



THE INTERNATIONAL COOPERATION IN COMBATING THE CRIME OF ENFORCED DISAPPEARANCE (COMPARATIVE STUDY)

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ABSTRACT

Most countries are seeking to find a kind of cooperation to combat the dangerous crimes. The crime of enforced disappearance is considered one of it. The matter that makes these countries to find a kind of cooperation in combating it.

The international cooperation has a great role in reducing the phenomenon of crime in general and the crime of enforced disappearance in particular because this cooperation contributes in one way or another in finding the most appropriate ways for combating, therefore some international conventions came to stipulate the principle of cooperation in the area of combating some crimes that have dangerous effects.

Those equity considerations and the requirements of legal logic must contribute to each country in the adoption of legislation to what requires the most appropriate ways to combat crimes and this could constitute the legal basis to the international cooperation. This cooperation embodies in the framework of the international legislations as well as the internal legislations and this came in multiple images all of them contribute in achieving international cooperation to combat the crime of enforced disappearance.

Introduction

The states are equal in sovereignty from a legal stand point and as result they are equal in the rights and duties that adhere to it. On this basis, the principle of the inadmissibility of interference in the affairs of other states has approved and the rules of the international law came dedicated to this.

So that the interference of any state in the internal affairs of another state is prohibited.

The international system that is based on a new data that lead to an absolute concept to the sovereignty of the state with the relative nature in order to achieve the international cooperation to serve the interest of every state. Accordingly, the states relinquished on certain sovereign rights for the sake of the international public interest and the necessity that requires the international cooperation in the legal and Judicial sphere.

For the information on the extent the international cooperation in combating the crime of enforced disappearance, we will divide our study to two sections, in the first we will search the international cooperation in combating the crime of enforced disappearance and the second is for the legal basis to the international cooperation in combating the crime of enforced disappearance. To determine the extent of international cooperation to combat the crime of enforced disappearance, we will divide our study to two sections; in the first we will search the concept of international cooperation in combating crime of enforced disappearance and the second for the legal basis to the international cooperation in combating the crime of enforced disappearance.

1. The concept of international cooperation in combating crime of enforced disappearance

In general, the term of the international cooperation is characterized by a relative modernity at the level of international relations therefore it will be discussed in two sections, in the first we will deal with his concept in general and in the second one we will show his importance in the area of combating the crime of enforced disappearance as follows:

1.1 The Definition of international cooperation

In general, the concept of international cooperation remarkable evolution during the last two decades, where this development has been associated, with the maturation of the rules of international regulation, and the rule of the international organizations, and what changed on the international relations from changes and shifts in various areas of political, economic, and social ([1]), therefore we will discuss its concept in two sections:

1.1.1 The Definition of international cooperation in the international law

The concept of (cooperation) in the language means: Presenting aid and assistance and configuring groups for doing joint action for the benefit of members, without a broker, it is said: the folk cooperate, cooperating each other, and enlisted someone to someone; means ask him for help ([2]).

While the term international: it is used as a real need to define the formal relations between the states([3]).

In general, the essence of the concept of the international cooperation does not differ in terminology from the linguistic meaning to the concept of (cooperation), where the majority of scholarly attempt to define the international cooperation on a primary axis, represented in exchanging aid and assistance to achieve mutual common benefit to these countries.

Therefore, it is defined by some as "the process that ensure the shift loyalties and political activities of political forces in several different states towards a new center, for its institutions powers that is beyond the powers of the existing nation-states" ([4]), it is also defined as "the solidarity of states and wrapping around a common interests and a mutual benefits which is always seeking to protect her. This solidarity is in a material or moral assistance and takes an image of a moral and a legal obligation. People seek to respect and abide it before each other, especially towards the people and the weak and poor states" ([5]).

It is also defined as "exchanging the aid and assistance and connected the joint efforts between two states or more, to achieve a benefit or a common service at the international, regional, or internal level for participating states" ([6]).

1.1.2 The Definition of international cooperation in the criminal law

The international cooperation is criminally Defined as "a bilateral involvement between two or among several states in the unification of judicial proceedings such as criminal evidence or testimony and the exchange of information, legal assistance, and other similar actions including other collaborative arrangements that agreed between the parties concerned that aimed at the execution of the criminal judgments" ([7]).

Although the expansion of the scope of the international economic relations and what happened to the multiplicity and diversity of appearances and images of the political relation between states, and the consequent of significant and clear implications on crime in general. However, the territorial limits of the states still plays an important role in determining the scope of the application of the provisions of national criminal legislations, both substantive and procedural. On one hand, the penal law of the state applied on everything located on their territory from crimes as a general rule –including the crime of enforced disappearance –whether the offender or the victim is a citizen or a foreigner and whether the crime resulted in prejudice to the interests of the state or undermining the interests of a foreign state([8]).

On the other hand, the scope of application of the procedural law of the state is limited on the territory of this state. So the jurisdiction organs may not exercise the conduct of investigation and evidence collection or preliminary investigation in the territory of another state.

This selection of spatial scale of the internal application of the provisions of criminal legislations, especially the procedural one finds his foundation in applying these provisions often assumes a coercive means. The necessity assumes an expression of state sovereignty which applied and which requires limited her within the territory in which this state exercises its sovereignty and the consideration of applied or carried it out in the territory that is under the sovereignty of another state is considered a clear violation to this sovereignty([9]).

And if the penal provisions promulgated by the condemnation are a crucial declaration of the need for retribution of the sentenced person down to requiring community in retribution and to achieve the equity considerations, the mere issuance of these provisions means the achievement of this goal, since it already requires the implementation of these provisions. Since then, the considerations of deterrence are achieved by his pictures, public and private. It follows the requirements of justice and the hearts of those which crime obtained them of assault calmed([10]).

However, it may occur in a few cases an offender commits a criminal behavior in the territory of a particular state and then he will be able to escape before the implementation of the judgment of conviction to another state, and the latter in turn refrain from extradition to the requesting state, on the basis of non-availability of some terms of delivery, and it may even refrain from his trial, on the basis that the crime has not been committed on her territory or it is not affected on her essential interests or it is not subjected to criminalization in accordance with the provisions of its internal law or to be issued a penalty of forfeiture of the defendant that are in another states that this provision cannot be performed without interference by the authorities ([11]).

In these cases, the judgment of conviction for allegedly compromising the sovereignty of this state cannot be executed so realistically crime remains unpunished on some get hurt doing justice and collapse doomed equality subject to sentence convicted and sentenced helped him to escape([12]), and then some states become a haven for criminals and out law and lead to a weakening of the community's ability to combat crime.

The cooperation between states in the criminal area is one of the required necessities to face criminality in a different way. In particular, the organized of it ([13]) and its effects is not limited to the territory of a particular state but crossing to the territory of other states and the efforts of states is individual in combating this crime that have a limited feasibility, so it become necessary to achieve effective confrontation, by combining all the states in order to combat crime and reduce their impact([14]).

Based on the foregoing, the states sent- achieving a common international interests-many ways in the area the international criminal cooperation, these aspects of cooperation has been reflected clearly in the stages of criminalization and prosecution([15]).

In the stage of criminality, the international cooperation began clearly in the conclusion of numerous, regional, and collective conventions that criminalizing many of the illegal activities which is not only adverse effects on a particular state, but also to other states, so these conventions have become an important source even if it is not a direct to the internal criminal legislations ([16]), among these conventions, the convention of the prevention of genocide and punishment of 1948, the convention non-applicability of statutory limitations to war crimes and crimes against humanity of 1968, the international convention for the suppression of the crime of apartheid and punishment of 1973, convention against torture and other cruel, in human or degrading treatment or punishment of 1984 and the American convention on enforced disappearance of 1994 and the international convention on the Protection from enforced disappearance of 2006 and other international instruments on human rights.

And in the stage of prosecution, combating crime required the necessity cooperation of states in the area of exchanging judicial assistance, especially transnational crimes to the territory of multiple states and the movement of her active and contributors from one state to another such as the convention of the United Nation to combat transnational organized crime of 2000. This cooperation has numerous pictures starting with the testimony of witnesses and the testimony of experts and preview and examine things and the exchange of evidence and letters rogatory up to the international cooperation in implementing the foreign criminal judgments ([17]).

1.2 The importance of the international cooperation in combating the crime of enforced disappearance

The importance this cooperation is manifested in the impact of convergence between the internal criminal legislations of states, and it is considered as one of the preventive measures from combat the crime of enforced disappearance or limited implications when already happened and it is considered as one of the manifestation of cultural advances to states, as well as represented by this cooperation in response to considerations of justice and individualization requirements executive punishment.

We will display these aspects to the importance of the international cooperation in the area of combating the crime of enforced disappearance, as follows:

1.2.1 The international cooperation in the legislative sphere

The international cooperation contributes in combating the crime of enforced disappearance in creating a kind of convergence and consistency between the internal criminal legislations, particularly in the areas of identification of acts and the images of the activity replaced criminalization, and the identification of punishments that determines the penalties for those who commit such acts in away makes talking about standardizing the legislations to combat the crime of enforced disappearance which is viable and not form of fantasy([18]). That link the application of the internal criminal and procedural legislations with the sovereignty of the state and her public system that is considered one of the most important impediments that facing the ways of a activating the cooperation among the states in combating the crime ([19]).

To overcome these constraints, especially in the crime of enforced disappearance, the state should formulate her internal legislation in a manner that is flexible a good example of that is the removal of barriers impeding the extradition that facing the international cooperation in the criminal area, and the recognition of the foreign criminal judgments, and the adoption of witnesses who are under investigation in a state other than the state that where the criminal case proceedings.

1.2.2 The preventive measures from committing the crime of enforced disappearance

Criminal sanctions are not considered alone whether it takes the image of punishment no matter how painful arising there from and cruelly executed methods or if takes the image of precautionary measures and an effective way to face the new forms of criminality despite the existence of the internal legislation which establishes the maximum penalties for those who commit these Crimes and participants in it. The statistics still indicate a marked increase in the rates of perpetration([20]).

So the cooperation of the states in combating these Crimes became a must including the Crime of enforced disappearance as one of the preventive measures from committing it or which limit the implications. The international cooperation in the prevention area of the crime of enforced disappearance takes an image of security and police international cooperation in combating this Crime through the exchange of information among police in the concerned states and create channels of communication for this cooperation such as the establishment of the international criminal police organization (Interpol)([21]) or regional policing devices (Al-Airobol) and the adoption of a mechanism of liaison officers and joint inference teams consisting of police officers from different countries and the uses of modern technology such as cross-border surveillance system by satellite ([22]).

The international cooperation in the area of combating the crime of enforced disappearance takes an image of mutual legal assistance between countries that aimed at early detection of the crime and the prosecution of perpetrators and accomplices and face the consequent effects through the exchange of information, the evidences, hearing witnesses and experts, and international letters rogatory, if the perpetrator does not commit the act of enforced disappearance in a state and he managed to escape before the trial or after a judgment of conviction and before the implementation of the sentence to another state, it would be liable for arrest and surrender to the state which the Crime was committed on its territory, or the state that her courts issued guilty verdict for the implementation of the sentence.

There is no doubt that they will hold the offender to think twice in the matter of this Crime before committing it, but it may make him to abstain completely from the behavior for this crime.

1.2.3 The equity considerations and the requirements of the individualism of punishment

The images of international cooperation are manifold in combating the crime of enforced disappearance, apart from cooperation in the field of hearing the testimony of witnesses, the testimony of experts, the exchange of evidence, and the international letters rogatory, this cooperation also extends to the implementation of foreign penal provisions([23]) which is the right response equity considerations and the requirements of legislative or judicial individualization of the penalty of deprivation of liberty, the recognition of these provisions is devoted in the state in which the conviction is released. It is one of important principles that is required by the rules of justice and equity which is the principles of inadmissibility of the person's trial for the same crime twice, and which is expressed by (the negative impact of penal sentence) ([24]) and if some people do not recognize this effect, due to the different personality of the prosecutor in the criminal case from state to another([25]), although this opinion will led to waste justice and fairness considerations which refuses to prosecute the person or punished him twice for the same act, and we can respond to this extreme view that the human society is the plaintiff in this lawsuit, especially that there is a common moral principles and social systems between all state([26]), so the state when practices its right in the punishment of whom commit the crime of enforced disappearance, it does not do any act from the acts of criminal protection only for her self-interest ([27]), but it protects a common international interest, so that it is not permissible for any other country to return practiced it again about the same person for the same incident of enforced disappearance.

On the other hand, the international cooperation responds in the area of transfer of sentenced persons of penalties of deprivation of liberty – as one of the images of the international legal cooperation in combating the crime of enforced disappearance with the requirements of the legislative and judicial individualization of execution of the sentence ([28]), it assumes this image of forms of international cooperation that we are about the person sentenced to deprivation of liberty for the crime of enforced disappearance in a state party to the convention of international protection of persons from enforced disappearance, and that there is a desire to display or to the state of convention or to the state to which he belongs sentenced to be transferred to the latter to implement or complete the implementation of his sentence, given the difficulty of communicating with other guests or with those in charge of the implementation of the rehabilitation and reform programs within the penal institution because of language barriers or a different religion and social customs and cultural variation, leading to the injury of the convict in a state of psychological loss.

In addition, the implementation of negative punishment for freedom in a foreign country could lead to the denial of many aspects of social care with in penal institution, where it is difficult for him to communicate with the members of his family because it takes so exorbitant expenses that may not be available in many cases, and virtually he receives no messages from his family and friends, and that might lead him to hit from the isolation that increase the harshness of the sentence ([29]), and then the basic purpose of this sentence is not achieved and it represented by reforming the convict and rehabilitation, but it can be considered to some extent a form of discrimination in punitive treatment of convicts in the same negative punishment for freedom, he must implement this punishment in the natural environment of the sentenced person that is closed to his family so as to achieve the purposes of this punishment, particularly the reform of the convict and rehabilitation ([30]).

It is clear from the above; the crime of enforced disappearance represents a threat not only for the national interest but also to the international and the entire humanitarian community which requires the commitment of each country to cooperate with other countries to protect this common international interest, especially since the political and economic situations vary from one state to another. There is a common social and ethical principle among all states which require the face of this inhumane crime by creating a legal framework an international one which enshrines the principle of cooperation among states in combating the crime of enforced disappearance of persons.

Perhaps it was confirmed explicitly by the international covenants on enforced disappearance by urging the states to take the necessary measures to criminalize this dangerous behavior in the framework of its internal laws and punishes on it, as well as the activation of the principle of complementarity between national and international justice representatives by the international criminal court. As this integration ensures the achievement of a great deal of convergence between the internal legal rules and the international legal rules relating to the criminalization of enforced disappearance and punishes on it.

2. The legal basis to the international cooperation in combating crime of enforced disappearance

The legal basis for the international cooperation in general means the source or the legal text which regulates the photos of this cooperation, whatever the source is, whether this declaration or international convention or internal legislation, and whether this cooperation between states or this cooperation was between and one of the international criminal courts, particularly the international criminal court, the areas of this cooperation varied in combating the crime of enforced disappearance such as security or legal or judicial or what is called (the mutual legal assistance in criminal matters) ([31]).

To find out the truth of this matter, we will display the legal basis to the international cooperation in combating the crime of enforced disappearance in the international charters and the internal legislations that have a relation with the cases of enforced disappearance, both in a separate demand as follows:

2.1 The legal basis in the international legislations

Since 1993, the human rights commission and human right council which left behind on the adoption of resolutions on a regular basis which called on all governments to take appropriate steps or other security, legislative and judicial steps to prevent the practice of enforced disappearance and the punishment on it and they take the necessary measures for this purpose on the internal and regional level and in cooperation with the United Nations ([32]). The international cooperation is divided from its nature to three pictures. We will show them in three branches and the detail follows:

2.1.1 The international security cooperation

In addition to the important role played by the international criminal police organization (Interpol) in the promotion of security and policing of international cooperation in combating the crime of enforced disappearance, there are other forms of such cooperation, provided for in many international conventions on cases of enforced disappearance, for example the universal Declaration on the Protection of persons from enforced disappearance, and the American convention on the protection from enforced disappearance, as they both ruled that states put accurate information on the detention of persons and their place or place of their presence,

including transfers movement from one place to another, within the reach of the members of their family or their lawyers or anyone else who has an interest in this information ([33]), that persons detained did not express adesire to the contrary ([34]).

As the state must retain a centralized official records that constantly updated the names of all deprived persons from their liberty in places of detention, the information contained therein are placed within the reach of people or judicial authority or any other authority and national competent and independent, licensed to do so in accordance with the internal legislation of the state, or any other international legal instrument ([35]).

As for the international convention on the Protection of persons from enforced disappearance, as well as, it included the type of information to be recorded in those records, including at least: A- the identity of the person deprived of his liberty. B- The date, time, and place of deprivation of liberty, and the authority that depriving him of his liberty. C- The authority that ordered the deprivation of liberty and the reasons for it. D- the authority which monitors the deprivation of liberty E- the place of deprivation of liberty and the date and time of admission to the place of deprivation of liberty and the responsible authority for a deprivation of liberty. F- The relevant elements of health of the person deprived of liberty. G- in case of death during the deprivation of liberty, the statement of the circumstances and causes of death and the destination of the remains of deceased. H- the date and time of release or transfer to another place of detention, and the place where he was transferred to and the responsible authority for the transfer ([36]), conscious of the international community to the suffering of the victims of enforced disappearances from the effects of stress and grief during the long deprivation of liberty committed in universal Declaration of 1992 and the international convention on the Protection of persons from enforced disappearance of 2006 the states to take the necessary steps for the release of any of the persons deprived of their liberty in away that allows to verify reliably than he already was released measures and that moreover has been released under conditions that ensure respect for physical integrity and ability to exercise their full rights ([37]), to exercise without prejudice to the obligations that may subject under the national law ([38]).

It is worth noting that the international convention on the Protection of persons from enforced disappearance has shown –exclusively of covenants on the case of enforced disappearance –attention appreciated in dealing with the prohibition of the use of personal information for purposes other than the search for the disappeared, including the medical data of the person or genetic which gathered or transmitted within the framework of the search for a disappeared person shall not prejudice the use of such information in criminal proceedings relating to a crime of enforced disappearance or the exercise of the right to obtain compensation provided they address the causes of such information or use it, or hold it to the violation of human rights and fundamental freedoms ([39]).

In order to ensure the protection of all involved in the investigation of cases of enforced disappearance, including the complainant, the lawyer, and the witnesses, as well as participating in the investigation. The international declaration and the international convention on the Protection from enforced disappearance make it compulsory need to take the necessary measures to ensure their protection from any ill- treatment or intimidation or retaliation because of the complaint or any evidence given ([40]).

It also allows them to build their request access to the results of the investigation unless doing so would jeopardize the ongoing investigation ([41]).

The importance of the declaration and the convention that mentioned above, in that they indicated explicitly to the obligation to take necessary measures to prevent the actions that would disrupt the course of the investigation procedures and ensure punishment by appropriate penalties to ensure that the inability of the accused of the crime of enforced disappearance of influencing the course of investigation, pressure or implementation of acts of intimidation or vengeance, exercised the right involved in the investigation ([42]).

The international declaration on the protection from enforced disappearance acquires a special significance, it is the only international document that dealt with two things that are very important, first- the need to take into account the relevant authorities in the country when taken to the decision to grant asylum to someone or refusing the question of the existence of grounds for believing that the person has participated in acts of enforced disappearance, whatever the motives on it ([43]). And second –they must stop the persons alleged to have committed those acts for the performance of any official duties during the investigation in these works.

Those who put the American convention on enforced disappearance must signal to this in a special text, so we hope that they can be added to the text in this content in article (5/6) of the American convention and article (9/2) of the international convention that are related with the cases of enforced disappearance and the proposed formula in all of these articles is as follows:

First – ((the competent authorities of the state should take into account when making the decision to grant asylum to someone or refusing to question the existence

of grounds for believing that the person has participated in high-risk businesses that are related to the enforced disappearance)).

Second-((the acts that are constituting an enforced disappearance are not considered committed in the course of performance of military duties and therefore the persons alleged to have committed acts of enforced disappearance must be stopped from any official duties during the investigation of the crime)).

2.1.2 The international legal cooperation

The international covenants that are concerned with the enforced disappearance are certainly keen to oblige states to ensure that internal legislations- without prejudice to its international obligations-regulation rules in the field of deprivation of liberty that determine the staff that have a license in issuing the orders of deprivation of liberty and the circumstances under may issue such orders and sanctions against employees who refuse without legal justification to provide information on depriving someone of his liberty with the imposition of strict control over all staff assigned to carry out arrests on persons, their arrest, detention, placed them in custody, transfer them, and their imprisonment, also it guarantees the exercise of such control on other employees who are authorized by law to use force and firearms ([44]). Persisting in ensuring optimal protection for people from acts of enforced disappearance. Each state party as part of its internal legislations must ensure that any person deprived of his liberty except in a recognized place officially and is subject to control([45]) and to ensure obtaining the permission to contact his family or his lawyer or any other person of his choice and to receive their visit which is subjected to the conditions set forth in the law and to facilitate the arrival of each authority or institution under the law to places of detention when necessary, without the need for prior authorization of the judicial authority, while ensuring the right of every person having a legitimate interest such as relatives of the disappeared person in the appeal before the court decides on the legality of depriving the victim of his liberty and order his release if such deprivation of liberty is illegal ([46]).

In support of the efforts in combating the cases of enforced disappearance, the state party ensures that each of the claims or has knowledge or a legitimate interest that a person has been a victim of enforced disappearance and he has the right to inform the competent facts authorities, which in turn carries out a swift investigation and a full and impartial investigation into his complaint and when it has reasonable grounds to believe that an enforced disappearance has been committed, the concerned state instructs those powers to make this investigation and has not filed a formal complaint and what the powers of her position to compel the attendance of the witnesses and to provide relevant documents and move immediately to preview sites ([47]).

The states parties are also required to refer both found in territory under its jurisdiction accused of enforced disappearance to the competent authorities in that state, to establish and direct the criminal case, and judged on him whether the results of the official investigation so warrant unless it is handed over to another country wishing to exercise its mandate in accordance with the international conventions that are applicable in this area ([48]) or has been referred to another state in accordance with its international obligations or submit it to a recognized its jurisdiction of an international criminal court ([49]).

To avoid the possibilities to circumvent the laws and legislations in force in the territories of the state's parties to refrain from providing any legal assistance to the victims of enforced disappearance or their families or their legal representatives each party shall take necessary measures to prevent the denial of the right of judicial appeal to obtain information relating to the disappearance of the victims and deprive them of their liberty or prejudice measures and the obligation to record all cases of deprivation of liberty or record any information the employee is responsible for the official registration or official files on the knowledge that it was false or should have known that it was false, as well as the refusal to provide information on the situation of deprivation of liberty or the provision of inaccurate information at a time when the legal conditions to the request for this information available ([50]).

And whether the provisions contained in international covenants on the cases of enforced disappearance applied to adult men and women, it included some provisions for children or protect them from all aspects of the illicit exploitation, in order to enable the child to have a happy childhood, that enjoy the rights and freedoms contained in the agreements and conventions on the protection of children, the states parties committed in maintaining the best interest of the abducted children from the children of parents who have been subjected to enforced disappearance, or who were born during their mother enforced disappearance to nullify any case arising from the adoption of this behavior which is internationally outlawed, especially in the countries that recognize the system of adoption, and it is committed to criminalize any case grab for these children, or fraud, concealment or destruction of documents at testing to their true identity, and their identification, and handed them over to their original families, in accordance with the legal procedures and the international conventions which are applicable. The states should conclude when appropriate bilateral or multilateral agreements for such purposes ([51]).

2.1.3 The international judicial cooperation

In order to ensure the procedural protection of persons from enforced disappear-

ance, each state party must be obliged to take legal measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction([52]), the approval of competence and the consolidation of the judicial authority in the issues being dealt with in accordance with specific standards, which are: A- If the crime is committed in any territory under its jurisdiction([53]) or on planes or ships registered in this state ([54]). B- If the alleged offender is a national. C- If the disappeared person a national, and that the state party considers it appropriate to do so ([55]) and it may not be prosecuted only before the ordinary competent authorities with the exception of his trial before a special court, particularly military justice ([56]).

The importance of the international convention –the last one- on the protection from enforced disappearance contrary to the universal declaration and the American convention on enforced disappearance is shown in that it is explicitly indicated in the allowance trial of those involved actors and partners in the processes of enforced disappearance before another court other than the ordinary criminal court, particularly since the perpetrators mostly of military commanders ([57]), as this convention does not exclude any criminal jurisdiction exercised in accordance with the national laws ([58]). The authors of the mentioned convention did well when they exclude this entry, because of the status held by the perpetrator or the victim, and it does not allow most of the military penal legislations in the world including, the Iraqi military penal legislation to refer to their cases to the ordinary criminal courts, but it should be considered before the military courts or the internal security forces courts.

The international charters, the American convention, and the international convention concerning with enforced disappearance have paid special attention to extradition ([59]) as the most prominent images of the international judicial cooperation in combating the enforced disappearance and the most effective. The extradition means the state gives up for someone that is on its territory to another country upon her request to stand trial for a punishable crime by law, or to carry out the sentence that is issued by the courts, whether it is done under the international convention –bilateral, regional, or collective- or under the internal legal texts or according to the principle of reciprocity ([60]).

For the purposes of extradition between the states parties to the conventions, the crime of enforced disappearance is not considered a political crime ([61]) or a crime connected with a political crime, or a crime inspired by political motives, and then it may not be applicable to reject a request for extradition based on such a crime ([62]).

The states parties also undertake to enter the crime of enforced disappearance –a crime had to delivery- in any extradition treaty between them in the future ([63]). With the growing treat of enforced disappearance at the regional and the international levels, any state party can put the condition of delivery to the treaty on the requirement list and it has received a request for extradition from another state that has no extradition treaty with. These conventions are considered the legal basis for extradition in respect of the crime of enforced disappearance ([64]) and it is not incumbent on the state party in response to a request for extradition from another state party if she had built on reasonable grounds believe that the purpose of the prosecution of the person or punishment due to reasons related to gender, race, religion, nationality, or ethnic origin, political opinions, membership of a group particular social or meet this demand will cause –without doubt- in harm to that person ([65]).

It is not allowed to the state party to expel, return, or extradite a person to any state where there are substantial reasons to let the belief that he would be at risk of enforced disappearance ([66]). So the judicial assistance –the extradition- is subjected to the specified conditions in the internal law of the state party to which the requested applicable treaties on judicial assistance, including the reasons upon which the state party which is asked to delivery, the refusal to provide judicial assistance or subject to conditions ([67]).

The delivery gets to multiple requests from several countries and including another request that is presented from the intentional criminal court to extradite the same person, because of the same behavior - the crime of enforced disappearance- then the situation does not go out for one of the two things:

1. If the state submitted a request for cooperation is party to the statute for the intentional criminal court, it would then be a priority in the acceptance and implantation of the extradition request from the court if they have decided to admissibility of a case, or began in the investigation or prosecution and the court take into account the work of the investigation or prosecution conducted by the requesting state with regard to the extradition request submitted to them ([68]).
2. If the state submitted a request for extradition is not a party to the statute for the intentional criminal court. The requested state to which the application for priority delivery to the request of the court if they have decided to admissibility of the case were not constrained by this state execute the request of the requesting state under an international obligation ([69]), as the international treaty or bilateral or collective or between them was recognized in previous cases on the basis of reciprocity, if the court were not decided the admissibility of the case, the requested state on extradition to consider the

requests to take into account the precedence in the request for extradition. If the originally filed suit holds her court the cases of enforced disappearance to search conduct final investigation on them down to the issue of governance, there are obstacles that may prevent doing the necessary investigation and survey the evidences on the case, in this case, the court may be based on the assignment of another court or another judge to direct the necessary measures to have reached a verdict in the lawsuit ([70]). It may require the issuance of arrest warrants for the culprits involved committing acts of enforced disappearance, in such a case, the court may by those under its jurisdiction to ask the states to be found in its territory on the supposed perpetrator of this crime arrested.

Hence the importance of the international convention on the protection from enforced disappearance, since receiving the responsibility of states

Parties to both of them to undertake another greatest measure of mutual legal assistance in criminal investigation or proceedings related to the crime of enforced disappearance, including the supply of all evidences at their disposal, which are necessary for the proceedings([71]).

The judicial assistance is not limited to the states parties in the international convention on the protection from enforced disappearance, but the states parties should cooperate in the Rome statute of the intentional criminal court which is not a party to the mentioned convention in that cooperating with the mentioned court in accordance with their internal laws and the basic rules of the court in determining the identity and whereabouts of persons –the defendants who committed the crime of enforced disappearance- and the gathering of evidences, including the testimony of witnesses after carrying out their right and bring them to court, and the questioning of any person being investigated or trial and to facilitate the voluntary appearance of persons as witnesses or experts before the court and the examination of places or sites, including the exhumation and the examination of grave sites, and execute the orders searches and seizures and the protection of victims and witnesses and the preservation of evidences and any other type of assistance that is not prohibited by the law of the requested state that request for judicial assistance ([72]).

2.2 The legal basis to the international cooperation in the internal legislations

The comparative legislations are coincided of each of Uruguay, Argentina, Gerny, and Spain to regulate the legal provisions on international cooperation on international crimes stipulated in in the Rome statute of the intentional criminal court in the special laws that organized extradition for these crimes –including the crime of enforced disappearance of persons- and the cooperation in the field of judicial assistance between states parties, as well as the cooperation to help the victims of these crimes ([73]), but the Iraqi legislation did not come with special provisions concerning the crimes that set forth in article (1/first) of the supreme Iraqi criminal court then the provisions contained in the assets of the Iraqi criminal procedure law ([74]) must be applied and we will show that in the three branches as the following detail:

2.2.1 The cooperation on extradition

According to the concept of violating the provisions of article (21/third) of the Iraqi constitution in force, which stipulates that "The political refugee may not be delivered to foreign body or forcefully returned him to the country from which he fled...." ([75]). So the enforced disappearance –the rule of law- is considered one of the requirements for the extradition crimes, although there is no specific provision in the Iraqi penal law that defines the bases, the descriptions, and the punishment of the crime.

However, for the purposes of extradition between the states, the enforced disappearance is not considered a political crime or a crime connected with a political crime, or a crime inspired by political motives. Thus, Iraq as a party in the international convention on the protection from enforced disappearance of 2006, it is obliged to hand over those involved in this crime of actors and partners to the requesting party for delivery, as well as the case whether they committed their crimes within the territory of the state of Iraq and fled before or after the issuance of penal provisions against them, so the state or states that found them in their provisions shall be bound to hand them over to the Iraqi side, and whether they are party to the convention or even if they were not a party, they are bound by this convention to extradition, so that this convention is a legal binding basis on those non-state party which in accordance with the provisions of article (13/4) of the international convention on the protection from enforced disappearance which stipulates that "Each state party may be a delivery which depends on the existence of a treaty that may consider this convention when it receives a request for extradition from other countries that do not have a treaty as the legal basis for extradition in respect of the crime of enforced disappearance", based on the provisions of article (21/third) of the Iraqi constitution in force, which stipulates that "The right to political asylum is not granted to those accused of committing international or terror crimes or to anyone who has caused harm to Iraq". So the person accused of committing a crime of enforced disappearance does not have the right to political asylum, as long as they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

They are bound by this agreement extradition, so that this agreement is a legal basis that binding on those non-State party which, in accordance with the provisions of article (1) of the Convention, which stipulates that " Each State Party may be a delivery which depends on the existence of a treaty may consider this Convention when it receives a request for extradition from other countries that do not have a treaty as the legal basis for extradition in respect of the crime of disappearance.

Based on the provisions of article (2) of the constitution in force, which stipulates that "does not give political asylum to those accused of committing international or terror crimes or to anyone who has caused Iraq harm.

So the person accused of committing a crime of enforced disappearance does not have the right to political asylum.

As long as they are committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.

In this trend is the legislator in Uruguay , where article (4/5) of cooperation with the International Criminal Court Act that "The offenses are not classified in this law, political crimes or common crimes linked to political crimes, or crimes subject suppressed for political purposes", the same law also states in article (6) of the law that " It does not in any way may be granted asylum if there are reasons to account that the person concerned, classified committed a crime in this law, even if it meets all the conditions required for the purposes of asylum".

It is thus clear that the forced disappearance does not fall into the category of political crimes that prevent the delivery, even if bilateral and multilateral extradition treaties or agreed by Iraq does not refer explicitly to the forced disappearance as a crime can be extraditable offenses as long as the above-mentioned treaties also include acts that are classified as part of the crime of enforced disappearance contained in article (2) of the International Convention on the Protection of the enforced disappearance of the year 2006.

And the fact that extradition subject to the conditions provided for by the law of the requested State or by applicable extradition by treaties, including in particular the requirement for the minimum level required for delivery and the foundations on which the State party is that they are based to refuse extradition or make it subject to certain conditions, which constitute obstacles is appropriate for the delivery of active and passive ([76]), Subjecting respond to requests for extradition for political considerations or risk extradition of nationals or dual criminality or considered involuntary disappearances and the crime of a political crime, military or not to re- trial in another country even if it is the first trial flawed or unfair or recognition of the claims official immunity from prosecution to enforced disappearance or statutes of limitations or risk handing the beneficiary of a general amnesty or special.

Under article (357 / A / 1) of the assets of the Iraqi Code of Criminal Procedure Select legislator minimum penalty due for delivery is imprisonment or imprisonment for not less than two years or any more severe penalty or sentenced in the courts of the State requesting extradition imprisonment for a term not less than six months or a more severe penalty. In application of the provisions of the Supreme Iraqi Criminal Court pursuant to the provisions (24 / First) of Court Law No. (10) for the year 2005 be the penalty for the crime of kidnapping is imprisonment if the abducted female prison term of up to fifteen years if male and increased the duration of arrest or attachment or deprivation of liberty fifteen days.

While passed a passive delivery Spanish in 1941 extradition law grants with respect to actions that provided for in the laws of Spain or party owner of the laws of the extradition request on the penalty or security measure at least a year or acts more serious or when demand imprisonment or relating to security measure not less duration of four months in respect of the offenses set forth in Spanish law.

The International Cooperation law Argentine number (26200) for 2007 was passed in the article (12) of delivery if the crimes - including enforced disappearances - requiring the minimum penalty equivalent to half of the total minimum and maximum penalty of any at least a year or six months if it was recognized for their execution of the sentence.

And take over Uruguay in the context of the fight against enforced disappearances particular importance to the principle of non-refoulement, has secured its law's provisions of the American Convention on Human Rights([77]), Stipulating Article (22/8) of the International Cooperation Law Arguani number (15737) for the year 2001 as " It may be expelled foreign or bring him back in any way to his own whether it originally belonged to that country when it is his right to life or personal liberty vulnerable to abuse because of their ethnic or national affiliation or because of religious or social status or political opinion", As well as in Germany as it refuses extradition requests in accordance with article (6) of the Law on Protection from Enforced Disappearance of 2009, If he believed that the person respondent him would be in the case handed over to the persecution More-over exclude article (8) of the same law the delivery of a State can be a death sentence carried out in the right of a person respondent him or subjected to severe punishment unreasonably or subjected to inhumane treatment during criminal

proceedings or in the prisons of the country of destination. As well as article (60/1) of the German Residence Act, which generally prohibits deportation where there is risk of exposure on foreign grave danger threatening his life or physical integrity or liberty which is the usual elements of enforced disappearances ([78]).

In Iraq, the Iraqi legislature prohibits refoulement is also subject to the provisions of article (4/1) of the Iraqi political asylum Law No. (51) of 1971, which stipulates that "It prohibits the delivery of a refugee to his country in any way....", and even makes it permissible As stipulated in article (14) of the Iraqi establishment of foreign law No. 118 of 1978, which stipulates that "Governors of neighboring provinces and the Director- General in other provinces to order taking out foreign entering Iraqi territory illegally"([79]).

As well as taking the legislator Spanish principle of the permissible delivery especially in the passive delivery as to ensure the person concerned the right to be heard and in the participation of the courts and the public prosecution service in accordance with the provisions of article (6) of passive extradition law because the freedom of people in such trials be at risk.

It is thus clear that States parties should apply the non-refoulement guarantee to all detainees in its prisons; it should also ensure that the fact that the main criterion in the prohibition of refoulement is effective control over the individual if the effectiveness of the control of the individual state changed to another shall be applied danger.

2.2.2 The cooperation in providing judicial assistance

Regulates international judicial assistance measures - letters rogatory –([80]) in Iraq, the Iraqi Criminal Procedure Code, Have stated in article (353) on the measures that letters rogatory "If you would like a foreign country to take measures to investigate the crime by the judicial authorities in Iraq, They must send a request through diplomatic channels to the Ministry of Justice, The demand must be accompanied by a full statement on the circumstances of the crime and the prosecution evidence in legal texts applicable to them and determine an accurate description of the actions"

And on the special rules to deal with requests for judicial Permissibility, article (354) of the assets of the Iraqi Criminal Procedure law provides that "a-If it considers the Justice Department that the application is compliant legal conditions, and that its implementation does not violate public order in Iraq, it referred to the investigating judge, who is carrying out the action in his area for the completion of the procedure required and may be a representative of the student of agency State when done. b-The Ministry of Justice to request the representative of the State requesting the deposit of an appropriate amount of agency for the account of witnesses and experts fees and fees imposed on securities and other expenses. C-If required doing the procedure, the judge papers submitted to the Ministry of Justice, to be sent to the foreign State".

As for the measures letters rogatory requests article stipulates (355) that "If the Iraqi judicial authorities asked made on behalf of the judicial authorities in another country to take a particular action presents the demand for the Ministry of Justice sent through diplomatic channels to the judicial authorities in that State shall be judicial action that has been under this of agency with the legal effect of which it is to him if it was by the judicial authorities in Iraq".

2.2.3 The cooperation in helping the victims of enforced disappearance

It included article 15 of the International Convention for the Protection from Enforced Disappearance two commitments ([81]): first- Of which have to be on the States parties to cooperate with each other to help the victims of enforced disappearance in obtaining compensation in civil suits. The second of which should help the victims in the search for missing persons and determine their whereabouts and release, and in the case of death bring out the bodies and identifying them and returning their remains. In many cases it's not only the reform of law and practice, but may require modification of bilateral or multilateral treaties in force mutual legal assistance or to join such treaties.

For the second commitment, Uruguay has been successfully used means of international cooperation in the search for the remains of the victims and determine their identities, It ago the General Secretariat emanating from the "Committee for the achievement of peace " to make strenuous efforts to determine the whereabouts of the remains of the victims with the help of the Argentine side of anthropology legitimate demand, a non-governmental body concrete result of these actions, the Federal Council Argentina's request for the transfer of the great structures of the eight unidentified persons to Argentina to conduct tests in order to determine the identities of their owners, General Secretariat as also cooperates extensively with the judiciary in relation to psychological, social and material needs of the families of the disappeared authorities ([82])

In Spain being now and since 2012 to prepare a draft law on determining the status of the victims, which includes the victim in its broadest sense and in accordance with Article (24/1) of the International Convention for the Protection of enforced disappearance with the rights of victims census based on the characteristics of the crime and gravity of and the appraisal of his personal and family and international cooperation in this the field ([83]).

In Iraq, the government is working and since 1991 through the Tripartite Commission, which includes three sides: "Iraq - the first party and both the United Kingdom and France and the United States of America, Kuwait and Saudi Arabia- The second party, the International Committee of the Red Cross- the third party", to resolve the missing file and missing Kuwaitis in Iraq has been able through its Sub-Committee of the resolution of files (241) Kuwaiti missing in Iraq of the total (608). The Iraqi side the transfer of the remains of Kuwaitis from Iraq since 2003, From a number of sites they have been tested in laboratories in the State of Kuwait and determine the fate of 241 cases, including the remains as belonging to Kuwaitis. As the relevant organizations working in the field of defense for the issues of Anfal prisoners politicians and that she was working in the Kurdistan region of Iraq since the uprising of the people of Kurdistan in 1991, the return remains of Anfal to their homeland and place of birth and compensation for the victims and address their parents of physically and psychologically patients in the inside or outside of Iraq ([84]).

And that we believe that what was passed legislation at the domestic level as a basis for international cooperation in the fight against enforced disappearances and its effects were not successful to some extent to the presence of obstacles stand to achieving the objectives of this cooperation comes in the forefront of the lack of a unified model of the activity rules component of the offense of enforced disappearance of persons be the basis for a claim to extradition, What is criminal in this description as well as a system may not be in another system and cannot get rid of this dilemma but claim the States Parties to update its legislation in line with the provisions of the International Convention on the Protection from Enforced Disappearance of 2006.

As The other difficulty in the field of judicial assistance in slowing the requested State in a reply either because of lack of trained staff or as a result of language difficulties or procedural differences which are held to respond, and to reduce this difficulty has to be the expansion of direct contact between competent in the eyes of authorities such requests to eliminate channels on the problem and the complexity of the delivery of agency requests.

Conclusion

After studying the international cooperation in combating the crime of enforced disappearance, this study showed the following results and suggestions:

1. The international cooperation is represented in the form of material or moral assistance or moral commitment between two states or more to achieve the shared benefits between those states.
2. The international cooperation in criminal area embodies in the consolidation of the judicial procedures of various forms and exchanging the legal assistance with a view to the implementation of the penal provisions.
3. The international cooperation in the criminal area is considered one of the required necessities for confronting crimes because its effects are not limited to a specified state but became including another states. The matter that requires concerting the international efforts to achieve the common interests.
4. It represents the first international cooperation in the areas of criminalization through the conclusion of several international and regional conventions which criminalize illegal acts and extends its effects for other countries, and the second in the field of judicial assistance.
5. That international cooperation to achieve some sort of rapprochement between the domestic criminal legislation of States in criminal matters, which represented a response to considerations of justice.
6. Embody the international cooperation in the fight against crime of enforced disappearance that each State formulate national legislation Negotiable flexible manner to the case of the recognition of foreign criminal verdicts or remove contraindications extradition.
7. Take international cooperation in the prevention of crime of enforced disappearance image security cooperation as well as exchange of information between police services for the early detection and prosecution of crime.
8. In order to comply with each country to international cooperation to combat the crime of enforced disappearance with many other countries must find an international legal framework enshrines the principle of cooperation, because this crime poses a threat not only to the national interest, but also to the international community.
9. Embodied the legal basis for international cooperation in the fight against crime of enforced disappearance legal provisions that regulate this cooperation, whether domestic legislation or international agreements.
10. It was on the authors of the American Convention on enforced disappearance , as well as on Enforced Disappearances International Convention to take into account the following that has added to Article (5/6) and (9/2) of the two conventions and be proposed formula in both articles as follows

(First: to the competent authorities in the country to take into account when making the decision to grant asylum to someone or refusing to question the existence of grounds for believing that the person has participated in high-risk business on enforced disappearance. Second is not considered acts constituting enforced disappearance it had made in the course of the performance of military duties and should therefore stop the persons alleged to have committed acts of enforced disappearance from any official duties during the investigation of the crime).

11. The delivery of Custodian of the most important images of international judicial cooperation in the fight against crime of enforced disappearance and has an active role because it is the responsibility of the States as the biggest parties of the judicial aid.
12. Iraq is a party to the International Convention on the Protection of enforced disappearances in 2006 and then be obliged to hand over suspects in the crime of enforced disappearance or hand them over to the Iraqi authorities because this agreement is a legal basis for this obligation.
13. Failure to identify a unified model of criminal activity component of the crime of enforced disappearance, as well as a slowdown in the countries of legal aid were not suited to the achievement of international cooperation at the domestic level, which requires the cooperation of States, particularly the competent authorities of each country so as to achieve greater effectiveness in the field of cooperation.

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- ([74]) The supreme Iraqi criminal court and the procedural rules did not provide for special provisions on extradition and letters rogatory other than the basic system of the international criminal court that devoted two articles to this subject, first: Article (57/3/D)- letters rogatory- second: Article (90)-extradition-.
- ([75]) The first Article of the Geneva convention for refugees of 1951 defined (the refugee) as "everyone feared that because of the torture viewed of sex or, creed, or membership of a particular social organization or because of his political views and being outside the state to which he belongs to it by his nationality, and he cannot, given the fear and he cannot call for the protection of this state.
- ([76]) Positive extradition means those actions by which a state requests the extradition of a required person to the requesting state to criminal prosecution for a crime where delivery permissible or to the purpose or enforcement provision related to such a crime, otherwise, negative extradition which refers to the procedures whereby a person recognizes in the territory of a state to a foreign state for the same reasons: Weil, J.L., Brazil: Political and the stats of Emergency, 2002, p. 260.
- ([77]) Article (22/8) of the American conventionfor the human rights of 1950.
- ([78]) Due to the aforementioned provisions which prohibit extradition to other states where there is a risk of enforced disappearance. The Federal police office did not respond automatically to the international police warnings that is received from other states in the cases where the wanted person faces risk of falling as a victim of a violation of the rule of law in the form of political persecution or enforced disappearance, instead, these warnings shall be referred for decision to the competent authorities(office of the federal judiciary, or office of the federal external affairs).Report of Germany,in accordance with paragraph (1)of Article(29) of the international convention on the Protection from enforced disappearance, paragraph number (93), 2012, p.24.
- ([79]) The former Iraqi governments have allowed to apply the principle of non-refoulement in the case of former members of MKO, who resided inIraqi illegally, and now the Iraqigovernment accuses them of committing crimes against the Iraqi people, so it has signed a memorandum of understanding whereby the transfer of personnel from camp Ashraf to liberty camp who underwent to the control and inspect of the United Nations mission (umami) including UNHCR, under the supervision of the Iraqi ministry of human rights in preparation for the consideration of asylum requests made by camp residents to settled in another country , Iraqi report submitted in accordance with paragraph (1)of Article(29) of the international convention of the Protection from enforced disappearance, paragraph number(114),2014,p.36.
- ([80]) The international letters rogatory differs in criminal matters, the state resorted to diplomatic mission,or the consulate that is located in a foreign state to hear the testimony of one of its nationals on the territory of this statepermanently or temporarily, and cannot come to the territory of the state to testify in court, Dr. Omar Salem, an earlier source, p.34.
- ([81]) Offset by Article (12) of the American convention on enforced disappearance of persons.
- ([82]) Uruguay's report submitted in accordance withparagraph (1)of Article(29) of the international convention on the Protection from enforced disappearance of the 2006, paragraph number(151),(152),(153),2011,p.28-29.
- ([83]) The report of Spain submitted in accordance with paragraph (1)of Article(29) of the international convention of the Protection from enforced disappearance of the 2006, paragraph number(134), 2012,p.33.
- ([84]) Iraqi's report submitted in accordance withparagraph (1) of Article(29) of the international convention of the Protection from enforced disappearance of the 2006, paragraph numbers (107) and (109),2014,p.24-35.