT, whether or not in violation of the domestic law of the country where perpetrate¹⁸. The definition of Nuremburg charter was not a wide definition. It limits the scope of the offence of crime against humanity to the illegal acts connected with the war¹⁹. So the definition of crime against humanity is only applicable in the war time only and it cannot apply to the offences committed in the peace time even though it qualifies all other element of the definition²⁰. But it is important fact that concept of the crime against humanity got a new dimension by The Nuremburg Charter. The Nuremburg charter is considering as the turning point of the all-other developments in the concept of crime against humanity. During the trial the prosecution categorized the practice of enforced disappearance during the Second World war as a war crime.

¹⁵ Charter of the International Military Tribunal (IMT), in Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis (London Agreement), August 8, 1945, Art 6

¹⁶ *Ibid.*

¹⁷ *Ibid*, Art. 8.

¹⁸ Crimes against humanity.- ‘ namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.

¹⁹ *Ibid.*

²⁰ *Ibid.*

4.4 Enforced Disappearance as a Crime against Humanity by NMT

After the trial of Field Marshal Wilhelm Keitel and higher officials of Nazi Germany the individual alienated powers tried an number of lower ranking officers before the National Military Tribunal sanctioned by Control Council governing in Germany. The US conducted twelve trials before the US Military Tribunal at Nuremburg. NMT trial was based on the international law as codified in CCL No 10 and interpretations of the decisions of IMT. After large debates NMT came to the conclusion that the night fog programme was a war crime which violate CIL and the Article 5,23(h),43, and 46 of Hague Convention 1907²¹. It is also important to note that NMTs judgments also declared that enforced disappearance committed during the night fog programme as a crime against humanity. NMT make this observation based on influence of the Report of Commission of Responsibilities for the Violation of Laws and Customs of War. According to it systematic terrorism against the civilian population was a violation of law of humanity. The Tribunal also held that the enforcement and the administration of Night Fog Programme violates international human rights law as well as the Article 2(1)(b) and C of the Control Council Law 10²².

4.5 ICC Statue and Enforced Disappearance

The Rome Statue of the International Criminal Court was adopted on 1998 by The United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court and it was coming in to force on 1 July 2002, in accordance with Article 126. The International Criminal Court is a permanent institution with the power to exercise the jurisdiction over the persons for most serious crimes of international concerns and the Statute listed the crimes on which the ICC an exercise its jurisdiction²³. The adoption of the Rome Statue of International Criminal Court is an important event in the history of the development of the international criminal law. The Statue established a permanent international criminal court with the jurisdiction over the most serious crimes of international concern as fixed by the statute. The Article 5(1) of the statue is dealing with the jurisdiction of the court according to this the international criminal court has the jurisdiction over the crime like crime of

²¹ FINUCANE, B. Enforced disappearance as a crime under international law: A neglected origin in the laws of war. *Yale Journal of International Law*, [s. l.], v. 35, n. 10, p. 28–178, 2020.

²² *Ibid*, 2020.

²³ Rome Statute of the International Criminal Court, 1998, Art 1.

Genocide, crime against humanity, war crimes and crime of aggression²⁴.

Article 7 of the ICC Statute is defining the concept of crime against humanity for the purpose of fixing the jurisdiction of the ICC. According to the Article 7 of ICC Statute the crime against humanity means commission of certain offences which are listed in the Article 7 as the part of whispered or systematic attack directed against the civilian population with knowledge of attack²⁵. On the analysis of the definition with other definitions of the crime against humanity, it can be found that the definition is the reflection of customary rules governing the law on crime against humanity and the definition make the knowledge of the attack is an important part of the crime against humanity. The general definition also keeps silence about the involvement of the state in the commission of the offence and it simply established that act committed as the part of whispered or systematics attack directed against the civilian population²⁶. On the analysis of the offences listed in the Article 7(1). It can be found that crime of enforced disappearance came under the jurisdiction of the court as a crime against humanity²⁷ and the Article 7(2)(i) also gives a definition for the practice of enforced disappearance for the purpose of applying the jurisdiction of the court²⁸.

4.6 Crime against Humanity under Convention against Enforced Disappearance

The practice of enforced disappearance and the inhuman human rights violations came to the attention of the world after The Second World War. UN took a number of stapeses to fight against the crime of enforced disappearance in which one of the most important step was the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance in 2010. But it is also important to note that before the adoption of the convention, UN adopted a declaration on enforced disappearance on 1992 called Declaration on the Protection of all Persons from Enforced Disappearance. Those two documents have a special importance in the history of the developments of laws against the practice of enforced disappearance and human rights violations related to this crime.

Article 5 of The Convention says that the practice of enforced disappearance must happened in systematic or widespread manner which means, it is need to prove that the

²⁴ Rome Statute of the International Criminal Court, 1998, Art 5(1)

²⁵ Rome Statute of the International Criminal Court, 1998, Art 7(1)

²⁶ *Ibid*, 1998.

²⁷ *Ibid*, 1998.

²⁸ *Ibid* Art 7 2(i)

practice of enforced disappearance was taken place as a part of planning and targeted to a large number of people. The individual isolated act of enforced disappearance is not come under the term “widespread or systematic practice of enforced disappearance” *and* is not a crime against humanity²⁹. By using the term widespread or systematic practice of enforced disappearance as criteria to make the practice of enforced disappearance as crime against humanity under the international law is practically limiting the scope of application on international law on the practice of enforced disappearance as a crime against humanity. It is relevant in this situation to note that The Declaration also mentioned about the status of enforced disappearance as crime against humanity in the preamble. The preamble acknowledges that the practice of enforced disappearance as a crime violate multiple human right and the systematic act of enforced disappearance has the nature of crime against humanity.

4.7 Victims of Enforced Disappearance

In the present world, several enforced disappearances and the human rights violations associated with them are reported as part of the war between Ukraine and Russia. Since the onset of the Russian Federation’s full-scale invasion of Ukraine in 2022, a significant number of civilians and military personnel have gone missing. The Independent International Commission of Inquiry on Ukraine pointed out that there is a trend of extensive unlawful detentions in regions controlled by Russian authorities, often leading to deportations or transfers, resulting in many being reported missing. It has thoroughly examined and confirmed nearly 100 cases of enforced disappearances carried out by Russian authorities on a large scale in all areas under their control in Ukraine³⁰. Numerous individuals have been missing for months or even years, and some have died. The Commission has determined that Russian authorities are responsible for enforced disappearances, which constitute crimes against humanity. The enforced disappearances happening as part of the War have similarities with the practice of enforced disappearances reported during the Second World War as part of the Night and Fog Decree.

The enforced disappearance is a crime against humanity which violates number of human rights ensured under the international human rights law. According to the Article 1 of

²⁹ International Convention for the Protection of All Persons from Enforced Disappearance, 2010, Art 5.

³⁰ United Nations Human Rights Council. Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory. UN Doc. A/HRC/58/67, 13 mar. 2025. p. 3-4.

the Declaration on the Protection of all Persons from Enforced Disappearance, the practice of enforced disappearance places the disappeared person outside the protection of the law and makes pain and suffering to disappeared person and his families³¹. It is clear that under the Declaration the concept of victims of enforced disappearance is not only limited to the disappeared person but also included all persons experienced pain and suffering due to the crime including his family members and friends. The Article one of The Declaration also pointed out that the practice of enforced disappearance violates the basic human rights like the right to recognition as a person before the law, the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person and the right to life³². According to The Convention victim means the disappeared person and the persons those who are experienced direct harm due to the disappearance of a person³³. The Convention also discussing about the rights of the victim, according to it every victim has the right to know truth about the circumstances of enforced disappearance and the progress and result of the investigation regarding the enforced disappearance³⁴. The Convention also accepted right of the victims to know the fate and whereabouts of the disappeared persons and it impose the responsibility on the state to find the disappeared person as soon as possible, if the person is died the state is responsible to find the remains of the dead person.

It important to note that the victims have the right to obtain the reparation and fair and adequate compensation. The right to obtain reparation includes material and moral damages and other forms of reparation like restitution, rehabilitation, satisfaction, including restoration of dignity and reputation and guarantees of non-repetition³⁵. It is also the responsibility of the state parties to guarantee the right to form and participate freely in organizations and associations concerned with attempting to establish the circumstances of enforced disappearances and the fate of disappeared persons and to assist victims of enforced disappearance. It is important to note that The Convention gives special consideration to the child victims of the enforced disappearance also. So in the case of enforced disappearance not only the disappeared person but also all persons directly or indirectly effected by enforced disappearance can be consider as the victims of the enforced disappearance and eligible to get

³¹ Declaration on the Protection of all Persons from Enforced Disappearance 1992, Art 1(2).

³² *Ibid*, 1992.

³³ BROWNLIE, I.; GOODWIN-GILL, G.; BROWNLIE, I. **Brownlie's Documents on Human Rights**. Oxford: Oxford University Press, 2010. p. 551.

³⁴ *Ibid*, 2010.

³⁵ *Ibid*, 2010, p. 551.

a remedy³⁶. It is the responsibility of the state to address the damages of all the victims of the enforced disappearance. The damage to the victims is not limited to physical damage but it included all kind of damages like social, physiological and economical.

5 CONCLUSION

The roots of concept of crime against humanity can be traced in the Martens clause of Hague Convention of 1907. It says that in situations in which the convention is silent, the state should follow the principles of the law of the nations which are evolved by the usage which are followed by the civilized people in their relations or law of the humanity or the dictate of public conscience. But the Martens clause was remained silent until the adoption of Nuremburg Charter. The Nuremburg Charter gives new dimensions to the concept. In The Nuremburg Charter the crime against humanity was included as a crime in which The IMT can exercise its jurisdiction and The Charter defined the concept of crime against humanity as the murder, enslavement, extermination, deportation and any other inhuman act committed against any civilian population committed before or during the war and also includes the persecution on the political, religious or racial ground in the execution of or in connection with the crimes within the jurisdiction of the IMT, whether or not in violation of the domestic law of the country where perpetrated. The definition of Nuremburg charter was not a wide definition. It limits the scope of the offence of crime against humanity to the illegal acts connected with the war. So the definition of crime against humanity is only applicable in the war time only and it cannot apply to the offences committed in the peace time even though it qualify all other element of the definition. The IMT was the first international institution which discussed about the inhuman face of the practice of enforced disappearance and declared enforced disappearance as a war crime which violate multiple human rights of the victims. After the IMT judgments The NMT declared enforced disappearance as a war crime as well as a crime against humanity. By these two judgments the practice of enforced disappearance becomes one of the serious crimes under international law.

Later the Rome Statue expressly established crime against humanity. According to the

³⁶ International Human Rights Law Clinic (IHRLC). (2021). The right to a remedy for enforced disappearances in India: A legal analysis of international and domestic law relating to victims of enforced disappearances (IHRLC Working Paper Series No. 1). Berkeley, CA: University of California, Berkeley, School of Law. Retrieved from: <https://www.law.berkeley.edu/wp-content/uploads/2015/04/Working-Paper-1-India-Right-to-a-Remedy-151027.pdf>

Article 7 of ICC Statute the crime against humanity means commission of certain offences which are listed in the Article 7 as the part of whispered or systematic attack directed against the civilian population with knowledge of attack .On the analysis of the definition with other definitions of the crime against humanity, it can be found that the definition is the reflection of customary rules governing the law on crime against humanity and the definition make the knowledge of the attack is an important part of the crime against humanity.it is also important to note that enforced disappearance is expressly mentioned in Article 7 as a crime against humanity. More over in 2010 The International Convention for the Protection of All Persons from Enforced Disappearance expressed according to Article 5 that that widespread or systematic practice of enforced disappearance as a crime against humanity under the international law which attracts the consequences under international law. So, under the international law concept of crime against humanity is a well-established principle and practice of enforced disappearance is a crime against humanity. Generally, victims are the persons those who are suffered any kind of physical or mental injury, emotional suffering, economic loss or violation of fundamental rights individually or collectively as a result of an act or omissions which are the violation of criminal laws of states including the criminal abuse of power. In the cases of enforced disappearance the victim are the persons those who are suffered any physical or mental or any other injury or loss as a direct consequence of the crime of enforced disappearance hence the victims of enforced disappearance includes not only the person whose liberty is deprived but also all other person suffered any harm due to the enforced disappearance of a person, it includes his family members friends some time the society as whole may be become the victim of enforced disappearance. it is also important to note that every victim has the right to get proper legal remedy for the violation of their rights and it is the responsibility of the states to ensure the remedy for the victims.

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