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ACTION IO-00

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INFO	LOG-00	AF-00	AID-00	AMAD-00	CIAE-00	WHA-00	SRPP-00
	EAP-00	EB-00	ED-01	EUR-00	UTED-00	HHS-01	H-01
	TEDE-00	INR-00	L-00	NEA-00	DCP-01	NSAE-00	NSCE-00
	OIC-02	OPIC-01	PER-00	PRS-00	P-00	SP-00	SS-00
	STR-00	TEST-00	TRSE-00	USIE-00	SA-00	ECA-00	PRM-00
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TO DEPTJUSTICE WASHDC
SECSTATE WASHDC 1957
INFO DOD WASHDC

UNCLAS SECTION 01 OF 02 GENEVA 000095

SENSITIVE

FOR IO/SHA - TOM JOHNSON, L/HRR - ANDRE SURENA, L/LEI -
DENISE MANNING, L/PM, DRL/MLA - CHRIS CAMPOVO, DOJ/OIA -
THOMAS BURROWS, DOD/GC - ELIANA DAVIDSON

E.O. 12958: N/A
TAGS: PHUM, UNHRC, SOCI
SUBJECT: REPORT ON OPENING OF WG SESSION ON FORCED
DISAPPEARANCES

REF: 02 GENEVA 005200

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1. (SBU) SUMMARY. IN WEEK ONE, THE UNHRC WORKING GROUP SESSION ON A PROPOSED LEGALLY BINDING INSTRUMENT ON FORCED DISAPPEARANCES HAS BEEN MOVING SWIFTLY, CONTRARY TO THE ORIGINAL PREDICTIONS OF THE CHAIR THAT IT WOULD TAKE THE FULL TWO-WEEK SESSION TO COMPLETE GENERAL DISCUSSION AND THE DEFINITION OF FORCED DISAPPEARANCES. DISCOURSE HAS BEEN HIGHLY SUBSTANTIVE AND FOCUSED, INCLUDING THE CONTRIBUTIONS OF MOST OF THE NGOS (NOTABLY THE INTERNATIONAL COMMISSION OF JURISTS, AMNESTY INTERNATIONAL, HUMAN RIGHTS WATCH, AND THE INTERNATIONAL FEDERATION OF HUMAN RIGHTS) AND THE ELOQUENT PRESENTATIONS OF MOTHERS OF THE DISAPPEARED. THERE IS GOOD WILL IN THE ROOM, IN LARGE PART DUE TO THE EXCELLENT ATMOSPHERICS SET BY THE FRENCH AMBASSADOR SELECTED TO CHAIR

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: JOHN S BLODGETT
DATE/CASE ID: 24 AUG 2009 200706444

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THE WG AND THE UNIVERSAL RECOGNITION AMONG DELEGATIONS OF THE REPREHENSIBLE NATURE OF FORCED DISAPPEARANCES. STILL, FAULT LINES ARE BEGINNING TO EMERGE. SEE ACTION REQUESTS IN PARA. 6 BELOW. END SUMMARY.

2. (SBU) THE WG SESSION OPENED ON JANUARY 6. AFTER THE UNANIMOUS SELECTION OF THE CHAIR AND SETTING OF THE AGENDA, MR. JOINET, A UN HUMAN RIGHTS EXPERT WHO HAS BEEN WORKING ON THE PROBLEM OF FORCED DISAPPEARANCES FOR CLOSE TO TWO DECADES, MADE A PRESENTATION. DURING THE GENERAL DEBATE THAT FOLLOWED, VARIOUS DELEGATIONS EXPRESSED VIEWS RANGING FROM (1) SWIFT ADOPTION OF A COMPREHENSIVE INSTRUMENT PRESCRIBING BROAD CRIMINALIZATION, PREVENTION AND REPARATION MECHANISMS (ENDORSED BY GRULAC) TO (2) ADOPTION OF A "SPECIFIC, EFFECTIVE AND UNIVERSAL" INSTRUMENT ADDRESSING ALL ASPECTS OF THE PROBLEM (FORMAL STATEMENT OF THE EU DELIVERED BY GREECE) TO (3) READINESS TO ACTIVELY ENGAGE IN DISCUSSIONS, WHILE

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LAYING DOWN EXPLICITLY SOME INITIAL GENERAL AREAS OF CONCERN REGARDING SUGGESTED PROVISIONS/CONCEPTS (THE U.S. AND CANADA) TO (4) THERE IS NO DEMONSTRATED NEED FOR AN INSTRUMENT (INDIA AND TO A LESSER DEGREE SAUDI ARABIA AND PAKISTAN). (TEXT OF U.S. INITIAL STATEMENT HAS BEEN SENT ELECTRONICALLY TO L/HRR, IO/SHA, AND DRL/MLA). ON JANUARY 7 THE INDEPENDENT EXPERT PROF. NOWAK PRESENTED HIS LENGTHY AND COMPREHENSIVE REPORT AND ANSWERED NUMEROUS THOUGHTFUL QUESTIONS.

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3. (SBU) CORE ISSUES THAT EMERGED OUT OF THE FIRST TWO DAYS OF DISCUSSION INCLUDE (1) COVERAGE OF NON-STATE ACTORS IN THE TREATY, (2) THE INTER-RELATIONSHIP OF HUMAN RIGHTS LAW, INTERNATIONAL HUMANITARIAN LAW, AND INTERNATIONAL CRIMINAL LAW, (3) NON-DEROGATION OF THE DUTY TO REFRAIN FROM COMMITTING ENFORCED DISAPPEARANCES AND, MORE PROBLEMATICALLY FOR SOME, OF MEASURES OF PROTECTION SUCH AS HABEAS CORPUS, (4) NEED FOR MEASURES AT THE NATIONAL VICE INTERNATIONAL LEVEL, (5) FORMAT OF THE PROPOSED INSTRUMENT, THAT IS, SEPARATE CONVENTION VICE OPTIONAL PROTOCOL TO ICCPR OR CONVENTION AGAINST TORTURE, AND THE CONCOMITANT QUESTION OF TREATY MONITORING BODY, AND (6) STRENGTHS AND WEAKNESSES OF VARIOUS REFERENCE TEXTS. ON THE LATTER POINT THE UNITED STATES (AND OTHERS) FLAGGED DEFICIENCIES IN THE '98 DRAFT TEXT, OTHER DELS WARMLY EMBRACED IT, AND THE CHAIR REASSURED THE ASSEMBLED THAT ONLY THE 1992 UNGA DECLARATION REPRESENTED THE UNCONTESTED CONSENSUS OF STATES.

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4. (SBU) ON WEDNESDAY THE SESSION MOVED FROM GENERAL DEBATE TO SPECIFIC, SUBSTANTIVE DISCUSSION OF THE PROPOSED CONTENTS OF A LEGAL INSTRUMENT. AFTER SOME BACK AND FORTH ON THE METHODOLOGY FOR EMBARKING ON OUR WORK, THE GROUP CONCLUDED THAT THIS SESSION WILL FOCUS ON CONCEPTS AND ISSUES, AS DELEGATES CANNOT BE EXPECTED AT THIS EARLY JUNCTURE TO ADDRESS IN DEPTH A DRAFT TEXT WITH INSTRUCTIONS FROM CAPITALS. TO FACILITATE AN ORDERLY REVIEW OF THOSE CONCEPTS AND ISSUES, A "DISCUSSION GUIDE" HAS BEEN PREPARED BY THE CHAIR (COPY TO BE FORWARDED TO THE DEPARTMENT). THERE FOLLOWED A USEFUL DISCUSSION OF THE DEFINITION OF FORCED DISAPPEARANCES, WITH SOME CONVERGENCE ON CORE ELEMENTS SUCH AS CONCEALMENT OF WHEREABOUTS, BUT WITH STARK DIVERGENCES OF VIEW BECOMING APPARENT. THESE INCLUDE, AS NOTED ABOVE, THE ISSUES OF TREATY COVERAGE OF PRIVATE PARTIES' ACTS AND ALSO INCLUDING IN THE DEFINITION OF "ACTS TAKING PLACE AT ALL TIMES",

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THE U.S. DELEGATION REQUESTED THAT THIS LATTER POINT BE REMOVED FROM THE DEFINITION AND DEFERRED TO A LATER DISCUSSION OF THE RELATIONSHIP BETWEEN THIS INSTRUMENT AND OTHER CONVENTIONS, NOTABLY THE GENEVA CONVENTIONS.

5. (SBU) U.S. DELEGATION EXPRESSED PRELIMINARY THOUGHTS ON THE DEFINITIONAL ISSUE, NOTING OUR OPPOSITION TO THE

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ACTION IO-00

INFO	LOG-00	AF-00	AID-00	AMAD-00	CIAE-00	WHA-00	SRPP-00
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	SAS-00	/009W					

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FM USMISSION GENEVA
TO DEPTJUSTICE WASHDC
SECSTATE WASHDC 1958
INFO DOD WASHDC

UNCLAS SECTION 02 OF 02 GENEVA 000095

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SENSITIVE

FOR IO/SHA - TOM JOHNSON, L/HRR - ANDRE SURENA, L/LEI -
DENISE MANNING, L/PM, DRL/MLA - CHRIS CAMPOUNOVO, DOJ/OIA -
THOMAS BURROWS, DOD/GC - ELIANA DAVIDSON

E.O. 12958: N/A

TAGS: PHUM, UNHRC, SOCI

SUBJECT: REPORT ON OPENING OF WG SESSION ON FORCED
DISAPPEARANCES

INCLUSION OF PURELY PRIVATE ACTORS IN THE TREATY, FOR BOTH
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THEOLOGICAL AND PRACTICAL REASONS. WE BASED OUR INTERVENTIONS
ON THE GENERAL INSTRUCTIONS FOR THIS SESSION CLEARED WITHIN
STATE, JUSTICE'S COMMENTS ON OUR DRAFT INSTRUCTIONS, AND
INTER-AGENCY INSTRUCTIONS AND AGENCY VIEWS PREPARED IN
CONNECTION WITH NEGOTIATION OF THE OAS FORCED DISAPPEARANCES
CONVENTION IN 1992-94. ON JANUARY 9, WE MOVED FROM
DISCUSSION OF THE DEFINITION OF ENFORCED DISAPPEARANCE TO
CRIMINALIZATION AND JURISDICTION TO PROSECUTE SUCH AN
OFFENSE. INTERESTINGLY, NUMEROUS INITIAL INTERVENTIONS WERE
PRESENTED BY UN AMBASSADORS IN GENEVA, THE JAPANESE MADE AN
ELEVENTH HOUR DECISION TO BRING IN A TEAM OF TWO FROM TOKYO
(INCLUDING A TREATY LAWYER), AND THE CANADIANS ARE
REPRESENTED BY A DEPARTMENT OF JUSTICE ATTORNEY FROM OTTAWA
(AS WELL AS A LOCAL REPRESENTATIVE). STATES ARE TAKING THIS
EXERCISE SERIOUSLY. THE SIZE AND COMPOSITION OF THE U.S.
DELEGATION HAS ALSO BEEN NOTICED AND WELL-RECEIVED BY THE
CHAIR AND A NUMBER OF DELEGATIONS.

6. (SBU) COMMENT AND ACTION REQUESTS. THE DISCUSSION TO
DATE HAS MADE IT VERY CLEAR THAT THE WORKING GROUP WILL
PROBABLY REACH, AND THUS WE SHOULD BE PREPARED TO ADDRESS,
CONCEPTS AND ISSUES SET FORTH IN THE "DISCUSSION GUIDE" NOTED
ABOVE. DURING THE SESSION, THE U.S. HAS MADE CLEAR THAT IT IS
EXPRESSING PRELIMINARY VIEWS ONLY. HOWEVER, IN VIEW OF THE
FAST-PROGRESSING AND SUBSTANTIVE NATURE OF THE DISCUSSIONS,
WE REQUEST THAT DOD/GC PROVIDE EARLY COMMENTS AND CLEARANCE
ON THE GENERAL AND ARTICLE-BY-ARTICLE INSTRUCTIONS EARLIER
PROVIDED FOR REVIEW. WE ALSO SOLICIT ANY ADDITIONAL COMMENTS
FROM STATE OR JUSTICE ON THE ARTICLE-BY-ARTICLE DRAFT OR
OTHERWISE THAT COULD BE OF BENEFIT TO THE DELEGATION DURING
THE COURSE OF THIS SESSION, WHICH ENDS JANUARY 17, AND IN
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PREPARATION FOR FUTURE SUCH SESSIONS.
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<< END OF DOCUMENT >>

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INFO	LOG-00	AID-00	CIAE-00	INL-00	DODE-00	DS-00	VCI-00
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	VCIE-00	NSAE-00	NSCE-00	OIC-00	PA-00	GIWI-00	FMPC-00
	SP-00	IRM-00	SSO-00	SS-00	DSCC-00	PRM-00	DRL-00
	G-00	SAS-00	FA-00	SWCI-00	/001R	RELEASED IN PART	

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SOURCE: CBLEXCLS.009468

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APPROVED BY: IO:MLAGON

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L/T:JKIM

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INFO USMISSION GENEVA PRIORITY

C O N F I D E N T I A L STATE 181098

E.O. 12958: DECL: 10/30/2016

TAGS: PREL, PHUM

SUBJECT: INSTRUCTIONS: DISAPPEARANCES CONVENTION AT THIRD
COMMITTEE

Classified By: Deputy Assistant Secretary Mark Lagon: Reasons 1.4 B/D

1. (U) DEPARTMENT PROVIDES THE INSTRUCTIONS IN PARAGRAPH 3 WITH RESPECT TO ACTION ON THE FRENCH RESOLUTION THAT WOULD ADOPT AND OPEN FOR SIGNATURE THE DISAPPEARANCES CONVENTION. ADDITIONAL BACKGROUND ON THE DECLARATION IS SET FORTH IN PARAGRAPH 2.

2. (SBU) WHILE THE DISAPPEARANCES CONVENTION WAS THE RESULT OF SEVERAL YEARS OF CONTENTIOUS NEGOTIATIONS, IT WAS ULTIMATELY ADOPTED BY CONSENSUS AT THE HUMAN RIGHTS COUNCIL IN JUNE 2006. AS MANY DELEGATIONS WHO PARTICIPATED IN THE PROCESS KNOW (INCLUDING FRANCE), THE UNITED STATES HAS MANY LEGAL CONCERNS ABOUT THE TEXT OF THE CONVENTION. THAT SAID, AS A GENERAL RULE, ADOPTION OF A TREATY BY THE UN GENERAL ASSEMBLY IS A PROCEDURAL STEP THAT MERELY DENOTES THE CONCLUSION OF THE NEGOTIATION FINALIZING THE TEXT OF THE TREATY AND PRECEDES THE TREATY'S BECOMING FORMALLY OPEN FOR

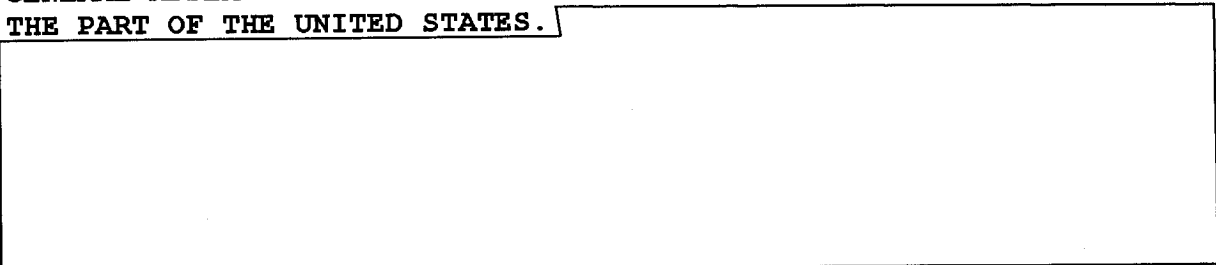
UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: JOHN S BLODGETT
DATE/CASE ID: 24 AUG 2009 200706444

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SIGNATURE. IN THE CASE OF THIS TREATY, ITS ADOPTION BY THE GENERAL ASSEMBLY WILL NOT RESULT IN ANY LEGAL OBLIGATION ON THE PART OF THE UNITED STATES.

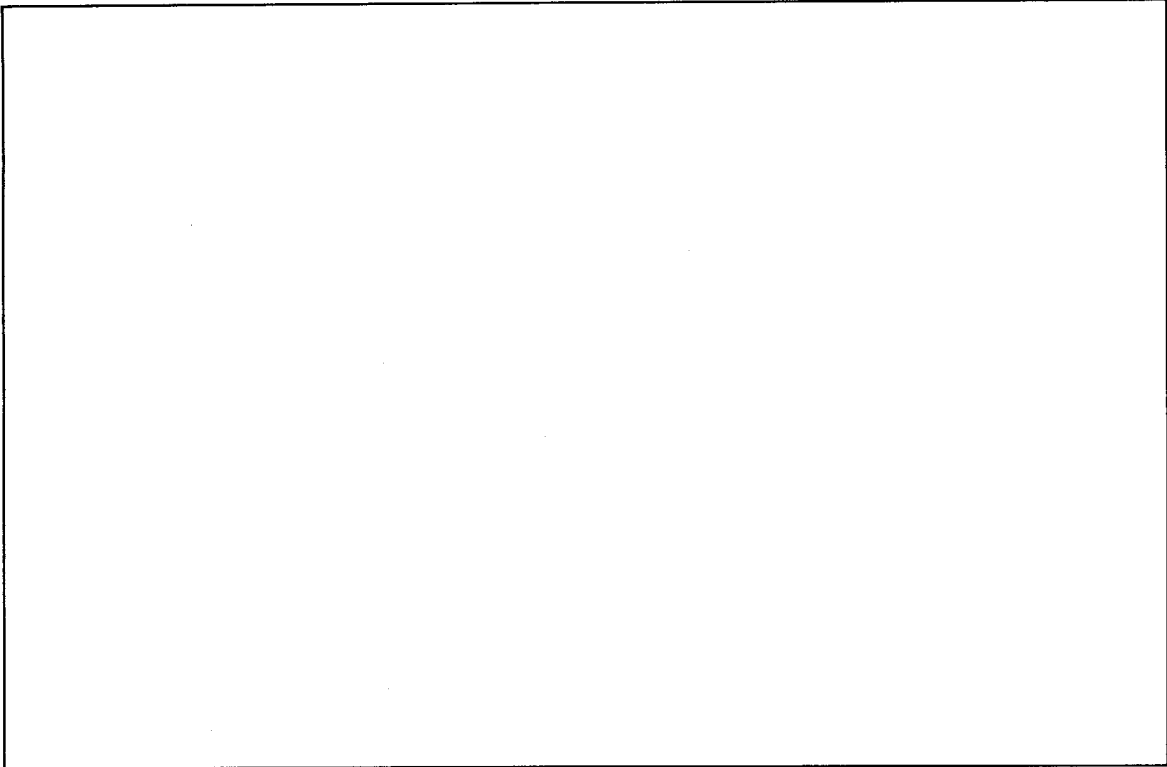
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THE TEXT NEEDS TO BE INTRODUCED AS IT APPEARS BELOW.

3. (C) DEPARTMENT PROVIDES THE FOLLOWING INSTRUCTIONS WITH RESPECT TO ACTION ON THIS CONVENTION:

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(B) DELEGATION IS REQUESTED TO READ THE FOLLOWING INTERAGENCY-CLEARED STATEMENT AT THE TIME OF ADOPTION OF THE TREATY: "THE UNITED STATES THANKS THE CHAIR OF THE WORKING GROUP TO DRAFT A CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES AND ALL PARTICIPANTS IN THE WORKING GROUP FOR FOCUSING ATTENTION ON THIS IMPORTANT ISSUE. THE UNITED STATES HAS BEEN AN ACTIVE PARTICIPANT IN EACH AND EVERY SESSION OF THE WORKING GROUP TO DRAFT A CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES. GIVEN OUR FULL AND CONTINUOUS PARTICIPATION, WE HAVE ALREADY PROVIDED OUR UNDERSTANDING OF THE INTENT OF STATES THAT

PARTICIPATED IN THE WORKING GROUP ON A NUMBER OF CORE ISSUES, WHICH ADDITIONALLY EXPRESSES OUR CONCERNS WITH THE FINAL TEXT. WE REAFFIRM AND INCORPORATE HEREIN OUR STATEMENT PRESENTED TO THE HUMAN RIGHTS COUNCIL THIS PAST JUNE, WHICH CAN BE FOUND AT A/HRC/1/G/1 27 JUNE 2006. THE UNITED STATES HAS REQUESTED THAT THIS INTERVENTION AND STATEMENT BEFORE THE COUNCIL BE MADE PART OF THE OFFICIAL RECORD OF THE GENERAL ASSEMBLY IN REGARD TO THE PROPOSED CONVENTION."

(C) DELEGATION IS REQUESTED TO POST BOTH THE EXPLANATION OF POSITION IN 3(B) AND THE HRC STATEMENT ON THE USUN WEBSITE AFTER ADOPTION OF THE CONVENTION. DELEGATION IS ALSO REQUESTED TO HAVE THE EXPLANATION OF POSITION AND THE HRC STATEMENT MADE AN OFFICIAL DOCUMENT OF THE THIRD COMMITTEE AT AN APPROPRIATE TIME GIVEN STRATEGY ISSUES IN 3(A).

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