

# ***Enforced Disappearances in the OSCE Region***

## ***Panel Discussion during the OSCE Human Dimension Meeting***

***Warsaw, 24/09/14***

### **Introductory Speech by Manfred Nowak:**

1. Slavery, torture and enforced disappearances are the only human rights violations which are absolutely prohibited by international law under all circumstances, including in times of war, terrorism or other emergencies, because they constitute the most direct attack on the core of human dignity. While slavery deprives human beings by law of their humanity and dignity, torture and enforced disappearances take their humanity and dignity away de facto. In all three cases the perpetrator exercises absolute control over the victims and makes the victims feel like they are totally powerless, i.e. outside the protection of the law. While slavery and torture have been lawful in the history of many domestic legal systems, enforced disappearances were never permitted. Enforced disappearances first occurred under the Nazis pursuant to the “Night and Fog Decree” and became known as a systematic practice by many Latin American military dictatorships during the 1970s. Political opponents were forcibly abducted from their homes by masked men (members of security forces or paramilitary groups) in the middle of the night and driven away in vehicles without number plates to secret places of detention. When the families inquired the following day with the police or military, they were told that their husbands, sons or daughters had not been arrested or detained, were not registered in any detention facility and that they had no idea where they could be. When this message of denial was spread to the outside world, the victims of enforced disappearances were usually still alive, detained and subjected to the most cruel forms of torture. Only very few escaped or were released as in case of Mr. Shekun, most were later killed and often thrown into mass graves, in Argentina sometimes even alive from planes into the ocean. Since their fate and whereabouts were kept secret, the families found themselves often for years and decades in most difficult situations between hope and despair, thereby becoming themselves victims of inhuman treatment and enforced disappearances, as Mrs Shikmuradova told us.

2. In reaction to the enforced disappearances in Latin America, the UN Commission on Human Rights in 1980 created its first thematic special procedure, the Working Group on Enforced or Involuntary Disappearances (WGEID) consisting of 5 independent experts. I served as Western member of the WGEID between 1993 and 2001. At that time, enforced disappearances had become a universal phenomenon with some 50.000 cases of enforced disappearances in roughly 100 States, most notably in Iraq (16.000) and Sri Lanka (12.000). Since more than 20.000 cases were reported from the former Yugoslavia, where enforced disappearances were practiced by paramilitary groups as a method of ethnic cleansing against Croats and Bosnians, I was also appointed in 1994 as UN expert on missing persons in the former Yugoslavia where I started, with the assistance of Finland and the Netherlands, a practice of opening mass graves, exhuming the mortal remains and identifying victims of enforced disappearances. I also initiated the establishment of an International Commission on Missing Persons (ICMP) which is still in existence and which has identified thousands of victims of enforced disappearances. A similar special commission on missing persons has been established by the UN in response to the occupation of Northern Cyprus by Turkey in 1974.
  
3. In other words, the highest amount of unresolved cases of enforced disappearances in the OSCE region relate to the former Yugoslavia, above all Bosnia and Herzegovina (BiH), and to Cyprus. But the UN WGEID, in its latest report of 4 August 2014, also mentions a number of other OSCE member States, most importantly the Russian Federation with almost 500 outstanding cases, Turkey with originally some 200 cases, but also Uzbekistan, Turkmenistan, the Ukraine, Belarus and Spain. In addition, in our joint global study on secret detention in the fight against terrorism, submitted by 4 special procedures to the UN Human Rights Council (UNHRC) in 2010, we identified a total of 44 States worldwide, practicing this particular form of enforced disappearances, most notably the CIA practice of so called black sites in many States, including the European states of Poland, Romania and Lithuania.

4. In 2001, I was asked by the UNHRC to carry out a legal study on the phenomenon of enforced disappearances and gaps in international criminal, humanitarian and human rights law. My study, which recommended the need to develop a new instrument, led to the drafting of the UN Convention on the Protection of all Persons from Enforced Disappearances by an inter-governmental Working Group under the chair of the French Ambassador Bernard Kessedijan, assisted by me as independent expert. The Convention was adopted by the General Assembly in 2006 by 85 votes in favour, none against and 89 abstentions. It entered into force on 23 December 2010. As of today, it has been signed by 93 States and ratified by 43 States, including only 15 from the OSCE region. I would strongly urge the other 42 participating States to ratify the Convention as it contains a number of innovative features, such as a tracing procedure by the UN Committee on Enforced Disappearances, an explicit prohibition of secret places of detention, the duty to maintain official registers of detainees, specific obligations in respect of children, and the recognition of families as secondary victims with an explicit right to know the truth. As enforced disappearances are a continuous human rights violation until the fate and whereabouts of the victim is officially established, there are quite a few cases where the UN Human Rights Committee in 2013 and 2014 has established violations by BiH and other states for having failed to carry out effective investigations with the aim of bringing the perpetrators to justice and providing the victims and families with adequate reparation for the harm suffered. Unfortunately and surprisingly the European Court of Human Rights has recently declared similar applications as manifestly ill-founded and obviously develops a much more restrictive jurisprudence towards victims of enforced disappearances, above all from BiH, in clear contradiction to the further developed jurisprudence of the UN Human Rights Committee.