

ACTION IO-00

RELEASED IN FULL

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	WHA-00	EAP-00	EUR-00	UTED-00	FOE-00	TEDE-00	INR-00
	LAB-01	L-00	MFLO-00	MOFM-00	MOF-00	NEA-00	NSAE-00
	NSCE-00	OIC-00	OIG-00	NIMA-00	PA-00	PER-00	PRS-00
	P-00	SP-00	SS-00	STR-00	TRSE-00	FMP-00	PRM-00
	DRL-00	G-00	SCA-00	SAS-00	FA-00	SWCI-00	/001W

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 FM USMISSION GENEVA  
 TO SECSTATE WASHDC 7057

UNCLAS GENEVA 000693

STATE FOR IO-RHS, DRL-MLGA, L-HRR

E.O. 12958: N/A

TAGS: PHUM, UNHRC-1

SUBJECT: COMMUNICATION FROM THE UN COMMITTEE AGAINST  
 TORTURE FOR THE UNITED STATES OF AMERICA

1. Mission has received a communication from the United Nations Committee against Torture for the United States of America. This communication is number 4 on the Geneva 2006 Communications Log.

2. Begin text of letter. Mr. Ambassador, In my capacity as Rapporteur for Follow-up on Conclusions and Recommendations of the United Nations Committee against Torture for the United States of America, I refer to the examination of the second periodic report of United States of America (CAT/C/48/Add.3/Rev.1). The Committee, in its Conclusions and Recommendations (CAT/C/USA/CO/2), requested the State Party to provide within one year information on the specific recommendation identified by the Committee in paragraph 43 (paragraphs 16, 20, 21, 22, 24, 33, 34 and 42 of the mentioned Conclusions and Recommendations).

The Government of the United States of America provided the information requested in September 2007 (CAT/C/USA/CO/2/Add.1). The Committee thanks the State party for its cooperation and presents its comments on the responses provided in the framework of the follow-up procedure, as part of the procedure through which the Committee monitors the implementation of specific recommendations that are serious, protective and may be implemented within one year as well of the continuous dialogue with States parties.

UNITED STATES DEPARTMENT OF STATE  
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With regard to the recommendation made in paragraph 16, the Committee welcomes the information that relevant authorities of the State party, including military, "as a matter of good administration practice, generally maintain appropriate records on persons detained by them. Such records would generally include the information mentioned in the Committee's recommendation". The Committee considers that maintaining records of persons detained is mandatory as it constitutes a basic guarantee, particularly in order to prevent torture, for all persons deprived of their liberty (paragraph 13 of the General Comment no. 2 on the implementation of article 2 by States parties, adopted on 23 November 2007). The Committee does not make any distinction between categories of persons deprived of their liberty and it considers that all of them are protected by this guarantee. The Committee reiterates that the State party should adopt the necessary measures to establish the obligation of registration of all persons deprived of liberty. I would be grateful if you could clarify in which cases the mentioned authorities do not maintain appropriate records on persons detained. Is the State party considering adopting any legislative measures to ensure that such registration is an obligation for all authorities, including military, and that it is not only carried out as a matter of good administrative practice?

While the Committee welcomes the information on paragraph 20 that "as a matter of policy, the United States Government does not transfer persons to countries where it determines that it is more likely than not that they will be tortured (and that this) policy applies to all components of the government including the intelligence agencies", the Committee wishes to remind the State party that the guarantee of non refoulement is a normative determination, of article 3 of the Convention, of the absolute, and jus cogens, prohibition of torture. It must be enforced effectively by the authorities of the State Party as a matter of law in any territory subject to its de jure or de facto control. No provision of the Convention limits the State territorial scope to the "territory of sovereignty" of State parties. It is reasonable to consider that the most adequate way to implement the assurance of non refoulement is the establishment of adequate judicial mechanisms to challenge all refoulement decisions. The Committee reiterates the recommendation to introduce such judicial control and would appreciate if the State party could indicate any measure taken in this regard.

As to the recommendation made in paragraph 21, the

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Committee welcomes the information received on the policy and practice of the Government of the United States, when relying on "diplomatic assurances". In particular, the Declaration of the Ambassador-at-large for War Crimes, Mr. Clint Williamson, clarifies the motives and details of the practice. However, the Committee regrets the absolute confidentiality of such procedure and the lack of information on cases where assurances have been provided, which does not enable the Committee to monitor these arrangements and the de facto implementation of the Convention's provisions by the State party. It also recalls that an adequate judicial mechanism for reviewing, in last instance, the sufficiency and appropriateness of diplomatic assurances in any applicable case, would have to be established. This principle also constitutes the basic of the decision adopted by the United States District Court for the Middle District of Pennsylvania

in the case "Sameh Sami S. Khouzam v. Thomas H. Hogan et al." (3:CV-07-0992; Judge Vanaskie), of 22 August 2007. Please indicate, in light of the above, any steps that might have been taken to consider the establishment of a judicial mechanism to this effect. Considering the confidential nature the State party has given to the procedure, please describe the post-return monitoring machinery in place on a generic and non-specific basis. Has the State party received information on any assurances that have not been honored and what appropriate actions were taken in such cases by the State party?

With regard to the recommendation made in paragraph 22, the Committee reiterates its interpretation of the scope of obligations imposed on State Parties, in time of peace as well as in time of armed conflict. All the guarantees that must be applied to all persons deprived of their liberty referred to previously (paragraph 13 of the General Comment no. 2) must also be applied to detainees in Guantanamo and, among these, "the right promptly to receive independent legal assistance, independent medical assistance, and to contact relatives, the need to establish impartial mechanisms for inspecting and visiting places of detention and confinement, and the availability (...) of judicial and other remedies that will allow them to have their complaints promptly and impartially examined, to defend their rights, and to challenge the legality of their detention or treatment". Taking also into account the rules on evidence established by the Military Commissions Act of 2006, it is also relevant to recall that it is absolutely forbidden by article 15 of the Convention to invoke, as evidence in any proceedings, any statement which is established to have been made as a result

of torture, except against a person accused of torture as evidence that the statement was made. That means that in a fair process, a person has the inderogable right to prove that evidence against him or her was obtained under torture. The Committee has closely followed the successive decisions of the Supreme Court of the United States to protect the constitutional rights and liberties of detainees in Guantanamo. It reiterates the recommendation that the State Party must provide access to a fair judicial process to the Guantanamo detainees, to comply with its obligations under the Convention.

In respect of the recommendations made in paragraph 24, the Committee takes note with satisfaction of the progress made in order to eradicate any interrogation technique that amounts to torture by any agent of United States Government. The Committee reiterates that in this context, the use of interrogation techniques amounting to torture, such as those identified by the Committee, must be forbidden to all "components of the Government, including intelligence agencies". However, it seems that some special legal exception would be reserved to these intelligence agencies as to the use of prohibited techniques, therefore derogating from the principle of absolute prohibition of torture. Please clarify the objective of the presidential veto of the 2008 Intelligence Authorization Act which would have applied to the Army Field Manual on interrogation to all "components of the Government, including intelligence agencies", thus prohibiting torture without any exception. Does this veto indicate that certain agencies outside of the Department of Defense, such as the CIA, may use prohibited acts, including interrogation such as methods involving sexual humiliation, "water boarding", "short shackling" and using dogs to induce fear, which the Committee has clearly indicated as constituting torture or cruel, inhuman or degrading treatment or punishment?

Concerning the recommendations made in paragraphs 33 and 34, the Committee thanks the State party for the information submitted. However, the Committee considers that the United States should consider ratifying the Convention on the Rights of the Child (as all other members of the international community have, except Somalia and the United States) in order to accept the conventional obligation to prohibit the sentencing of juveniles to life imprisonment without the possibility of parole.

With regard to the recommendation made in paragraph 42, the Committee thanks the State party for the information submitted. However, the Committee considers that the next

periodic report, which the United States will have to present to the Committee on 19 November 2011, should include all the detailed statistical data requested in the concluding observations. While taking note of the responses of the State Party to the recommendation of the establishment of a federal database on the implementation of the provisions of the Convention, the Committee reiterates this recommendation as it would allow the State party to provide the Committee with information it was unable to provide. Without the detailed statistical data as requested, the Committee will not be able to adequately monitor the full implementation of

the State party's obligations under the Convention when considering the next report of the United States of America.

The Committee looks forward to pursuing the constructive dialogue started with the authorities of the United States of America on the implementation of the Convention. In this context, the Committee seeks to receive your written response to this request for further clarifications.

Accept, Mr. Ambassador, the assurances of my highest consideration. Fernando M. Marino, Rapporteur for follow-up on Conclusions and recommendations for the United States of America Committee against Torture. End text of letter.  
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	INR-00	IO-00	LAB-01	DCP-00	NSAE-00	OES-00	OIC-00
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SOURCE: CBLEXCLS.001675

DRAFTED BY: L/HRR:RKHARRIS -- 10/20/2005 202-647-4035

APPROVED BY: IO:MLAGON

IO/SHA:, TJOHNSON, DRL:, JGINSBURG

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FM SECSTATE WASHDC

TO USMISSION GENEVA IMMEDIATE

UNCLAS STATE 194539

E.O. 12958: N/A

TAGS: AORC, PHUM

SUBJECT: SUBMISSION OF PERRIDIC REPORT OF THE UNITED STATES OF AMERICA TO THE HUMAN RIGHTS COMMITTEE

1. On Friday morning, October 21, Mission is instructed to transmit the attached two letters to the Chairman of the Human Rights Committee and one letter to the Chairman of the Committee Against Torture, conveying: (A) the U.S. government,s combined second and third periodic report of its implementation of the International Covenant on Civil and Political Rights (under cover of the of the letter at para (3); (B) to the Human Rights Committee a revised Annex to the USG,s report on the Convention Against Torture discussing certain persons in the custody of the U.S. Armed Forces (under cover of the letter at para (4); and (C) to the Committee Against Torture, that same revised Annex to the USG,s report on the Convention Against Torture discussing certain persons in the custody of the U.S. Armed Forces (under cover of the letter at para (5). For reasons of protocol, Mission

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is asked to deliver the letter and package to the Committee Against Torture (referenced in para (5)) prior to delivery of the packages to the Committee on Human Rights.

2. Given the length of the three attachments described above, these texts will not be conveyed in cable form, but electronically will be sent to the Mission from L/HRR on Thursday evening, October 20. Following transmittal, Mission is required to send to the Department (IO/SHA and L/HRR) copies of signed transmittal letters.
3. First Letter to HRC (transmitting the report)

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Ms. Christine Chanet  
Chairman  
Human Rights Committee  
Office of the UN High Commissioner for Human Rights  
Palais Wilson  
CH-1211 Geneva 10

Dear Madame Chairman:

I have the honor to transmit to you the combined second and third periodic report of the United States of America, with annexes, provided under Article 40 of the International Covenant on Civil and Political Rights. As you requested in your letter of July 23, 2005, the report contains a discussion of U.S. implementation of the Patriot Act. The Government of the United States will be pleased to answer further questions from the Committee on the basis of this report, in keeping with the Committee's rules and standard practice.

Please allow me to express once again the longstanding commitment of the United States to the protection and promotion of human rights and to the work of the Committee.

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Yours very truly,

Kevin E. Moley  
Ambassador

4. Second Letter to HRC (transmitting updated detainee CAT Annex)

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Ms. Christine Chanet  
Chairman  
Human Rights Committee  
Office of the UN High Commissioner for Human Rights  
Palais Wilson  
CH-1211 Geneva 10

Dear Madame Chairman:

In a letter that I had the honor to send you today, the United States of America transmitted to the Committee on Human Rights the combined second and third periodic report of the United States of America, provided under Article 40 of the International Covenant on Civil and Political Rights. Although not part of the U.S. report, as described more fully in paragraph 129 of the U.S. report, I am pleased in this letter to enclose as a matter of courtesy a separate description relating to individuals under the control of the U.S. Armed Forces captured during operations against the Taliban Al-Qaida, and their affiliates and supporters and captured during military operations in Iraq. This information updates information provided in May of this year by the United States to the Committee Against Torture.

We hope that this information will be responsive to the concerns you expressed in your July 23, 2005 letter.

Yours very truly,

Kevin E. Moley  
Ambassador

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5. Letter to the Committee Against Torture (transmitting updated detainee CAT Annex)

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Professor Fernando Marino Menendez  
Chairman  
Committee Against Torture  
Office of the UN High Commissioner for Human Rights  
Palais Wilson  
rue des Pquis 52  
1202 Geneva

Dear Mr. Chairman:

As you recall, in May of this year, the United States conveyed to the Committee Against Torture (the &Committee8) its Second Periodic Report on measures giving effect to its undertakings under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and on other information of interest to the Committee. By letter of May 21, 2004, the Committee requested &updated information concerning the situation in places of detention in Iraq.8 In Annex 1 of the May 2005 U.S. report, the United States provided a discussion and related materials relevant to its detention of individuals under the control of U.S. Armed forces in Iraq captured during military operations and similar information with respect to detentions of individuals under the control of U.S. Armed Forces in Afghanistan and Guantanamo Bay, Cuba.

In light of the Committee,s continuing interest in these matters, I have the honor to transmit to you an update of the information contained in Annex 1. Please allow me to express once again the longstanding commitment of the United States to the protection and promotion of human rights and to the work of the Committee.

Yours very truly,

Kevin E. Moley  
Ambassador8

6. Press Guidance

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&L Press Guidance October 21, 2005

United States Periodic Report on the  
International Covenant on Civil and Political Rights

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Q: Is it true that the United States recently filed a report on its implementation of the International Covenant on Civil and Political Rights? What is this report, and why did the United States produce it?

A:

z On October 21, 2005, the United States submitted to the Human Rights Committee its combined second and third periodic report on its implementation of the International Covenant on Civil and Political Rights (&ICCPR& or the &Covenant&).

The report is a required and routine update of the Initial Report, which the United States filed in July 1994.

z The new report describes recent legislation, caselaw, policies, programs and other relevant information to update our Initial Report.

z The report is comprehensive and covers a very wide range of subjects, including law and practice in the United States to protect freedoms of speech, conscience, religion, association, peaceful assembly, non-discrimination, life, personal freedom and security. It also addresses liberty of movement, due process and fair judicial procedures, and equality under the law. The report also covers the rights to be free from arbitrary arrest or detention, torture, cruel inhuman or degrading treatment or punishment, and slavery or involuntary servitude.

z The report also updates what is known as the &core document&, which provides an overview of census information about the United States, its general political structure, and the general framework for the protection of human rights within the United States.

z The Human Rights Committee will post the report on its website in accordance with its standard practice. The Department of State will also post the report on its own website.

z The United States looks forward to presenting the report orally before the Human Rights Committee at one of its future sessions.

Core themes to emphasize:

z Through an extensive inter-agency process we have produced a thorough and comprehensive report, consistent with our reporting obligations under the ICCPR.

z We believe the report presents the Committee with a clear picture of how U.S. law and institutions promote and enforce the human rights contained in the ICCPR. We hope that this record of recent U.S. experience may help other countries in their efforts to promote and protect human rights.

z We look forward to engaging in a dialogue on these

issues when we present the report orally before the Human Rights Committee at one of its future sessions.

(Background: Article 40 of the ICCPR provides that all States Parties shall submit to the Human Rights Committee reports on measures they have taken to implement the treaty. The Committee, which is charged with reviewing the reports, is a body of eighteen experts created by the ICCPR. These experts, who act in their individual capacities, includes a U.S. citizen. The report and its annexes are more than 250 pages in length. )

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IF ASKED:

Reporting process:

Q. Isn't it true that the United States is many years behind schedule in submitting its report? Doesn't that send a negative signal about the seriousness of its commitment to preventing torture?

A:

z The U.S. was behind schedule, but this in no way reflects our commitment to producing a comprehensive report.

z The United States is strongly committed to ensuring that it implements its obligations under the ICCPR.

z The reporting process is a good way for the United States to take stock of its efforts and to provide this information in a transparent manner to its ICCPR treaty partners.

If needed:

z The drafting of a comprehensive report on U.S. implementation of a treaty with the broad scope of the ICCPR is a complex and ambitious undertaking, which involves contributions by and coordination among many departments within the U.S. government.

z Because of the scope of these undertakings, many countries in addition to the United States have found it difficult to submit their treaty reports on time.

z With respect to national reports on implementation of the ICCPR, 93 countries are currently overdue in meeting their reporting requirements.

Q. What happens now that the United States has filed its ICCPR report?

A:

z The Human Rights Committee invites States Parties to present their reports to the Committee in oral session.

z The United States, for example, appeared before the Committee in March of 1995 to explain its Initial Report.

z The Department of State anticipates that the Committee

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will schedule such a session on the U.S. report in one of its future sessions.

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IF ASKED

Treatment of Terrorist Detainees

Q. Does the U.S. Report discuss the treatment of U.S. detainees overseas captured during operations against the Taliban, al-Qaida and their affiliates and supporters or treatment of detainees in Iraq?

z The report the United States submitted in May of 2005 on its implementation of the Convention Against Torture contained a lengthy annex on detentions of individuals under the control of U.S. Armed Forces in Afghanistan, Iraq and Guantanamo Bay, Cuba, a description of the investigations into abuse allegations arising out of these detentions, and a summary of actions to hold personnel of the U.S. armed forces accountable under the military justice system when they have been found to have committed unlawful acts. That annex also summarized the mechanisms for reviewing the detention of a detainee through combatant status review tribunals and annual administrative review boards, as well as for trying a detainee by military commissions.

z By its terms, the ICCPR expressly applies only to individuals within its (a States Party,s) territory and subject to its jurisdiction. Thus, it does not impose obligations on the United States outside of its territory. Notwithstanding this provision and the fact that these individuals are being held pursuant to the law or war, the United States as a matter of courtesy separately provided information on this subject to the Committee. This material is not part of the U.S. report.

IF ASKED

Torture

Q. Does the report discuss the general subject of torture and cruel, inhuman or degrading treatment or punishment?

A.

z Yes.

z The U.S. Government does not permit, tolerate, or condone torture, or other unlawful treatment of detainees by its personnel or employees under any circumstances.

z Article 7 of the ICCPR provides, inter alia, that (n)o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

z The report describes U.S. law and practice on this subject in the years since the U.S. Initial Report.

o The report underscores that the United States takes all allegations of abuse seriously and investigates them.

o Those people who are found to have committed unlawful

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acts are held accountable as the circumstances warrant.

o Investigations are thorough and have high priority.

z As this subject is contained in only one of the twenty seven substantive articles of the ICCPR, a lengthier discussion of U.S. law and practice on torture and cruel, inhuman or degrading treatment or punishment can be found in the May 2005 U.S. Periodic Report on the U.S. implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

(Note: Issues related to torture were discussed at greater length in May 6, 2005 L press guidance available at the time of the rollout of the U.S. report of its implementation of the Convention Against Torture and will be attached to the package sent to PA.)

Drafted: L/HRR: RHarris  
Clearances: IO/SHA: Tjohnson  
DRL: JGinsburg

Authorizer: IO: MLagon  
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	OMB-01	PA-00	PM-00	PRS-00	ACE-00	P-00	SP-00
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UNCLAS GENEVA 003431

L/UNA BRANCATO, IO - TJOHNSON

E.O. 12958: N/A  
 TAGS: FR, UNGA, UNHR  
 SUBJECT: ENFORCED DISAPPEARANCES INTER-SESSIONAL WORKING  
 GROUP MEETS INFORMALLY; HOMES IN ON ISSUES FOR FORMAL  
 JANUARY 2004 NEGOTIATIONS

REF: GENEVA 002390 AND PREVIOUS

1. (U) BEGIN SUMMARY. THE INTER-SESSIONAL WORKING GROUP HELD "INFORMAL CONSULTATIONS" SEPTEMBER 1-5 PURSUANT TO ITS COMMISSION ON HUMAN RIGHTS MANDATE TO ELABORATE A LEGALLY BINDING INSTRUMENT ON ENFORCED DISAPPEARANCES (E.D.). AT THE OPENING DAY'S SESSION, THE U.S. UNDERScoreD AND EXPLAINED ITS PROCEDURAL OBJECTIONS TO HOLDING INFORMAL MEETINGS THAT UNDULY ACCELERATE NEGOTIATIONS ON LEGAL INSTRUMENTS. U.S. MADE SELECTIVE INTERVENTIONS THAT FOCUSED HEAVILY ON THE SUBSTANTIVE CONCERNS PREVIOUSLY IDENTIFIED IN GUIDANCE FROM STATE AND JUSTICE DEPARTMENTS. U.S. PROCEDURAL OBJECTIONS FELL LARGELY ON UNWELCOME EARS, WITH NO STATEMENTS (PUBLICLY) VOICED IN SUPPORT OF THOSE OBJECTIONS. HOWEVER, U.S VIEWS ON SEVERAL IMPORTANT SUBSTANTIVE ISSUES WERE STRONGLY IN LINE WITH THOSE OF SEVERAL KEY DELEGATIONS. INTERESTINGLY, THE CHAIRMAN AND SEVERAL DELEGATIONS HAVE BEGUN TO ACKNOWLEDGE OPENLY THAT THE ISSUES RAISED BY THESE NEGOTIATIONS ARE MORE COMPLEX THAN HAD BEEN PREVIOUSLY ASSUMED. THIS AWARENESS HAS ALREADY HAD A PERCEPTIBLE MODERATING EFFECT ON SUBSTANTIVE POSITIONS INITIALLY TAKEN BY SOME DELEGATIONS, INCLUDING KEY LATIN DELEGATIONS SUCH AS ARGENTINA AND MEXICO. THOSE ISSUES ON WHICH VIEWS STILL REMAIN FAR FROM CONSENSUS ARE THE FOLLOWING: THE FORM AND MANDATE OF AN INTERNATIONAL

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MONITORING BODY; THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW (IHL) IN PROTECTING AGAINST E.D.; NON-DEROGABILITY OF TREATY OBLIGATIONS TO BE ASSUMED BY STATES PARTIES; AND THE FORM OF THE INSTRUMENT (CONVENTION VS. PROTOCOL). KEY ISSUES ON WHICH A FAVORABLE (FOR THE U.S.) CONSENSUS APPEARS TO BE EMERGING ARE: THE DEFINITION OF E.D.; THE DEATH PENALTY; MILITARY AND SPECIAL TRIBUNALS; STATUTES OF LIMITATIONS (S/L); NON-STATE ACTORS; AMNESTIES, PARDONS, AND PROSECUTORIAL IMMUNITIES; AND TREATY RESERVATIONS. THE NEXT ROUND OF NEGOTIATIONS WILL TAKE PLACE OVER A TWO-WEEK PERIOD FROM 12-23 JANUARY 2004, WHERE THE CHAIRMAN HOPES TO REACH AGREEMENT ON THE TEXTS OF AS MANY DRAFT ARTICLES FOR THE E.D. INSTRUMENT AS POSSIBLE. THE CHAIRMAN IS PREPARING A DRAFT WORKING TEXT OF SUCH ARTICLES THAT WILL BE DISTRIBUTED TO WORKING GROUP MEMBERS ON/ABOUT DECEMBER 1. END SUMMARY.

2. (U) AS ANTICIPATED IN REFTTEL, THE DISCUSSIONS BEGAN WITH A FULL EXCHANGE OF VIEWS ON THE REMAINING ISSUES THAT COULD NOT BE REACHED AT THE JANUARY 2003 OPENING ROUND OF NEGOTIATIONS (SEE PARAS 3 AND 4 BELOW), NAMELY: THE NATURE AND FUNCTIONS OF AN INTERNATIONAL MONITORING MECHANISM; THE FORM THE NEW INSTRUMENT SHOULD TAKE (I.E., CONVENTION VS. PROTOCOL), INCLUDING RELATED LEGAL AND OTHER IMPLICATIONS; AND THE INSTRUMENT'S FINAL CLAUSES -- OF PARTICULAR CONCERN, A RESERVATIONS CLAUSE. DISCUSSION THEN RESUMED WITH FURTHER ANALYSIS OF THE PREVIOUSLY DEBATED "CHAPTERS" IN THE CHAIRMAN'S "KEY ELEMENTS" DISCUSSION PAPER (SEE REPORTING AT PARAS 5-13 BELOW). (THAT PAPER WAS FIRST DISTRIBUTED IN JULY 2003 AND RE-DISTRIBUTED DURING THE SEPTEMBER CONSULTATIONS).

3. (U) INTERNATIONAL MONITORING MECHANISM. MOST SPEAKERS STRONGLY FAVORED INCLUDING AN INTERNATIONAL FOLLOW-UP BODY WITHIN THE FRAMEWORK OF THE NEW INSTRUMENT. THE U.S. INTERVENED TO RESERVE ITS POSITION AND TO SUGGEST THAT THIS ISSUE IS ONE BEST LEFT FOR LATER EXAMINATION FOLLOWING NEGOTIATION OF SUBSTANTIVE STATE OBLIGATIONS YET TO BE DETERMINED. THIS VIEW WAS ECHOED BY SEVERAL OTHER DELEGATIONS, SUCH AS CANADA, JAPAN, AND THE UK. DESPITE CALLS BY SOME DELEGATIONS (SUCH AS SWITZERLAND) FOR AN INTRUSIVE MONITORING REGIME (SUCH AS THE TORTURE CONVENTION'S OPTIONAL PROTOCOL'S "ANYTIME-ANYWHERE" SITE VISIT AUTHORITY), THE WORKING GROUP CHAIRMAN VOICED HIS INTENTION NOT TO PRODUCE AN INSTRUMENT WITH SUCH A CONTROVERSIAL FEATURE. AT THE SAME TIME, THE CHAIR MADE CLEAR HIS STRONG PREFERENCE FOR AN INTERNATIONAL MECHANISM WHOSE MOST IMPORTANT FUNCTION WOULD BE TO INQUIRE IMMEDIATELY WITH THE AFFECTED STATE FOLLOWING A CREDIBLE REPORT OF AN ALLEGED ENFORCED DISAPPEARANCE WITHIN ITS TERRITORY. DEBATE OVER WHETHER TO

CREATE A NEW MONITORING MECHANISM OR TO UTILIZE AN EXISTING ONE (SUCH AS THE HUMAN RIGHTS COMMITTEE) QUICKLY LED TO DISCUSSION OF IMPORTANT SUBSIDIARY ISSUES. AMONG THEM: WHETHER THE HUMAN RIGHTS COMMITTEE (HRC) POSSESSES THE NECESSARY MANDATE AND FUNDING TO EXAMINE ACTS OF FORCED DISAPPEARANCE; AND WHETHER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR), WHICH CREATED THE HRC, WOULD NEED TO BE AMENDED IN ORDER TO GIVE NEW E.D. RESPONSIBILITIES TO THE HRC. MOST DELEGATIONS AND THE CHAIRMAN ARE CURRENTLY INCLINED TOWARDS USING THE HUMAN RIGHTS COMMITTEE AS THE FOLLOW-UP MECHANISM, THOUGH THIS ISSUE REMAINS FAR FROM RESOLVED.

4. (U) INTERNATIONAL MONITORING MECHANISM (CONTINUED). LATE IN THE AFTERNOON OF THE FINAL DAY, THE WORKING GROUP RECEIVED A LEGAL OPINION AUTHORED BY RALPH ZACKLIN OF THE UN

HEADQUARTERS LEGAL OFFICE. THAT OPINION CONCLUDED THAT USING THE E.D. TREATY TO TASK NEW MONITORING DUTIES TO THE HRC COULD PRESENT COMPLEX AND "SERIOUS LEGAL OBSTACLES" AS WELL AS "RAISE SUBSTANTIAL ADMINISTRATIVE AND FINANCIAL ISSUES". THIS LEGAL OPINION IS SURE TO HAVE A SOBERING EFFECT ON THE WORKING GROUP'S FUTURE NEGOTIATIONS OF THE INTERNATIONAL MONITORING MECHANISM ISSUE, INCLUDING THE RELATED ISSUE OF WHETHER THE NEW INSTRUMENT SHOULD BE ADOPTED IN THE FORM OF A PROTOCOL TO THE ICCPR OR AS AN ENTIRELY NEW CONVENTION.

5. (U) TREATY RESERVATIONS CLAUSE. THIS ISSUE HAS LONG-STANDING AND INSTITUTIONAL INTEREST TO THE DEPARTMENT. THE US UNDERScoreD THE IMPORTANCE OF RESERVATIONS CLAUSES AS TOOLS THAT CAN ASSIST ALL STATES (PARTICULARLY FEDERAL STATES SUCH AS THE U.S.) IN DECIDING WHETHER TO BECOME PARTIES TO A TREATY REGIME. IN SUPPORT OF OUR POSITION, THE U.S. DREW THE WORKING GROUP'S ATTENTION TO THE TEXT OF THE INTERNATIONAL LAW COMMISSION'S (ILC) 1997 PRELIMINARY CONCLUSIONS IN WHICH THE ILC SAID THAT RESERVATIONS CLAUSES WERE SUITABLE FOR ALL NORMATIVE MULTILATERAL TREATIES, "INCLUDING TREATIES IN THE AREA OF HUMAN RIGHTS." NOTWITHSTANDING ARGENTINA'S IMPASSIONED PLEA TO BAN ANY RESERVATIONS TO THE NEW INSTRUMENT, THE CHAIRMAN STATED HIS FIRM VIEW THAT BARRING RESERVATIONS WOULD PREVENT COUNTRIES FROM JOINING THE TREATY REGIME, PARTICULARLY STATES THAT NEED RESERVATIONS TO AVOID CONSTITUTIONAL OR OTHER DOMESTIC LAW IMPEDIMENTS IF THEY BECAME PARTIES. SWITZERLAND (SPEAKING AS A FEDERAL STATE) ALSO ANNOUNCED ITS SUPPORT FOR A RESERVATIONS CLAUSE. ALTERNATIVELY, THEY SAID, SILENCE ON THIS ISSUE WOULD THEN ALLOW THE VIENNA CONVENTION ON THE LAW OF TREATIES TO HAVE ITS EFFECT. MEXICO JOINED THE BANDWAGON, CALLING RESERVATIONS A "NECESSARY EVIL". SOUTH AFRICA AND THE UK SAID ALLOWING RESERVATIONS WAS THE "PRAGMATIC" THING TO DO.

6. (U) DEFINITION OF "ENFORCED DISAPPEARANCE". THERE WERE SHARPLY DIVERGENT AND DIFFICULT TO RECONCILE VIEWS INITIALLY EXPRESSED ON THIS ISSUE. CONSIDERABLE ATTENTION CENTERED ON WHETHER TO ADOPT IN FULL (OR TO BUILD UPON) THE DEFINITION OF ENFORCED DISAPPEARANCE FOUND IN THE ROME STATUTE TO THE INTERNATIONAL CRIMINAL COURT (ICC) OR THE DEFINITION FOUND IN THE 1998 DRAFT CONVENTION ON E.D. AS THE DEBATE EVOLVED, A STRICT ROME STATUTE APPROACH BEGAN TO FALL INCREASINGLY INTO DISFAVOR. THIS WAS BECAUSE, IF THE ROME STATUTE APPROACH WERE TO BE FULLY APPLIED, ENFORCED DISAPPEARANCE WOULD ONLY BE PUNISHED "WHEN COMMITTED AS PART OF A WIDESPREAD AND SYSTEMATIC ATTACK DIRECTED AGAINST ANY CIVILIAN POPULATION" (HENCE, ONLY WHEN IT RISES TO THE LEVEL OF A VIRTUAL "CRIME AGAINST HUMANITY"). THIS APPROACH WAS ULTIMATELY REGARDED AS UNDULY NARROW. U.S. TALKING POINTS ON ALL ISSUES RELATED TO THE DEFINITION OF E.D. WERE DEPLOYED. THE U.S. JOINED SEVERAL OTHER DELEGATIONS WHO OPPOSED A "WIDESPREAD AND SYSTEMATIC" APPROACH (E.G., ARGENTINA, CANADA, FRANCE, AND MEXICO). THE U.S. SUPPORTED CANADA'S, CHINA'S AND SPAIN'S APPEALS TO PERMIT REASONABLE DETENTION OF SUSPECTED CRIMINALS FOR LAW ENFORCEMENT PURPOSES, PROVIDED SUCH DETENTION IS NOT FOR "A PROLONGED PERIOD OF TIME." SOME DELEGATIONS URGED THAT ANY DEPRIVATION OF A PERSON'S LIBERTY ASSOCIATED WITH AN ACT OF ENFORCED DISAPPEARANCE SHOULD BE DEEMED UNLAWFUL "IN WHATEVER FORM OR FOR WHATEVER REASON", AND THUS PREFERRED THE APPROACH FOUND IN ARTICLE I OF THE 1998 DRAFT E.D. CONVENTION.

7. (U) DEFINITION (CONTINUED). THE ISSUE OF WHETHER THE NEW INSTRUMENT SHOULD ADOPT AN EXCLUSIVE DEFINITION OF ENFORCED DISAPPEARANCES (AND IF SO, ONE BASED ON THE ROME STATUTE, THE DRAFT 1998 CONVENTION, OR VARIANTS OF THOSE INSTRUMENTS) WAS HOTLY DEBATED. AN ALTERNATIVE APPROACH IS THAT FOUND IN THE CONVENTION AGAINST TORTURE ("CAT"), WHICH PENALIZES "ALL ACTS OF TORTURE" (AND THUS BY EXTENSION "ALL ACTS OF ENFORCED DISAPPEARANCES"). THE U.S. SUPPORTED OTHER DELEGATIONS (CANADA, JAPAN, UK) WHO VOICED STRONG SUPPORT FOR AN "ACTS" APPROACH. THESE DELEGATIONS POINTED TO THE EFFECTIVENESS SUCH APPROACH COULD HAVE UNDER THEIR RESPECTIVE DOMESTIC LAWS. AS THE DISCUSSION EVOLVED, A NUMBER OF PREVIOUSLY SKEPTICAL DELEGATIONS BEGAN TO PERCEIVE THAT AN "ACTS" APPROACH COULD GENUINELY BE RECONCILED WITH THE GOAL OF CRIMINALIZING AND PUNISHING ENFORCED DISAPPEARANCES. THE CHAIRMAN URGED AN APPROACH OF "PRAGMATISM" IN ORDER TO ALLOW THOSE STATES THAT COULD RELY ON AN "ACTS" APPROACH TO BE FREE TO DO SO, WITHOUT BEING OBLIGED TO ENACT AN EXCLUSIVE, NEW CRIMINAL STATUTE DEFINING AND PUNISHING ENFORCED DISAPPEARANCES. THE CHAIRMAN EXPLAINED THAT "OUR PURPOSE IS NOT TO CREATE A NEW INTERNATIONAL CRIMINAL CODE. WE MUST TAKE INTO ACCOUNT AND, AS APPROPRIATE, BASE OUR WORK ON

DOMESTIC LAW." HIS INTERVENTION CHILLED FURTHER DISCUSSION OF THE DEFINITION ISSUE. REGARDING NON-STATE ACTORS OR OTHER PRIVATE ACTORS WITH NO LINK TO THE STATE, THE U.S. SUPPORTED SEVERAL OTHER STATE DELEGATIONS (ARGENTINA, CANADA, MEXICO, JAPAN, PAKISTAN, SWEDEN AND UK), AND ONE KEY NGO DELEGATION (FEDEFAM), THAT HAD STRONG RESERVATIONS ABOUT INCLUDING SUCH ACTORS WITHIN THE DEFINITION OF ENFORCED DISAPPEARANCES. IN

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HIS SUMMARY STATEMENT, THE CHAIRMAN DISCOURAGED ANY FURTHER SERIOUS EFFORT TO INCLUDE NON-STATE ACTORS WITHIN THE E.D. DEFINITION.

8. (U) STATUTES OF LIMITATIONS. A FAIRLY STRONG CONSENSUS QUICKLY EMERGED IN FAVOR OF A FLEXIBLE APPROACH IN ADDRESSING THE STATUTE OF LIMITATIONS (S/L) ISSUE. SEVERAL DELEGATIONS (CANADA, CHINA, GERMANY, INDIA, JAPAN, SWEDEN, THE UNITED STATES AND THE UK) SAID THEY SAW MERIT IN AN APPROACH THAT ALLOWED SUCH STATUTES TO BE APPLIED COMMENSURATE WITH THE GRAVITY OF THE OFFENSE. IN THE SAME VEIN, SEVERAL DELEGATIONS (LED BY CANADA) SAID THEY COULD, AS AN ALTERNATIVE, SUPPORT A SILENT APPROACH THAT WOULD ALLOW EACH STATE'S S/L LAWS TO TAKE THEIR NATURAL EFFECT. THE CHAIRMAN WARMLY ENDORSED SUCH AN APPROACH AS BEING CONSISTENT WITH HIS PREFERENCE TO RELY, WHERE FEASIBLE, ON EXISTING DOMESTIC LAW TO ADDRESS PROCEDURAL ISSUES.

9. (U) AMNESTIES, PARDONS, AND PROSECUTORIAL IMMUNITIES. THE U.S. JOINED THE UK, SOUTH AFRICA AND THAILAND IN URGING A SIMILAR "DOMESTIC LAW-BASED" APPROACH WITH REGARD TO THE ACCEPTABILITY OF AMNESTIES, AND PARDONS AND "SIMILAR MEASURES". MANY HEADS NODDED IN THE AFFIRMATIVE WHEN THE U.S. UNDERScoreD THE IMPORTANCE OF AVOIDING CONSTITUTIONAL ISSUES THAT WOULD QUICKLY BE RAISED BY BANNING OR RESTRICTING AMNESTIES AND PARDONS IN THE CONTEXT OF ENFORCED DISAPPEARANCE PROSECUTIONS. U.S. REP EXPLAINED THE U.S. LAW ENFORCEMENT ADVANTAGES RESULTING FROM PROSECUTORS' USE OF TRANSACTIONAL IMMUNITY TO COMPEL CRITICAL CO-DEFENDANT TESTIMONY TO CONVICT A MAJOR OFFENDER. U.S. REP THEREFORE URGED REJECTION OF LANGUAGE LIKE THAT FOUND IN ARTICLE 18 OF THE 1992 U.N. "DECLARATION ON THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCES" BARRING "SIMILAR MEASURES THAT MIGHT HAVE THE EFFECT OF EXEMPTING (OFFENDERS) FROM CRIMINAL PROCEEDINGS OR SANCTION." THIS WORDING HAD BEEN STRONGLY FAVORED BY MOST OF THE LATIN STATE DELEGATIONS AND SEVERAL NGOS PRESENT. HOWEVER, THEIR OPPOSITION SEEMS TO BE WEAKENING.

10. (U) MILITARY AND SPECIAL TRIBUNALS. IN CONNECTION WITH DISCUSSION OF ISSUES RELATING TO "IMPUNITY", A FEW DELEGATIONS ATTEMPTED TO OPEN A BROAD DISCUSSION ON WHETHER

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THE INSTRUMENT SHOULD BAR MILITARY AND SPECIAL TRIBUNALS. THE U.S. SUPPORTED THOSE WHO URGED AN APPROACH NOT DISSIMILAR TO THAT FOUND IN PARAGRAPH 6 OF THE CHAIRMAN'S WORKING PAPER ("PERSONS SUSPECTED OF ENFORCED DISAPPEARANCES SHALL BE PRESENTED BEFORE INDEPENDENT AND IMPARTIAL COURTS AND ENJOY ALL GUARANTIES OF A FAIR TRIAL."). THE U.S. FURTHER ASSERTED THAT THE FORM OF THE TRIBUNAL WAS NOT CRITICAL, BUT RATHER WHETHER IT WAS CAPABLE OF PROVIDING FAIR JUDICIAL PROCESS WITH MINIMUM RECOGNIZED STANDARDS OF DUE PROCESS. THE CHAIRMAN THEN MADE ANOTHER TIMELY INTERVENTION TO ANNOUNCE HIS FIRM INTENTION TO PRODUCE AN INSTRUMENT THAT DOES NOT CONDEMN THE USE OF MILITARY OR SPECIAL TRIBUNALS. WHAT MATTERED MOST, HE SAID, WAS WHETHER THE ACTUAL PROCEDURE AMOUNTED TO "SHAM JUSTICE." HE THEN NOTED THAT, AS FAR AS HE WAS CONCERNED, IT COULD GENERALLY BE ASSUMED THAT U.S. MILITARY TRIBUNALS ARE INDEED CAPABLE OF ADHERING TO MINIMUM DUE PROCESS STANDARDS. THAT RATHER ABRUPTLY ENDED DISCUSSION OF THIS ISSUE.

11. (U) DEATH PENALTY. SEVERAL DELEGATIONS (INSTIGATED MAINLY BY THE SWISS, AND LATER BY BELGIUM AND MEXICO) MADE AN UNSUCCESSFUL ATTEMPT TO REQUIRE AN EXPRESS BAR TO THE DEATH PENALTY WHEN STATES ENGAGE IN INTERNATIONAL COOPERATION IN SUPPRESSING OR PUNISHING ENFORCED DISAPPEARANCES. FOR INSTANCE, THEY SOUGHT INCLUSION OF LANGUAGE THAT WOULD PREVENT EXTRADITION, IF SUCH COOPERATION RISKED EXPOSING A SUSPECTED CRIMINAL TO THE DEATH PENALTY UPON CONVICTION. THE U.S. PUT DELEGATIONS ON NOTICE THAT ADDING SUCH LANGUAGE WOULD BE INFLAMMATORY AND COMPEL CERTAIN STATES TO ENTER A RESERVATION REJECTING SUCH A RESTRICTION. THIS PROMPTED THE CHAIR TO ANNOUNCE HIS GOAL OF CONCLUDING A "UNIVERSAL INSTRUMENT" THAT WOULD AVOID THE NEED FOR A "PROLIFERATION OF RESERVATIONS." THE CHAIRMAN THEN NOTED EMPHATICALLY THAT ADDRESSING "THE DEATH PENALTY IS NOT (HE UNDERScoreD NOT) PART OF OUR MANDATE." THE INTERNATIONALLY RENOWNED PRESIDENT OF THE NGO, FEDEFAM, (HERSELF A MOTHER WHO LOST A DAUGHTER AND GRANDDAUGHTER TWENTY-SEVEN YEARS AGO TO ENFORCED DISAPPEARANCE) SECONDED THE CHAIRMAN'S STATEMENT AND SAID "THIS IS NOT THE SUBJECT WE ARE HERE TO DEAL WITH" (DESPITE HER STATED PERSONAL OPPOSITION TO THE DEATH PENALTY). SHE CONTINUED, "WE MUST ACCEPT THE FACT THAT EACH COUNTRY IS FREE TO ACT ON THIS QUESTION AS IT DEEMS FIT." THESE KEY INTERVENTIONS SEEM TO HAVE DIMINISHED SIGNIFICANTLY THE POSSIBILITY OF A FINAL INSTRUMENT THAT EXPLICITLY ADDRESSES OR RESTRICTS THE DEATH PENALTY.

12. (U) PREVENTION. UNDER THE "PREVENTION" CHAPTER, THERE WAS ACTIVE EXAMINATION OF THE NINE POINTS ADDRESSED IN THE DISCUSSION PAPER. PARTICULAR FOCUS WAS GIVEN TO POINT 2 (THE

NON-DEROGABILITY OF THE RIGHT "TO BE INFORMED OF THE PLACE AND MOTIVES OF THE DETENTION"), AND POINT 3 (THE OBLIGATION OF THE STATE TO PRESENT DETAINEES WITHOUT UNDUE DELAY BEFORE A COURT OR JUDICIAL AUTHORITY). DELEGATION VIEWS ON THESE AND RELATED ISSUES SPLIT ALONG PREDICTABLE LINES. HOWEVER, PARTICULARLY NOTABLE WAS THE FACT THAT THE CHAIRMAN, HIS ABLE LEGAL ADVISER FROM PARIS (ANTOINE BUCHET), AND THE HIGHLY RESPECTED INDEPENDENT EXPERT AND ADVISER TO THE WORKING GROUP, LOUIS JOINET, (ALL FRENCH NATIONALS) HELPED STEER THE DEBATE INTO CONSTRUCTIVE, REALISTIC DIRECTIONS, OFFERING WELL-REASONED REBUTTALS TO MORE FAR-REACHING PROPOSALS BY SOME DELEGATIONS AND NGOS. IN SUMMING UP, THE CHAIR ACKNOWLEDGED, HOWEVER, THAT DISCUSSION OF THE NINE POINTS LISTED UNDER THIS CHAPTER HAD NOT YIELDED A CONSENSUS.

13. (U) DEFINING VICTIMS OF E.D. DISCUSSION FOCUSED PRIMARILY ON TWO ISSUES: HOW BROADLY TO DEFINE THE SCOPE OF "VICTIMS"; AND APPROPRIATE REMEDIES, INCLUDING, INTER ALIA, THE RIGHT TO REPARATION. THE U.S. SUGGESTED THE UTILITY OF AN APPROACH THAT WOULD ALLOW EACH STATE SUFFICIENT FLEXIBILITY TO DETERMINE THE EACH CLASS OF POTENTIAL "VICTIMS" BY APPLYING ITS DOMESTIC LAW PRINCIPLES ON "STANDING" TO SUE. DELEGATIONS SEEM GENERALLY WILLING TO CONSIDER SUCH A PRAGMATIC APPROACH, IN LIEU OF A PREDETERMINED LIST OF ALL POTENTIAL E.D. "VICTIMS" ALLEGEDLY ENTITLED TO SEEK A REMEDY.

14. (U) APPLICATION OF IHL TO ENFORCED DISAPPEARANCES. A REPRESENTATIVE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC) OFFERED PREPARED REMARKS (ALREADY FAXED TO L/HRR) THAT DISCUSSED THE INTERPLAY BETWEEN INTERNATIONAL HUMANITARIAN LAW (IHL) AND ENFORCED DISAPPEARANCES AS A VIOLATION OF HUMAN RIGHTS LAW. ALTHOUGH THE ICRC REP AVOIDED SPEAKING IN CATEGORICAL TERMS, HER REMARKS WERE UNHELPFUL IN SEVERAL RESPECTS, AS THEY TENDED TO SUGGEST (AND TO RECOMMEND) THAT PRINCIPLES FROM IHL COULD APPROPRIATELY BE APPLIED TO FILL GAPS IN HUMAN RIGHTS LAW TO ENHANCE PROTECTION FROM ENFORCED DISAPPEARANCES. HER COMMENTS WOULD HAVE PROVOKED A GENERAL DEBATE, BUT THE CHAIR PRECLUDED THAT AND ENCOURAGED DELEGATIONS TO CAREFULLY CONSIDER THE ICRC,S REMARKS IN THE CONTEXT OF THE NEXT ROUND OF NEGOTIATIONS.

15. (U) NEXT STEPS. THE CHAIRMAN ANNOUNCED THE NEXT FORMAL SESSION OF THE WORKING GROUP WOULD BE HELD FROM 12-23 JANUARY 2004, WHERE HE WILL BEGIN "TRYING TO REACH CONSENSUS ON DRAFTING ARTICLES". HE ANNOUNCED HIS INTENTION TO PRODUCE A NEW WORKING DOCUMENT (PRESUMABLY AN INITIAL DRAFT OF A CONVENTION TEXT). THIS NEW WORKING DOCUMENT WILL DRAW FROM THE SEPTEMBER DISCUSSIONS AND BE MADE AVAILABLE TO THE

WORKING GROUP ON OR ABOUT DECEMBER 1. IN SUMMING UP, THE CHAIRMAN (AMBASSADOR KESSEDJIAN) IDENTIFIED FOUR GOALS HE INTENDS TO USE AS GUIDING PRINCIPLES AT THE JANUARY SESSION. FIRST, USE THE 1992 DRAFT DECLARATION AS A MINIMUM THRESHOLD AND POINT OF REFERENCE, WITH A VIEW TO INCORPORATING ALL OF ITS KEY ELEMENTS. SECOND, AS FAR AS POSSIBLE, USE AGREED LEGAL EXPRESSIONS FOUND IN OTHER INSTRUMENTS IN DRAFTING TEXT FOR THE E.D. INSTRUMENT, UPDATING SUCH AGREED LANGUAGE ONLY WHERE NECESSARY. THIRD, AVOID NEEDLESSLY OVERBURDENING STATES PARTIES, RECOGNIZING THAT THE NEW INSTRUMENT NEED NOT FILL IN ALL THE LEGAL GAPS DESIRED BY SOME TO PROVIDE FULL PROTECTION FROM ENFORCED DISAPPEARANCES. IN EFFECT, THIS MEANS LEAVING SUFFICIENT ROOM FOR APPLICABLE DOMESTIC LAW TO FILL IN CERTAIN GAPS, HE EXPLAINED. AND FOURTH, AVOID LEAVING GAPS IN THAT WOULD CLEARLY WEAKEN THE EFFECTIVENESS OF THE NEW INTERNATIONAL INSTRUMENT PROTECTING AGAINST E.D.

16. (U) NOTABLE CLOSING SESSION DEVELOPMENTS. JAPAN STRESSED THE NEED FOR THE NEXT WORKING DOCUMENT TO "REFLECT ALL THE DIFFERENT VIEWS" (READ: INCLUDING CONSERVATIVE, MINORITY VIEWS FROM STATE DELEGATIONS). ON THE FINAL DAY OF DISCUSSIONS, AN AD HOC GROUP OF LIKE-MINDED DELEGATIONS, INCLUDING CANADA, JAPAN, THE UNITED STATES AND AUSTRALIA, INTERCEPTED THE CHAIRMAN BEFORE HIS ARRIVAL AT THE MEETING ROOM TO QUERY HIM ABOUT HOW HE INTENDED TO PREPARE THE NEXT DRAFT DOCUMENT. WE CAUTIONED HIM ABOUT THE SERIOUS CONCERNS THAT WOULD BE RAISED IF THAT DOCUMENT REFLECTED UNDULY AN "NGO" PERSPECTIVE. IN A TWENTY-MINUTE MEETING OUTSIDE THE MEETING HALL, THE CHAIRMAN WENT TO LENGTHS TO REASSURE THE AD HOC GROUP THAT HE WOULD BE PRAGMATIC IN STRIKING A PROPER BALANCE BETWEEN THE COMPETING VIEWS, STICKING WITH HIS PREVIOUSLY STATED OPPOSITION TO INFLAMMATORY REFERENCES SUCH AS THE DEATH PENALTY, MILITARY TRIBUNALS, ETC. LATER, THE FEDEFAM (OUTGOING) PRESIDENT (MARTA OCAMPO DE VASQUEZ) (SEE PARA 11 ABOVE) WAS INVITED BY THE CHAIRMAN TO MAKE A PARTING STATEMENT, IN VIEW OF HER INTERNATIONALLY RENOWNED STATURE ON THE E.D. ISSUE. TO HER CREDIT, OCAMPO URGED NEGOTIATORS TO STAY FOCUSED ON THE IMPORTANT ISSUES NEEDED TO PRODUCE AN EFFECTIVE INSTRUMENT AS SWIFTLY AS POSSIBLE. IN THE CONTEXT

OF HER PREVIOUS INTERVENTIONS, THIS WAS CODEWORD FOR AVOID EXTRANEOUS DEBATES OVER SUCH ISSUES AS REFERENCES TO THE DEATH PENALTY AND THE INCLUSION OF NON-STATE ACTORS WITHIN THE TREATY REGIME.

17. (U) COMMENT.

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END COMMENT.

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