Commemoration of the 10\textsuperscript{th} Anniversary of the International Convention for the Protection of All Persons from Enforced Disappearance

Fabian Salvioli
President
Human Rights Committee

Geneva, 11 March 2016
In my own name and on behalf of the Human Rights Committee, allow me to pay tribute to the Committee on Enforced Disappearances. I have very many friends – and eminent colleagues - in the Committee. The Human Rights Committee is actually in session at the moment, so I hope you will understand if I cannot stay on for the debate following the panel. I feel it was important for me to be here, participate in this event and pay tribute to both the Convention and the Committee.

What an unspeakable tragedy is enforced disappearance for the life of a person really is one of the most horrendous things that can happen. It is a perverse practice. It is something which prevents the right to bereavement which something utterly necessary for the families and because the families themselves are the victims of inhumane treatment. It is heinous because uncertainty erodes families every day and every night. We very much believe that enforced disappearance and torture: enforced disappearance and torture go hand in hand, that enforced disappearance always constitutes torture. The very first case I dealt with, when I became a member of the Human Rights Committee in 2009, was about enforced disappearance: the case Cifuentes Elgueta v. Chile. I was really surprised that the Human Rights Committee did not tackle the case in a comprehensive fashion and I had to deliver a strong dissenting opinion on that case. Shortly after, the mother of the disappeared person died and her brother wrote a letter saying that her last hope for justice has just been lost. Now today, just five minutes ago, a friend told me that a case we settled four months ago brought justice to the family of the disappeared person and that the mother was crying of joy because finally somebody said that they were right. I felt that was somehow bringing the whole thing to a close. I think we must have a comprehensive view of the phenomenon of enforced disappearance. With your forbearance, I might venture to say what we have to do and obviously I can only give a summary explanation in ten minutes.

I am going to give some rather summary explanations and challenges faced by treaty bodies when faced by cases of enforced disappearances:

1. We have to interpret law with a pro personam basis and assess the case on a pro personam basis.

2. When we have to make an assessment of our competencies, we have to be clear than the crime of enforced disappearance is an ongoing crime. The crime is continuous, and therefore committed until the person appears alive or not.

3. We have to accept the evidences and proofs in a flexible manner. An enforced disappearance is not, a simple human rights violation, and a matter easy to prove because there is a lot of cover up. There are circumstantial evidences and a specific context, both are essential as we tackle the task.

4. Bear in mind particular characteristics of a case of enforce disappearance - and this is in my view is something that the treaty bodies are not doing well enough yet -
for example the gender dimension of enforced disappearance, or the affiliation to an indigenous group, when deciding reparations.

5. Adequately address contemporary practices of enforced disappearance, that are covered by the fig leave of something else, like secret detention. It is the same kind practice and has the same ultimate goal. The Convention is wise in saying that nobody should be held in secret detention.

6. A clear identification of when the enforced disappearance ends. It only ends when the person reappears or the remains are found.

7. If the enforced disappearance ends, this is not tantamount to say that there was no enforced disappearance previously. When there is enforced disappearance and the crime has ceased and the matter is brought before any treaty body, it must be treated as an enforced disappearance and not an extra-judicial execution, for example. We must be very clear about that otherwise there is no understanding of the phenomenon.

8. There must be no minimum time requirement for an enforced disappearance. International humanitarian law and the Rome Statute, which is to determine individual responsibility, must not be confused with instruments of international human rights law. We must look at the Inter-American Convention and at the International Convention for the Protection of All Persons from Enforced Disappearance. For treaty bodies it must be clear that cases of enforced disappearance do not require a minimum time to determine the responsibility of the State in an enforced disappearance, as I wrote in a concurring separate opinion in the case Abufaied.

9. There must be a comprehensive approach to an enforced disappearance, even if the authors of the complaint do not invoke a particular provision of the Covenant. Treaty bodies must apply the “iura novit curiae” principle.

10. Remedies must be determined under the principle of “full reparation”, including restitution, rehabilitation, measures of satisfaction and non-repetition, and economic compensation.

I think this is the paramount messages I can give in my five minutes. I would be delighted to stay on, believe me, but I have to chair the Human Rights Committee session in Palais Wilson. I was really happy to take part: I did not turn up just because I had to. When we work in human rights, we are strongly committed personally. We need to pay tribute to Louis Joinet and to everybody who has made the work of the Committee on Enforced Disappearances possible. By preventing and punishing enforced disappearance, the world has become fairer.

Thank you.