

b) à l'Etat partie sur le territoire duquel la mission d'enquête a été effectuée.

5. La procédure visée par le présent article est confidentielle. Toutefois, avec l'accord des Etats parties concernés, [l'organe de suivi] peut rendre publiques ses constatations

Article II-D

Les membres [de l'organe de suivi] et ceux qui les accompagnent en mission sur le territoire des États parties ont droit aux facilités, privilèges et immunités reconnus aux experts en mission pour l'Organisation des Nations Unies, tels qu'ils sont énoncés dans les sections pertinentes de la Convention sur les privilèges et immunités des Nations Unies.

Article II-E

1. [L'organe de suivi] n'est compétent qu'à l'égard des privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument].

2. Si un Etat devient partie [au présent instrument] après l'entrée en vigueur de celui-ci, ses obligations vis-à-vis [de l'organe de suivi] ne concernent que les privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument] à son égard.

Article II-F

1. [L'organe de suivi] présente aux États parties et à l'Assemblée générale de l'Organisation des Nations Unies un rapport annuel sur les activités qu'il aura réalisées en application [du présent instrument].

2. Afin d'assurer le suivi de ses observations et de ses recommandations, [l'organe de suivi] peut, à sa discrétion, décider de reproduire dans le rapport annuel qu'il établit conformément au paragraphe 1 tous commentaires, observations, recommandations et mises en garde formulés par lui en vertu de l'article II-A, accompagnés des observations reçues des États parties intéressés. Il peut aussi décider de reproduire les conclusions rendues publiques conformément à l'article II-B, paragraphe 5, et les constatations rendues publiques conformément à l'article II-C, paragraphe 5.

**Partie III**

Article III-A

1. [Le présent instrument] est ouvert à la signature de [...].

2. [Le présent instrument] est soumis à la ratification de [...]. Les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.

3. *[Le présent instrument]* est ouvert à l'adhésion de [...]. L'adhésion se fera par le dépôt d'un instrument d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies.

Article III-B

1. *[Le présent instrument]* entrera en vigueur le trentième jour après la date du dépôt du *[N<sup>me</sup>]* instrument de ratification ou d'adhésion.

2. Pour tout État qui ratifiera *[le présent instrument]* ou y adhèrera après le dépôt du dixième instrument de ratification ou d'adhésion, *[le présent instrument]* entrera en vigueur le trentième jour après la date du dépôt par cet État de son instrument de ratification ou d'adhésion.

Article III-C

Le Secrétaire général de l'Organisation des Nations Unies notifiera à tous les États Membres de l'Organisation des Nations Unies et à tous les États qui auront signé *[le présent instrument]* ou y auront adhéré :

a) les signatures, les ratifications et les adhésions reçues en application de l'article III-A ;

b) la date d'entrée en vigueur *[du présent instrument]* en application de l'article III-B.

Article III-D

Les dispositions *[du présent instrument]* s'appliquent, sans limitation ni exception aucune, à toutes les unités constitutives des États fédéraux.

Article III-E

Aucune circonstance exceptionnelle, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'ex

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Peay, T Michael

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**From:** Brancato, Gilda M  
**nt:** Tuesday, December 24, 2002 6:38 AM  
**To:** Surena, Andre M; Gorove, Katherine M; Manning, Denise; Johnson, Thomas A; Sicade, Ly  
M; Dorosin, Joshua L; Camponovo, Christopher N (DRL);  
'Eliana\_Daivdson@nts.policy.osd.pentagon.smil.mil'  
**Cc:** Jacobson, Linda; Dolan, JoAnn; Buchwald, Todd F; Danies, Joel D(Geneva); Peay, T Mich  
(Geneva); Solomon, Steven A(Geneva); Brancato, Gilda M  
**Subject:** Revised instructions: WG on forced disappearances

Attached for your clearance is a revised set of instructions that take into account comments received from several offices including Justice/OIA. This revision shifts the focus of discussion from domestic constraints to international standards, particularly the ICCPR, to which we are a party. May I have your comments and clearance by Tuesday December 31, please?

I will be circulating next Monday for your clearance a discussion of some of the more problematic articles of the 1998 UNCHR sub-commission draft convention.



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Thank you for your review, and wishing you wonderful holidays. Gilda

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 23 JUN 2009 200706444

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U.S. Government's Initial Intervention at  
Working Group Negotiations on a Draft  
Forced Disappearances Convention  
(January 6, 2003)

The United States delegation takes great pleasure Mr. Chairman, in warmly congratulating you on your assumption of the chairmanship of this working group, for all of the reasons that have already been mentioned.

The United States deplores forced disappearances and regards them as a serious violation of human rights and fundamental freedoms, which, as others have correctly pointed out, result in several associated violations of human rights guarantees. These include, for instance, deprivation of the right to liberty and security of the person, the right against arbitrary arrest or detention, and the rights to due process and a fair trial, just to mention a few. Moreover, too often, forced disappearances lead to some of the gravest violations, such as torture and deprivation of the right to life.

So there should be no mistake that the U.S. harbors no toleration for the despicable collection of violations associated with the phenomenon of "forced disappearance."

Nonetheless, the U.S. finds itself in agreement with several delegations that have suggested in various ways that the Working Group has much work ahead of it in order to elaborate a document that could attract widespread acceptance within the international community.

First, for example, reaching consensus on a legal definition of "forced disappearance" that would be precise and not prohibit legitimate law enforcement and military activities presents a daunting challenge for the Working Group. While we recognize the effort invested in the 1998 Sub-Commission draft on forced disappearances, we believe that its definitional section is in several respects far too broad to be workable in the practical sense of defining and penalizing a crime. As we will point out along the way, the draft text contains other deficiencies which will require close scrutiny and revision. In this regard, we believe that the Working Group should make a virtue of precision in our negotiations.

Second, whatever draft instrument results from this process should be compatible with internationally accepted standards and guarantees, such as those contained in the ICCPR.

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Third, we believe the proposed convention should be carefully crafted to target forced disappearances without capturing collateral issues and bodies of law. For example, we believe that existing international humanitarian law should continue to govern and resolve issues arising from armed conflict.

A fourth concern is that, in our view, a convention should place its greatest emphasis on strengthening national laws and law enforcement practices, which is where the problem of forced disappearances is typically confronted.

Fifth, we would not support the creation of a new treaty body to oversee compliance with a new convention. We oppose duplication of the work and the capabilities of existing treaty bodies, and would wish to avoid additional costs and efforts associated with such duplication. For instance, several delegations have made the interesting proposal that we frame this instrument as an optional protocol to the ICCPR. An advantage of so doing may be that the Human Rights Committee could serve as the monitoring mechanism.

A sixth concern relates to provisions that would clearly, from the outset, impede consensus, such as a no-reservations provision and certain other provisions contained in the 1998 draft.

These comments represent some of our initial thoughts. Others will likely be raised in the course of the Working Group's deliberations. We look forward to actively participating in the work of this body.

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*Composite Text of all USG  
Comments except 16 to 19 and  
M.I.E.*

**Draft Instrument on Forced Disappearances/US Proposed Text**

GE175

**Article 1.**

**“For purposes of this instrument, an enforced disappearance is considered to be an arrest, detention or abduction of a person by, or with the authorization, support or acquiescence of, a State, followed by its refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of such person, with the intention of removing that person from the protection of the law for a prolonged period of time.”**

*was intended  
= engaging in conduct that is for the purpose of removing*

**Article 2.**

**Article 2(1): Replace current 2(1) and 3(1)(a)-(c) with the following text:**

**“Each State Party shall take the necessary measures to ensure that the acts which comprise an enforced disappearance, for purposes of this instrument, constitute a punishable offense or offenses under its criminal law [or alternatively: is subject to criminal sanction under its criminal law]. The same shall apply to an attempt to commit an enforced disappearance and to an act that constitutes complicity or participation in, or a conspiracy to commit, an enforced disappearance.”**

**Article 2bis.**

**“States Parties shall take all feasible measures to prohibit and criminalize the acts described in Article 1 when committed by private organizations, groups or individuals.”**

**Article 4. Add new Article 4(3):**

**“Mitigating and aggravating circumstances shall also be permitted as provided under the domestic law of a State Party unless inconsistent with the object and purposes of this instrument.”**

**Article 9. Replace Article 9(1)© and Article 9(1)(d) with the following.**

**“In addition, each State party may take the necessary measures to establish jurisdiction in respect of an enforced disappearance in the following instances:**

- (a) when the disappeared person is one of its nationals;**
- (b) when the alleged perpetrator of the offense is present in a territory under its jurisdiction, unless the State extradites the alleged perpetrator, or transfers him or her to an international tribunal.”**

**Article 10(3). Preference is to *delete* Article 10(3).**

**Otherwise reword as follows:**

**“ Any foreign national held in custody pursuant to paragraph one may communicate with an appropriate representative of the State of which he or she is a national in accordance with applicable international legal obligations.”**

**Article 11.**

**Article 11(3): Substitute “duly constituted under law” for “of general jurisdiction,” so that the provision reads as follows.**

**“Any person alleged to have committed an enforced disappearance shall be tried in a court duly constituted under law which offers guarantees of competence, independence and impartiality and respect for a fair trial.”**

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Article 12.

Article 12 *passim*. Change competent "authority" to "domestic authorities."

Article 12(3): Add at end of chapeau:

" , in accordance its domestic law":

Article 12(6): Reword as follows: "Each party shall endeavor to take the necessary measures to prevent or punish acts intended to hinder an investigation."

Article 13(6) and 14(2): Add after "refuse": "or condition".

Article 15.

Add to Article 15(1) and 15(2) after "assistance":

"in appropriate cases."

*Chapter 6 should read "Prevention" not "Presentation."*

Article 16.

Article 16(1)(d): Add at end of chapeau: "in accordance with the Constitution of the State Party":

Article 19.

Article 19(a): Add "knowing" before "delay."

Article 19(b): Add "knowing" before "Failure."

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Article 20.

The United States delegation proposes either the current text or a text that incorporates beneficiaries of training, other than law enforcement personnel, who are referred to in CAT Article 10 (i.e. civil or military, medical personnel, public officials and other persons who may become involved in a situation of enforced disappearance).

Article 21.

Reword text to track CAT Article 3, as follows:

“1. No State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subject to an enforced disappearance.

2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.”

Article III-E and III-F.

Article III-E (Non-derogation) may be acceptable provided that Article III-F (Operation of IHL) is clarified, to read as follows:

“Nothing in this instrument shall other others rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions.”

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*Les indications telles que « nouveau », « restructuré », etc, visent à faciliter la comparaison avec le document E/CN.4/2004/WG22/WP.1/rev.1 du 1<sup>er</sup> décembre 2003.*

***Préambule (nouveau)***

Les Etats Parties *[au présent instrument]*,

*Rappelant* la Déclaration sur la protection de toutes les personnes contre les disparitions forcées adoptée par l'Assemblée Générale des Nations Unies dans sa résolution 47/133 du 18 décembre 1992,

*Conscients* de l'extrême gravité de la disparition forcée qui constitue un crime et, dans certaines circonstances, un crime contre l'humanité.

*Déterminés* à lutter contre l'impunité du crime de disparition forcée,

*Affirmant* le droit des victimes de savoir la vérité sur les circonstances d'une disparition forcée et le sort de la personne disparue,

Sont convenus de ce qui suit :

**Partie I**

***Article premier***

Aux fins *[du présent instrument]*, on entend par disparition forcée la privation de liberté d'une personne sous quelque forme que ce soit, commise par des agents de l'État ou par des personnes ou des groupes de personnes qui agissent avec l'autorisation, l'appui ou l'acquiescement de l'État, suivie du déni de la reconnaissance de la privation de liberté ou de la dissimulation du sort réservé à la personne disparue ou du lieu où elle se trouve, la soustrayant ainsi à la protection de la loi.

***Article-1 bis (nouveau)***

1. Nul ne peut être soumis à une disparition forcée.
2. *(repris de l'ancien article III E)*. Aucune circonstance, quelle qu'elle soit, qu'il s'agisse de l'état de guerre ou de menace de guerre, d'instabilité politique intérieure ou de tout autre état d'exception, ne peut être invoquée pour justifier la disparition forcée.

***Article 2 (modifié)***

1. Tout Etat partie prend les mesures nécessaires pour que la disparition forcée, telle qu'elle est définie à l'article 1<sup>er</sup>, constitue une infraction au regard de son droit pénal.

2. Tout Etat partie prend des mesures équivalentes lorsque les agissements définis à l'article 1<sup>er</sup> sont le fait de personnes ou de groupes de personnes n'ayant pas l'autorisation, l'appui ou l'acquiescement de l'Etat.

**Article 2 bis (nouveau)**

La pratique généralisée ou systématique de la disparition forcée constitue un crime contre l'humanité et entraîne les conséquences prévues par le droit international.

**Article 3 (restructuré)**

Tout Etat partie prend les mesures nécessaires pour poursuivre et punir ceux qui commettent ou concourent à commettre une disparition forcée.

1. Sont punis :

- a) les auteurs d'une disparition forcée et ceux qui s'en rendent complices.
- b) la tentative de disparition forcée,
- c) l'entente en vue de commettre une disparition forcée.

2. Sont également punis :

a) ceux qui ordonnent ou encouragent la commission ou la tentative d'une telle infraction, ceux qui en facilitent la commission ou la tentative en apportant leur aide, leur concours ou toute autre forme d'assistance, y compris en fournissant les moyens de cette commission ou de cette tentative,

b) le supérieur hiérarchique qui :

- i) savait que ses subordonnés commettaient ou allaient commettre une disparition forcée ou a délibérément négligé de tenir compte d'informations qui l'indiquaient clairement, et qui
- ii) n'a pas pris toutes les mesures nécessaires et raisonnables qui étaient en son pouvoir pour empêcher ou faire cesser la disparition forcée, ou pour en réprimer l'exécution ou en référer aux autorités compétentes aux fins d'enquête et de poursuites.

3 (*ancien article 6*) L'ordre d'un supérieur hiérarchique ou d'une autorité publique ne peut être invoqué pour justifier une disparition forcée.

**Article 4**

1. Tout Etat partie rend la disparition forcée passible de peines appropriées qui prennent en compte son extrême gravité.

2. Tout Etat partie peut prévoir :
  - a) Des circonstances atténuantes notamment en faveur de ceux qui, impliqués dans la commission d'une disparition forcée, auront contribué efficacement à la récupération en vie de la personne disparue ou auront permis d'élucider des cas de disparitions forcées ou d'identifier les auteurs d'une disparition forcée.
  - b) (*complété*) Des circonstances aggravantes, notamment en cas de décès de la victime ou envers ceux qui se sont rendus coupables d'une disparition forcée à l'encontre de femmes enceintes, de mineurs ou d'autres personnes particulièrement vulnérables.

**Article 5 (modifié)**

Sans préjudice de l'article 2 bis,

1. Tout Etat Partie qui, à l'égard de la disparition forcée, applique un régime de prescription, prend les mesures nécessaires pour que le délai de prescription de l'action pénale :
  - a) soit de longue durée et proportionné à l'extrême gravité de cette infraction ;
  - b) commence à courir lorsque le crime de disparition forcée cesse et que le sort de la personne disparue est établi.
2. Le délai de prescription de l'action pénale prévue au paragraphe 1 est suspendu aussi longtemps que, dans un Etat partie, toute victime d'une disparition forcée ne dispose pas d'un recours utile.

**Article 6 (repris dans art. 3, § 3)**

**Article 7 (supprimé)**

**Article 8 (supprimé)**

**Article 9 (restructuré et modifié)**

1. Tout Etat Partie prend les mesures nécessaires pour établir sa compétence aux fins de connaître d'une disparition forcée :
  - a) quand l'infraction a été commise sur tout territoire relevant de sa juridiction ou à bord d'un navire battant son pavillon ou d'un aéronef immatriculé conformément à sa législation au moment des faits ;
  - b) quand l'auteur présumé de l'infraction est l'un de ses ressortissants, ou une personne apatride résidant habituellement sur son territoire ;
  - c) quand la personne disparue est l'un de ses ressortissants et que cet Etat partie le juge approprié ;
2. Tout Etat partie prend également les mesures nécessaires pour établir sa compétence aux fins de connaître d'une disparition forcée quand l'auteur présumé de l'infraction se trouve

sur tout territoire relevant de sa juridiction, sauf s'il l'extrade ou le remet à un autre Etat, ou s'il le remet à une juridiction pénale internationale dont il a reconnu la compétence.

3. [*Le présent instrument*] n'écarte aucune compétence pénale exercée conformément aux lois nationales.

#### *Article 10*

1. S'il estime que les circonstances le justifient, après avoir examiné les renseignements dont il dispose, tout Etat partie sur le territoire duquel se trouve une personne soupçonnée d'avoir commis une disparition forcée assure la détention de cette personne ou prend toutes autres mesures juridiques nécessaires pour assurer sa présence. Cette détention et ces mesures doivent être conformes à la législation dudit Etat partie ; elles ne peuvent être maintenues que pendant le délai nécessaire à l'engagement de poursuites pénales ou d'une procédure d'extradition.
2. L'Etat partie qui a pris les mesures visées au paragraphe 1 procède immédiatement à une enquête en vue d'établir les faits. Il informe les Etats parties qui pourraient être compétents conformément à l'article 9, paragraphe 1 des mesures qu'il a prises en application du paragraphe 1 du présent article, notamment la détention et les circonstances qui la justifient, et des conclusions de son enquête, en leur indiquant s'il entend exercer sa compétence.
3. Toute personne détenue en application du paragraphe 1 peut communiquer immédiatement avec le plus proche représentant qualifié de l'Etat dont elle a la nationalité ou, s'il s'agit d'une personne apatride, avec le représentant de l'Etat où elle réside habituellement.

#### *Article 11*

1. L'Etat partie sur le territoire sous la juridiction duquel l'auteur présumé d'une disparition forcée est découvert, s'il n'extrade pas ce dernier, ne le remet pas à un autre Etat ou s'il ne le remet pas à une juridiction pénale internationale dont il a reconnu la compétence, soumet l'affaire à ses autorités compétentes pour l'exercice de l'action pénale.
2. Ces autorités prennent leur décision dans les mêmes conditions que pour toute infraction de droit commun de caractère grave en vertu du droit de cet Etat partie. Dans les cas visés à l'article 9, paragraphe 2, les règles de preuve qui s'appliquent aux poursuites et à la condamnation ne sont en aucune façon moins rigoureuses que celles qui s'appliquent dans les cas visés à l'article 9, paragraphe 1.
3. (*modifié*) Toute personne poursuivie pour une disparition forcée est jugée par une juridiction compétente, indépendante et impartiale, établie par la loi, et qui respecte les garanties du procès équitable.
4. (*nouveau*) Toute personne poursuivie pour une disparition forcée bénéficie de la garantie d'un traitement équitable à tous les stades de la procédure.

#### *Article 12 (modifié)*

1. Tout Etat partie assure à quiconque alléguant qu'une personne a été victime d'une disparition forcée le droit de dénoncer les faits devant une autorité compétente, laquelle procède immédiatement à une enquête approfondie et impartiale. Des mesures appropriées sont prises le cas échéant pour assurer la protection du plaignant, des témoins, des proches de la personne disparue et de leurs défenseurs ainsi que de ceux qui participent à l'enquête contre tout mauvais traitement ou toute intimidation en raison de la plainte déposée ou de toute déposition faite.
2. Lorsqu'il existe des motifs raisonnables de croire qu'une personne a été victime d'une disparition forcée, tout État partie soumet l'affaire à l'autorité visée au paragraphe 1, afin qu'elle ouvre une enquête, même si aucune plainte n'a été officiellement déposée.
3. *(nouveau)* Tout Etat partie veille à ce que l'autorité visée au paragraphe 1 :
  - a) dispose des pouvoirs et des ressources nécessaires pour mener l'enquête à bien, y compris par la comparution de personnes soupçonnées ou de témoins,
  - b) ait communication des informations nécessaires à son enquête ;
  - c) ait accès à tout lieu où la présence d'une personne disparue est soupçonnée.
4. *(ancien art. 12, § 6 complété)* Tout Etat partie prend les mesures nécessaires pour prévenir et sanctionner les actes de nature à entraver le déroulement des enquêtes. Il s'assure notamment que les personnes soupçonnées d'avoir commis une disparition forcée ne soient pas en mesure d'influer sur le cours des enquêtes par des pressions et des actes d'intimidation ou de représailles exercés sur le plaignant, les témoins, les proches de la personne disparue et de leurs défenseurs ainsi que sur ceux qui participent à l'enquête.
5. *(nouveau)* L'enquête prévue au présent article est conduite conformément aux principes internationaux en matière d'enquête en cas de violation des droits de l'homme, de torture, de recherche des personnes disparues, d'examen légiste et d'identification.

**Article 13 (modifié)**

1. Pour les besoins de l'extradition entre États parties, la disparition forcée n'est pas considérée comme une infraction politique, comme une infraction connexe à une infraction politique ou comme une infraction inspirée par des mobiles politiques. En conséquence, une demande d'extradition fondée sur une telle infraction ne peut être refusée pour ce motif.
2. La disparition forcée est de plein droit comprise au nombre des infractions donnant lieu à extradition dans tout traité d'extradition conclu entre des États parties avant l'entrée en vigueur *[du présent instrument]*.
3. Les États parties s'engagent à inclure la disparition forcée au nombre des infractions qui justifient l'extradition dans tout traité d'extradition à conclure par la suite entre eux.
4. Tout Etat partie qui assujettit l'extradition à l'existence d'un traité peut, s'il reçoit une demande d'extradition d'un autre État partie auquel il n'est pas lié par un traité, considérer

[*le présent instrument*] comme la base juridique nécessaire pour l'extradition en ce qui concerne la disparition forcée.

5. Tout Etat partie qui n'assujettit pas l'extradition à l'existence d'un traité reconnaît la disparition forcée comme susceptible d'extradition.
6. L'extradition est, dans tous les cas, subordonnée aux conditions prévues par le droit de l'Etat partie requis ou par les traités d'extradition applicables, y compris, notamment, aux conditions concernant la peine minimale requise pour extraditer et aux motifs pour lesquels l'Etat partie requis peut refuser l'extradition, ou l'assujettir à certaines conditions.
7. Aucune disposition [*du présent instrument*] ne doit être interprétée comme faisant obligation à l'Etat partie requis d'extrader s'il a de sérieuses raisons de penser que la demande a été présentée aux fins de poursuivre ou de punir une personne en raison de son sexe, de sa race, de sa religion, de sa nationalité, de son origine ethnique ou de ses opinions politiques, ou que donner suite à cette demande causerait un préjudice à cette personne pour l'une quelconque de ces raisons.

**Article 14 (modifié)**

1. Les Etats parties s'accordent l'entraide judiciaire la plus large possible dans toute enquête ou procédure pénale relative à une disparition forcée, y compris en ce qui concerne la communication de tous les éléments de preuve dont ils disposent et qui sont nécessaires aux fins de la procédure.
2. Cette entraide judiciaire est subordonnée aux conditions prévues par le droit interne de l'Etat partie requis ou par les traités d'entraide judiciaire applicables, y compris, notamment, concernant les motifs pour lesquels l'Etat partie requis peut refuser d'accorder l'entraide judiciaire ou la soumettre à des conditions.

**Article 15 (modifié)**

Les Etats partie coopèrent entre eux et s'accordent l'entraide la plus large possible pour porter assistance aux victimes des disparitions forcées et dans la recherche, la localisation et la libération des personnes disparues et, en cas de décès, dans l'exhumation, l'identification des personnes disparues et la restitution de leurs restes

**Article 15 bis (ancien article 21)**

1. Aucun Etat partie n'expulse, ne refoule ni n'extrade une personne vers un autre Etat s'il y a des motifs sérieux de croire qu'elle risque d'être victime d'une disparition forcée.
2. Pour déterminer s'il y a de tels motifs, les autorités compétentes tiendront compte de toutes les considérations pertinentes, y compris, le cas échéant, de l'existence, dans l'Etat intéressé, d'un ensemble de violations systématiques des droits de l'homme ou du droit humanitaire, graves, flagrantes ou massives.

**Article 16 (restructuré et modifié ; cf. article 16 bis)**

1. Tout Etat partie, dans sa législation,

- a) désigne les agents de l'Etat habilités à ordonner des privations de liberté ;
  - b) détermine les conditions dans lesquelles de tels ordres peuvent être donnés ;
  - c) garantit que toute personne privée de liberté sera placée uniquement dans un lieu officiellement reconnu et contrôlé ;
  - d) garantit l'accès des autorités judiciaires aux lieux de privation de liberté ;
  - e) garantit à toute personne privée de liberté, en toute circonstance, le droit d'introduire un recours devant un tribunal afin que celui-ci statue à bref délai sur la légalité de sa privation de liberté et ordonne sa libération si cette privation de liberté est illégale.
2. Tout Etat partie établit et tient à jour un ou plusieurs registres officiels des personnes privées de liberté. Figurent au moins parmi ces informations :
- a) l'identité de la personne privée de liberté,
  - b) l'autorité ayant décidé la privation de liberté,
  - c) l'autorité assurant le contrôle de la privation de liberté,
  - d) le jour et l'heure de l'admission dans le lieu de détention et l'autorité responsable du lieu de détention,
  - e) le jour et l'heure de la libération ou du transfert vers un autre lieu de détention, la destination et l'autorité chargée du transfert.

**Article 16 bis**

1 Tout Etat partie garantit à la personne privée de liberté et à ses proches, à leurs représentants légaux, à leurs avocats et à toute personne mandatée par eux ainsi qu'à toute autre personne pouvant arguer d'un intérêt légitime un accès au moins aux informations suivantes :

- a) l'autorité à laquelle la personne a été déférée ;
- b) l'autorité ayant ordonné la privation de liberté ;
- c) l'autorité assurant le contrôle de la personne privée de liberté ;
- d) le lieu où se trouve la personne privée de liberté, y compris en cas de transfert ;
- e) la date et le lieu de libération ;
- f) l'état de santé et, en cas de décès, les circonstances et causes du décès.



2. Des mesures appropriées sont prises le cas échéant pour assurer la protection des personnes visées au paragraphe 1 ainsi que de ceux qui participent à l'enquête contre tout mauvais traitement, toute intimidation ou toute sanction en raison de la recherche d'information concernant une personne privée de liberté.

3. (*nouveau*) Afin de ne pas porter atteinte à la vie privée des personnes concernées, les informations fournies conformément au paragraphe 1 du présent article devront être adéquates et pertinentes par rapport à la finalité recherchée et ne devront pas être utilisées à des fins autres que la recherche de la personne privée de liberté.

#### **Article 17**

Sans préjudice de l'examen de la légalité de la privation de liberté d'une personne, l'Etat partie garantit aux proches de la personne privée de liberté ou de la personne disparue, aux représentants légaux, aux avocats et à toute personne mandatée par la personne privée de liberté ou par la personne disparue ou par ses proches ainsi qu'à toute autre personne pouvant arguer d'un intérêt légitime le droit à un recours prompt et effectif pour obtenir à bref délai les informations visées à l'article 16 bis. Ce droit à un recours ne peut être suspendu ou limité en aucune circonstance.

#### **Article 18 (complété)**

Tout Etat partie prend les mesures nécessaires pour que la remise en liberté d'une personne se déroule selon des modalités qui permettent de vérifier avec certitude qu'elle a été effectivement libérée. Tout Etat partie prend également les mesures nécessaires pour assurer l'intégrité physique et le plein exercice de ses droits à toute personne au moment de sa remise en liberté, sans préjudice des obligations auxquelles elle peut être assujettie en vertu de la loi.

#### **Article 19**

Tout Etat partie prend les mesures nécessaires pour prévenir et sanctionner des agissements suivants :

- a) l'entrave ou l'obstruction au recours visé à l'article 17 ;
- b) le manquement à l'obligation d'enregistrement de toute privation de liberté, ainsi que l'enregistrement de toute information dont l'agent responsable du registre officiel connaît ou devrait connaître l'inexactitude ;
- c) le refus opposé par un agent de fournir des informations sur une privation de liberté, ou la fourniture d'informations inexactes, alors même que les conditions légales pour fournir ces informations sont réunies.

#### **Article 20 (complété)**

1. Tout Etat partie veille à ce que la formation du personnel civil ou militaire chargé de l'application des lois, du personnel médical, des agents de la fonction publique et des autres personnes qui peuvent intervenir dans la garde ou le traitement de toute personne

privée de liberté, puisse inclure l'enseignement et l'information nécessaires concernant les dispositions [*du présent instrument*], en vue de :

- a) prévenir l'implication de ces agents dans des disparitions forcées ;
  - b) souligner l'importance de la prévention et des enquêtes en matière de disparition forcée ;
  - c) veiller à ce que l'urgence de la résolution des cas de disparition forcée soit reconnue.
2. Tout Etat veille à ce que soient interdits les ordres ou instructions prescrivant, autorisant ou encourageant une disparition forcée. Tout Etat garantit qu'une personne refusant de se conformer à un tel ordre ne sera pas sanctionnée.
  3. Tout Etat partie prend les mesures nécessaires pour que les personnes visées au paragraphe 1 qui ont des raisons de penser qu'une disparition forcée s'est produite ou est projetée signalent le cas à leur supérieurs et, au besoin, aux autorités ou instances de contrôle ou de recours compétentes.

**Article 21 (intégré à l'article 15 bis)**

**Article 22 (modifié et complété)**

1. Aux fins du [*présent instrument*], on entend par victime la personne disparue et toute personne physique ayant subi un préjudice direct du fait de cette disparition.
2. Tout Etat partie prend les mesures nécessaires afin que toute victime ait connaissance de la vérité concernant les circonstances de la disparition forcée et le sort de la personne disparue. Il prend en particulier les mesures nécessaires pour la recherche, la localisation et la libération des personnes disparues et, en cas de décès, la restitution de leurs restes.
3. Tout Etat partie garantit à la victime d'une disparition forcée le droit d'obtenir une réparation rapide, équitable et adéquate des dommages qui lui ont été causés.
4. Le droit d'obtenir une réparation visé au paragraphe 3 comprend l'indemnisation intégrale des dommages matériels et moraux. Il peut aussi inclure notamment :
  - a) la restitution,
  - b) la réadaptation,
  - c) la satisfaction,
  - d) le rétablissement de la dignité et de la réputation.
5. Sans préjudice de l'obligation de poursuivre l'enquête jusqu'à l'élucidation du sort de la personne disparue, tout Etat Partie prend les mesures nécessaires concernant la situation légale des personnes disparues dont le sort n'est pas élucidé et de leurs proches, dans des domaines tels que la protection sociale, les questions financières, la garde des enfants et les droits de propriété.

**Article 23 (complété)**

1. Tout Etat partie prend les mesures nécessaires pour prévenir et réprimer pénalement :
  - a) l'enlèvement ou l'appropriation d'enfants victimes de disparition forcée, d'enfants dont le père ou la mère sont victimes d'une disparition forcée, ou d'enfants nés pendant la captivité de leur mère victime de disparition forcée ;
  - b) la falsification ou la destruction de documents attestant la véritable identité des enfants visés au a).
2. Tout Etat partie prend les mesures nécessaires pour rechercher et identifier les enfants visés au paragraphe 1 a) et b).

**Article 24**

Les Etats parties se prêtent mutuellement assistance dans la recherche, l'identification et la détermination du lieu où se trouvent les enfants visés à l'article 23.

**Article 25**

1. Lorsqu'un enfant enlevé ou approprié dans les conditions de l'article 23 a) est retrouvé sur le territoire d'un Etat partie, la question de son éventuel retour vers sa famille d'origine est réglée, soit par la loi nationale de cet Etat partie, soit par l'accord bilatéral ou multilatéral qui le lie avec tout autre Etat dans lequel réside la famille d'origine.
2. En toute circonstance, l'intérêt supérieur de l'enfant est une considération primordiale et l'enfant qui est capable de discernement a le droit d'exprimer librement son opinion, laquelle est dûment prise en compte eu égard à son âge et à son degré de maturité.

## Partie II

### *Article II O (nouveau)*

1. Un [organe de suivi] assure le suivi de la mise en œuvre du présent instrument et du respect par les États parties de leurs engagements.
2. Les membres de [l'organe de suivi] bénéficient dans l'exercice de leur mandat des privilèges et immunités tels qu'ils sont énoncés dans la convention sur les privilèges et immunités des Nations Unies.
3. Tout État partie s'engage à coopérer avec [l'organe de suivi] et à prêter assistance à ses membres dans l'exercice de leur mandat.

### *Article II-A (modifié)*

1. Tout État partie présente [à l'organe de suivi], par l'entremise du Secrétaire général de l'Organisation des Nations Unies, un rapport sur les mesures prises pour donner effet à ses obligations en vertu [du présent instrument], dans un délai d'un an à compter de l'entrée en vigueur [du présent instrument] à son égard.
2. Le Secrétaire général de l'Organisation des Nations Unies transmet les rapports à tous les États parties.
3. Chaque rapport est étudié par [l'organe de suivi], qui peut faire les commentaires, les observations, les recommandations et les mises en garde qu'il estime appropriés. L'État partie intéressé reçoit communication des commentaires, observations, recommandations et mises en garde, auxquels il peut répondre, de sa propre initiative ou à la demande [de l'organe de suivi].

### *Article II-B (modifié)*

1. [L'organe de suivi] peut être saisi par un État partie, ou par les proches de la personne disparue, leurs représentants légaux, leurs avocats et toute personne mandatée par eux ainsi que toute autre personne pouvant arguer d'un intérêt légitime, d'une demande visant à chercher et retrouver une personne disparue au sens de l'article premier.
2. S'il estime que la demande présentée en vertu du paragraphe 1 n'est pas manifestement dépourvue de fondement, qu'elle ne constitue pas un abus de droit et qu'elle n'est pas incompatible avec les dispositions [du présent instrument], [l'organe de suivi] demande à tout État partie de lui fournir, dans un délai qu'il fixe, des renseignements sur la situation de cette personne.
3. Au vu de la réponse fournie par l'État partie intéressé conformément au paragraphe 2, [l'organe de suivi] présente à ce dernier une recommandation ou une mise en garde. Il peut aussi lui enjoindre de prendre des mesures adéquates et de lui en faire rapport, dans un délai qu'il fixe.

4. [L'organe de suivi] établit ses conclusions et les communique à tout État partie auquel des renseignements ont été demandés et à l'auteur de la demande visée au paragraphe 1.
5. La procédure visée par le présent article est confidentielle.

**Article II-C (modifié)**

1. S'il estime qu'un déplacement sur le territoire d'un État partie sous la juridiction duquel se trouverait la personne disparue est indispensable pour répondre à la demande dont il est saisi conformément à l'article II-B, [l'organe de suivi] peut demander à un ou plusieurs de ses membres de réaliser une mission d'enquête et de l'informer sans retard. Le ou les membres [de l'organe de suivi] qui effectuent la mission peuvent se faire accompagner, si nécessaire, par des interprètes, des secrétaires et des experts. Aucun membre de la délégation, à l'exception des interprètes, ne peut être ressortissant de l'État partie dans lequel la visite est effectuée.
2. [L'organe de suivi] notifie par écrit à l'État partie concerné son intention d'organiser une mission d'enquête et indique la composition de la délégation. L'État partie fait connaître sans retard à [l'organe de suivi] son accord ou son opposition à la mission d'enquête sur un territoire sur lequel il exerce sa juridiction.
3. Si l'État partie a donné son accord à la mission d'enquête, il fournit [à l'organe de suivi] toutes facilités nécessaires à l'accomplissement de cette mission. [L'organe de suivi] peut notamment:
  - a) Effectuer les visites qu'il jugera nécessaires pour chercher et retrouver la personne disparue ;
  - b) Entrer en contact librement avec toute personne dont il pense qu'elle peut lui fournir des informations utiles sur le sort de la personne disparue ;
  - c) Se faire présenter la personne dont la disparition forcée est alléguée et s'entretenir avec elle sans témoin et de façon confidentielle.
4. [L'organe de suivi] fait part des constatations faites pendant sa mission d'enquête:
  - a) À l'État partie sur le territoire duquel la mission d'enquête a été effectuée ;
  - b) À l'auteur de la demande visée à l'article II-B, paragraphe 1.
5. La procédure visée par le présent article est confidentielle.

**Article II C bis (nouveau)**

1. Si [l'organe de suivi] reçoit une communication présentée par les proches de la personne disparue, leurs représentants légaux, leurs avocats et toute personne mandatée par eux ainsi que toute autre personne pouvant arguer d'un intérêt légitime, faisant état de graves manquements d'un État partie à ses engagements au titre du [présent instrument], il peut s'en saisir sauf si :

a) la communication est insuffisamment motivée, ou manifestement dépourvue de fondement ;

b) la même question est en cours d'examen dans une autre instance internationale d'enquête ou de règlement ;

c) le plaignant n'a pas épuisé toutes les voies de recours effectifs internes.

2. S'il estime que la communication est conforme aux conditions fixées au paragraphe 1, [l'organe de suivi] transmet à l'Etat partie concerné cette communication et lui demande de lui fournir, dans un délai qu'il fixe, ses observations et commentaires.

3. Au vu de la réponse de l'Etat partie, [l'organe de suivi] peut décider :

a) de classer la communication ;

b) de poursuivre son examen ;

c) d'adresser à l'Etat partie une recommandation.

4. [L'organe de suivi] met fin à la procédure visée au présent article en communiquant à l'Etat partie concerné et à l'auteur de la communication, les conclusions de son enquête.

5. La procédure visée par le présent article est confidentielle.

#### **Article II C ter (nouveau)**

Si [l'organe de suivi] reçoit des renseignements qui lui semblent contenir des indications bien fondées selon lesquelles la disparition forcée est pratiquée de manière généralisée ou systématique sur le territoire d'un Etat partie, il peut saisir le Secrétaire Général des Nations Unies, après avoir recherché auprès de l'Etat partie concerné toute information pertinente sur cette situation et sur les mesures prises pour faire cesser immédiatement de telles pratiques

#### **Article II D (intégré à l'article II O § 2)**

#### **Article II-E (complété)**

1. [L'organe de suivi] n'est compétent qu'à l'égard des privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument].

2. Si un Etat devient partie [au présent instrument] après l'entrée en vigueur de celui-ci, ses obligations vis-à-vis [de l'organe de suivi] ne concernent que les privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument] à son égard.

3. (nouveau) Tout Etat partie peut, à tout moment, déclarer qu'il reconnaît, pour ce qui le concerne, à [l'organe de suivi] une compétence concernant les disparitions forcées ayant débuté antérieurement à l'entrée en vigueur du [présent instrument].

**Article II-F (modifié)**

1. [L'organe de suivi] présente aux États parties et à l'Assemblée générale de l'Organisation des Nations Unies un rapport annuel sur les activités qu'il aura réalisées en application [du présent instrument].
2. **(nouveau)** Si les procédures engagées au titre des article II B et II C bis révèlent un refus manifeste de coopérer de la part de l'Etat partie concerné ou ne se traduisent par aucun résultat effectif, [l'organe de suivi] peut décider de rendre publique une observation relative à la question ou à la situation dont il a eu à connaître.
3. **(nouveau)** La publication de l'observation visée au § 2 du présent article doit être préalablement annoncée à l'Etat partie concerné et accompagnée des réponses, commentaires ou observations transmis par l'Etat partie à [l'organe de suivi] dans le délai que celui-ci aura fixé.

### Partie III

#### *Article III-O (ancien article 2 § 2)*

[*Le présent instrument*] est sans préjudice de tout autre instrument international ou de toute loi nationale qui contient ou peut contenir des dispositions de portée plus large.

#### *Article III-O bis (nouveau)*

Les informations personnelles, y compris les données médicales ou génétiques, qui sont transmises dans le cadre de la recherche d'une personne disparue ne peuvent pas être utilisées à d'autres fins que celle de la recherche de la personne disparue.

#### *Article III-A*

1. [*Le présent instrument*] est ouvert à la signature de [...].
2. [*Le présent instrument*] est soumis à la ratification de [...]. Les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.
3. [*Le présent instrument*] est ouvert à l'adhésion de [...]. L'adhésion se fera par le dépôt d'un instrument d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies.

#### *Article III-B*

1. [*Le présent instrument*] entrera en vigueur le trentième jour après la date du dépôt du [*Nème*] instrument de ratification ou d'adhésion.
2. Pour tout État qui ratifiera [*le présent instrument*] ou y adhérera après le dépôt du [*Nème*] instrument de ratification ou d'adhésion, [*le présent instrument*] entrera en vigueur le trentième jour après la date du dépôt par cet État de son instrument de ratification ou d'adhésion.

#### *Article III-C*

Le Secrétaire général de l'Organisation des Nations Unies notifiera à tous les États Membres de l'Organisation des Nations Unies et à tous les États qui auront signé [*le présent instrument*] ou y auront adhéré:

- a) Les signatures, les ratifications et les adhésions reçues en application de l'article III-;
- b) La date d'entrée en vigueur [*du présent instrument*] en application de l'article III-B.

#### *Article III-D*

Les dispositions [*du présent instrument*] s'appliquent, sans limitation ni exception aucune, à toutes les unités constitutives des États fédéraux.



**Article III- D bis (nouveau)**

1. Tout Etat, lors de la signature, de la ratification ou de l'accession, peut déclarer que [le présent instrument] s'étendra à tout territoire dont il est responsable au titre des relations internationales. Une telle déclaration prendra effet lorsque [le présent instrument] entrera en vigueur pour l'Etat concerné.

2. A tout moment, une telle extension pourra faire l'objet d'une notification adressée au Secrétaire général des Nations Unies et prendra effet, à compter de (...) après le jour de réception par le Secrétaire général des Nations Unies de cette notification.

**Article III-E (intégré à l'article I bis § 2)****Article III-F**

[Le présent instrument] est sans préjudice des dispositions du droit international humanitaire, y compris les obligations des Hautes Parties contractantes des quatre Conventions de Genève du 12 août 1949 et ses protocoles facultatifs du 8 juin 1977, ou de la possibilité qu'a tout Etat d'autoriser le Comité international de la Croix rouge à visiter les lieux de détention dans les cas non prévus par le droit international humanitaire.

**Article III- G**

1. Tout État partie [au présent instrument] peut proposer un amendement et déposer sa proposition auprès du Secrétaire général de l'Organisation des Nations Unies. Le Secrétaire général communique la proposition d'amendement aux États parties [au présent instrument] en leur demandant de lui faire savoir s'ils sont favorables à l'organisation d'une conférence d'États parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les quatre mois qui suivent la date d'une telle communication, le tiers au moins des États parties se prononce en faveur de la tenue de ladite conférence, le Secrétaire général organise la conférence sous les auspices de l'Organisation des Nations Unies. Tout amendement adopté à la majorité des deux tiers des États parties présents et votants à la conférence sera soumis par le Secrétaire général à l'acceptation de tous les États parties.
2. Un amendement adopté selon les dispositions du paragraphe 1 du présent article entrera en vigueur lorsque les deux tiers des États parties [au présent instrument] l'auront accepté conformément à la procédure prévue par leurs constitutions respectives.
3. Lorsque les amendements entreront en vigueur, ils auront force obligatoire pour les États parties qui les auront acceptés, les autres États parties demeurant liés par les dispositions [du présent instrument] et par tout amendement antérieur qu'ils auraient accepté.

**Article III-H**

1. [Le présent instrument], dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé auprès du Secrétaire général de l'Organisation des Nations Unies.
2. Le Secrétaire général de l'Organisation des Nations Unies fera tenir une copie certifiée conforme [du présent instrument] à tous les États.

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U.S. Government Informal Non-Paper on the Draft Enforced Disappearances Text

In response to the Chairman's kind request for comments on the above-referenced draft text, the U.S. Mission takes pleasure in presenting the following informal comments and observations. These comments are not exhaustive, nor intended to be, but rather highlight the principal issues of greatest concern to us that are raised by the Chairman's draft text ("2003 draft").

At the outset we express appreciation to the Chairman for some very significant proposals in his text, both in terms of what is included and what is omitted. We note in particular that unlike the 1998 Sub-commission forced disappearances text, the Chair's 2003 draft eliminates problematic references to:

- prohibiting the death penalty.
- prohibiting military tribunals.
- prohibiting amnesties and pardons.
- prohibiting treaty reservations.
- requiring criminalization of "crimes against humanity."

Still, as noted above, the 2003 text contains matters of serious concern to the United States. These include, *inter alia*:

ARTICLE ONE. Definition of forced disappearance is far too broad ("*deprivation of a person's liberty through any means whatsoever*") and could not be a basis for a criminal offense under United States law and jurisprudence. Nor, in our view, could that definition provide an appropriate basis for a criminal offense in any country whose jurisprudence requires, as a matter of due process and fairness, that a criminal offense be defined in precise terms. Absent the requisite clarity, such vague definitions would be stricken by the courts for being too broad and vague. The definition regrettably would also cover non-State actors, which the United States firmly opposes.

A possible alternative could be the following:

"the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."

ARTICLE TWO. To the extent that the paragraph requires enactment of a specific crime denominated "forced disappearance," as it appears to do, it could make the treaty unworkable under the United States system of federalism. Rather, we would support the formula contained in the Convention against Torture: to require criminalization of "acts" of torture, here "acts of forced disappearance." We fail to see why such a formulation should be regarded as being less effective or appropriate (for both federal and non-federal states) in this context when the international community has widely embraced it to suppress the heinous offense of torture.

ARTICLE FIVE. This provision would require a statute of limitations for disappearances that is "the longest period possible under its domestic law." In the United States this would amount to NO statute of limitations, as for instance is the case with murder in

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several state jurisdictions. To the extent such a period of prescription is considered highly disproportionate to the gravity of the offense under United States law (for example, in the case of a forced disappearance not involving torture or murder), legitimate concerns about fairness and equity would be raised, including due process challenges to the statute of limitations by the defendant.

ARTICLE SIX. Disallows an "obedience to orders" defense. As discussed during earlier negotiating rounds, certain States believe that such a defense could be appropriate in circumstances where the superior order is not manifestly unlawful.

ARTICLE SEVEN. <sup>right of victim to receive</sup> Severely restricts amnesties and pardons and makes them inapplicable to the receipt of compensation. During negotiations, several States wisely voiced the view that amnesties and pardons are peculiarly a matter of domestic law, especially pardons, which are typically subject to the exclusive authority of the President, Governor, or other chief executive authority.

ARTICLES NINE & ELEVEN. Requires four mandatory bases of jurisdiction, including quasi-universal ("present in") jurisdiction. This leaves little flexibility to the States Parties and may require an extra-territorial jurisdictional reach far broader than many States would be willing to exercise.

ARTICLE TWELVE (THREE). The requirement of "access [by an investigator] to all places where the disappeared person may be found" requires serious study and appears problematic under United States law, including anti-terrorism law.

ARTICLE TWELVE (FOUR) and SIXTEEN (TWO) and SEVENTEEN. Requires that information be given about a disappearances investigation to "all persons with a legitimate interest in the matter." This would appear to transgress statutes protecting the confidentiality of law enforcement methods and sources and material witness protections and may intrude upon other privacy protections in the United States.

ARTICLE FIFTEEN. Clarification would be required <sup>to ensure</sup> that these provisions for law enforcement assistance and cooperation would not require cooperation with international tribunals regarding which a State is not legally bound to cooperate.

ARTICLE NINETEEN. Requires criminalization of the failure to provide information and the like; this is a provision that would need to be made substantially more precise and targeted. *(Criminal due process issue; clarity of prohibited conduct.)*

ARTICLE TWENTY-ONE. The *non-refoulement* provision needs to be made consistent with applicable standards and principles such as inclusion of the word "substantial" before "reason to believe."

These comments again are not exhaustive but do highlight some of the initial concerns of the United States raised by the 2003 draft, based on an informal translation of that text into English.

Thank you.

December 2, 2003  
Geneva

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26/03/2004

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DRAFT

Enforced or involuntary disappearances

*The Commission on Human Rights,*

*Recalling its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, its resolution 1995/75 of 8 March 1995 on cooperation with representatives of United Nations human rights organs, and its resolutions 2001/46 of 23 April 2001 and 2002/41 of 23 April 2002,*

*Recalling also General Assembly resolution 47/133 of 18 December 1992, by which the Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States, and Assembly resolution 57/215 of 18 December 2002,*

~~*Recalling further Economic and Social Council decision 2001/221 of 4 June 2001 in which the Council endorsed the decision of the Commission to establish an intersessional open-ended working group of the Commission, with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance,*~~

*Deeply concerned* in particular by the increase in enforced or involuntary disappearances in various regions of the world, including arrest, detention and abduction, when these are part of or amount to enforced disappearances, and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared,

*Emphasizing* that impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof and that there is a need for effective measures to combat the problem of impunity,

*Acknowledging* the fact that acts of enforced disappearance are crimes against humanity, as defined in the Rome Statute of the International Criminal Court (A/CONF.183/9),

1. *Takes note* of the report submitted by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2003/70 and Corr.1 and 2)(E/CN.4/2004/58), pursuant to Commission resolution 2002/41; *and notes the recommendations made by the Working Group on the development of national institutions, on preventive measures and on the fight against impunity;*

*Ibis. Recalls the importance of the implementation of its resolution 2000/109 on the strengthening of the effectiveness of the Commission on Human Rights mechanism;*

2. *Stresses* the importance of the work of the Working Group and encourages it in the execution of its mandate:

(a) To continue to promote communication between families of disappeared persons and the Governments concerned with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements;

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(b) To continue to observe, in its humanitarian task, United Nations standards and practices regarding the handling of communications and the consideration of government replies;

(c) To continue to consider the question of impunity in the light of the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearance and of the final reports submitted by the Special Rapporteur appointed by the Sub-Commission on the Promotion and Protection of Human Rights;

(d) To continue to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate closely with the Governments concerned in searching for and identifying these children;

(e) To pay particular attention to cases transmitted to it that refer to ill-treatment, serious threatening or intimidation of witnesses of enforced or involuntary disappearances or relatives of disappeared persons;

(f) To pay particular attention to cases of disappearance of persons working for the promotion and protection of human rights and fundamental freedoms, wherever they occur, and to make appropriate recommendations for preventing such disappearances and improving the protection of such persons;

(g) To continue to apply a gender perspective in its reporting process, including in information collection and the formulation of recommendations;

(h) To provide appropriate assistance in the implementation by States of the Declaration and of the existing international rules;

(i) To continue its deliberations on its working methods and to include these aspects in its report to the Commission at its ~~sixtieth~~ sixty first session;

3. *Deplores* the fact that some Governments have never provided substantive replies concerning the cases of enforced disappearances in their countries ~~or acted on the recommendations concerning them made in the reports of the Working Group; and have not followed up relevant recommendations concerning this subject in the reports of the Working Group;~~

4. *Urges the Governments concerned States:*

(a) *To fully implement the Declaration on the protection of all persons against enforced disappearances;*

(a) To cooperate with the Working Group and help it to carry out its mandate effectively, in particular ~~by inviting it freely to visit~~ *by welcoming it in* their countries;

(b) To intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

(c) To take steps to protect witnesses of enforced or involuntary disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

(d) ~~That have long had many unresolved cases of disappearances, to continue their efforts to elucidate the fate of the disappeared concerned and to set appropriate settlement machinery in train with the families of those individuals;~~

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(e) To make provision in their legal systems for machinery for victims of enforced or involuntary disappearances or their families to seek fair and adequate reparation;

5. *Reminds* Governments:

(a) That, as proclaimed in article 2 of the Declaration on the Protection of All Persons from Enforced Disappearance, no State shall practise, permit or tolerate enforced disappearances;

(b) That all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penallaw;

(c) That they should ensure that their competent authorities proceed immediately to conduct impartial inquiries in all circumstances where there is reason to believe that an enforced disappearance has occurred in territory under their jurisdiction;

(d) That, if such belief is borne out, all the perpetrators of enforced or involuntary disappearances must be prosecuted;

(e) That impunity is simultaneously one of the underlying causes of enforced disappearance and one of the major obstacles to the elucidation of cases thereof;

(f) That, as proclaimed in article 11 of the Declaration, all persons deprived of liberty must be released in a manner permitting reliable verification that they have actually been released and, further, have been released in conditions in which their physical integrity and ability fully to exercise their rights are assured;

6. *Expresses*:

(a) Its thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information and to the Governments that have invited *welcomed* the Working Group ~~to visit~~ *in* their countries, asks them to give all necessary attention to the Working Group's recommendations and invites them to inform the Working Group of any action they take on those recommendations;

(b) Its appreciation to the Governments that are investigating, have developed or are developing appropriate mechanisms to investigate any cases of enforced disappearance which are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

7. *Invites* States to take legislative, administrative, legal and other steps, including when a state of emergency has been declared, to take action at the national and regional levels and in cooperation with the United Nations, if appropriate through technical assistance, and to provide the Working Group with concrete information on the measures taken and the obstacles encountered in preventing enforced or involuntary disappearances and in giving effect to the principles set forth in the Declaration;

8. *Takes note* of the assistance provided to the Working Group by non-governmental organizations and their activities in support of the implementation of the Declaration and invites those organizations to continue their cooperation;

9. *Acknowledges with great concern* the difficulties encountered by the Working Group in the accomplishment of its mandate and requests the Secretary-General:

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(a) To ensure that the Working Group receives all the assistance and resources it requires to perform its function, including supporting the principles of the Declaration, carrying out and following up on missions and holding sessions in countries that are prepared to receive it;

(b) To provide the resources needed to update the database on cases of enforced disappearance;

(c) To keep the Working Group and the Commission regularly informed of the steps taken for the wide dissemination and promotion of the Declaration;

10. *Requests* the Working Group to report on its activities to the Commission at its sixtieth session;

~~11. *Takes note* of the report (E/CN.4/2002/71) presented by the independent expert charged with examining the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearances to the intersessional working group with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, in accordance with Commission resolutions 2001/46 and 2002/41, as well as the contribution of the Chairperson-Rapporteur of the sessional working group on the administration of justice of the Sub-Commission on the Promotion and Protection of Human Rights to the work of the intersessional working group in her capacity as Rapporteur on the question of the draft international convention on the protection of all persons from enforced disappearance (transmitted by the Sub-Commission in its resolution 1998/25 of 26 August 1998;~~

12. *Also takes note* of the report of the Intersessional open-ended working group of the Commission to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance (~~E/CN.4/2003/71~~ E/CN.4/2004/59) and welcomes the substantial progress made during the first *second* session of the Intersessional Working Group and, in that context, welcomes the participation of non-governmental organizations;

13. *Requests* the Intersessional Working Group to meet for a period of 10 working days *2 formal sessions* before the ~~sixtieth~~ sixty first session of the Commission ~~in order to continue for~~ its work, ~~in accordance with Commission resolutions 2001/46 and 2002/41,~~ and to report to the Commission at its ~~sixtieth~~ sixty first session;

14. *Requests* the Chairperson-Rapporteur of the Intersessional Working Group to undertake informal consultations with all interested parties in order to prepare the next session of the Intersessional Working Group;

15. *Requests* the United Nations High Commissioner for Human Rights to invite the ~~experts mentioned in paragraph 11 above~~ *the independent expert charged with examining the existing international criminal and the human rights framework for the protection of persons from enforced or involuntary disappearances, the sub commission rapporteur on the question of the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annexe), and also a representative of the Working Group on enforced or involuntary disappearances* to participate in the activities of the working group;

16. *Decides* to consider this matter at its ~~sixtieth~~ sixty first session under the same agenda item.

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## Question des disparitions forcées ou involontaires

*La Commission des droits de l'homme,*

*Rappelant sa résolution 20 (XXXVI) du 29 février 1980, par laquelle elle a décidé de créer un groupe de travail composé de cinq de ses membres agissant en tant qu'experts nommés à titre personnel pour examiner les questions concernant les disparitions forcées ou involontaires, sa résolution 1995/75 du 8 mars 1995 sur la coopération avec les représentants d'organes de l'Organisation des Nations Unies chargés des droits de l'homme, ainsi que ses résolutions 2001/46 du 23 avril 2001 et 2002/41 du 23 avril 2002,*

*Rappelant également la résolution 47/133 de l'Assemblée générale, en date du 18 décembre 1992, par laquelle l'Assemblée a adopté la Déclaration sur la protection de toutes les personnes contre les disparitions forcées, en tant qu'ensemble de principes qui doivent être appliqués par tous les États, ainsi que la résolution 57/215 de l'Assemblée, en date du 18 décembre 2002,*

*Rappelant en outre la décision 2001/221 du Conseil économique et social, en date du 4 juin 2001, dans laquelle le Conseil a fait sienne la décision de la Commission des droits de l'homme de créer un groupe de travail intersessions à composition non limitée, dont le mandat serait d'élaborer un projet d'instrument normatif contraignant pour la protection de toutes les personnes contre les disparitions forcées,*

*Profondément préoccupée en particulier par la multiplication, dans diverses régions du monde, des disparitions forcées ou involontaires, y compris les arrestations, détentions et enlèvements, lorsque ces actes conduisent à des disparitions forcées ou peuvent y être assimilés, et par le nombre croissant d'informations faisant état de mesures de harcèlement, de mauvais traitements et d'actes d'intimidation à l'encontre des témoins de disparitions ou des familles de personnes disparues,*

*Soulignant que l'impunité est l'une des causes profondes des disparitions forcées et, en même temps, l'un des obstacles majeurs à l'élucidation de ces cas, et qu'il est nécessaire de prendre des mesures efficaces pour combattre le phénomène de l'impunité,*

*Considérant que les actes de disparition forcée constituent des crimes contre l'humanité, tels qu'ils sont définis dans le Statut de Rome de la Cour pénale internationale (A/CONF.183/9),*

*1. Prend acte du rapport du Groupe de travail sur les disparitions forcées ou involontaires (E/CN.4/2003/70/2004/58), présenté conformément à la résolution 2002/41 de la Commission; et note les recommandations du groupe de travail concernant le développement d'institutions nationales, les mesures préventives et la lutte contre l'impunité.*

*2. Rappelle l'importance de la mise en œuvre de sa résolution 2000/109 concernant le renforcement de l'efficacité des mécanismes de la Commission des droits de l'homme*

*2. Souligne l'importance des travaux du Groupe de travail et l'encourage, dans l'accomplissement de son mandat:*

*a) À continuer de faciliter la communication entre les familles des personnes disparues et les gouvernements concernés, afin de veiller à ce que des cas bien documentés et clairement identifiés fassent l'objet d'enquêtes, et de s'assurer que ces renseignements entrent dans le cadre de son mandat et comportent les éléments requis;*



- b) À continuer d'observer, dans sa mission humanitaire, les normes et pratiques de l'Organisation des Nations Unies en ce qui concerne le traitement des communications et l'examen des réponses des gouvernements;
- c) À poursuivre sa réflexion sur la question de l'impunité, compte tenu des dispositions pertinentes de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées et des rapports finaux remis par le rapporteur spécial désigné par la Sous-Commission de la promotion et de la protection des droits de l'homme;
- d) À continuer de porter une attention toute particulière aux cas d'enfants victimes de disparition forcée et d'enfants de personnes disparues, et de coopérer étroitement avec les gouvernements concernés à la recherche et à l'identification de ces enfants;
- e) À suivre avec une attention particulière les cas qui lui sont transmis, faisant état de mauvais traitements, de menaces sérieuses ou d'intimidations à l'encontre des témoins de disparitions forcées ou involontaires ou des familles de personnes disparues;
- f) À porter une attention particulière aux cas de disparition des personnes travaillant pour la promotion et la protection des droits de l'homme et des libertés fondamentales, où qu'ils se produisent, et à faire des recommandations appropriées tendant à la prévention de telles disparitions ainsi qu'à l'amélioration de la protection de ces personnes;
- g) À poursuivre son approche sexospécifique dans l'élaboration de son rapport, y compris la collecte d'informations et la formulation des recommandations;
- h) À fournir l'assistance appropriée à la mise en œuvre, par les États, de la Déclaration et des normes internationales existantes;
- i) À poursuivre la réflexion entreprise sur ses méthodes de travail et à intégrer ces éléments dans son rapport à la Commission, à sa sixième session;

3. Déplore le fait que certains gouvernements n'ont jamais donné de réponse sur le fond, concernant les cas de disparitions forcées qui se seraient produits dans leur pays, et n'ont pas davantage donné suite aux recommandations pertinentes faites à ce sujet dans les rapports du Groupe de travail; et n'ont pas donné suite aux recommandations pertinentes faites à ce sujet dans les rapports du groupe de travail.

4. Exhorte les gouvernements concernés États:

a) À mettre pleinement en œuvre la Déclaration sur la protection de toutes les personnes contre les disparitions forcées

a) À coopérer avec le Groupe de travail et à l'aider de façon à ce qu'il puisse s'acquitter efficacement de son mandat, notamment en l'invitant à se rendre librement l'accueillant dans leur pays;

b) À intensifier leur coopération avec le Groupe de travail sur toutes mesures prises en application des recommandations que le Groupe de travail leur a adressées;

c) À prendre des mesures pour protéger les témoins des disparitions forcées ou involontaires, ainsi que les avocats et les familles des personnes disparues, contre toute intimidation ou tout mauvais traitement dont ils pourraient faire l'objet;

~~d) Ayant depuis longtemps un grand nombre de cas de disparition non résolus, à poursuivre leurs efforts pour que la lumière soit faite sur le sort de ces personnes disparues et pour que les mécanismes appropriés de règlement de ces cas soient efficacement mis en œuvre avec les familles concernées;~~

e) À prévoir, dans leur système juridique, un mécanisme permettant aux victimes de disparitions forcées ou involontaires ou à leurs familles de rechercher une indemnisation équitable et adéquate;

5. Rappelle aux gouvernements:

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- a) Que, comme il est proclamé à l'article 2 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées, aucun État ne doit avoir recours à des disparitions forcées, les autoriser ou les tolérer;
- b) Que tous les actes de disparition forcée ou involontaire sont des crimes passibles de peines appropriées qui doivent tenir compte de leur extrême gravité au regard de la loi pénale;
- c) Qu'ils doivent veiller à ce que leurs autorités compétentes procèdent immédiatement à des enquêtes impartiales, en toutes circonstances, chaque fois qu'il y a des raisons de penser qu'un cas de disparition forcée s'est produit dans un territoire placé sous leur juridiction;
- d) Que, si les faits sont vérifiés, tous les auteurs de disparitions forcées ou involontaires doivent être poursuivis;
- e) Que l'impunité est l'une des causes fondamentales des disparitions forcées et, en même temps, l'un des principaux obstacles à l'élucidation des cas antérieurs;
- f) Que, comme il est proclamé à l'article 11 de la Déclaration sur la protection de toutes les personnes contre les disparitions forcées, toutes les personnes privées de liberté doivent être libérées d'une manière qui permette de vérifier valablement qu'elles ont effectivement été libérées et, par ailleurs, qu'elles ont été libérées dans des conditions qui garantissent leur intégrité physique et la possibilité de faire valoir leurs droits;

### 6. *Exprime:*

a) Ses remerciements aux nombreux gouvernements qui ont coopéré avec le Groupe de travail et répondu à ses demandes de renseignements, ainsi qu'aux gouvernements qui l'ont invité à se rendre sur place ~~à se rendre sur place~~ accueilli, les prie d'accorder toute l'attention voulue aux recommandations du Groupe de travail et les invite à informer celui-ci de toutes les mesures prises pour y donner suite;

b) Sa satisfaction aux gouvernements qui enquêtent, ont mis ou mettent au point des mécanismes appropriés pour enquêter sur tous les cas de disparition forcée portés à leur attention, et incite tous les gouvernements concernés à développer leur action dans ce domaine;

7. *Invite* les États à prendre des mesures législatives, administratives, judiciaires et autres, y compris lorsqu'un état d'urgence est proclamé, à agir à l'échelon national et régional et en coopération avec l'Organisation des Nations Unies, au besoin par le biais de l'assistance technique, et à donner des informations concrètes au Groupe de travail sur les mesures prises et les obstacles rencontrés pour prévenir les disparitions forcées ou involontaires et mettre en œuvre les principes énoncés dans la Déclaration;

8. *Prend note* de l'aide apportée au Groupe de travail par les organisations non gouvernementales ainsi que de leur action pour favoriser la mise en œuvre de la Déclaration, et les invite à poursuivre cette coopération;

9. *Note avec une grande préoccupation* les difficultés que rencontre le Groupe de travail dans l'accomplissement de son mandat et prie le Secrétaire général:

a) De veiller à ce que le Groupe de travail reçoive toute l'assistance et les ressources dont il a besoin pour s'acquitter de sa tâche, y compris pour apporter son soutien aux principes de la Déclaration, pour effectuer des missions et en assurer le suivi, et pour tenir ses réunions dans les pays qui seraient disposés à l'accueillir;

b) De fournir les moyens nécessaires pour actualiser la base de données sur les cas de disparitions forcées;

c) D'informer régulièrement le Groupe de travail et la Commission des mesures prises pour faire connaître et promouvoir largement la Déclaration;

10. *Prie* le Groupe de travail de lui faire rapport sur ses activités, à sa soixantième ~~61~~ ème session;

~~11. Prend note du rapport (E/CN.4/2002/71) présenté par l'expert indépendant chargé d'étudier le cadre international actuel en matière pénale et de droits de l'homme pour la protection des personnes contre les disparitions forcées ou involontaires au groupe de travail intersessions ayant pour mandat d'élaborer un projet d'instrument normatif juridiquement contraignant pour la protection de toutes les personnes contre les disparitions forcées, conformément aux résolutions 2001/46 et 2002/41 de la Commission des droits de l'homme;~~

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~~ainsi que la contribution du Président-Rapporteur du Groupe de travail de la Sous-Commission de la promotion et de la protection des droits de l'homme sur l'administration de la justice aux travaux du groupe de travail intersessions, en sa qualité de Rapporteur du projet de convention internationale pour la protection de toutes les personnes contre les disparitions forcées (E/CN.4/Sub.2/1998/19, annexe), transmis par la Sous-Commission dans sa résolution 1998/25 du 26 août 1998;~~

12. ~~Prend note également~~ du rapport du groupe de travail intersessions, à composition non limitée, ayant pour mandat d'élaborer un projet d'instrument normatif juridiquement contraignant pour la protection de toutes les personnes contre les disparitions forcées (E/CN.4/2003/71 E/CN.4/2004/59) et se félicite des progrès importants réalisés lors de la première-deuxième session du Groupe de travail ainsi que de la participation d'organisations non gouvernementales à cet égard;

13. ~~Demande~~ au groupe de travail intersessions, à composition non limitée, de se réunir avant la soixantième-61 ème session de la Commission pour une durée de 10 jours ouvrables deux sessions formelles pour poursuivre conclure ses travaux, conformément aux résolutions 2001/46 et 2002/41 de la Commission des droits de l'homme, et de lui faire rapport à sa soixantième-61 ème session;

14. ~~Prie~~ le Président-Rapporteur du groupe de travail intersessions à composition non limitée d'entreprendre des consultations informelles avec toutes les parties intéressées pour préparer la prochaine session du Groupe de travail;

15. ~~Prie~~ le Haut-Commissaire des Nations Unies aux droits de l'homme d'inviter les experts mentionnés au paragraphe 11 ci-dessus l'expert indépendant chargé d'étudier le cadre international actuel en matière pénale et de droits de l'homme pour la protection des personnes contre les disparitions forcées ou involontaires, le Rapporteur du projet de convention internationale pour la protection de toutes les personnes contre les disparitions forcées (E/CN.4/Sub.2/1998/19, annexe), ainsi qu'un représentant du Groupe de travail sur les disparitions forcées ou involontaires à participer aux activités du Groupe de travail intersession;

16. ~~Décide~~ d'examiner cette question à sa soixantième-61 ème session, au titre du même point de l'ordre du jour.

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A GENEVE

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Genève, le 27 octobre 2003

MESSAGE N° 745

De la part de : Catherine CALOTHY  
Destinataire (s) : M. PEAY  
Mission Permanente des Etats-Unis  
Fax. 022 / 749.43.43.  
Prière de communiquer à :  
Objet : Disparitions forcées.

Le document a déjà été donné à Mme BRANCATO./.

Nombre total de pages : 14

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NON PAPIER  
22/10/03

## Partie I

Article premier

Aux fins *[du présent instrument]*, on entend par disparition forcée la privation de liberté d'une personne, sous quelque forme que ce soit, commise par des agents de l'État ou par une organisation politique, ou par des personnes ou des groupes de personnes qui agissent avec l'autorisation, l'appui ou l'acquiescement de l'État ou de l'organisation politique, suivie du déni de la reconnaissance de la privation de liberté ou de la dissimulation du sort réservé à la personne disparue ou du lieu où elle se trouve, la soustrayant ainsi à la protection de la loi.

Article 2

1. Tout Etat partie prend les mesures nécessaires pour que la disparition forcée, telle qu'elle est définie à l'article 1<sup>er</sup>, constitue une infraction au regard de son droit pénal lorsqu'elle est commise intentionnellement.

2. Le présent article est sans préjudice de tout autre instrument international ou de toute loi nationale qui contient ou peut contenir des dispositions de portée plus large.

*Article 3*

1. Tout Etat partie prend les mesures nécessaires pour punir :

- a) les auteurs d'une disparition forcée et ceux qui s'en rendent complices, soit en ordonnant, sollicitant ou encourageant la commission ou la tentative d'une telle infraction, soit en facilitant la commission ou la tentative d'une telle infraction en apportant leur aide, leur concours ou toute autre forme d'assistance, y compris en fournissant les moyens de cette commission ou de cette tentative,
- b) la tentative de disparition forcée,
- c) l'entente en vue de commettre une disparition forcée.

2. Tout Etat partie prend les mesures nécessaires pour que la notion de complice, au sens du paragraphe 1 a), englobe le supérieur hiérarchique qui :
- a) savait ou, en raison des circonstances et des informations dont il disposait, aurait dû savoir qu'un subordonné placé sous son autorité ou son contrôle effectifs était en train de commettre ou sur le point de commettre une disparition forcée, et qui :
  - b) n'a pas pris toutes les mesures nécessaires et raisonnables qui étaient en son pouvoir pour empêcher ou faire cesser la disparition forcée, ou pour en réprimer l'exécution ou en référer aux autorités compétentes aux fins d'enquête et de poursuites.

Article 4

1. Tout Etat partie rend la disparition forcée passible de peines appropriées qui prennent en considération sa gravité.
2. Tout Etat partie peut prévoir :
  - a) des circonstances atténuantes en faveur de ceux qui, impliqués dans la commission d'une disparition forcée, auront contribué efficacement à la récupération en vie de la personne disparue ou auront permis d'élucider des cas de disparitions forcées ou d'identifier les auteurs d'une disparition forcée ;
  - b) des circonstances aggravantes envers ceux qui se sont rendus coupables d'une disparition forcée à l'encontre d'une personne particulièrement vulnérable, notamment à raison de son âge ou de son état de santé.

Article 5 (SIL)

1. Tout Etat partie prend les mesures nécessaires pour qu'à l'égard de la disparition forcée, le délai de prescription de l'action pénale et des peines :
  - a) soit égal au délai le plus long prévu dans sa législation ;
  - b) commence à courir à compter du jour où le sort de la personne disparue est connu avec certitude.
2. Lorsque les recours prévus à l'article 2 § 3 a) du Pacte international relatif aux droits civils et politiques ne sont pas efficaces, la prescription de la disparition forcée est suspendue aussi longtemps que l'efficacité de ces recours n'aura pas été rétablie.

Article 6

Aucun ordre de la loi, aucun ordre ou instruction émanant d'une autorité, de quelque nature que ce soit, ne peut être invoqué pour exonérer l'auteur d'une disparition forcée de sa responsabilité pénale. ✓

Article 7

Tout État partie s'assure que les mesures de grâce, d'amnistie et les autres mesures analogues dont peuvent bénéficier les auteurs ou les personnes soupçonnées d'avoir commis une disparition forcée, n'aient pas pour effet d'empêcher l'exercice de tout recours et l'obtention d'une réparation. Est notamment garanti, en toute circonstance, le droit d'obtenir des informations exactes et complètes sur le sort des personnes disparues.

Article 8

Tout État partie considère la disparition forcée comme un crime grave de droit commun, au sens de l'article 1 F b) de la Convention relative au statut des réfugiés du 28 juillet 1951.

Article 9

Tout État partie prend les mesures nécessaires pour établir sa compétence, à l'égard d'une disparition forcée, dans les cas suivants :

- a) Quand l'infraction a été commise sur tout territoire relevant de sa juridiction ou à bord d'un navire battant son pavillon ou d'un aéronef immatriculé conformément à sa législation au moment des faits ;
- b) Quand l'auteur présumé de l'infraction est l'un de ses ressortissants ;
- c) Quand la personne disparue est l'un de ses ressortissants ;
- d) Quand l'auteur présumé de l'infraction se trouve sur un territoire relevant de sa juridiction et qu'il ne l'extrade pas ou ne le défère pas devant une juridiction pénale internationale.

Article 10

1. S'il estime que les circonstances le justifient, après avoir examiné les renseignements dont il dispose, tout État partie sur le territoire duquel se trouve une personne soupçonnée d'avoir commis une disparition forcée prend toutes les mesures nécessaires pour assurer la présence continue de cette personne sur son territoire et, au besoin, assure sa détention. Cette détention et ces mesures doivent être conformes à la législation dudit État partie ; elles ne peuvent être maintenues que pendant le délai nécessaire à l'engagement de poursuites pénales ou d'une procédure d'extradition.

2. L'État partie qui a pris les mesures visées au paragraphe 1 procède immédiatement à une enquête préliminaire en vue d'établir les faits. Il informe les États parties qui pourraient être compétents conformément à l'article 9 a), b) et c) des mesures qu'il a prises en application du paragraphe 1 et des conclusions de son enquête, en leur indiquant s'il entend exercer sa compétence.

3. Toute personne détenue en application du paragraphe 1 peut communiquer immédiatement avec le plus proche représentant qualifié de l'Etat dont elle a la nationalité ou, s'il s'agit d'une personne apatride, avec le représentant de l'Etat où elle réside habituellement.

Article 11

1. L'Etat partie sur le territoire sous la juridiction duquel l'auteur présumé d'une disparition forcée est découvert, s'il n'extrade pas ce dernier ou ne le défère pas devant une juridiction pénale internationale, soumet l'affaire à ses autorités compétentes pour l'exercice de l'action pénale.

2. Ces autorités prennent leur décision dans les mêmes conditions que pour toute infraction d'une gravité équivalente en vertu du droit de cet Etat partie.

3. Toute personne soupçonnée d'avoir commis une disparition forcée est jugée par une juridiction de droit commun qui offre des garanties de compétence, d'indépendance et d'impartialité et qui respecte les garanties du procès équitable.

Article 12

1. Tout Etat partie assure à quiconque alléguant qu'une personne a été victime d'une disparition forcée le droit de dénoncer les faits devant une autorité compétente et indépendante, laquelle procède immédiatement et impartialement à une enquête approfondie. Des mesures seront prises pour assurer la protection du plaignant et des témoins contre tout mauvais traitement ou toute intimidation en raison de la plainte déposée ou de toute déposition faite.

2. Lorsqu'il existe des raisons sérieuses de croire qu'une personne a été victime d'une disparition forcée, tout Etat partie soumet l'affaire à l'autorité visée au paragraphe 1, afin qu'elle ouvre une enquête, même si aucune plainte n'a été officiellement déposée.

3. Tout Etat partie veille à ce que l'autorité visée au paragraphe 1 :

- a) dispose des pouvoirs et des ressources nécessaires pour mener l'enquête à bien ;
- b) ait communication des documents nécessaires à son enquête ;
- c) ait accès à tout lieu où la présence d'une personne disparue est soupçonnée.

4. Tout Etat partie garantit aux personnes qui ont un intérêt légitime le droit d'être informées, à leur demande, des progrès et des résultats de l'enquête ouverte en application des paragraphes 1 ou 2.



5. Sont considérés comme ayant un intérêt légitime, aux fins *[du présent instrument]* :
- a) la personne privée de liberté ;
  - b) le conjoint et les membres de la famille de la personne privée de liberté, son avocat ou son représentant légal ;
  - c) toute personne mandatée par les personnes visées aux points a) et b).
6. Tout Etat partie prend les mesures nécessaires pour prévenir et sanctionner les actes de nature à entraver le déroulement des enquêtes. Il s'assure notamment que les personnes soupçonnées d'avoir commis une disparition forcée ne soient pas en mesure, par leurs fonctions, d'influer sur le cours des enquêtes, par des pressions et des actes d'intimidation ou de représailles exercés sur ceux qui participent à l'enquête et sur les proches de la personne disparue.

Article 13

1. Aux effets de l'extradition, la disparition forcée n'est pas considérée comme une infraction politique ou comme une infraction de droit commun commises pour des raisons politiques.
2. La disparition forcée est de plein droit comprise au nombre des infractions donnant lieu à extradition dans tout traité d'extradition conclu entre des États parties.
3. Tout Etat partie s'engage à inclure la disparition forcée au nombre des infractions qui justifient l'extradition dans tout traité d'extradition auquel il souscrit.
4. Tout Etat partie qui assujettit l'extradition à l'existence d'un traité peut, s'il reçoit une demande d'extradition d'un autre État partie auquel il n'est pas lié par un traité, considérer *[le présent instrument]* comme la base juridique nécessaire pour l'extradition en ce qui concerne la disparition forcée.
5. Tout Etat partie qui n'assujettit pas l'extradition à l'existence d'un traité reconnaît la disparition forcée comme susceptible d'extradition.
6. L'extradition est subordonnée aux conditions prévues par le droit de l'Etat partie requis ou par les traités d'extradition applicables, y compris, notamment, aux conditions concernant la peine minimale requise pour extraire et aux motifs pour lesquels l'Etat partie requis peut refuser l'extradition.

Article 14

1. Les Etats parties s'accordent l'entraide judiciaire la plus large possible dans toute enquête ou procédure pénale relative à une disparition forcée, y compris en ce qui concerne la communication de tous les éléments de preuve dont ils disposent et qui sont nécessaires aux fins de la procédure.

2. L'entraide judiciaire est subordonnée aux conditions prévues par le droit interne de l'Etat partie requis ou par les traités d'entraide judiciaire applicables, y compris, notamment, aux conditions concernant les motifs pour lesquels l'Etat partie requis peut refuser d'accorder l'entraide judiciaire.

Article 15

1. Les Etats parties coopèrent entre eux et s'accordent l'entraide la plus large possible dans la recherche, la localisation et la libération des personnes disparues.

2. Les Etats parties s'accordent mutuellement aide et assistance en vue de porter secours aux victimes des disparitions forcées et, en cas de décès des personnes disparues, en vue de la restitution de leurs restes.

Article 16

1. Tout Etat partie :

- a) désigne les agents de l'Etat habilités à ordonner des privations de liberté ;
- b) détermine les conditions dans lesquelles de tels ordres peuvent être donnés ;
- c) garantit que toute personne privée de liberté sera placée uniquement dans un lieu officiellement reconnu et contrôlé ;
- d) garantit à toute personne privée de liberté le droit d'introduire un recours devant un tribunal afin que celui-ci statue sans délai sur la légalité de sa privation de liberté et ordonne sa libération si cette privation de liberté est illégale et, si la personne privée de liberté est soupçonnée d'avoir commis une infraction pénale, le droit d'être traduit dans le plus court délai devant un juge ou une autre autorité habilitée par la loi à exercer des fonctions judiciaires.

2. Tout Etat partie prend les mesures nécessaires pour que les personnes ayant un intérêt légitime, au sens de l'article 12 § 5, reçoivent communication, lorsqu'ils en font la demande, d'informations sur la situation d'une personne privée de liberté. Ces informations concernent au moins :

- a) le lieu où se trouve la personne privée de liberté,
- b) l'identité des responsables de la privation de liberté,
- c) l'autorité à laquelle la personne a été déférée.

3. Tout Etat partie établit et tient à jour un ou plusieurs registres officiels des personnes privées de liberté. Ces informations figurant sur ces registres sont tenues à la disposition des personnes et autorités mentionnées aux paragraphes 1 et 2, pour consultation.

Article 17

Sans préjudice de l'examen de la légalité de la privation de liberté d'une personne, les États parties garantissent à toute personne ayant un intérêt légitime, au sens de l'article 12 § 5, le droit à un recours effectif pour obtenir les informations visées à l'article 16.2. Ce droit à un recours ne peut être suspendu ou limité en aucune circonstance.

Article 18

Tout État partie prend les mesures nécessaires pour que la remise en liberté d'une personne se déroule selon des modalités qui permettent de vérifier avec certitude que la personne a été effectivement libérée et qu'elle l'a été de telle manière que son intégrité physique et sa faculté d'exercer pleinement ses droits soient assurées.

Article 19

Tout État partie prend les mesures nécessaires pour prévenir et sanctionner les agissements suivants :

- a) l'entrave ou l'obstruction au recours visé à l'article 17 ;
- b) le manquement à l'obligation d'enregistrement de toute privation de liberté, ainsi que l'enregistrement de toute information dont l'agent responsable du registre officiel connaît ou devrait connaître l'inexactitude ;
- c) le refus illégitime opposé par un agent de l'État de fournir des informations sur une privation de liberté, ou la fourniture d'informations inexactes.

Article 20

1. Tout État partie veille à ce que la formation des agents chargés de l'application de la loi puisse inclure l'apprentissage nécessaire concernant les dispositions [du présent instrument], en vue de :

- a) prévenir l'implication de ces agents dans des disparitions forcées ;
- b) souligner l'importance de la prévention et des enquêtes en matière de disparition forcée ;
- c) veiller à ce que l'urgence de la résolution des cas de disparition forcée soit reconnue.

2. Tout État partie veille à ce que soient interdits les ordres ou instructions prescrivant, autorisant ou encourageant une disparition forcée.

3. Tout Etat partie prend les mesures nécessaires pour que les agents chargés de l'application de la loi qui ont des raisons de penser qu'une disparition forcée s'est produite ou est sur le point de se produire signalent le cas à leurs supérieurs et, au besoin, aux autorités ou instances de contrôle ou de recours compétentes.

Article 21

1. Aucun Etat partie n'expulse, ne refoule ni n'extrade une personne vers un autre Etat s'il y a des motifs de croire qu'une disparition forcée risque d'être commise à son encontre dans cet Etat.

2. Pour déterminer s'il existe de tels motifs, les autorités compétentes tiendront compte de toutes les considérations pertinentes, y compris, le cas échéant, de l'existence, dans l'Etat intéressé, d'un ensemble de violations systématiques des droits de l'homme, graves, flagrantes ou massives.

Article 22

1. Aux fins [du présent instrument], on entend par victime toute personne physique qui a subi un préjudice en raison de la commission de l'infraction définie à l'article 1<sup>er</sup>.

2. Tout Etat partie garantit, dans son système juridique, à la victime d'une disparition forcée le droit d'obtenir une réparation des dommages qui lui ont été causés.

3. Le droit à réparation visé au paragraphe 2 comprend notamment :

- a) l'indemnisation,
- b) la réadaptation,
- c) la satisfaction,
- d) le rétablissement de la dignité et de la réputation.

Article 23

Tout Etat partie prend les mesures nécessaires pour prévenir et réprimer pénalement :

- a) l'enlèvement ou l'appropriation d'enfants dont l'un ou l'autre des parents sont victimes des crimes de disparition forcée ;
- b) la falsification ou la destruction de documents attestant la véritable identité des enfants visés au a).

Article 24

Les Etats parties se prêtent mutuellement assistance dans la recherche, l'identification et la détermination du lieu où se trouvent les enfants enlevés ou appropriés dans les conditions de l'article 23 a).

Article 25

1. Lorsqu'un enfant enlevé ou approprié dans les conditions de l'article 23 a) est retrouvé sur le territoire d'un Etat partie, la question de son éventuel retour vers sa famille d'origine est réglée, soit par la loi nationale de cet Etat partie, soit par l'accord bilatéral ou multilatéral qui le lie avec tout autre Etat dans lequel réside la famille d'origine.
2. En toute circonstance, l'intérêt supérieur de l'enfant est une considération primordiale et l'enfant qui est capable de discernement a le droit d'exprimer librement son opinion, laquelle est dûment prise en compte eu égard à son âge et à son degré de maturité.

Partie II

Article II-A

1. Tout Etat partie présente [à l'organe de suivi], par l'entremise du Secrétaire général de l'Organisation des Nations Unies, un rapport sur les mesures prises pour donner effet à ses obligations en vertu [du présent instrument], dans un délai d'un an à compter de l'entrée en vigueur [du présent instrument] à son égard.
2. A la suite de la présentation du rapport visé au paragraphe 1, tout Etat partie fournit un rapport complémentaire sur demande [de l'organe de suivi].
3. Le Secrétaire général de l'Organisation des Nations Unies transmet les rapports à tous les Etats parties.
4. Chaque rapport est étudié par [l'organe de suivi], qui peut faire les commentaires, les observations, les recommandations et les mises en garde qu'il estime appropriés. L'Etat partie intéressé reçoit communication des commentaires, observations, recommandations et mises en garde, auxquels il peut répondre, de sa propre initiative ou à la demande [de l'organe de suivi].

Article II-B

1. [L'organe de suivi] peut être saisi par un État partie, ou par toute personne qui a un intérêt légitime, au sens de l'article 12 § 5, d'une demande visant à chercher et retrouver une personne disparue au sens de l'article 1<sup>er</sup>.
2. S'il estime que la demande présentée en vertu du paragraphe 1 n'est pas manifestement dépourvue de fondement, qu'elle ne constitue pas un abus de droit et qu'elle n'est pas incompatible avec les dispositions [du présent instrument], [l'organe de suivi] demande à tout État partie de lui fournir, dans un délai qu'il fixe, des renseignements sur la situation de cette personne.
3. Au vu de la réponse fournie par l'État partie intéressé conformément au paragraphe 2, [l'organe de suivi] présente à ce dernier une recommandation ou une mise en garde. Il peut aussi lui enjoindre de prendre des mesures adéquates et de lui en faire rapport, dans un délai qu'il fixe.
4. [L'organe de suivi] établit les conclusions de son enquête et les communique à l'auteur de la demande visée au paragraphe 1 et à tout État partie auquel des renseignements ont été demandés.
5. La procédure visée par le présent article est confidentielle. Toutefois, s'il estime qu'aucune mesure adéquate n'a été prise à la suite d'une demande présentée conformément au paragraphe 3, [l'organe de suivi] peut, après avoir mis en demeure les États parties concernés, rendre publiques ses conclusions, ainsi que les réponses et renseignements qui lui ont été fournis.

Article II-C

1. S'il estime qu'un déplacement sur le territoire d'un État partie sous la juridiction duquel se trouverait la personne disparue est indispensable pour répondre à la demande dont il est saisi conformément à l'article II-B, [l'organe de suivi] peut demander à un ou plusieurs de ses membres de réaliser une mission d'enquête et de l'informer sans retard. Le ou les membres [de l'organe de suivi] qui effectuent la mission peuvent se faire accompagner, si nécessaire, par des interprètes, des secrétaires et des experts. Aucun membre de la délégation, à l'exception des interprètes, ne peut être ressortissant de l'État partie dans lequel la visite est effectuée.
2. [L'organe de suivi] notifie par écrit à l'État partie concerné son intention d'organiser une mission d'enquête et indique la composition de la délégation. L'État partie fait connaître sans retard à [l'organe de suivi] son accord ou son opposition à la mission d'enquête sur un territoire sur lequel il exerce sa juridiction.
3. Si l'État partie a donné son accord à la mission d'enquête, il fournit [à l'organe de suivi] toutes facilités nécessaires à l'accomplissement de cette mission. [L'organe de suivi] peut notamment :

- a) effectuer les visites qu'il jugera nécessaires pour chercher et retrouver la personne dont la disparition forcée est alléguée ;
  - b) entrer en contact librement avec toute personne dont il pense qu'elle peut lui fournir des informations utiles sur le sort de la personne dont la disparition forcée est alléguée ;
  - c) se faire présenter la personne dont la disparition forcée est alléguée et s'entretenir avec elle sans témoin.
4. [L'organe de suivi] fait part des constatations faites pendant sa mission d'enquête :
- a) à l'auteur de la demande visée à l'article II-B paragraphe 1 ;
  - b) à l'Etat partie sur le territoire duquel la mission d'enquête a été effectuée.

5. La procédure visée par le présent article est confidentielle. Toutefois, avec l'accord des Etats parties concernés, [l'organe de suivi] peut rendre publiques ses constatations

Article II-D

Les membres [de l'organe de suivi] et ceux qui les accompagnent en mission sur le territoire des Etats parties ont droit aux facilités, privilèges et immunités reconnus aux experts en mission pour l'Organisation des Nations Unies, tels qu'ils sont énoncés dans les sections pertinentes de la Convention sur les privilèges et immunités des Nations Unies.

Article II-E

1. [L'organe de suivi] n'est compétent qu'à l'égard des privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument].
2. Si un Etat devient partie [au présent instrument] après l'entrée en vigueur de celui-ci, ses obligations vis-à-vis [de l'organe de suivi] ne concernent que les privations de liberté ayant débuté postérieurement à l'entrée en vigueur [du présent instrument] à son égard.

Article II-F

1. [L'organe de suivi] présente aux Etats parties et à l'Assemblée générale de l'Organisation des Nations Unies un rapport annuel sur les activités qu'il aura réalisées en application [du présent instrument].
2. Afin d'assurer le suivi de ses observations et de ses recommandations, [l'organe de suivi] peut, à sa discrétion, décider de reproduire dans le rapport annuel qu'il établit conformément au paragraphe 1 tous commentaires, observations, recommandations et mises en garde formulés par lui en vertu de l'article II-A, accompagnés des observations reçues des Etats parties intéressés. Il peut aussi décider de reproduire les conclusions

rendues publiques conformément à l'article II-B, paragraphe 5, et les constatations rendues publiques conformément à l'article II-C, paragraphe 5.

### Partie III

#### Article III-A

1. *[Le présent instrument]* est ouvert à la signature de [...].
2. *[Le présent instrument]* est soumis à la ratification de [...]. Les instruments de ratification seront déposés auprès du Secrétaire général de l'Organisation des Nations Unies.
3. *[Le présent instrument]* est ouvert à l'adhésion de [...]. L'adhésion se fera par le dépôt d'un instrument d'adhésion auprès du Secrétaire général de l'Organisation des Nations Unies.

#### Article III-B

1. *[Le présent instrument]* entrera en vigueur le trentième jour après la date du dépôt du [N<sup>o</sup>] instrument de ratification ou d'adhésion.
2. Pour tout État qui ratifiera *[le présent instrument]* ou y adhérera après le dépôt du dixième instrument de ratification ou d'adhésion, *[le présent instrument]* entrera en vigueur le trentième jour après la date du dépôt par cet État de son instrument de ratification ou d'adhésion.

#### Article III-C

Le Secrétaire général de l'Organisation des Nations Unies notifiera à tous les États Membres de l'Organisation des Nations Unies et à tous les États qui auront signé *[le présent instrument]* ou y auront adhéré :

- a) les signatures, les ratifications et les adhésions reçues en application de l'article III-A ;
- b) la date d'entrée en vigueur *[du présent instrument]* en application de l'article III-B.

#### Article III-D

Les dispositions *[du présent instrument]* s'appliquent, sans limitation ni exception aucune, à toutes les unités constitutives des États fédéraux.



Article III-E

Aucune circonstance, qu'il s'agisse d'instabilité politique intérieure, d'une menace de guerre, d'une guerre ou de toute autre situation d'exception ou de suspension des garanties individuelles, ne peut être invoquée pour se soustraire aux obligations énoncées dans [le présent instrument].

Article III-F

Les dispositions [du présent instrument] sont sans effet sur les obligations qui incombent aux États parties en vertu des quatre Conventions de Genève du 12 août 1949 et des Protocoles additionnels du 8 juin 1977 s'y rapportant, ou sur la possibilité qu'a tout État partie d'autoriser le Comité international de la Croix-Rouge à visiter des lieux de détention dans des cas non prévus par le droit international humanitaire.

Article III-G

1. Tout État partie [au présent instrument] peut proposer un amendement et déposer sa proposition auprès du Secrétaire général de l'Organisation des Nations Unies. Le Secrétaire général communique la proposition d'amendement aux États parties [au présent instrument] en leur demandant de lui faire savoir s'ils sont favorables à l'organisation d'une conférence d'États parties en vue de l'examen de la proposition et de sa mise aux voix. Si, dans les quatre mois qui suivent la date d'une telle communication, le tiers au moins des États parties se prononcent en faveur de la tenue de ladite conférence, le Secrétaire général organise la conférence sous les auspices de l'Organisation des Nations Unies. Tout amendement adopté à la majorité des deux tiers des États parties présents et votants à la conférence sera soumis par le Secrétaire général à l'acceptation de tous les États parties.

2. Un amendement adopté selon les dispositions du paragraphe 1 du présent article entrera en vigueur lorsque les deux tiers des États parties [au présent instrument] l'auront accepté conformément à la procédure prévue par leurs constitutions respectives.

3. Lorsque les amendements entreront en vigueur, ils auront force obligatoire pour les États parties qui les auront acceptés, les autres États parties demeurant liés par les dispositions [du présent instrument] et par tout amendement antérieur qu'ils auraient accepté.

Article III-H

1. [Le présent instrument], dont les textes anglais, arabe, chinois, espagnol, français et russe font également foi, sera déposé auprès du Secrétaire général de l'Organisation des Nations Unies.

2. Le Secrétaire général de l'Organisation des Nations Unies fera tenir une copie certifiée conforme [du présent instrument] à tous les États./.

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*File: Enforced  
Disappearance*

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- ◆ The United States underscores that forced disappearances are a serious human rights violation that deserves universal attention, especially by governments, to prevent, prohibit, and punish forced disappearances.
- ◆ We would like to recognize the leadership, organization, and hard work that allowed the first negotiating session you chaired last January to be highly substantive and collegial.
- ◆ In the spirit of the constructive candor that has thus far shaped these negotiations, we find it necessary to voice serious objection to "informal inter-sessional meetings" or "informal drafting group meetings" in negotiations of multilateral instruments such as the one under consideration.
- ◆ In the view of my Government, such "informal" inter-sessional treaty meetings -- coming on top of intense substantive and formal two-week negotiating sessions each year - strain personnel and other government resources. In substantive terms, such informal sessions can also result in hastily formulated positions and incomplete analysis of draft instruments before their formal adoption. This inevitably leads to the publication of inherently flawed instruments, which is a result that serves no one's interests.
- ◆ The devotion of finite governmental resources to these negotiations must be viewed in the fuller context of each State's other human rights negotiations commitments, as well as human rights reporting commitments, and of course annual resource commitments related to participation in the Commission on Human Rights and the UNGA Third Committee, which themselves demand significant resources and staffing each spring and fall.
- ◆ Additionally, "informal" inter-sessional negotiations tend to undermine the principle of universal participation, as not every State is always able to engage fully in such negotiations.
- ◆ In short, my Government believes that the multilateral treaty-making process is best served when negotiating procedures allow all States a full and effective opportunity to elaborate the text of an agreement. Experience has shown that single, official sessions, held

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REVIEW AUTHORITY: ARCHIE M BOLSTER  
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annually, allow States to have the opportunity they need before the next session to review a text and working group report in capitals and to carry out requisite inter-agency and other internal consultations in preparation for the next session.

- ◆ Following that past practice, we believe that this negotiation can be well-paced without being hurried. We therefore call upon all parties to these negotiations to refrain from making the mistake of putting them on a "hurried" track.
  
- ◆ For these reasons, despite the fact that my delegation is present today, in the future, the United States will be unable to support "informal" inter-sessionals that seek to advance unhelpfully the pace of these negotiations.
  
- ◆ Turning to the Chairman's paper prepared for this session and the Chairman's report of the first session, those reports do not adequately address the genuine and on-going concerns that some delegations (the U.S. included) have about certain concepts and provisions discussed in these negotiations to date.
- ◆ Working group documents should adequately reflect divergent views on issues, particularly where such views are strongly-held by State delegations, as is the case here.
- ◆ To this end, we propose that working documents of these negotiations should contain "brackets" around controversial or unagreed concepts, provisions and words to fairly reflect that there are divergent views expressed by delegations and to memorialize different options delegations may wish to consider.
  
- ◆ Turning to substance, we wish to reiterate points raised last January and to highlight major concerns about the following themes and provisions, while reserving until a later date other substantive concerns we wish to raise.
  
- ◆ A legal instrument on "forced disappearance" can, and should, be flexible enough to accommodate States whose criminal statutes already comprehensively cover and punish the offense, without the need to enact additional legislation.

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- ◆ Bearing this in mind, criminalization of forced disappearances would be better framed in terms of "acts" of forced disappearance, which is similar to the approach taken in penalizing "acts of torture" in the Convention Against Torture (CAT Article 2(1)). Taking this adaptive approach would be both effective and eliminate the need for radical reform of criminal codes (at least for some States) who would otherwise be required to create a newly designated crime of "forced disappearance."
- ◆ The proposed definition of "forced disappearance" to include a "deprivation of liberty in whatever form" suffers from being overbroad, vague, and unworkable in the context of defining a criminal offense.
  - ◆ The extraordinary breadth of this phrase seems to extend far beyond the deplorable practice of a forced disappearance which is the target of the proposed instrument.
  - ◆ The vagueness of the term could cause constitutional problems in certain criminal justice systems and be invalidated by national courts under a "void for vagueness" doctrine.
  - ◆ The breadth and vagueness combined would invariably and inappropriately capture within its scope legitimate law enforcement and security activities.
- ◆ The definition of forced disappearances should also be limited to State actors, as inclusion of activities by private groups fundamentally alters the scope and nature of the instrument. Although any proposed instrument would contain elements of international criminal law, it is at its core a human rights instrument primarily governing the conduct of States.
- ◆ A statute of limitations provision should require that the prescription period "be commensurate with the seriousness of the offense." This formula was also supported by some other delegations last January but was omitted from the Chairman's most recent Report.
- ◆ We strongly oppose a provision that would bar special jurisdiction tribunals, including military tribunals or commissions. Among other reasons, such an approach erroneously implies that military proceedings are inferior or are inherently incapable of ensuring minimum standards of due process by comparison to regular civilian courts. Should the instrument contain a prohibition relating to tribunals, it should bar "sham"

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proceedings, regardless of their nature, and not target lawful military tribunals in which due process guarantees are provided.

- ◆ We would strongly oppose a death penalty provision or any other restrictions on sentencing.
  - ◆ We note, in this regard, that other human rights treaties, including the Convention against Torture, do not limit punishments for perpetrators.
  - ◆ The focus should be on the human rights of the disappearance victims and their families, not on the perpetrators. In these negotiations, we need to bear in mind that we are not trying to elaborate a criminal law enforcement instrument but rather one that principally addresses human rights.
- ◆ We would strongly oppose jurisdictional provisions that reach beyond those contained in, for example, the Optional Protocol to the CRC on Child Sale, Prostitution and Pornography.
  - ◆ Article 4 of the Optional Protocol requires that a State Party establish jurisdiction over covered offenses committed in its territory (or on board a ship or aircraft) and permits jurisdiction for offenses committed by or against nationals.
  - ◆ The Optional Protocol also requires States Parties to prosecute alleged offenders "present in" its territory when the State refuses extradition on the ground that the offense has been committed by one of its nationals.
- ◆ We would strongly urge excluding from the scope of the instrument any activities governed by international humanitarian law. In addition, a significant overall concern is that the proposed treaty not cover or otherwise prejudice legitimate law enforcement and national security activities.
- ◆ Mandatory site visits would be problematic and subject to abuse.
- ◆ Any provisions addressing a superior orders defense would have to be closely studied with a view to: a) governing national law and practice on the subject; b) the lawfulness of the orders; c) applicable international law; and d) the need to avoid unfairly accusing innocent subordinate actors by ensuring that each accused had in fact the requisite intent (*mens rea*) to warrant prosecution.
- ◆ A provision prohibiting reservations would be unacceptable.

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- ◆ Such a prohibition is not necessary as reservations that would defeat the object and purpose of the treaty would not be permitted.
- ◆ Properly tailored reservations are essential to enable many countries to become party to treaties. Creating a prohibition would thus be counterproductive to the goal of achieving broad international participation in a treaty regime.
- ◆ We would oppose the creation of a new treaty monitoring body and believe that existing treaty bodies (e.g., the HRCommittee) should be considered as the appropriate mechanisms for monitoring implementation by States parties.
  
- ◆ These are only the most serious concerns of our Government. Other issues of notable concern are raised by provisions relating to a centralized registers of names, pardons and amnesties, reparations, standing to raise complaints, funding, and entry into force provisions, among others.
  
- ◆ In sum, the Working Group has a formidable task ahead of it to elaborate a document that truly seeks to enjoy widespread acceptance within the international community.

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Drafted: L/HRR - Gilda Brancato x 72773 8/26/03 113465

Cleared: L/HRR - Robert Harris - ok  
IO/SHA - Tom Johnson - ok  
DRL/MLA - Chris Camponovo - ok  
US Mission/L - Mike Peay - ok (8/29/03)

Cc: L - Sam Witten  
L/LEI - Linda Jacobson  
L/PM - Chip Brooks  
IO - Jackie Sanders, Mark Lagon  
IO/SHA - June Carter Perry  
DRL/MLA - Lynn Sicade

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U.S. Mission

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Geneva

GE231

facsimile transmittal

To: L/HRR-Gilda Brancato Fax: 736-7028

From: T. Michael Peay  
Legal Adviser

Date: July 10, 2003

Office: 41-22-749-4316  
Fax: 41-22-749-4343  
E-Mail: PeayTM@state.gov

RE: Enforced Disappearances Pages including cover: 25

Additional Notes:

Gilda,

These are the materials referenced in the cable I am about to send you. Best personal regards,

*Mike Peay*

1. Facsimile Notice from OHCHR (English & French)
2. Faxed Outline of draft instrument (English & French)



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UNITED NATIONS  
HIGH COMMISSIONER FOR HUMAN RIGHTS

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Télégrammes:  
UNATIONS, GENEVE  
Téléx: 41 29 62  
Internet: www.unhcr.ch  
E-mail: crueda@ohchr.org

*file:*  
*Human Rts:*  
*Enforced*  
*Disappearances*



Address:  
Palais des Nations  
CH-1211 GENEVE 10

FACSIMILE

A / To:	Mr. Michael Peay Permanent Mission of the United States Geneva	De/ From:	Carmen Rueda Castañon Secretary Committee against Torture
Fax N°:	022 749 4880	Fax N°:	022 917 9022
Tel N°:		Tel N°:	022 917 9288
Date:	9 July 2003	Nombre de pages y compris la présente : Number of pages including this one :	3
Objet: Subject:	Open-ended working group on a draft legally binding instrument on enforced disappearances		

As requested.

*P. Willard*

Poppy Willard  
Secretariat  
Support Services Branch

2003 JUL 10 11 00 00

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 23 JUN 2009 100706444 17:39

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FACSIMILE

A/ To:	All Permanent Missions of Member States and Observers accredited to the UN Office at Geneva and Missions in New York, as appropriate	De/ From:	Carmen Rueda Castañón <i>CR</i> Secretary Open-ended working group on a draft legally binding instrument on enforced disappearances
Fax N°: Tel N°:		Fax N°: Tel N°:	022 917 9022 022 917 9288
Date:	23 June 2003	Nombre de pages y compris la présente : Number of pages including this one :	2
Objet: Subject:	Informal consultations		

Please find attached a note verbale.

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
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Palais des Nations  
CH-1211 GENEVE 10

The Secretariat of the United Nations (High Commissioner for Human Rights) has the honour to refer to Commission on Human Rights resolution 2003/38, entitled "Question of enforced or involuntary disappearances". In paragraph 14 of that resolution, the Commission requests the Chairperson-Rapporteur of the intersessional open-ended working group with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance, to undertake informal consultations with all interested parties in order to prepare the next session of the working group.

Following that request, the Chairperson-Rapporteur of the working group, Ambassador Bernard Kessedjian, will hold informal consultations at the United Nations Office in Geneva, from 1 to 5 September 2003. Ambassador Kessedjian would like to invite representatives of all Member States to participate in this consultative meeting, and would be grateful if the Permanent Missions could inform the Secretariat of the name of the representative(s) of their Government who would attend the meeting.

*Ge* 23 June 2003

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 23 JUN 2009 200706444

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UNITED STATES MISSION TO INTERNATIONAL ORGANIZATIONS  
GENEVA, SWITZERLAND

January 23, 2003

Ms. Catherine Calothy  
Counselor (Human Rights)  
Mission Permanente de la France  
auprès de l'ONU à Genève  
Villa "Les Ormeaux"  
Route de Pregny 36  
1292 Chambesey.

GE232

*Catherine*  
Dear Ms Calothy:

On behalf of the U.S. delegation, with pleasure, I take this opportunity to again thank the French Mission, Ambassador Kessedjian and his distinguished team for your superlative efforts in bringing a successful conclusion to our initial round of discussions at the Inter-Sessional Working Group to Elaborate a Draft Legally Binding Normative Instrument for the Protection of all Persons from Enforced Disappearances, January 6-17, 2003.

In response to Ambassador Kessedjian's invitation for comments from participating delegations on the Draft Report that will reflect the deliberations of that working group, I take pleasure in enclosing the U.S. delegation's comments on that report. Our comments are in the form of hand-written inserts into the draft report text and have been provided to you in hard photo-copy for your ease of reading. As our delegation indicated during the final afternoon of deliberations on January 17, our comments on the Draft Report are offered to ensure that it reflects accurately and with balance comments made during the formal proceedings regarding a number of key points.

With that understanding, we hope these comments can be incorporated into, and will assist in final preparation of, the report in question. We look forward to working with you and your delegation in the months ahead on this important project.

Sincerely,

*Michael Peay*  
T. Michael Peay  
Legal Adviser

Attachment:  
U.S. Comments on Draft Report

cc: Jeff DeLaurentis  
Gilda Brancato

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 23 JUN 2009 200706444

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**Peay, T Michael**

**From:** Brancato, Gilda M  
**Sent:** Friday, January 03, 2003 12:02 AM  
**To:** Peay, T Michael(Geneva); Solomon, Steven A(Geneva)  
**Subject:** FW: Memo on Accreditation for WG on Forced Disappearances

Looking forward to working with you both next week and to meeting the team (see accreditation memo below, please). Mike, may I call you Friday to discuss plans for Monday morning, for example, who will be attending the WG session, where to meet, etc. I will be arriving Sunday, staying at the President Wilson. See you soon! Very much looking forward to it. Gilda

-----Original Message-----

**From:** Johnson, Thomas A  
**Sent:** Thursday, January 02, 2003 5:37 PM  
**To:** Muncy, Linda H  
**Cc:** Perry, June C; Brancato, Gilda M; DeLaurentis, Jeffrey(Geneva)  
**Subject:** Memo on Accreditation for WG on Forced Disappearances

Linda--  
Please send the attached version of the memo to OIC. Thanks.



memo accreditation  
forced disa...

June 17, 2003 Working Group

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GE243

**2002/41. Question of enforced or involuntary disappearances***The Commission on Human Rights,*

*Recalling* its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, its resolution 1995/75 of 8 March 1995 on cooperation with representatives of United Nations human rights organs, and its resolution 2001/46 of 23 April 2001,

*Recalling also* General Assembly resolution 47/133 of 18 December 1992, by which the Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States, and Assembly resolution 55/103 of 4 December 2000,

*Deeply concerned* in particular by the increase in enforced or involuntary disappearances in various regions of the world and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared,

*Emphasizing* that impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof and that there is a need for effective measures to combat the problem of impunity,

*Welcoming* the fact that acts of enforced disappearance, as defined in the Rome Statute of the International Criminal Court (A/CONF.183/9), come within the jurisdiction of the Court as crimes against humanity,

1. *Takes note* of the report submitted by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2002/79) pursuant to Commission resolution 2001/46;
2. *Stresses* the importance of the work of the Working Group and encourages it in the execution of its mandate:
  - (a) *To continue to promote communication* between families of disappeared persons and the Governments concerned with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements;
  - (b) *To continue to observe, in its humanitarian task, United Nations standards and practices* regarding the handling of communications and the consideration of government replies;
  - (c) *To continue to consider the question of impunity in the light of the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearance and of the final reports submitted by the Special Rapporteur appointed by the Sub-Commission on the Promotion and Protection of Human Rights;*
  - (d) *To continue to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate closely with the Governments concerned in searching for and identifying these children;*
  - (e) *To pay particular attention to cases transmitted to it that refer to ill-treatment, serious threatening or intimidation of witnesses of enforced or involuntary disappearances or relatives of disappeared persons;*
  - (f) *To pay particular attention to cases of disappearance of persons working for the promotion and protection of human rights and fundamental freedoms, wherever they occur, and to make*

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appropriate recommendations for preventing such disappearances and improving the protection of such persons;

(g) To continue to apply a gender perspective in its reporting process, including in information collection and the formulation of recommendations;

(h) To provide appropriate assistance in the implementation by States of the Declaration and of the existing international rules;

(i) To continue its deliberations on its working methods and to include these aspects in its report to the Commission at its fifty-ninth session;

3. *Deplores* the fact that some Governments have never provided substantive replies concerning the cases of enforced disappearance in their countries or acted on the recommendations concerning them made in the reports of the Working Group;

4. *Urges* the Governments concerned:

(a) To cooperate with the Working Group and help it to carry out its mandate effectively, in particular by inviting it freely to visit their countries;

(b) To intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

(c) To take steps to protect witnesses of enforced or involuntary disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

(d) That have long had many unresolved cases of disappearances, to continue their efforts to shed light on the fate of the individuals concerned and to set appropriate settlement machinery in train with the families of those individuals;

(e) To make provision in their legal systems for machinery for victims of enforced or involuntary disappearances or their families to seek fair and adequate reparation;

5. *Reminds* Governments:

(a) That all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penal law;

(b) That they should ensure that their competent authorities proceed immediately to conduct impartial inquiries in all circumstances where there is reason to believe that an enforced disappearance has occurred in territory under their jurisdiction;

(c) That, if such belief is borne out, all the perpetrators of enforced or involuntary disappearances must be prosecuted;

(d) That impunity is simultaneously one of the underlying causes of enforced disappearance and one of the major obstacles to the elucidation of cases thereof;

6. *Expresses*:

(a) Its thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information and to the Governments that have invited the Working Group to visit

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their countries, asks them to give all necessary attention to the Working Group's recommendations and invites them to inform the Working Group of any action they take on those recommendations;

(b) Its satisfaction to the Governments that are investigating, or developing appropriate mechanisms to investigate, any cases of enforced disappearance which are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

7. *Invites* States to take legislative, administrative, legal and other steps, including when a state of emergency has been declared, to take action at the national and regional levels and in cooperation with the United Nations, if appropriate through technical assistance, and to provide the Working Group with concrete information on the measures taken and the obstacles encountered in preventing enforced, involuntary or arbitrary disappearances and in giving effect to the principles set forth in the Declaration;

8. *Takes note* of the assistance provided to the Working Group by non-governmental organizations and their activities in support of the implementation of the Declaration and invites those organizations to continue their cooperation;

9. *Acknowledges with great concern* the difficulties encountered by the Working Group in the accomplishment of its mandate and requests the Secretary-General:

(a) To ensure that the Working Group receives all the assistance and resources it requires to perform its function, including supporting the principles of the Declaration, carrying out and following up on missions and holding sessions in countries that are prepared to receive it;

(b) To provide the resources needed to update the database on cases of enforced disappearance;

(c) To keep the Working Group and the Commission regularly informed of the steps he takes for the wide dissemination and promotion of the Declaration;

10. *Requests* the Working Group to report on its activities to the Commission at its fifty-ninth session;

11. *Takes note* of Economic and Social Council decision 2001/221 of 4 June 2001 in which the Council endorsed the decision of the Commission to create an intersessional open-ended working group, with the mandate to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance;

12. *Welcomes*, in this regard, the report of the independent expert (E/CN.4/2002/71), which, in accordance with Commission on Human Rights resolution 2001/46, will be presented to the Intersessional working group established pursuant to that resolution, at its first session;

13. *Requests* the Intersessional working group, which will meet before the fifty-ninth session of the Commission for a period of 10 working days, to prepare, for consideration and adoption by the General Assembly, a draft legally binding normative instrument for the protection of all persons from enforced disappearance, on the basis of the Declaration on the Protection of All Persons from Enforced Disappearance, in the light of the work of the independent expert and taking into account, inter alia, the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annex) transmitted by the Sub-Commission in its resolution 1998/25 of 26 August 1998;

14. *Decides* to consider this matter at its fifty-ninth session under the same agenda item.

51st meeting

23 April 2002

[Adopted without a vote. See chap. XI.]

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 UNITED NATIONS HIGH COMMISSIONER  
 FOR HUMAN RIGHTS



GEZ44

**Question of enforced or involuntary disappearances**

Commission on Human Rights resolution 2001/46

*The Commission on Human Rights,*

*Recalling* its resolution 20 (XXXVI) of 29 February 1980, in which it decided to establish a working group consisting of five of its members, to serve as experts in their individual capacity, to examine questions relevant to enforced or involuntary disappearances, its resolution 1995/75 of 8 March 1995 on cooperation with representatives of United Nations human rights organs, and its resolution 2000/37 of 20 April 2000,

*Recalling also* General Assembly resolution 47/133 of 18 December 1992, by which the Assembly adopted the Declaration on the Protection of All Persons from Enforced Disappearance as a body of principles for all States, and Assembly resolution 55/103 of 4 December 2000,

*Deeply concerned* in particular by the increase in enforced or involuntary disappearances in various regions of the world and by the growing number of reports concerning harassment, ill-treatment and intimidation of witnesses of disappearances or relatives of persons who have disappeared,

*Emphasizing* that impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof and that there is a need for effective measures to combat the problem of impunity,

*Welcoming* the fact that acts of enforced disappearance, as defined in the Rome Statute of the International Criminal Court (A/CONF.183/9), come within the jurisdiction of the Court as crimes against humanity,

1. *Takes note* of the report submitted by the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2001/68) pursuant to Commission resolution 2000/37 and of the replies received by the secretariat on the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/2001/69 and Add.1);

2. *Stresses* the importance of the work of the Working Group and encourages it, in the execution of its mandate:

(a) To continue to promote communication between families of disappeared persons and the Governments concerned with a view to ensuring that sufficiently documented and clearly identified individual cases are investigated and to ascertain whether such information falls under its mandate and contains the required elements;

(b) To continue to observe, in its humanitarian task, United Nations standards and practices regarding the handling of communications and the consideration of government replies;

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UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 23 JUN 2009 200706444

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(c) To continue to consider the question of impunity in the light of the relevant provisions of the Declaration on the Protection of All Persons from Enforced Disappearance and of the final reports submitted by the Special Rapporteur appointed by the Sub-Commission on the Promotion and Protection of Human Rights;

(d) To continue to pay particular attention to cases of children subjected to enforced disappearance and children of disappeared persons and to cooperate closely with the Governments concerned in searching for and identifying these children;

(e) To pay particular attention to cases transmitted to it that refer to ill-treatment, serious threatening or intimidation of witnesses of enforced or involuntary disappearances or relatives of disappeared persons;

(f) To pay particular attention to cases of disappearance of persons working for the promotion and protection of human rights and fundamental freedoms, wherever they occur, and to make appropriate recommendations for preventing such disappearances and improving the protection of such persons;

(g) To continue to apply a gender perspective in its reporting process, including in information collection and the formulation of recommendations;

(h) To provide appropriate assistance in the implementation by States of the Declaration and of the existing international rules;

(i) To continue its deliberations on its working methods and to include these aspects in its report to the Commission at its fifty-eighth session;

(j) To continue to formulate comments on the draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annex) transmitted by the Sub-Commission in its resolution 1998/25 of 26 August 1998;

3. *Deplores* the fact that some Governments have never provided substantive replies concerning the cases of enforced disappearances in their countries or acted on the recommendations concerning them made in the reports of the Working Group;

4. *Urges* the Governments concerned:

(a) To cooperate with the Working Group and help it to carry out its mandate effectively, in particular by inviting it freely to visit their countries;

(b) To intensify their cooperation with the Working Group on any action taken pursuant to recommendations addressed to them by the Working Group;

(c) To take steps to protect witnesses of enforced or involuntary disappearances and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

(d) That have long had many unresolved cases of disappearances, to continue their efforts to shed light on the fate of the individuals concerned and to set appropriate settlement machinery in train with the families of those individuals;

(e) To make provision in their legal systems for machinery for victims of enforced or involuntary disappearances or their families to seek fair and adequate reparation;

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/318687f0c5b02860c1256a4100450c...> 1/3/03

5. *Reminds Governments:*

(a) That all acts of enforced or involuntary disappearance are crimes punishable by appropriate penalties which should take due account of their extreme seriousness under penal law;

(b) That they should ensure that their competent authorities proceed immediately to conduct impartial inquiries in all circumstances where there is reason to believe that an enforced disappearance has occurred in territory under their jurisdiction;

(c) That, if such belief is borne out, all the perpetrators of enforced or involuntary disappearances must be prosecuted;

(d) That impunity is simultaneously one of the underlying causes of enforced disappearances and one of the major obstacles to the elucidation of cases thereof;

6. *Expresses:*

(a) Its thanks to the many Governments that have cooperated with the Working Group and replied to its requests for information, and to the Governments that have invited the Working Group to visit their countries, asks them to give all necessary attention to the Working Group's recommendations and invites them to inform the Working Group of any action they take on those recommendations;

(b) Its satisfaction to the Governments that are investigating, or developing appropriate mechanisms to investigate, any cases of enforced disappearance which are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

7. *Invites States to take legislative, administrative, legal and other steps, including when a state of emergency has been declared, to take action at the national and regional levels and in cooperation with the United Nations, if appropriate through technical assistance, and to provide the Working Group with concrete information on the measures taken and the obstacles encountered in preventing enforced, involuntary or arbitrary disappearances and in giving effect to the principles set forth in the Declaration;*

8. *Takes note of the assistance provided to the Working Group by non-governmental organizations and their activities in support of the implementation of the Declaration and invites those organizations to continue their cooperation;*

9. *Decides to renew, for a three-year period, the mandate of the Working Group of five independent experts entrusted with the task of investigating enforced or involuntary disappearances;*

10. *Requests the Working Group to report on its activities to the Commission at its fifty-eighth session;*

11. *Requests the Chairperson of the fifty-seventh session of the Commission, after consultations with the Bureau and the regional groups, to appoint an independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, taking into account relevant legal instruments at the international and regional levels, intergovernmental arrangements on judicial cooperation, the draft international convention on the protection of all persons from enforced disappearance transmitted by the Sub-Commission in its resolution 1998/25, and also comments of States and intergovernmental and non-governmental organizations, with a view to identifying any gaps in order to ensure full protection from enforced or involuntary disappearance and to report to the Commission at its fifty-eighth session and to the working*

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/318687f0c5b02860c1256a4100450c...> 1/3/03

group established under paragraph 12 of the present resolution at its first session;

12. *Decides* to establish, at its fifty-eighth session, an inter-sessional open-ended working group of the Commission, with the mandate to elaborate, in the light of the findings of the independent expert, a draft legally binding normative instrument for the protection of all persons from enforced disappearance, taking into account, *inter alia*, the draft international convention on the protection of all persons from enforced disappearance transmitted by the Sub-Commission in its resolution 1998/25, for consideration and adoption by the General Assembly;

13. *Requests* the Secretary-General:

(a) To ensure that the Working Group on Enforced Disappearances receives all the assistance and resources it requires to perform its function, including supporting the principles of the Declaration, carrying out and following up on missions and holding sessions in countries that are prepared to receive it;

(b) To provide the resources needed to update the database on cases of enforced disappearance;

(c) To keep the Working Group and the Commission regularly informed of the steps he takes for the wide dissemination and promotion of the Declaration;

14. *Decides* to consider this matter at its fifty-eighth session under the same agenda item;

15. *Recommends* to the Economic and Social Council the adoption of the following draft decision:

[For the text, see E/CN.4/2001/167 - E/2001/23 chap. I, draft decision 26.]

*73rd meeting*

*23 April 2001*

[Adopted without a vote.]

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*McKay* (USA)

GE245

Groupe de travail intersessions à  
composition non limitée, chargé  
d'élaborer un projet d'instrument  
normatif juridiquement contraignant  
pour la protection de toutes les  
personnes contre les disparitions forcées  
Première session  
Genève, 6-17 janvier 2003

Point 6 de l'ordre du jour

**PROJET DE GUIDE DE DISCUSSION**  
Proposé par le Président

**DISPOSITIONS DE SUBSTANCE**

---

1. — Définition.
2. — Incriminations et sanctions.
  - A. — Incriminations.  
Actes et personnes punissables.
  - B. — Peines encourues.
3. — Protection contre l'impunité.  
Questions relatives à la prescription, aux immunités, aux demandes d'asile, à l'amnistie et à la grâce, et autres causes d'exonération ou d'atténuation de la responsabilité pénale.
4. — Poursuites et coopération internationale.
  - A. — Compétence et poursuites au plan national.
  - B. — Coopération internationale.  
Extradition, entraide judiciaire, entraide humanitaire.
5. — Prévention.
  - A. — Contrôle des détentions.
  - B. — Formation des personnels.
6. — Victimes.

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MISSION PERMANENTE DE LA FRANCE  
AUPRES DE L'OFFICE DES NATIONS UNIES  
A GENEVE

GE247

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Virginie Bahnik  
36, route de Prégny  
1292 CHAMBESY  
Tel. (41.22) 758.91.70  
Fax (41.22) 758.91.53

Genève, le 9 juillet 2003

**TELECOPIE**

Message n° 324/c.

De la part de : Virginie Bahnik  
Destinataire : M. Mike Peay

**Objet :** Preparatory document for the informal session of consultations of the intergovernmental working groupe on enforced disappearances (1-5 september 2003)

As promised, please find enclosed the invitation by the secretariat for the informal consultations as well as the document the Chairman-Rapporteur prepared for September (French and English versions). Do not hesitate to contact us if you have any question or comment. Have a nice day.

Virginie Bahnik

Nombre total de pages (page de garde comprise) : 1 + 22

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M. BOLSTER  
DATE/CASE ID: 23 JUN 2009 200706444

PAGES MISSING

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**Définition**

Au sens du présent instrument, la disparition forcée est

- la privation de liberté sous quelque forme que ce soit ;
- suivie de la négation de cette privation de liberté ou la dissimulation du sort réservé à la personne ;
- avec pour conséquence la soustraction de la personne disparue à la protection de la loi.

**Incriminations et sanctions**

- 1- La disparition forcée constitue une infraction pénale
  - la disparition forcée est un crime lorsqu'elle est commise par des agents de l'Etat ou par des personnes ou des groupes qui agissent avec l'autorisation, l'appui ou l'acquiescement de l'Etat ou lorsqu'elle est commise par un groupe organisé.
  - La disparition forcée est un crime contre l'humanité lorsqu'elle est commise dans le cadre d'une attaque généralisée ou systématique lancée contre toute population civile et en connaissance de cette attaque.
- 2- Sont aussi des infractions pénales :
  - La complicité (exemples : aide matérielle, instigation, etc)
  - La tentative
  - L'entente en vue de commettre une disparition forcée
- 3- Le crime de disparition forcée est passible d'une peine appropriée, proportionnelle à sa gravité. L'Etat partie peut prévoir
  - des circonstances aggravantes, lorsque le crime est perpétré à l'encontre d'une personne particulièrement vulnérable,
  - des circonstances atténuantes, lorsque les personnes impliquées dans la commission du crime contribuent volontairement et efficacement à l'élucidation de cas de disparition forcée.
- 4- Le supérieur hiérarchique est pénalement responsable des disparitions forcées commises par ses subordonnés.



**Protection contre l'impunité**

- 1- La disparition forcée ne peut être justifiée ni par la loi, ni par un ordre, ni par les circonstances.
- 2- Prescription :
  - Les disparitions forcées qui constituent des crimes contre l'humanité sont imprescriptibles.
  - Pour les disparitions forcées qui ne constituent pas des crimes contre l'humanité, le délai de prescription commence à courir à partir du jour où le sort de la personne disparue est connu avec certitude.
  - Le délai de prescription est au moins égal au délai le plus long prévu dans la législation nationale.
  - Le délai de prescription est suspendu en l'absence de recours national judiciaire ou administratif efficace.
- 3- Les mesures de grâce, d'amnistie et autres mesures de clémence ne privent pas les victimes de la possibilité d'obtenir réparation.
- 4- Le responsable d'une disparition forcée ne peut pas bénéficier de l'asile ou du statut de réfugié.
- 5- L'Etat partie assure, durant toute la durée de la procédure, la protection des témoins au procès, et notamment des victimes.
- 6- Les personnes soupçonnées d'être responsables de disparitions forcées sont jugées par des juridictions indépendantes et impartiales, et bénéficient de toutes les garanties d'un procès équitable.

**Poursuites au plan national**

1- Est compétent pour juger le crime l'Etat partie

- Du territoire où le crime a été commis
- De nationalité de la victime
- De nationalité de l'auteur présumé
- Du territoire où se trouve l'auteur présumé, lorsque l'extradition n'est pas accordée.

2- L'Etat partie sur le territoire duquel se trouve une personne soupçonnée d'avoir commis un crime de disparition forcée s'assure de sa présence, au besoin par la détention.

3- L'Etat partie qui renonce à exercer sa compétence pour juger une personne soupçonnée d'avoir commis une disparition forcée en avise immédiatement les autres Etats potentiellement compétents pour juger le crime.

4- En l'absence d'extradition, l'Etat partie sur le territoire duquel se trouve la personne soupçonnée d'un crime de disparition forcée soumet l'affaire à ses autorités compétentes pour l'exercice de l'action pénale.

5- L'Etat partie

- Reçoit et enregistre toute information ou plainte relative à une disparition forcée
- Ouvre une enquête, sans délai, de son propre chef ou à la demande du plaignant, s'il existe des raisons sérieuses de croire qu'une personne a été victime d'une disparition forcée.

6- L'Etat partie prend les mesures nécessaires pour prévenir et sanctionner tous les actes de nature à entraver le déroulement de l'enquête.

**Coopération internationale**

- 1- Les Etats parties s'accordent l'entraide judiciaire la plus large possible dans toute enquête concernant une disparition forcée et dans la recherche des victimes de disparition forcée.
- 2- Les Etats parties s'accordent l'aide la plus large possible pour porter secours aux victimes de disparitions forcées.
- 3- Le crime de disparition forcée n'est pas considéré comme une infraction politique aux effets de l'extradition.
- 4- Le crime de disparition forcée est considéré comme inclus au nombre des crimes donnant lieu à extradition entre les Etats Parties.
- 5- Les Etats parties se prêtent assistance pour retrouver les enfants enlevés ou appropriés suite à une disparition forcée.

**Prévention**

- 1- Les législations des Etats parties définissent les règles à respecter pour ordonner une privation de liberté.
- 2- Toute personnes privée de liberté ainsi que toute personne ayant un intérêt légitime à le demander a le droit indérogeable d'exercer, selon une procédure d'urgence, un recours effectif pour que soient déterminés le lieu et les motifs de la détention.
- 3- Les personnes privées de liberté sont déférées sans délai à un juge ou à une autre autorité habilitée par la loi à exercer des fonctions judiciaires.
- 4- L'avocat et les proches de la personne privée de liberté sont informés sans délai du lieu de détention et des transferts éventuels.
- 5- Les personnes privées de liberté sont placées uniquement dans des lieux de détention officiels.
- 6- L'Etat partie tient à jour un ou plusieurs registres officiels des personnes privées de liberté. Ces registres sont accessibles à l'avocat de la personne privée de liberté et aux personnes légitimement fondées à en connaître.
- 7- La mise en liberté des personnes détenues s'effectue selon des modalités qui permettent de vérifier que la personne a bien été relâchée, dans le plein respect de ses droits.
- 8- L'Etat partie ne procède pas à une extradition, à un refoulement ou à une expulsion si un crime de disparition forcée risque d'être commis envers la personne extradée, refoulée ou expulsée.
- 9- Les personnels chargés de l'application des lois sont formés de façon adéquate pour prévenir et remédier aux disparitions forcées.

**Victimes**

- 1- Sont victimes d'une disparition forcée
  - La personne à l'encontre de laquelle le crime est commis
  - Son conjoint
  - Ses ascendants
  - Ses descendants
  - Toute personne à sa charge.
- 2- Les victimes ont le droit de dénoncer les faits devant l'autorité compétente et d'intervenir ab initio dans la procédure judiciaire mise en oeuvre.
- 3- Les victimes ont le droit d'être informées des progrès et résultats de l'enquête.
- 4- Les victimes ont droit à une réparation matérielle et morale des dommages qui leur ont été causés. La réparation comprend notamment l'indemnisation, la réadaptation, la satisfaction, le rétablissement de la dignité et de la réputation.

**Enfants de personnes disparues**

- 1- Les Etats parties préviennent et répriment l'enlèvement ou l'appropriation d'un enfant dont le parent a été victime d'une disparition forcée.
- 2- Des mesures sont prises en vue de permettre, le cas échéant, le retour de l'enfant enlevé ou approprié vers sa famille d'origine. L'intérêt supérieur de l'enfant doit être pris en compte et son opinion doit être recueillie.

**Organe de suivi**

- 1- Rôle et compétence
- 2- Composition et fonctionnement
- 3- Relations avec les Etats parties : rapports, demandes de renseignements, visites
- 4- Communications inter-étatiques et individuelles
- 5- Recherche des personnes disparues.

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**Dispositions finales**

1. Signature, ratification, entrée en vigueur
2. Dépositaire
3. Réserves
4. Amendements
5. Textes faisant foi

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*Submitted/Distribution  
Jan. 14, 2003*

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**Proposal of the United States delegation  
Concerning Article 19 of the 1998 Draft Convention**

States Parties shall ensure that the training of public law enforcement personnel and officials includes the necessary education regarding the provisions of this Convention, with a view to:

- (a) preventing the involvement of such personnel and officials in forced disappearances;
- (b) ensuring recognition of the importance of prevention and investigation of such disappearances; and
- (c) ensuring recognition of the need for urgency in resolving such cases.

**Intervención de la República Argentina sobre el Proyecto de Convención para la protección de todas las personas contra las desapariciones forzadas.**

1ª sesión del Consejo de Derechos Humanos de las Naciones Unidas

27 de junio de 2006.

GE254A

Señor Presidente:

La Argentina respalda por entero la intervención del GRULAC sobre el proyecto de Convención para la protección de todas las personas contra las desapariciones forzadas.

Esta Delegación desea destacar que en esta materia tan dramática y urgente, la opinión pública mundial espera mucho de las iniciativas de este Consejo de Derechos Humanos.

Los primeros proyectos de convención en la materia se presentaron en los foros internacionales hace ya exactamente 25 años.

En la Organización de las Naciones Unidas se aprobó una Declaración en 1992.

En la Organización de los Estados Americanos se adoptó una Convención en 1994.

A fines de los años 90 el experto Louis Joinet presentó un proyecto de Convención universal a la Subcomisión.

En el año 2003 comenzó sus trabajos el Grupo de Estados de composición abierta, bajo la presidencia del Embajador de Francia Bernard Kessedjian, que culminó exitosamente sus trabajos el 22 de septiembre de 2005 con el proyecto que hoy consideramos, el que fue aprobado por consenso.

La protección contra las desapariciones forzadas es una cuestión clave en la promoción y la defensa de los derechos humanos.

Por ello en el Grupo de Redacción, en medio de la diversidad propia de diferentes regiones y sistemas, hubo coincidencias decisivas, que se afirmaron claramente en la fase final de los trabajos, respecto de cuestiones fundamentales.

El resultado fue un proyecto de convención equilibrado que tiene en cuenta tanto la prevención como la protección contra este flagelo.

Contribuyeron al avance de la redacción los excelentes aportes teóricos y prácticos de organizaciones no gubernamentales de derechos humanos.

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Señor Presidente:

Este proyecto de Convención viene a llenar un vacío que todavía existe en la protección internacional de los derechos y libertades fundamentales.

Baste señalar que esta norma convencional garantiza como un derecho humano, el derecho a conocer la verdad sobre las circunstancias de una desaparición forzada y la suerte de la persona desaparecida, con lo que confirma una evolución reciente del derecho internacional de los derechos humanos en la materia a la que mi país, como es sabido, ha hecho una significativa contribución.

Igualmente en el texto adoptado en septiembre último se previene y sanciona penalmente la apropiación de niños sometidos a desaparición forzada y se reafirma el principio de restitución a la familia de origen.

El proyecto establece, entre otros, un mecanismo novedoso de acciones urgentes para la búsqueda de personas desaparecidas, a veces denominado "habeas corpus internacional".

Esta función estrictamente humanitaria y preventiva es una de las principales atribuciones del Comité sobre la Desaparición Forzada de diez expertos independientes creado por este nuevo instrumento internacional.

Teniendo en cuenta los proyectos de reforma de las Naciones Unidas y de su maquinaria de derechos humanos, el texto prevé la reunión de una Conferencia de Estados Partes, no antes de cuatro años y no más tarde de seis años después de la entrada en vigor de la convención, para evaluar el funcionamiento del Comité y decidir en consecuencia sobre el órgano de aplicación del instrumento.

La adopción del proyecto de convención significará un gran paso, largamente esperado por el movimiento de derechos humanos en el mundo, en la lucha contra la impunidad y en favor de la prevención de esas graves violaciones de los derechos humanos constituidas por las desapariciones forzadas de personas.

Como afirmó en el segmento de alto nivel el canciller argentino Embajador Jorge Taiana el lunes pasado, la Convención está lista para ser adoptada y la República Argentina, como un país que ha contribuido con empeño a su redacción, hace votos para que su adopción sea uno de los principales logros de esta primera sesión del Consejo.

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ICRC

Statement of the  
INTERNATIONAL COMMITTEE OF THE RED CROSS  
to the United Nations Human Rights Council  
concerning the draft International Convention on the Protection of  
all Persons from Enforced Disappearance

CHECK AGAINST DELIVERY

Geneva, 27 June 2006

Mr Chairman,

At this first session, an issue comes before Human Rights Council that is of particular importance for the International Committee of the Red Cross (ICRC): the draft *Convention for the Protection of all Persons from Enforced Disappearance*.

The Commission on Human Rights had a long tradition of developing new human rights treaties and norms, and the International Committee of the Red Cross (ICRC) has participated in many of its endeavours. It has followed the drafting of the *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict*, of the *Convention against Torture* and of its *Optional Protocol*, to name but a few.

The latest of such instruments is the draft Convention on the Protection of All Persons against Enforced Disappearances that comes before the Human Rights Council at this first session. The ICRC has followed the work of the Working Group mandated to draft the Convention very closely and supports the efforts to adopt the draft.

The ICRC is deeply concerned about the fate of forcibly disappeared persons: they are abducted and detained, sometimes killed, and their families are kept in the dark about their fate.

Enforced disappearance constitutes a violation of international humanitarian law and of human rights, both in international as well as in non-international armed conflict. It violates, or threatens to violate, a number of fundamental customary rules such as the prohibition of arbitrary deprivation of liberty, the prohibition of torture and other cruel and inhuman treatment, and the prohibition of murder. Leaving families without news about the situation and whereabouts of their relatives not only places them in a situation of cruel uncertainty but is a denial of the right to family life and of the families' right to know the fate of their relatives.

The prohibition of enforced disappearance, like all rules of humanitarian law, allows for no exception. No war, no state of exception, no imperative reason of national security can justify enforced disappearance. Just as no State, group or individual is above the law, no person can be placed outside the law: enforced disappearance tries to do just that.

INTERNATIONAL COMMITTEE OF THE RED CROSS  
15 Avenue de la Paix, 1202 Geneva, Switzerland T +41 22 734 6001 F +41 22 733 2057 www.icrc.org

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Once a person has been caused to disappear, it is often too late. It is beforehand that we must act, that we must prevent persons from disappearing - by registering them, by keeping track of them, by giving news to their families.

This is why the Convention is so important. It will clearly enshrine those legal obligations of States which are critical for the prevention of persons from being caused to disappear. All *detained persons* must be registered in officially recognised places, have regular contact with their families, and benefit from legal procedural guarantees. For the first time, these obligations will be codified in a legally binding human rights treaty, applicable at all times. It will also enshrine the right of families to know the fate of their relatives, one of the pillars on which all rules on missing persons must rest.

For its part, the ICRC strives to prevent or put an end to disappearances. Regular visits to detention centres are one of the principal means used by the ICRC to achieve this aim. Last year, among the 500'000 detainees who benefited from ICRC detention activities, the ICRC followed more than 46'000 detainees individually in about 2'500 places of detention. About 26'000 were visited for the first time by the ICRC and registered. Our delegates transmitted about 100'000 Red Cross messages between detainees and their families. Bringing news to the families is a standard modality of ICRC's detention work on behalf of detainees.

ICRC registration contributes to prevent disappearance, as it enables us to follow the detainees individually and to search actively for their whereabouts. The ICRC also receives numerous requests from families who are looking for lost relatives and our delegates do everything they can to trace them, re-establish the family link and, in some cases, assist families in their specific needs.

Together with the International Red Cross and Red Crescent Movement, the ICRC also seeks to raise awareness about the tragedy of people unaccounted for as a result of armed conflict or other forms of violence and about the anguish of their families.

Mr Chairman

Much more still needs to be done against enforced disappearance. At the 28<sup>th</sup> International Conference of the Red Cross and Red Crescent of 2003 the Red Cross and Red Crescent Movement and States committed themselves in the Agenda for Humanitarian Action to respect and restore the dignity of missing persons and their families. The ICRC therefore calls on all States to put even more effort into preventing persons from going missing and alleviating the suffering caused by it.

Enforced disappearance is a phenomenon that still exists in different parts of the world and produces anguish, fear and unspeakable sorrow for thousands of families. The ICRC witnesses this plight everyday in its work. The urgency of the need to eradicate the phenomenon of enforced disappearance is too great to delay the adoption of a new treaty that outlaws it. There can be no doubt that this Convention will contribute to greater legal protection of persons from being caused to disappear, and the ICRC therefore strongly encourages the Human Rights Council to adopt it at its first session.

*Thibault de Fombelle*

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UNITED NATIONS HUMAN RIGHTS COUNCIL  
FIRST SESSION  
(Geneva, 19 - 30 June 2006)

Consideration of the report  
of the intersessional open-ended Working Group  
to elaborate a draft legally binding normative instrument for the  
protection of all persons from enforced disappearances

\*

\* \*

Statement by H.E. Ambassador Wolfgang PETRITSCH  
Permanent Representative of Austria  
on behalf of the European Union

Geneva, 27 June 2006

Check against delivery

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GE254D

*Austrian Presidency of the EU  
Geneva, 27 June 2006*

Mr Chairman,

The European Union would like to thank the president-rapporteur of the working group for his presentation.

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia\*, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Serbia, and the EFTA countries Iceland and Liechtenstein members of the European Economic Area, as well as Ukraine and the Republic of Moldova align themselves with this declaration.

The working group concluded its work in September 2005. It decided that it had finished its work and that the draft Convention on enforced disappearances should be transmitted to the Commission on Human Rights.

The Commission on Human Rights has been working on the issue of enforced disappearances since the beginning of the 1980's. In the course of several decades, we have developed a better understanding of this odious crime ; how it violates a large number of human rights of the victims, how it is linked to torture and arbitrary detention, how it violates also the rights of the relatives of the victim and how it is used to silence and threaten entire populations.

Despite the creation of the working group on enforced and involuntary disappearances and the adoption in 1992 of the Declaration on the Protection of all Persons from enforced disappearances, the phenomenon still persists. It is not a crime of the past. It is not limited to a specific region. Today, on all 5 continents, people disappear and their fate is never elucidated. The need for an international convention is therefore obvious.

The draft Convention represents a step forward for international human rights. It defines the crime of enforced disappearances. It organises the fight against impunity of perpetrators, both at the national and international levels. It also describes which preventive measures must be taken. Finally, it creates a committee of independent experts, to ensure appropriate implementation of the Convention. The European Union believes that the Convention will be a powerful tool to prevent enforced disappearances in the future.

The European Union calls for the prompt adoption of the Convention by the Council and its transfer to the General Assembly this fall.

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\* *Croatia and the former Yugoslav Republic of Macedonia continue to be part of the Stabilisation and Association Process.*

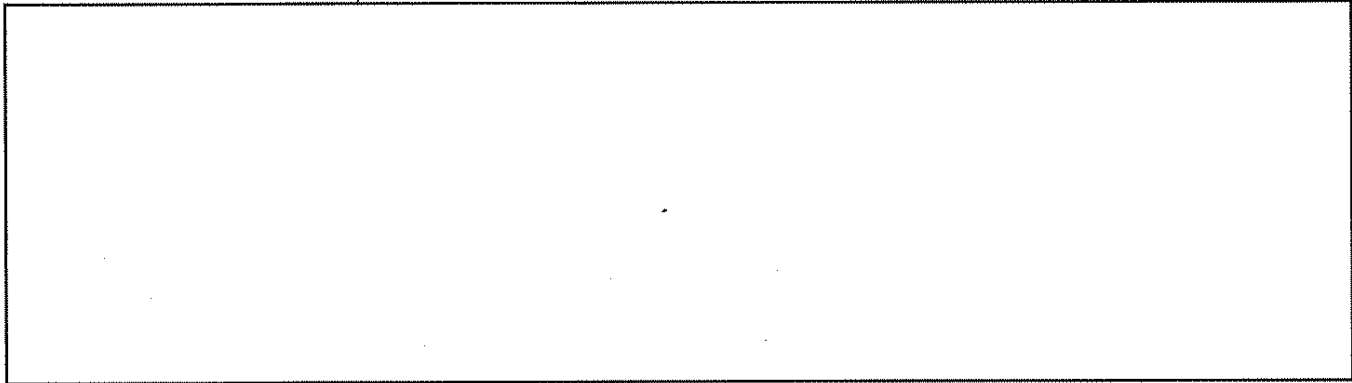
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DATE/CASE ID: 23 JUN 2009 200706444

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FP0888

Lee, Michelle G

**From:** Hutchinson, Yvonne G  
**Sent:** Friday, June 09, 2006 1:02 PM  
**To:** Kovar, Jeffrey D  
**Subject:** RE: Hard Q's and A's for the July hearing before the Human Rights Committee



B5

**From:** Kovar, Jeffrey D  
**Sent:** Friday, June 09, 2006 8:53 AM  
**To:** Barton, Paula J; Hutchinson, Yvonne G  
**Subject:** FW: Hard Q's and A's for the July hearing before the Human Rights Committee

Please look over these and let me know if you can think of additional questions the Committee might ask that we should prepare answers for. Thanks.

**From:** Schou, Nina E  
**Sent:** Friday, June 09, 2006 2:28 AM  
**To:** [redacted] 'michael.edney@usdoj.gov';  
'Tobi.Longwitz@usdoj.gov'; 'Brent.McIntosh@usdoj.gov'; Waxman, Matthew; Haines, Ann D; 'Mike.Davis@dhs.gov';  
'Thomas.Monheim@usdoj.gov'; 'ron.rosenberg@dhs.gov'; 'Brian.Kelliher1@dhs.gov'; [redacted] B6  
[redacted] Lagon, Mark P; Noyes, Julieta V (DRL); Hodgkinson, [redacted] B6  
'john.torres@dhs.gov'; 'brian.dixon@dhs.gov'; 'michael.davis2@dhs.gov'; 'hainesad [redacted] 'Bradley.Saul@usdoj.gov'; ' B6  
'Brasure, Ian D, Maj, JCS SJS'; 'quintana.carlos@dol.gov'; 'rob.wexler@ed.gov'; 'Laurence.Rothenberg@usdoj.gov';  
[redacted] 'Igor.timofeyev@dhs.gov'; [redacted] Kovar, Jeffrey D; 'MaryBeth West';  
**Cc:** 'Abdo, Mark A. (OPHS)'; 'MWynne@OSOPHS.DHHS.GOV'; 'R.Trent.Shores@usdoj.gov'; Ryan, Kelly; Kennelly, Nan E; Lum, Linda L  
Hill, Steven R; Harris, Robert K; 'amsurena [redacted] Bentes, Julianna W; nschou [redacted] B6  
**Subject:** Hard Q's and A's for the July hearing before the Human Rights Committee

All -

Attached is a list of Hard Q's and A's that we have prepared for use in the ICCPR hearing. As you know, the format of the proceedings are such that we will need to respond to questions posed by the Committee in the same meeting in which the questions are raised. For this reason, we need to prepare as much canned material as possible. We have come up with the following list based in large part on the many NGO submissions the Committee has already received. Julianna already circulated the link to these reports previously but I'm enclosing it again for your reference. [ [http://www.ohchr.org/english/bodies/hrc/87ngo\\_info.htm](http://www.ohchr.org/english/bodies/hrc/87ngo_info.htm) ]

In a couple of instances where the issue areas are so vast we have specifically requested particular agencies to provide additional Q's and A's that they think may be necessary. Even if we have not specifically requested it, as we have said before, we would also welcome any additional Q's and A's that agencies may consider relevant, based in part, for example on Congressional, press or NGO inquiries.



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Requests/Explanations to particular agencies –

NSC – Please forward this to an appropriate contact at HUD and advise them to get in touch directly with me.  
DOJ – Many of the questions are directed to you. In a handful of cases we were able to supply answers to DOJ questions based on the CAT questions. We would recommend that you review those answers and supplement as necessary.  
DOD -- we have assigned a handful of questions to you on your own. There are also a large number assigned to DOS/DOD, which means that the questions concern DOD programs, but DOS will draft an answer based on material prepared for the CAT hearing. Unfortunately we have not had time to include those answers at this time, but we will be working on that in the coming weeks.  
HUD and DoEd – there are a couple of reports concerning homelessness and while these questions may appear tangentially related to the Covenant we nevertheless think it wise to prepare them.  
HHS – You will note several questions relating to reproductive health issues in particular. We may ultimately include more.

Timing and clearances --

There will be an opportunity for all agencies to review and clear the entire package of Q's and A's once they are completed. However, if in reviewing the document, a particular agency believes it should weigh in on a question that has been assigned to another agency, please let me know and I will put you in touch with the appropriate agency POC.

**As was mentioned at last week's meeting at the NSC, the deadline for submitting answers on these Q's is Friday, June 29<sup>th</sup>.**

Please be sure to send your agency's submission to [schoune@state.gov](mailto:schoune@state.gov), [bentesjw@state.gov](mailto:bentesjw@state.gov), [amsurena\[redacted\]@state.gov](mailto:amsurena[redacted]@state.gov), [hillsr@state.gov](mailto:hillsr@state.gov), and [harrisrk2@state.gov](mailto:harrisrk2@state.gov).

B6

Once we receive the draft answers, DOS will review them and recirculate the package to you all for final review and clearance.

Thanks for your help,

Nina Schou  
Attorney Adviser  
U.S. Department of State  
Office of the Legal Adviser  
Human Rights and Refugees  
202-647-4262

<< File: LEGAL-#26442-v1-ICCPR\_Hard\_Qs\_and\_As.DOC >>

Lee, Michelle G

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**From:** Schou, Nina E [SchouNE@state.gov] B5  
**Sent:** Monday, February 13, 2006 5:22 PM  
**To:** Kovar, Jeffrey D; Brancato, Gilda M  
**Cc:** Hill, Steven R; Harris, Robert K  
**Subject:** RE: Daily Telegraph - SRs' report and Guantanamo

cc-ing Steve - as he is the lead on the law of war/DOD issues for the CAT and ICCPR reports.

---

**From:** Kovar, Jeffrey D(Geneva)  
**Sent:** Monday, February 13, 2006 10:16 AM  
**To:** Schou, Nina E; Brancato, Gilda M  
**Subject:** FW: Daily Telegraph - SRs' report and Guantanamo

[Redacted]

B5

-----Original Message-----

**From:** Cassidy, Joseph P  
**Sent:** Monday, February 13, 2006 3:59 PM  
**To:** Robinson, Brooks A; Cassel, Lynn L; Campbell, Piper ; DePirro, Velia M; Kovar, Jeffrey D  
**Subject:** RE: Daily Telegraph - SRs' report and Guantanamo

[Redacted]

B5

-----Original Message-----

**From:** Robinson, Brooks A  
**Sent:** Monday, February 13, 2006 2:15 PM  
**To:** Cassel, Lynn L; Campbell, Piper ; Cassidy, Joseph P; DePirro, Velia M; Kovar, Jeffrey D; Denig, Paul; Wilbur, Richard M; Vasquez, Edgar J (IO); Grenell, Richard ; Cummings, Monica L; Merante, Joseph  
**Subject:** FW: Daily Telegraph - SRs' report and Guantanamo

### UN inquiry demands immediate closure of Guantanamo

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2006/02/13/wguan13.xml&sSheet=/portal/2006/02/13/ixportal.html>

By Con Coughlin, Defence and Security Editor in New York  
(Filed: 13/02/2006)

A United Nations inquiry has called for the immediate closure of America's Guantanamo Bay detention centre and the prosecution of officers and politicians "up to the highest level" who are accused of torturing detainees.

The UN Human Rights Commission report, due to be published this week, concludes that Washington should put the 520 detainees on trial or release them.

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It calls for the United States to halt all "practices amounting to torture", including the force-feeding of inmates who go on hunger strike.

The report wants the Bush administration to ensure that all allegations of torture are investigated by US criminal courts, and that "all perpetrators up to the highest level of military and political command are brought to justice".

It does not specify who it means by "political command" but logically this would include President George W Bush.

The demands are contained in the final report of the commission's working group on arbitrary detention, which will be presented at its Geneva headquarters in the next few days. A copy of the report has been obtained exclusively by The Daily Telegraph.

The report is bound to intensify the already strained relations between the US and the UN over the Iraq war.

Washington officials yesterday denounced it as "a hatchet job" when informed of the contents by this newspaper.

"This shows precisely what is wrong with the United Nations today," said a senior official. "These people are supposed to be undertaking a serious investigation of the facts relating to Guantanamo.

"Instead, they deliver a report with a bunch of old allegations from lawyers representing released detainees that are so generalised that you cannot even tell what they are talking about.

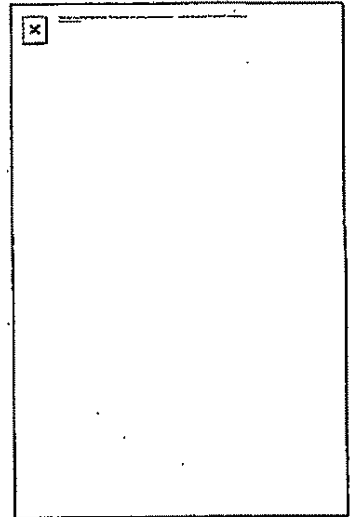
"When the UN produces an unprofessional hatchet job like this it discredits the whole organisation."

The Bush administration has repeatedly called for the UN's wholesale reform, and the report is likely to lead to demands from Congress for a freeze on Washington's annual donations.

The authors question the right of America to classify the detainees as "enemy combatants" and argue that the "war on terror" is no justification for holding them indefinitely without charge.

The report is also deeply critical of the US over recent disclosures that some of the detainees have been subjected to force-feeding when they have gone on hunger strike.

The authors argue that force-feeding is akin to torture, and demands that "the authorities in Guantanamo Bay do not force-feed any detainee who is capable of forming a rational judgment and is aware of the consequences of refusing food."



The Red Cross monitors the centre at Guantanamo monthly

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But US officials refuted the suggestion that force-feeding is torture, arguing that they had a duty under international law to protect the lives of the detainees.

"We have a duty to prevent people killing themselves," said an official, "and we are proud of the fact that none of the detainees held at Guantanamo Bay has died since it opened."

The Guantanamo Bay detention centre was adapted to hold hundreds of al-Qa'eda fighters captured during the 2001 war in Afghanistan to overthrow the Taliban.

More than 750 detainees have been processed by the facility during the past four years.

After interrogation by US intelligence officers, some have been released and others returned to their country of origin.

Because the al-Qa'eda fighters do not wear uniforms and have no allegiance to any government they are not covered by the Geneva Conventions.

And while there is insufficient evidence to charge most of the 520 detainees with war crimes, the US insists on the right to detain them to prevent them returning to the battlefield to carry out further attacks against the coalition.

There have already been at least 12 instances where released Guantanamo detainees have resumed attacks against the coalition.

US officials are also prepared to return detainees to their home countries, assuming those countries are prepared to receive them and that they will not be subjected to torture on their return.

While American officials are prepared to concede that there are conflicting interpretations over how the laws governing international conflict should be applied, they are furious at the way the investigation was conducted, especially the evidence that the four "special rapporteurs" who compiled the report have used to reach their conclusions.

Although Washington invited the group to visit Guantanamo at the end of last year to inspect the facility, the rapporteurs rejected the invitation after American officials made it clear that they would not be allowed to meet the detainees.

"They [the rapporteurs] were offered the same access as congressmen responsible for overseeing the facility, but they declined to take up the offer," said a government official. "And then they complain that they had no access to doctors or guards - all of which they were offered."

The Bush administration also challenges whether it is the responsibility of a body such as the UN Human Rights Commission to investigate Guantanamo.

The International Committee of the Red Cross (ICRC), the internationally recognised body responsible for monitoring detention facilities, visits Guantanamo on a monthly basis.

GEIC

Lee, Michelle G

**From:** Kovar, Jeffrey D  
**Sent:** Friday, April 28, 2006 12:00 PM  
**To:** DePirro, Velia M  
**Cc:** Levin, Jan  
**Subject:** RE: Question for the UK

RELEASED IN PART  
B5, B6

-I think that's what he intended to do.

**From:** DePirro, Velia M  
**Sent:** Friday, April 28, 2006 9:21 AM  
**To:** Kovar, Jeffrey D  
**Cc:** DePirro, Velia M; Levin, Jan  
**Subject:** RE: Question for the UK

[Redacted]

B5

Thanks.

Velia De Pirro  
Political Counselor  
U.S. Mission Geneva  
(41) 22-749-4111

**From:** Kovar, Jeffrey D  
**Sent:** Friday, April 28, 2006 7:10 AM  
**To:** DePirro, Velia M  
**Subject:** FW: Question for the UK

Velia -- Do you know anything about this? It's the first I've heard. I had lunch yesterday with [Redacted] and she never mentioned this even though I mentioned we had CAT coming up. Thanks -- Jeff

B6

**From:** Harris, Robert K  
**Sent:** Thursday, April 27, 2006 7:29 PM  
**To:** Lagon, Mark P  
**Cc:** Hill, Steven R; Schou, Nina E; Noyes, Julieta V (DRL); Kovar, Jeffrey D  
**Subject:** Question for the UK

Mark,

[Redacted]

B5

I will be leaving for Geneva next Tuesday afternoon.

Thanks.

Bob

RELEASED IN PART  
B6, B5 **GE 2A**

**DePirro, Velia M**

**From:** Kovar, Jeffrey D  
**Sent:** Thursday, March 30, 2006 9:21 AM  
**To:** Johnson, Thomas A; Barton, Paula J  
**Cc:** Harris, Robert K; Lagon, Mark P; Leatham, Rachel M; Rohn, Douglas C; Noyes, Julieta V (DRL); DePirro, Velia M; Levin, Jan  
**Subject:** RE: CAT Hearing--Space for USDEL in Room XVII

Tom -- we'll explore this with the secretariat. My hazy recollection from watching Canada several months ago was that the members of the delegation that spoke, or directly supported the speakers, sat in the inner table with the microphones, with the CAT members sitting around them in the horseshoe. I can't remember the number that can be accommodated there. The rest of the delegation sat in the first inner row of seats, as I recall. Bellinger as HOD plus one or two will sit at the podium. -- Jeff

**From:** Johnson, Thomas A  
**Sent:** Thursday, March 30, 2006 3:42 AM  
**To:** Kovar, Jeffrey D; Barton, Paula J  
**Cc:** Harris, Robert K; Lagon, Mark P; Leatham, Rachel M; Rohn, Douglas C; Noyes, Julieta V (DRL)  
**Subject:** CAT Hearing--Space for USDEL in Room XVII

Jeff/Paula--

One follow-up project from the meeting yesterday is to find out from you how much space the USDEL will have in Room XVII, where I'm told the hearing will be. Everyone understands that our huge delegation cannot all fit in whatever space we are given, but we want to get as much space as we can. We assume that the country making its report either sits on the bottom level of the horseshoe or in a rear side row (as has been done with some guests of CHR), but that would force some CAT members to turn around and makes less sense.

In any event, if the bottom level of the horseshoe is used, can you please explore with the secretariat if we can have one whole desk (i.e., on the side or middle) and seats behind? Using the middle desk on the lowest level of the horseshoe might look symmetric and all that, but aren't there substantially more seats on the sides? If so, can you make a pitch for one of the side desks?

If they use a back side row, why not try for the whole row?

And if you can find a diagram of the room somewhere, can you please send a copy back here? Thanks. Tom

-----Original Message-----

**From:** Harris, Robert K  
**Sent:** Wednesday, March 29, 2006 7:17 PM  
**To:** Bellinger, John B(Legal); Lowenkron, Barry F (DRL); Barks-Ruggles, Erica J (DRL); Lagon, Mark P  
**Cc:** Noyes, Julieta V (DRL); Johnson, Thomas A; Legal-L-HRR; amsurena [redacted]; Kovar, Jeffrey D; Camponovo, Christopher N.; Sicade, Lynn M (DRL)  
**Subject:** FW: CAT hearing PCC meeting - Monday, April 3.

John, Barry, and Mark,

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 07 AUG 2009 200706444

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B6

L, DRL and IO had an in-house planning meeting yesterday to continue our planning for the CAT hearing May 5-8. We are expecting additional agency comments on the answers to the 196 questions from the Committee Against Torture, and suggest you might want to look at them once we have incorporated them further.

Highlights:

- We will have a delegation of around 30 officials from State, Justice, DOD, DHS and perhaps the Bureau of Prisons. (This sounds like a lot, but it is roughly the size of the UK's delegation when it defended its CAT report in November 2004. The Committee likes large, high-level delegations as it suggests that the country takes the process seriously.
- A core team will arrive in Geneva on Wednesday to make sure all systems are in place. We will have a delegation meeting on Thursday afternoon. You will need to determine whether you want to arrive Thursday morning or be fresher with a Wednesday arrival.
- We will designate members of the delegation as note takers and as recorders of the questions we are asked to answer over the weekend.
- Subject to your approval, we will have short opening statements from Barry and John. After Barry's opening remarks, John will be the master of ceremonies.
- We will have 90 minutes to deliver our opening statement and to give abbreviated answers to the Committee's questions. The Committee will then ask additional questions, which we can answer on the spot or answer on Monday. (Most countries choose not to answer questions on the spot.)
- Once day one is over, the US delegation will formulate the questions that were asked  and begin writing answers.
- Over the weekend, the delegation will write the answers, seeking Washington guidance or input as needed. The goal, of course, is to get a delegation of sufficient rank that it can clear its own answers.
- Matt Waxman will be in Europe over that weekend and has offered to come to Geneva Sunday afternoon to look at the package we have come up with and come to the Monday session. I told him that we would welcome his fresh eyes and brain, so I think he is planning to come.
- On Monday morning, we will send our answers electronically to the Committee and on Monday afternoon, we will deliver the answers orally. The Committee will then ask follow-up questions, but there is typically not very much time left for this process.
- I am going to stay with a core delegation team on Tuesday to write the reporting cable. We will try to find a way to make sure John and Barry approve it before it is sent.
- Later in the session, the Committee will draft conclusions and recommendations, which they, as a courtesy, will forward to us 24-48 hours in advance. It will issue them at the end of the session, May 19.

B5

At Monday's meeting, we will go through this with the agencies, and ask them to designate a Washington-based team in each agency to assist the delegation.

In case you do not yet have a headache, here is more detailed information about the session, which we received from the UN Secretariat via our Mission in Geneva in February. My points above have included the highlights.

#### CONDUCT OF THE SESSIONS

The U.S. will have 1 1/2 hours the first morning for its presentation. Morales said this limit will be strictly followed by the Committee so that the members will have the same amount of time to

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pose questions.

Morales suggested that not more than 15 minutes be devoted to a head of delegation opening statement. Effective use of this time would be to highlight any new developments, and to give a positive sense for the general U.S. approach to implementation, policy frameworks, etc.

Following the opening statement the remaining time will be devoted to answering the Committee's written questions. This can be used to read the written answers into the record, but in most cases delegations offer summaries of the written answers. Morales noted that some states continue to use the head of delegation for this. Others, like the UK, have turned to the members of the delegation with technical expertise. The head of delegation will control the floor, and there will be several microphones available for members of the delegation, who will therefore not need to come to the podium to provide information.

As for the format of the U.S. replies, Morales and Nataf urged that we stick to the questions the way they are presented. If we present answers that cover more than one question, it is important to indicate precisely which ones are being answered. In that connection, the Committee has reformatted the U.S. report by numbering each paragraph and incorporating the updated Annex presented at the time of the ICCPR Report. It is important for us to refer to our report according to these new paragraph numbers. The reformatted version was provided to us and will be scanned and emailed to you on Monday when the OMS in our section is in the office.

The rest of the session will be devoted to statements and questions from members of the Committee. The delegation may reply to questions on the spot, but most delegations simply take note of them, then prepare responses overnight for presentation the following day. Nataf pointed out that some questions are repetitive and many overlap, and may be regrouped as necessary.

The session will reconvene the following afternoon, and the U.S. will have 45 minutes to reply to the Committee's questions. Morales noted that we would be held pretty strictly to this time limit, so should carefully pace our replies to get them all out. She recommended being concise so that we could cover all points in a balanced way.

The Committee may then make statements and pose follow-up questions for 45 minutes, and the U.S. will in principle have a 15 minute right of reply at the end. Morales noted, however, that there is rarely 15 minutes left at the end, and said we should plan for no more than 5 minutes of reply.

At the end, the Committee generally offers the delegation the possibility to submit additional information in the next day or two, but Morales noted that she could never recall a state actually doing so.

The Committee will then provide an advance, unedited version of its concluding comments 24-48 hours before the end of the session. That version will be made public, subject to translation and final clean-up, at the concluding press conference on Friday May 19. There is no requirement for delegations to stay until this event, and local Ambassadors are no longer expected to attend. The Mission can cover it at the appropriate level.

In response to a query whether the Committee would accept audiovisual or powerpoint presentations, Morales and Nataf replied that they could recall it once at the Committee on the Rights of the Child, but that it had created technical complications and delay. They discouraged it because it could be seen as time waster.

#### PUBLICATION OF U.S. REPLIES

Morales stated that there are various options for what would go into the record. If the U.S. wishes, it can ask for its written answers to be published in the official records along with the oral statements. However, the U.S. may ask that its written answers not be published or distributed, and the Committee will respect that wish -- in such a case only the oral statements would be

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published. Morales stressed that all written replies are embargoed for use only of the Committee members unless expressly authorized for distribution by the state concerned. In response to our query Morales stated that they are not to be given by the Committee to NGOs in advance of the session.

NGO COMMENTS

Morales stated that there would be an organizational session the first week of March for the countries subject to review in May (Peru, Guatemala, Qatar, Republic of Korea, Togo, Georgia, USA). At that time, all NGO submissions would be distributed. After that session we would be able to get any further NGO submissions from the extranet site the Committee will establish for that purpose. There is no deadline for submission of NGO comments. In addition, a closed consultation for NGO's would be conducted by the Committee the evening before the first part of the U.S. oral presentation.

PUBLIC PARTICIPATION/DISSEMINATION

The session is open to the public, and will be held in the Palais des Nations. The local UN-accredited press will have access, as will other press who seek credentials, upon approval by the chair. The sessions are taped recorded for the Committee's use, and the press, NGOs, and governments can ask the Secretariat to make copies if they provide blank audio tapes. TV or video requests must be made through the UN Department of Public Information (DPI). They must be approved by the Chair of the Committee. DPI will ensure they would not be handled in an intrusive way. Morales remarked that during India's presentation there was quite a bit of press and TV participation. In response to our query whether there had ever been a webcast link, Morales said not to her knowledge. She said that a request would have to be considered if it came in, but would not/not originate with the Committee itself ("we will not pick the U.S. to be a guinea pig.").

RAPPORTEURS

Rapporteurs for the U.S. session are Marino and Carrara, who are natives speakers of Spanish and French. Morales requested that, if any of the information to be submitted by the U.S. can also be provided in these two languages, that we do so.

DOCUMENTS

In response to a query whether there were any specific background documents that the Committee expected to be submitted, Morales said that it would be helpful to submit two copies of anything cited in the report. When asked whether a weblink would be adequate, Morales and Nataf were of two minds -- on the one hand a weblink should suffice, but experience was that links are often dead or the Committee has difficulties opening them.

Bob

**From:** Camponovo, Christopher N. [mailto:Christopher\_N\_Camponovo@ ]  
**Sent:** Wednesday, March 29, 2006 6:20 PM  
**To:** schoune@state.gov; amsurena ; Bourke, Michael P.; Brian.Kelliher1@dhs.gov;   
 ; daniel.brown@dhs.gov;  
 David\_Bernhardt@ios.doi.gov; Diane Beaver; drew.steinberg@dhs.gov; HarrisRK2@state.gov;  
 HodgkinsonSL@state.gov; Igor Timofeyev; johnsonTA2@state.gov; lagonmp@state.gov;  
 laurence.rothenberg@usdoj.gov; matthew.friedrich2@usdoj.gov; Melear, Pamela S.;  
 molly.groom@dhs.gov; nader.baroukh@dhs.gov; noyesjv@state.gov; omar.vargas3@usdoj.gov;

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rena.comisac@usdoj.gov; rob.wexler@ed.gov; roger.sagerman@dhs.gov;  
ron.rosenberg@dhs.gov; Ronald.whitney@dhs.gov  
**Cc:** Melear, Pamela S.  
**Subject:** CAT hearing PCC meeting - Monday, April 3.

We've scheduled a PCC for Monday, April 3 at 2 pm in the EEOB, room 211 on preparations for the upcoming Convention Against Torture hearing. For those of you on this email distribution who represent agencies not involved in the CAT hearing, apologies -- feel free to click delete.

This email is also a reminder that agency comments on the answers to the Committee's questions on our Second Periodic Report re. implementation of the CAT were due by c.o.b. Tuesday, March 28. If you have not already provided your responses to Bob Harris at [Harrisrk2@state.gov](mailto:Harrisrk2@state.gov) please do so as soon as possible, cc-ing [Schoune@state.gov](mailto:Schoune@state.gov), [HillSR@state.gov](mailto:HillSR@state.gov), [bentesjw@state.gov](mailto:bentesjw@state.gov). In light of all that remains to be done to prepare the U.S. delegation for the hearing, it is all the more critical that we finalize the answers to the Committee's questions as soon as possible and circulate them for final agency clearance.

The PCC is primarily intended to explain the next steps in preparing the delegation and also to explain the actual mechanics of the actual hearing process. An agenda for the meeting is attached. At that meeting State will discuss the actual structure of the hearing, the amount of time allotted for the USG defense of its report, and how the USG will divide its time between opening statements and summaries of answers to the Committee's numerous questions, how to handle the additional questions that the Committee will ask during the course of the hearing, and how to coordinate interagency clearances for such questions. We will also discuss the additional work product that must be prepared and cleared by the interagency to prepare the delegation for the hearing.

Please respond to Pam Melear (cc'd) with clearance info.

In anticipation of the meeting and the materials we will need to prepare shortly thereafter, we ask that each agency:

- o Finalize their decisions on who will represent their respective agencies for the hearing. State does not yet have lists for DOJ/CRD and DHS.
- o DOJ - please consider whether someone from BOP should be represented on the delegation, or whether support from BOP in Washington should suffice to be responsive to any additional questions that may arise from the Committee.
- o Come up with a list of hard questions that have not been addressed thus far, but that we may expect the Committee to ask. To the extent possible, we request that agencies also in a week or two suggest draft answers. (By way of background, the principal USG human rights NGOs have had numerous opportunities to inform the Committee of any concerns they have. Thus, to the extent that US NGOs have raised particular issues with your agency that may have some relevance to the CAT, it would be helpful if you could include those Qs and As.)

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B3, CIA, B6 **GES**

L Press Guidance  
May 6, 2005

United States Periodic Report on the  
Convention Against Torture

**Q: Is it true that the United States recently filed a report on its implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT")? What is this report, and why did the United States produce it?**

**A:**

- On May 6, 2005, the United States submitted to the Committee Against Torture its second periodic report on its implementation of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("CAT"). The report is a routine periodic update of our Initial Report, which was filed in October 1999.
- Article 19 of the CAT provides that all States Parties shall submit to the Committee Against Torture reports on measures they have taken to implement the CAT.
- The Convention Against Torture created a body of experts known as the Committee Against Torture (the "Committee"). Among its responsibilities, the Committee reviews reports submitted by CAT States Parties.
- The report just filed provides an update since the

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 06 AUG 2009 200706444

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filing of the Initial Report in 1999 on new legislation, caselaw, policies, and programs and other relevant information to update the initial report. The material provided is comprehensive, as the report provides an article-by-article discussion of the various provisions of the CAT.

- The report also contains a lengthy annex on detentions of individuals under the control of U.S. Armed Forces in Afghanistan, Iraq and Guantanamo Bay, Cuba, investigations into abuse allegations arising out of these detentions, and 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.
- The report has been sent to the Committee Against Torture, which will post it on their website in accordance with their standard practice. We will now post the report on our own website.

Core themes to emphasize:

- This report demonstrates that the United States takes its obligations under the Convention Against Torture seriously.

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- Through an extensive inter-agency process we have produced a serious report, consistent with our reporting obligations under the Convention.
- We look forward to engaging in a dialogue on these issues when we present the report orally before the Committee Against Torture at one of its future sessions.
- As the President has clearly stated, "America stands against and will not tolerate torture." We take the prohibition against torture seriously.
  - Every jurisdiction in the United States, at the federal and state level, prohibits torture.
  - We have enacted legislation to ensure that acts of torture committed outside of the United States by U.S. nationals or by foreign nationals subsequently found in the United States acting under color of law are subject to U.S. criminal jurisdiction.
  - U.S. laws also prohibit serious abuses short of torture when they are committed by U.S. officials acting within the United States and within the premises of U.S. military or other United States Government missions or entities in foreign States.

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- This report documents this robust legal framework and notes how it has been applied in response to allegations of abuse. This report makes clear that in all cases where allegations of torture or other unlawful treatment of detainees have been made, they will be investigated, and if substantiated, prosecuted.
- In every country in the world there are human rights violations.
  - What is important is having institutions in place to investigate them and to provide for accountability.
  - This report acknowledges serious allegations of abuse by officials acting within the United States and abroad.
  - The United States takes seriously any credible allegation of abuse by any government official, whether at the federal or state level, by the military, or by intelligence agencies.
- This report also acknowledges that allegations have been raised that the United States has transferred individuals to third countries where they have been tortured.
  - The report reiterates the policy that has been

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repeatedly reaffirmed at the highest levels of the U.S. government: the United States does not transfer persons to countries where the United States believes it is more likely than not that they will be tortured.

**IF ASKED:**

**Substance of the report:**

- Much of the report is focused on the implementation of the CAT in the criminal justice setting.
  - For example, it provides examples of Department of Justice prosecutions of abuses by law enforcement officers since 1999.
  - It also describes new legislation that Congress has passed since 1999 that expands the ability of the United States to prosecute acts of torture as well as other serious abuses that fall short of torture.
- The report also describes how aliens in immigration proceedings are granted protection when it is "more likely than not" that they would face torture in their country of removal, and how this same standard is applied in extradition cases as well.
- It also describes the generous support provided by the

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United States to victims of torture or other mistreatment, through assistance to groups working on these issues both domestically and overseas.

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:

- Yes, the U.S. was behind schedule, but this is not unusual among States Parties.
- The United States is strongly committed to preventing torture. The United States condemns the use of torture wherever it occurs.

If needed:

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

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- With respect to national reports on implementation of the CAT, 93 countries are currently overdue in meeting their reporting requirements, including countries such as Australia, Brazil, Chile, China, Costa Rica, El Salvador, Germany, Ireland, Japan, Liechtenstein, New Zealand, Portugal, South Africa, Spain and Sweden.

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

A:

- The Committee invites States Parties to present their reports to the Committee in oral session in Geneva.
- The United States, for example, appeared before the Committee in May of 2000 to explain its October, 1999 Initial Report.
- The Department of State anticipates that the Committee will schedule such a session on the U.S. report in one of its future sessions.

Q: When does the United States plan to submit its long overdue report on its implementation of the International Covenant on Civil and Political Rights?

A:

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- Now that the United States has completed its report on the Convention Against Torture, it is further intensifying its efforts to complete work on its periodic update report on the International Covenant on Civil and Political Rights.
- We anticipate that we will submit that report in the next few months.

## 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?

A:

Yes. The U.S. report contains a lengthy Annex describing the treatment of detainees under the control of the U.S. Armed Forces in Afghanistan, Guantanamo, and Iraq.

Q: What does the Report or its annex say about treatment of U.S. detainees in Iraq, Afghanistan and Guantanamo?

A:

- The Annex to the Report describes the background to the war against the Taliban, al-Qaida, and their affiliates and supporters. It describes the status

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of the detainees held by U.S. Armed Forces, the combatant status review tribunals, how the U.S. assesses detainees for release and/or transfer, military commissions, and the U.S. court proceedings that are underway. It also addresses generally the issue of treatment of detainees and summarizes the numerous USG reviews and reports that have been released to date addressing DoD treatment.

- The Annex to the Report notes that none of the detailed examinations and reports addressing DoD operations have found a governmental policy that promoted, encouraged, or directed the abuses that took place at Abu Ghraib or elsewhere.
- The report and its annexes underscore that the United States takes all allegations of abuse seriously and investigates them. Those people who are found to have committed unlawful acts are held accountable and disciplined as the circumstances warrant. Investigations are thorough and have high priority.

Q: Does the Report address the CIA's treatment of detainees?

9  
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A:

- The report notes that all components of the United States Government are obligated to act in compliance with the law, including all United States constitutional, statutory and treaty obligations relating to torture and cruel, inhuman or degrading treatment or punishment.
- 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. U.S. laws prohibiting such practices apply when United States government personnel or contractors are operating in the United States and in other parts of the world, although different U.S. laws may apply depending upon the circumstances.
- Allegations regarding the military are discussed in Annex 1. Allegations regarding intelligence activities are currently under review by the Inspector General of the CIA. That office has reported and will continue to report its findings to the Director of the Central Intelligence Agency and the Congressional Intelligence Oversight Committees and will continue to forward substantiated cases of abuse to the Department of Justice for investigation and prosecution.

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If Pressed on CIA practices (including specific cases, so-called "ghost detainees," alleged CIA detention facilities)

- We do not comment on intelligence activities. The report speaks for itself.

Renditions/Removals to countries despite fears of torture

Q: Does the report address renditions of persons to countries in which they face torture?

A:

- The report acknowledges that allegations have been raised that the United States has transferred individuals to third countries where they have been tortured.
- The report reiterates the policy that has been repeatedly reaffirmed at the highest levels of the U.S. government: the United States does not transfer persons to countries where the United States believes it is "more likely than not" that they will be tortured.

If pressed on whether this policy applies to the CIA

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This policy applies to all components of the United States government.

If pressed on specific allegations of CIA renditions

- The policy not to return people to countries in which the United States believes it is more likely than not that the person would be tortured applies to all components of the United States government.
- In keeping with longstanding practice, we do not comment on intelligence activities.

If pressed about diplomatic assurances

Q: Does the report address the legality of diplomatic assurances? How is it possible for the U.S. to trust the word of governments that are known human rights violators?

A:

- The report restates the policy that has been repeatedly reaffirmed at the highest levels of the U.S. government: the United States does not transfer persons to countries where the United States believes it is "more likely than not" that they will be tortured.

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- The United States obtains assurances, as appropriate, from the foreign government to which a detainee is transferred that it will not torture the individual being transferred.
- If assurances were not considered sufficient when balanced against treatment concerns, the U.S. would not transfer the person to the control of that government unless the concerns were satisfactorily resolved.

If pressed on specific interrogation techniques

Q: Does the report address alleged interrogation techniques such as water-boarding, etc.? Are such techniques permissible under the CAT?

A: The report does not address specific interrogation techniques. The report reiterates that the U.S. is committed to complying with all United States constitutional, statutory, and treaty obligations relating to torture and cruel, inhuman, and degrading treatment or punishment and that it does not permit, tolerate, or condone torture or other unlawful treatment by its personnel or employees under any circumstances, regardless of whether the abuse occurred within the United States or overseas.

If asked about specific cases

13  
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Q: Does the report address the case of [specific case]?

A:

We will need to get back to you on that. As always, we will not be in a position to comment on cases that are the subject of pending litigation.



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L Press Guidance, 4/20/05 Drafted: L/HRR:RKHarris/NSchou 4/18/05  
x74262

SBU # 11095

Cleared: L:JBellinger  
L:SWitten (o.k.)  
L/PM:ADeeks (o.k.)  
L/CID:KGorove (o.k.)  
L/EUR:DTerrill (o.k.)  
DRL/MLA:CCamponovo/LSicade (o.k.)  
DRL:GBigler (o.k.)  
DRL:MKozak (o.k.)  
IO/SHA: WLucas (o.k.)  
H: DPetchell (o.k.)  
S/WCI: ERichard (o.k.)  
S/P:WInboden (o.k.)  
D: RWaller (o.k.)  
G: Tmittnacht (o.k.)  
P: JDeHart (o.k.)  
NSC : SHodgkinson (o.k.)  
CIA:   
DHS: Nader Baroukh (o.k.)  
DOD:   
DOD:   
DOJ: PPhilbin (o.k.)

B3

B6

GEB

**Chambers, Anna L**

**From:** DePirro, Velia M  
**Sent:** Monday, December 19, 2005 12:31 PM  
**To:** Levin, Jan; Williams, Kendl  
**Subject:** FW: Dels to defend US reports to human rights/torture treaty bodies

RELEASED IN PART

B6, B5

Jan/Kendl:

FYI State's planning for the May and July defenses of U.S. submissions.

Velia De Pirro  
 Political Counselor  
 U.S. Mission Geneva  
 (41) 22-749-4111

-----Original Message-----

**From:** Harris, Robert K  
**Sent:** Wednesday, December 14, 2005 11:39 PM  
**To:** Kovar, Jeffrey D; DePirro, Velia M; Cassel, Lynn L  
**Cc:** Witten, Samuel M; Bellinger, John B(Legal); Frechette, Alicia A; Legal-L-HRR; Dorosin, Joshua L; Dolan, JoAnn; Andre Surena Final (amsurena [redacted])  
**Subject:** RE: Dels to defend US reports to human rights/torture treaty bodies

B6



LEGAL-#18180-v1-  
 Funding\_for\_de...

Sam and John,

Mark Lagon's e-mail is very good news, as IO approved the request we wrote for \$50,000 to fund the L core team (plus Mark Lagon) for our CAT and ICCPR report hearings. Jeff Kovar tells me that we may need to find money for additional expenditures, such as a bus to carry the delegation, a car for John and Barry etc. (Mark warned me that IO would get "sticker shock" if I asked for more money than I did.) DRL and other bureaus at State will pay their own way to the hearings.

Jeff Kovar earlier today sent me the questions from the Committee Against Torture, which I have not had a chance to yet to read (there are 14 pages of them!). I am attaching them to this message so that L/HRR, L/PM and Andre can look at them. I do not want to circulate these more widely until we've had a chance to see what we think about them and how we would like to task the answers.



14 December 2005  
 - Unedited ve...

I will keep this group apprised of events related to these hearings as they unfold.

Bob

**From:** Lagon, Mark P  
**Sent:** Wednesday, December 14, 2005 12:53 PM  
**To:** Harris, Robert K  
**Cc:** Witten, Samuel M; Bellinger, John B(Legal)  
**Subject:** FW: Dels to defend US reports to human rights/torture treaty bodies

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 23 JUL 2009 200706444

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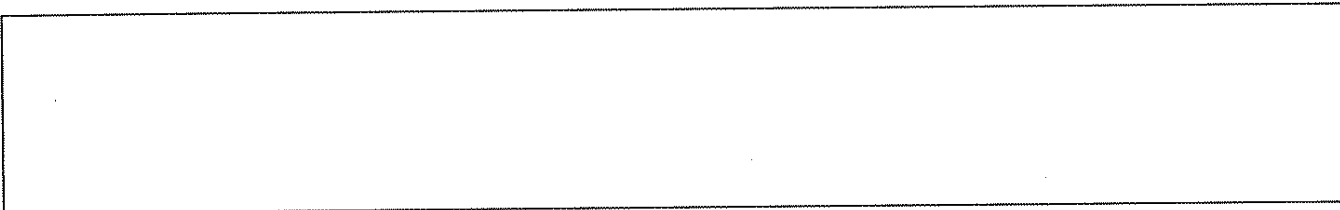
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As your requested, Bob, here is the memo IO considered (with about three non-substantive words tweaked, as I told you). At my urging to Kristen and Philo, IO will provide the entire amount requested. IO/OIC has found money to support (despite it not being a usual "conference")

-----Original Message-----

**From:** Lagon, Mark P  
**Sent:** Thursday, December 08, 2005 9:57 AM  
**To:** Dibble, Philo L; Tiernan, Thomas J; Williams, Penelope A  
**Subject:** Dels to defend US reports to human rights/torture treaty bodies



B5

Many thanks

-----Original Message-----

**From:** Harris, Robert K  
**Sent:** Wednesday, December 07, 2005 5:26 PM  
**To:** Lagon, Mark P  
**Subject:**

<< File: LEGAL-#18180-v1-Funding\_for\_defnse\_of\_treaty\_reports.doc >>

RELEASED IN PART  
B5

GE9

**From:** DePirro, Velia M  
**Sent:** Thursday, December 01, 2005 10:42 AM  
**To:** Williams, Kendl  
**Subject:** FW: Rapid Response 11-30: Euros waiting for answers on prisons  
Kendl:

Let's create a press guidance file where we can put all this stuff for when we need it -- like to write statements, etc. thanks

Velia De Pirro  
Political Counselor  
U.S. Mission Geneva  
(41) 22-749-4111

-----Original Message-----

**From:** Robinson, Brooks A  
**Sent:** Wednesday, November 30, 2005 2:48 PM  
**To:** Moley, Kevin E; Cassel, Lynn L; Lubetkin, Wendy C; Ashley, Chuck; Barton, Paula J; Birdsall, Paul D; Campbell, Piper ; Carle, Lisa M; Cassidy, Joseph P; Chamberlin, John W; DePirro, Velia M; Eshelman, Stephanie K; Hohman, David E; Kehoe, Melissa J; Kovar, Jeffrey D; Kruglikova, Kira G; Kyloh, Nance M; Lee, Donna L; Levin, Jan; Peay, Michael T; Perkins, Katherine K; Rose, Erwin D; Siekert, Magda S  
**Subject:** FW: Rapid Response 11-30: Euros waiting for answers on prisons

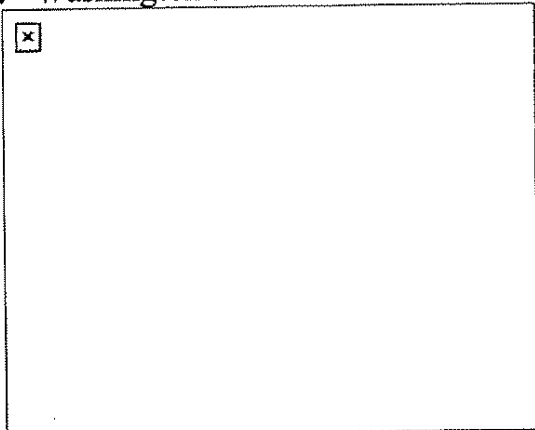


B5



**HOT ISSUES**

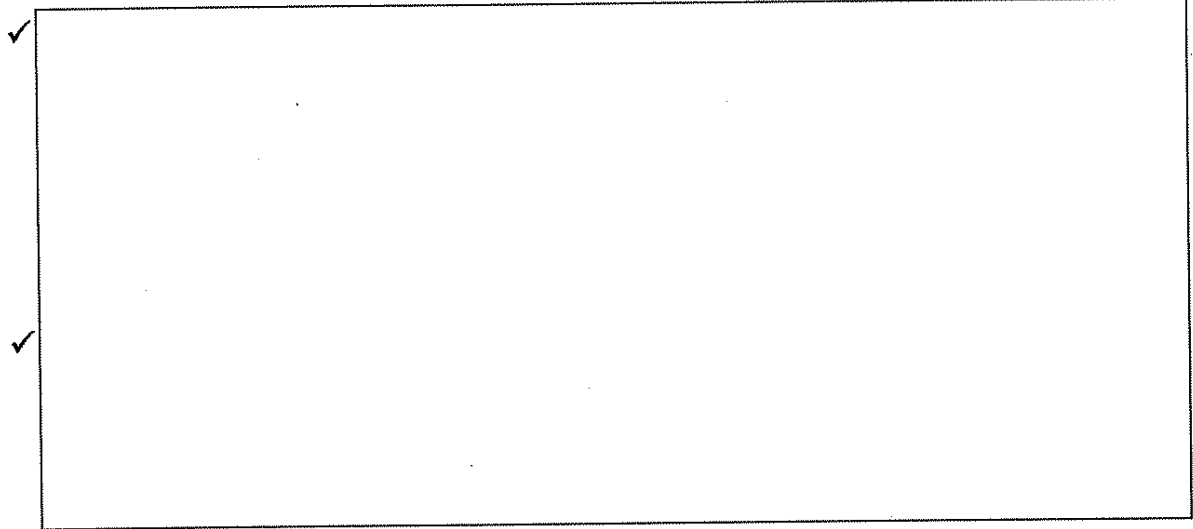
- **Euros Waiting For Answers on Prisons:** Washington's "refusal to confirm or deny" allegations of secret CIA prisons dominates Europe's media. Spain's *El Pais* and *ABC* run Secretary Rice's "promise" to "explain the truth" as their top international stories. A Russian daily observes: "The torture scandal...has seriously damaged U.S.-EU relations and caused mistrust inside Europe." The Secretary's upcoming trip is seen as a "visit of reconciliation."



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B5



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RELEASED IN PART

B5, B6

GE13

Peay, Michael T

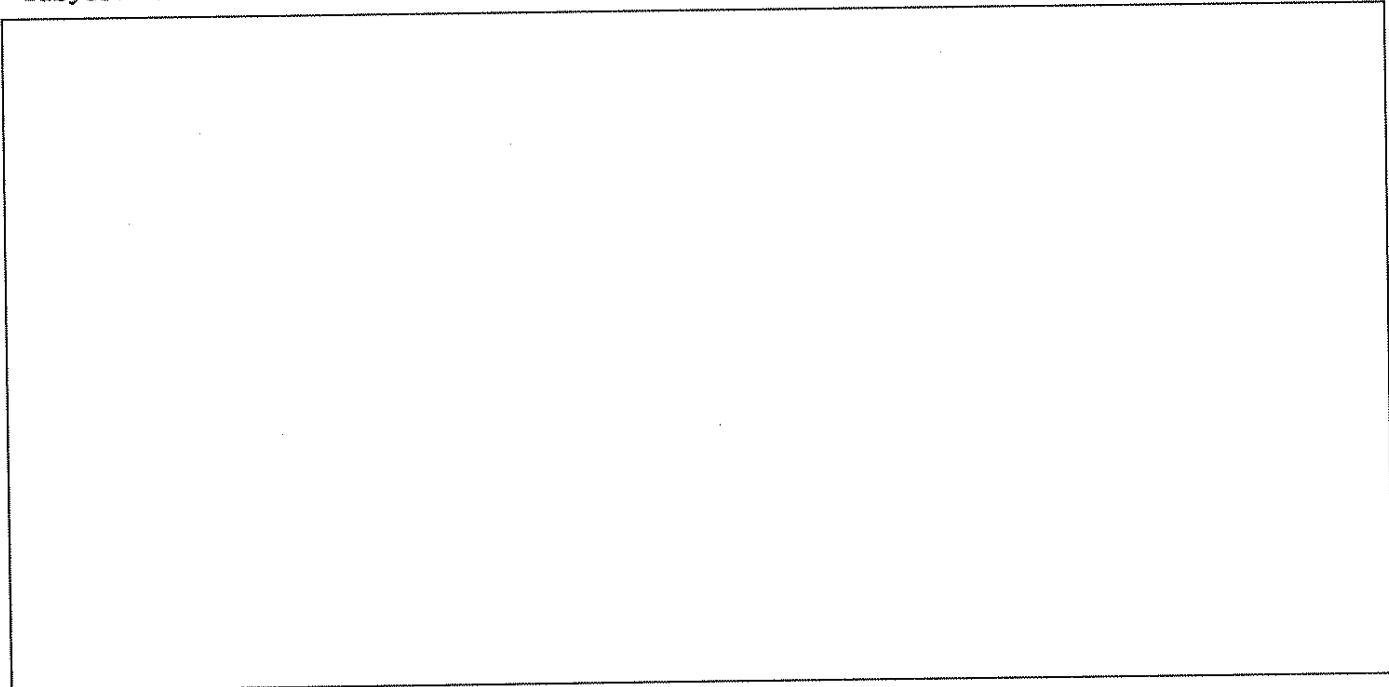
**From:** Brancato, Gilda M (L-HRR)  
**Sent:** Tuesday, January 25, 2005 7:19 PM  
**To:** Brancato, Gilda M (L-HRR); Jacobson, Linda (SBU); Manning, Denise (SBU); Brooks, Waldo W (L-PM); Dorosin, Joshua L (L-PM); Johnson, Thomas A; Camponovo, Christopher N (DRL); Sicade, Lynn M (DRL)  
**Cc:** Witten, Samuel M (L); Harris, Robert K (L-HRR); Barton, Paula J; Danies, Joel D; Lucas, William E; Peay, Michael T; Butler, Michael A (DRL)  
**Subject:** RE: FOR COMMENT/enforced disappearances - new proposals

This is a follow-up to my email below and is a LAST CALL for any comments on the new proposals, please, by 3 pm today, as I am in NYC for the remainder of the week for the disabilities treaty negotiations. Disappearances negotiations in Geneva start Monday. Thank you all, Gilda

-----Original Message-----

**From:** Brancato, Gilda M (L-HRR)  
**Sent:** Tuesday, January 18, 2005 10:18 AM  
**To:** Jacobson, Linda (SBU); Manning, Denise (SBU); Brooks, Waldo W (L-PM); Dorosin, Joshua L (L-PM); Johnson, Thomas A; Camponovo, Christopher N (DRL); Sicade, Lynn M (DRL)  
**Cc:** Witten, Samuel M (L); Harris, Robert K (L-HRR); Barton, Paula J; Danies, Joel D  
**Subject:** FW: FOR COMMENT/enforced disappearances - new proposals

B5



-----Original Message-----

**From:** Danies, Joel D (Geneva)  
**Sent:** Tuesday, January 18, 2005 4:31 AM  
**To:** Brancato, Gilda M (L-HRR); Barton, Paula J; Peay, Michael T  
**Cc:** Lucas, William E; Johnson, Thomas A; Butler, Michael A (DRL); Camponovo, Christopher N (DRL); Harris, Robert K (L-HRR); Mehra, Sasha; Schechter Torres, Julie L (DRL)  
**Subject:** FW: enforced disappearances - consultations on 19 and 24 January

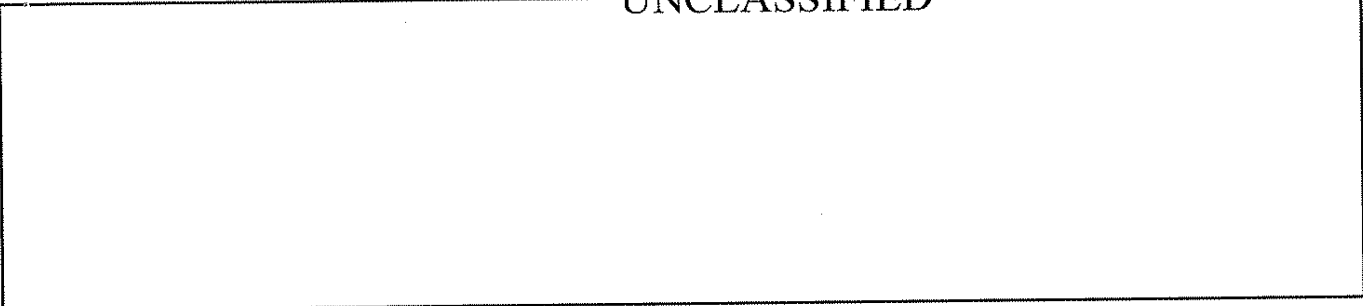
Gilda,

1

UNITED STATES DEPARTMENT OF STATE  
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DATE/CASE ID: 06 AUG 2009 200706444

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FP0919



-----  
-----Original Message-----

From: [redacted]  
[mailto:[redacted]]  
Sent: 17 January 2005 15:25  
To: Cahalane Brian GENEVA PMUN; [redacted]  
[redacted] obemson [redacted]  
[redacted]  
[redacted]

Subject: enforced disappearances - consultations on 19 and 24 January

Dear regional coordinators,

I would be very thankful if you could forward the following information to the members of your group.

HE Mr Kessedjian has send a letter in December to all delegations inviting them to new informal consultations at the French mission.

- on 19 January, at 3 PM, we will discuss articles 10 to 15bis, 19 and 20
- on 24 January, at 9 AM, we will discuss articles 16, 16bis, 17, 18 and 22
- on 24 January, at 14 PM, we will discuss parts II and III.

For these discussions, we will use the attached documents :  
- the chairs draft, that was used as a basis for the October session  
- a simplified Part II, dated 1 December 04  
- a preliminary compilation dated 2 December 04. This document is an attempt at combining a number of proposals. It does not include all the articles, nor does it reflect all the proposals made by delegations.

During our dicussions, we will try to identify compromise formulas. These formulas will then be presented during our official session, from 31 Januray to 11 February.

I would be very grateful to colleagues who wish to attend these discussions if they could let the French mission know in advance (022 758 91 42 or [redacted]).

Many thanks  
cc  
<<drafteng.doc>>

\*\*\*\*\*  
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This footnote also confirms that this email message has been swept by

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MIMESweeper for the presence of computer viruses.

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GE18

**Comments of the United States of America  
on the Draft Report of the Working Group on the elaboration of a  
draft legally binding instrument on protection from  
Enforced Disappearances**

We have reviewed the draft Forced Disappearances Report covering the third session of negotiations held from October 4-8, 2004 and the fourth session held from January 31-February 11, 2005. The following are our comments on this draft:

**CRITICAL COMMENTS:**

Article 9: The Chair and the Secretariat staff promised the US delegation during negotiations that the final Report would state clearly that one delegation continued to oppose the inclusion of Article 9(2) on "found in" (quasi-universal) jurisdiction. The draft Report does not state this. Please ensure that the final Report expressly includes mention of this opposition of one delegation to Article 9(2).

Article 5: The Report should reflect that at least one delegation believes that there should not be an operative provision in the instrument text on crimes against humanity.

Process: The final Report should include reference to the status of the negotiations at the conclusion of the Fourth session, in particular the following:

(1) the Chair's statement on the final day of the Fourth session that several aspects of the treaty text remain subject to lively debate within the Working Group, including (a) state action, (b) the whole of Part II, Article III- Dbis on "responsibility for international relations", and (c) the format and structure of the instrument (i.e. whether it is an optional protocol or convention, and whether it will use an existing or new treaty monitoring body); and

(2) while many states intervened to applaud the skill of the Chair and his team, several States added on the last day of the fourth session that the text of the instrument was not yet mature, that consensus was desirable and not reached, and that the 61st CHR should authorize additional treaty negotiations.

**Additional comments:**

Article 19: Paragraph 16 in the Report under Article 19 should reflect that at least one delegation underscored that Article 19, as well as similar criminalization provisions, should contain an express requirement of intentionality or knowledge.

Article 22: Paragraph 11 in the Report under Article 22 inaccurately indicates that the proposed Principles and Guidelines on Right to a Remedy contain "obligatory" provisions. Rather, these Principles by their terms (and expressly stated therein) are non-binding. Thus the second sentence in paragraph 11 under Article 22 should be corrected to read as follows: "Other kinds of reparation were just as important to victims' families, and should therefore be treated on a par with compensation in keeping with the Principles and Guidelines on Right to a Remedy currently being worked on at the United Nations."

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RELEASED IN PART  
B6, B1, 1.4(B), 1.4(D), B5

SECRET  
GE19

Barton, Paula J

**From:** Barrios, Stacy M  
**Sent:** Tuesday, February 22, 2005 7:24 PM  
**To:** Brancato, Gilda M; Barton, Paula J; Peay, Michael T  
**Cc:** Danies, Joel D  
**Subject:** FW: Enforced Disappearances: report

Bob shared the UK's comments below....

*Stacy M. Barrios*  
*Human Rights Officer*  
*U.S. Mission to UN Organizations*  
*Geneva, Switzerland*  
*41-22-749-4214*  
*41-22-749-4717 (fax)*  
*BarriosSM@state.gov*

-----Original Message-----

**From:** [Redacted]  
**Sent:** Tuesday, February 22, 2005 6:36 PM  
**To:** Barrios, Stacy M; [Redacted]  
**Subject:** FW: Enforced Disappearances: report

B6  
B6

Dear all

In case you're interested, below are our comments on the report.

best wishes

Bob

-----Original Message-----

**From:** Bob Last Geneva -Conf  
**Sent:** 22 February 2005 11:32  
**To:** [Redacted]  
**Subject:** FW: Enforced Disappearances: report

B6

Thanks Jillian

we didn't receive the report or hear about the deadline. I've just sent in our comments.

Bob

-----Original Message-----

**From:** Bob Last Geneva -Conf  
**Sent:** 22 February 2005 11:30  
**To:** [Redacted]

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 14 AUG 2009 200706444

B6

2/23/2005

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Cc:

Subject: Enforced Disappearances: report

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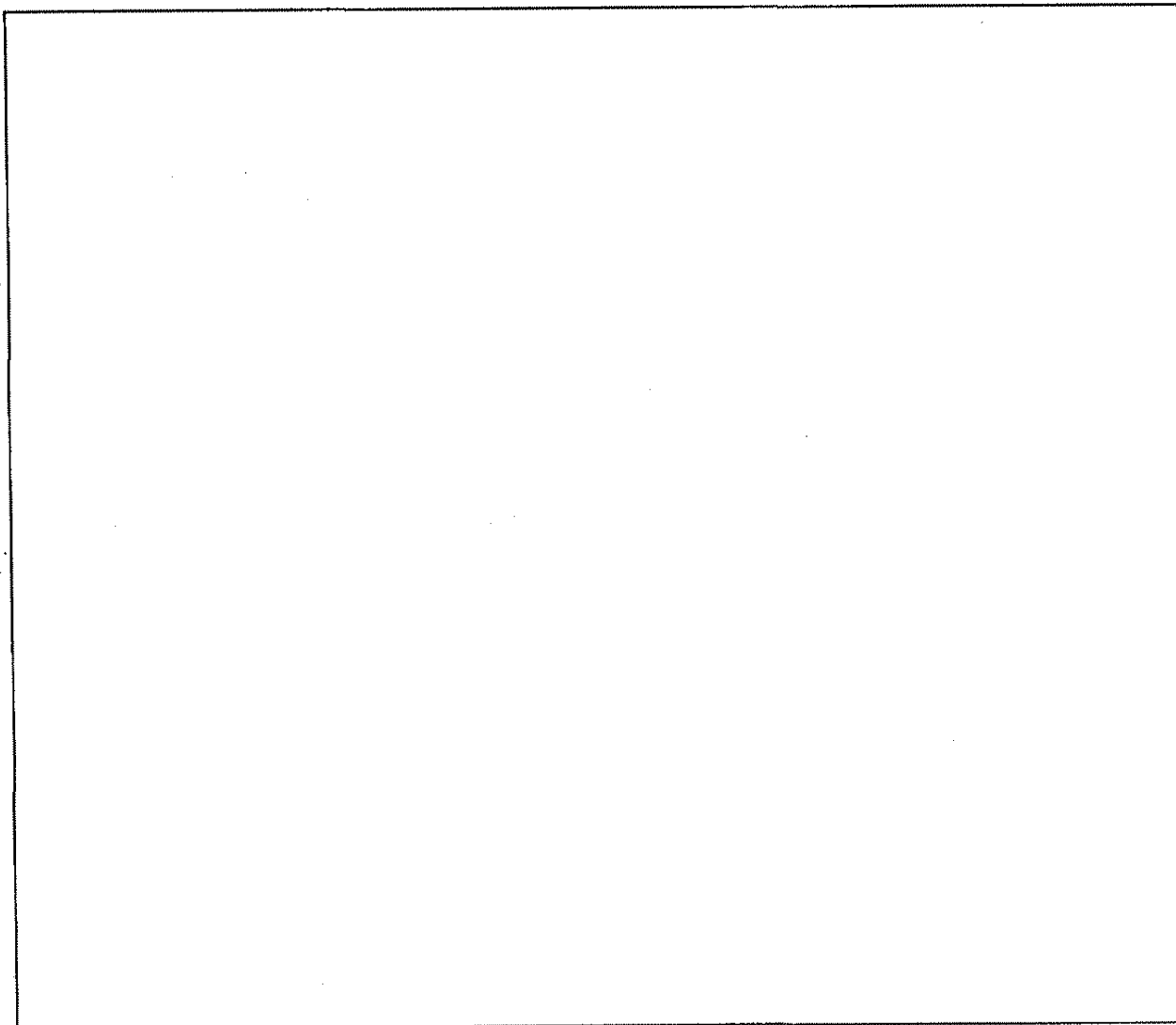
Carmen

I hope this is not too late. Here are the UK's comments on the report.

best wishes

Bob

WG.22/CRP 2



B1

Bob Last  
Human Rights Attaché  
Human Rights Section

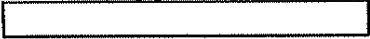
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[www.fco.gov.uk/ukmisgeneva](http://www.fco.gov.uk/ukmisgeneva)

2/23/2005

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PRELIMINARY COMPILATION OF PROPOSALS - 02/12/95

GE22

**Preamble**

The States Parties to [this instrument],

*Considering* the obligations of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and fundamental freedoms,

*Having regard to* the Universal Declaration of Human Rights,

*Recalling* the Declaration on the Protection of All Persons from Enforced Disappearance adopted by the General Assembly of the United Nations in its resolution 47/133 of 18 December 1992,

*Recalling* all other relevant instruments,

*Aware* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances, a crime against humanity,

*Determined* to prevent enforced disappearances and combat impunity for the crime of enforced disappearance,

*Affirming* the right of any person not to be subjected to an enforced disappearance and the right of victims to know the truth about the circumstances of an enforced disappearance and the fate of the disappeared person,

Have agreed as follows:

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
CLASSIFICATION: UNCLASSIFIED  
DATE/CASE ID: 23 JUL 2009 200706444

[Redacted]

Article 1

For the purposes of [this instrument], enforced disappearance is considered to be the deprivation of a person's liberty, in whatever form, arrest, detention, abduction or any other deprivation of liberty committed by agents of the a State or by persons or groups of persons acting with the authorization, support or acquiescence of the a State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which places such a person and where such person is placed outside the protection of the law.

[Redacted]

[Redacted]

OR

For the purpose of [this instrument], enforced disappearance is considered to be the placement of a person outside the protection of the law as a consequence of both his/her deprivation of liberty, including arrest, detention or abduction, committed by agents of a State or by persons or groups of persons acting with the authorization, support or acquiescence of a State, and the refusal to acknowledge the deprivation of liberty or the concealment of the fate or whereabouts of the disappeared person.

Article 3

1. Each State Party shall take the necessary measures to ~~prosecute and punish~~ hold criminally responsible those who

a) those who attempt to commit and are accomplices or participate in ~~commit or assist in the commission of~~ an enforced disappearance.

1. ~~The following shall be punished:~~

- ~~(a) The perpetrators of an enforced disappearance and those who are accessories to it;~~
- ~~(b) Attempted enforced disappearance;~~
- ~~(c) Conspiracy to commit an enforced disappearance.~~

2. ~~The following shall also be punished:~~

~~(a) Those who order or encourage the commission or attempted commission of such an offence, and those who facilitate its commission or attempted commission by aiding, abetting or otherwise assisting in it, including by providing the means for its commission or attempted commission;~~

(b) The superior officer who:

- (i) Knew, or consciously disregarded information which clearly indicated, that subordinates **under his/her effective authority and control** were committing or about to commit an enforced disappearance **and** ;
- (ii) Failed to take all necessary and reasonable measures within his or her power to prevent or halt repress the enforced disappearance or to ~~repress its commission or~~ submit the matter to the competent authorities for investigation and prosecution.

2. An order from a superior **officer** or a public authority may not be invoked as a justification for enforced disappearance.

**Article 4**

1. Each State party shall make the offence of enforced disappearance punishable by appropriate penalties which take into account its extreme seriousness.

2. Each State Party may establish:

(a) Mitigating circumstances, inter alia for persons who, having been implicated in the commission of an enforced disappearance, effectively contribute to bringing the disappeared person forward alive or make it possible to clarify cases of enforced disappearance or to identify the perpetrators of an enforced disappearance;

(b) Aggravating circumstances, inter alia in the event of the death of the victim or the commission of an enforced disappearance in respect of pregnant women, minors or other particularly vulnerable persons.



## Article 5

Without prejudice to article 2 bis,

1. A State Party which applies a statute of limitations in respect of enforced disappearance shall take the necessary measures to ensure that the term of limitation for criminal proceedings:

(a) Is substantial of a long duration and proportionate to the extreme seriousness of this offence;

(b) Commences from the moment when the offence of enforced disappearance ceases and the fate of the disappeared person is established.

2. The term of limitation for criminal proceedings which is provided for in paragraph 1 shall be suspended for as long as no effective remedy is available in a the State Party to any victim in case of an enforced disappearance.

B5

B5

**Article 9**

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over **the offence of enforced disappearance**:

- a) When the offence is committed in any territory under its jurisdiction or on a ship flying its flag or on an aircraft registered in accordance with its legislation at the time of the events;
- b) When the alleged offender is one of its nationals or a stateless person usually resident in its territory;
- c) **When the alleged offender is a stateless person usually resident in its territory and the State Party considers it appropriate;**
- d) When the disappeared person is one of its nationals ~~and the State Party considers it appropriate.~~

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over **the offence of enforced disappearance** when the alleged offender is present in any territory under its jurisdiction, unless it extradites or transfers him or her in accordance with its international obligations to another State or transfers him or her to an international criminal tribunal whose jurisdiction it has recognized.

3. [This instrument] does not exclude any **additional** criminal jurisdiction exercised in accordance with ~~internal national~~ law.

**Article 10**

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed an **offence of enforced disappearance** is present shall take him or her into custody or take other legal measures to ensure his or her presence. The custody and other legal measures shall be as provided for in the law of that State Party but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. A State Party which has taken the measures referred to in paragraph 1 shall immediately carry out an investigation to establish the facts. It shall notify the States Parties ~~which may have jurisdiction in accordance with~~ referred to in article 9, paragraph 1, of the measures it has taken in pursuance of paragraph 1 of this article, including detention and the circumstances warranting detention; and the findings of its investigation, indicating whether it intends to exercise its jurisdiction.

3. Any person in custody pursuant to paragraph 1 shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he or she is a national, or, if he or she is a stateless person, with the representative of the State where he or she usually resides

**Article 11**

1. The State Party in the territory under whose jurisdiction a person alleged to have committed an enforced disappearance is found shall, if it does not extradite that person or transfer him or her **in accordance with its international obligations** to another State or transfer him or her to an international criminal tribunal whose jurisdiction it has recognized, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State Party. In the cases referred to in article 9, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 9, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be **tried entitled to a fair and public hearing** by a competent, independent and impartial court ~~which has been duly established by law and which respects the guarantees of a fair trial tribunal established by law.~~
4. Any person regarding whom proceedings are brought in connection with an enforced disappearance shall be guaranteed fair treatment at all stages of the proceedings

**Article 12**

1. Each State Party shall ensure that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to a competent authority, which shall immediately undertake a thorough and impartial investigation. Appropriate steps shall be taken, where necessary, to ensure that the complainant, witnesses, relatives of the disappeared person and their defense counsel, as well as persons participating in the investigation, are protected against all ill-treatment or intimidation as a consequence of the complaint or any evidence given.
2. Where there are reasonable grounds for believing that a person has been subjected to enforced disappearance, ~~each State Party shall refer the matter to~~ the authority referred to in paragraph 1 ~~for~~ launches an investigation, even if there has been no formal complaint.
3. Each State Party shall ensure that the authority referred to in paragraph 1:
  - (a) Has the necessary powers and resources to conduct the investigation effectively, including the power to compel suspects or witnesses to appear before it;
  - (b) ~~Receives the~~ Has access to all documents and other information relevant for it needs for its investigation;
  - (c) Has access to any place under its jurisdiction where it is suspected that a disappeared person may be present.
4. Each State Party shall take the necessary measures to prevent and punish acts likely to hinder the conduct of the investigations. It shall ensure in particular that persons suspected of having committed an enforced disappearance are not in a position to influence the progress of the investigations by means of pressure or acts of intimidation or reprisal aimed at the complainant, witnesses, relatives of the disappeared person or their defense counsel, or at persons participating in the investigation.
5. The investigation provided for in this article ~~shall~~ should be conducted in accordance with the relevant international standards, principles and guidelines relating applicable to investigations into human rights violations, including those on torture, and to the prevention of extra-legal, summary or arbitrary executions, as well as to the search for disappeared persons; and forensic examinations and identification.

**Article 13**

1. For the purposes of extradition between States Parties, **the offence of enforced disappearance** shall not be regarded as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition based on such an offence may not be refused on these grounds.
2. **The offence of enforced disappearance** shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties before the entry into force of [this instrument].
3. States Parties undertake to include **the offence of enforced disappearance** as an extraditable offence in every extradition treaty subsequently to be concluded between them.
4. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider [this instrument] as the necessary legal basis for extradition in respect of **the offence of enforced disappearance**.
5. A State Party which does not make extradition conditional on the existence of a treaty shall recognize **the offence of enforced disappearance** as an extraditable offence between States Parties themselves.
6. Extradition shall, in all cases, be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition or make it subject to certain conditions.
7. Nothing in [this instrument] shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

**Article 15 bis**

1. No State Party shall expel, return ("*refouler*") , **transfer** or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations, including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights or of humanitarian law.

**Article 16**

1. Each State Party shall, under its law:
  - a) Indicate those ~~officials~~ **authorities** authorized to order deprivation of liberty;
  - b) Establish the conditions under which such orders may be given;
  - c) Guarantee that any person deprived of liberty shall be held solely in an officially recognized and supervised place;
  - d) **Guarantee that any person deprived of liberty shall be authorized to communicate with a person of his/her choice, when such a communication is not incompatible with the purpose of the detention ;**
  - e) Guarantee access by the judicial authorities to the places where persons are deprived of liberty;
  - f) Guarantee that any person deprived of liberty shall, in all circumstances, be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of the deprivation of liberty and order his or her release if that deprivation of liberty is not lawful.
2. Each State Party shall compile and maintain one or more official registers of persons deprived of liberty. The information contained therein shall include, as a minimum:
  - a) The identity of the person deprived of liberty;
  - b) The authority ~~that ordered~~ **having decided** the deprivation of liberty;
  - c) The authority ~~responsible for supervising~~ **controlling** the deprivation of liberty;
  - d) The date and time of admission to the place of detention and the authority responsible for the place of detention;
  - e) **The State of health and, in the event of death, the circumstances and cause of death**
  - f) The date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer.



SECRET

## Article 16 bis

1. Each State Party shall ~~guarantee to the person deprived of liberty and to his or her relatives, their legal representatives, their counsel and any person authorized by them, as well as to any person able to claim with a legitimate interest under this article~~, access to at least the following information:

- (a) ~~The authority to which the person has been handed over;~~
- (b) ~~The authority that ordered having decided the deprivation of liberty;~~
- (c) The authority responsible for supervising the person deprived ~~controlling the~~ deprivation of liberty ;
- (d) The ~~whereabouts~~ whereabouts of the person deprived of liberty, including in the event of a transfer;
- (e) The date and place of release;
- (f) ~~The state of health and, in the event of death, the circumstances and causes of~~ death.

B5

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2. Appropriate measures shall be taken, where necessary, to protect the persons referred to in paragraph 1, as well as persons participating in the investigation, from any ill-treatment, intimidation or sanction as a result of the search for information concerning a person deprived of liberty.

3. In order not to jeopardize the privacy of the persons concerned, the information provided pursuant to paragraph 1 of this article must be appropriate and relevant for the intended purpose and ~~must not be used for purposes other than~~ of the search for the person deprived of liberty.

**Article 17**

Without prejudice to consideration of the lawfulness of the deprivation of a person's liberty, States Parties shall guarantee to the ~~relatives of the person deprived of liberty or of the disappeared person, their legal representatives, their counsel and any person authorized by the person deprived of liberty or by the disappeared person or by his or her relatives, as well as to any other person able to claim a legitimate interest~~ **the persons referred to in Article 16bis 1**, the right to a prompt and effective remedy as a means of obtaining without delay the information referred to in article 16 bis. This right to a remedy may not be suspended or restricted in any circumstances.

**Article 19**

1. Each State Party shall take the necessary measures to prevent and punish the following conduct:

- a) Delaying or obstructing the remedy referred to in **article 16.1 e)** and 17;
- b) Failure to record the deprivation of liberty of any person, or the recording of any information which the official responsible for the official register knows or ought to know to be inaccurate;

2. Refusal by an official to provide information on the deprivation of liberty of a person, or the provision of inaccurate information, even though the legal requirements for providing such information have been met.

**Article 22**

1. For the purposes of [this instrument], "victim" means the disappeared person and any ~~individual~~ **natural person** who has suffered ~~direct~~ harm as a **direct** result of ~~that person's~~ an **enforced** disappearance.
2. Each State Party shall take the necessary measures to ensure that every victim knows the truth regarding the circumstances of the enforced disappearance and the fate of the disappeared person. In particular, it shall take the necessary measures to search for, locate and release disappeared persons and, in the event of death, return their remains.
3. Each State Party shall guarantee the right of victims of enforced disappearance to obtain prompt, fair and adequate reparation for the harm caused to them.
4. The right to obtain reparation referred to in paragraph 3 includes full compensation for material and psychological harm. It may also include **other modalities of reparation such as:**
  - a) Restitution;
  - b) Rehabilitation;
  - c) Satisfaction;
  - d) **Guarantee of non-repetition, including restoration of honour and reputation**
5. Without prejudice to the obligation to continue the investigation until the fate of the disappeared person has been clarified, each State Party shall take the necessary measures with regard to the legal situation of the disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, custody of children and property rights.

**Article 23**

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

- a) The abduction or appropriation of children who are ~~victims of enforced disappearance~~ **disappeared**, children whose father or mother is a victim of enforced disappearance or children born during the captivity of a mother who is a victim of enforced disappearance;
- b) The falsification or destruction of documents attesting to the true identity of the children referred to in subparagraph (a).

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) and (b)

**Article 25**

1. When a child who has been abducted or appropriated in the circumstances described in article 23, paragraph 1 (a), is found in the territory of a State Party, the question of the child's possible return to his or her family of origin shall be resolved either under the national legislation of that State Party or under a bilateral or multilateral agreement entered into by that State and by the State in which the family of origin resides.
2. In all cases, the best interests of the child shall be a primary consideration, and a child who is capable of forming his or her own views shall have the right to express those views freely, the views of the child being given due weight in accordance with the age and maturity of the child.
3. Considering the need to protect the best interests of the children referred to in paragraph 1, there shall be an opportunity, in States Parties which recognize a system of adoption, for a review of the adoption of such children and, in particular, for annulment of any adoption which originated in enforced disappearance. Such adoption should, however, continue to be in force if consent is given, at the time of review, by the child's closest relatives.

GE29

Lee, Michelle G

From: Bellinger, John B(Legal)  
Sent: Tuesday, May 02, 2006 1:08 PM  
To: Kovar, Jeffrey D; Harris, Robert K; 'Sandra\_L.\_Hodgkinson@nsc.eop.gov'; Waxman, Matthew  
Subject: Re: CAT -- NGO briefing Sat May 6

[Redacted]

B5

-----Original Message-----

From: Kovar, Jeffrey D <KovarJD@state.gov>  
To: Harris, Robert K <HarrisRK2@state.gov>; Bellinger, John B(Legal) <BellingerJB@state.gov>  
Sent: Tue May 02 03:09:02 2006  
Subject: RE: CAT -- NGO briefing Sat May 6

[Redacted]

B5

From: Harris, Robert K  
Sent: Monday, May 01, 2006 9:05 PM  
To: Bellinger, John B(Legal); Kovar, Jeffrey D  
Subject: FW: CAT -- NGO briefing Sat May 6  
Importance: High

[Redacted]

B5

Jeff,

As you are John's control officer, you might want to contact the Mission's Press office to make sure the scheduling works.

Bob

From: Lagon, Mark P  
Sent: Monday, May 01, 2006 2:43 PM  
To: Robinson, Brooks A; Lubetkin, Wendy C  
Cc: Noyes, Julieta V (DRL); Denig, Paul; Wilbur, Richard M; Harris, Robert K  
Subject: RE: CAT -- NGO briefing Sat May 6  
Importance: High

[Redacted]

B5

----> Could you make some specific suggestions for interviews (and potential times -- but I suppose Fri afternoon might be best), and please copy me, Julieta and Bob Harris  
UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 22 JUN 2009 200706444

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We'll endeavor to get John to join/lead the NGO briefing too.

-----Original Message-----

From: Robinson, Brooks A(Geneva)  
Sent: Monday, May 01, 2006 4:02 AM  
To: Noyes, Julieta V (DRL); Lagon, Mark P  
Cc: Lubetkin, Wendy C  
Subject: RE: CAT -- NGO briefing Sat May 6

[Redacted]

B5

We'll send out invitations to the NGO briefing saying "the US delegation" will brief.

- Brooks

From: Noyes, Julieta V (DRL)  
Sent: Friday, April 28, 2006 9:21 PM  
To: Lagon, Mark P; Robinson, Brooks A  
Subject: RE: CAT -- NGO briefing Sat May 6

[Redacted]

B5

From: Lagon, Mark P  
Sent: Friday, April 28, 2006 3:07 PM  
To: Robinson, Brooks A  
Cc: Noyes, Julieta V (DRL)  
Subject: RE: CAT -- NGO briefing Sat May 6

J--

[Redacted]

B5

-----Original Message-----  
From: Robinson, Brooks A(Geneva)  
Sent: Friday, April 28, 2006 12:29 PM  
To: Lagon, Mark P  
Cc: Noyes, Julieta V (DRL)  
Subject: RE: CAT -- NGO briefing Sat May 6

[Redacted]

B5

- Brooks

From: Lagon, Mark P  
Sent: Friday, April 28, 2006 4:03 PM  
To: Robinson, Brooks A  
Cc: Noyes, Julieta V (DRL)

2  
UNCLASSIFIED



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Subject: RE: CAT -- NGO briefing Sat May 6

Great

-----Original Message-----

From: Robinson, Brooks A(Geneva)  
Sent: Friday, April 28, 2006 8:23 AM  
To: Lagon, Mark P; Noyes, Julieta V (DRL)  
Cc: Kovar, Jeffrey D; DePirro, Velia M; Lubetkin, Wendy C; Denig, Paul  
Subject: FW: CAT -- NGO briefing Sat May 6

Mark / Julieta:

I called a few NGOs this morning. It looks like we can get enough on Saturday to make it worthwhile. Most of them like early afternoon. How about 2:30-3:30 at the Mission? As soon as you confirm we'll get out invitations.

By the way, HR Watch's Jennifer Daskil from Washington and Amnesty International's Daniel Gorevan from London will be in Geneva specifically for the CAT. They would definitely want to attend, in addition to at least some of the Geneva-based staff.

We got the final scenesetter today. We'll wait to hear from you after your Monday planning meeting re: we can send that out, and what other information materials we might have or make. As for outreach to journalists, we will play that by ear and wait to see whether Bellinger and/or Cully want to make a few phone calls at some point; that can be done on very short notice.

- Brooks

P.S. I will be Charge during the CAT, so next week Wendy Lubetkin on my staff will take over coordinating the NGO event.

\*\*\*\*\*

Brooks Anne Robinson  
Counselor for Public Affairs  
US Mission, Geneva  
tel: 41-22-749-4360  
<http://geneva.usmission.gov>

UNCL<sup>3</sup>ASSIFIED

GE30

Lee, Michelle G

**From:** Schou, Nina E  
**Sent:** Tuesday, May 02, 2006 7:44 PM  
**To:** Bellinger, John B(Legal)  
**Cc:** Legal-L-HRR; Haines, Avril D; Dorosin, Joshua L; Kovar, Jeffrey D; Hata, Marianne J; Gale, T Hanny  
**Subject:** FW: LEGAL-#24995-v1-CAT\_JBB\_open.DOC  
**Attachments:** LEGAL-#24997-v1-CAT\_script\_5\_2\_06.DOC; LEGAL-#24995-v1-CAT\_JBB\_open.DOC  
**Importance:** High

John,

Here are two documents for your review. The first is your opening statement.

The second is the oral script we will use during the first session of the hearing.

If possible, we would appreciate your edits to the script, and any additional edits you may have on your opening statement, by midday Geneva time Wednesday so that we may incorporate them. If you would like to email the text, please do so to any of our accounts, and cc Jeff Kovar in Geneva. If you would like to make pen and ink edits, please fax them to Jeff Kovar at the mission (011-41-22-749-4343).

Thanks for your help and your leadership. We'll celebrate when this is over.

Best,  
Nina

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CE31

Lee, Michelle G

**From:** Bellinger, John B(Legal)  
**Sent:** Tuesday, May 02, 2006 10:06 PM  
**To:** Schou, Nina E  
**Cc:** Legal-L-HRR; Haines, Avril D; Dorosin, Joshua L; Kovar, Jeffrey D; Hata, Marianne J; Gale, T Hanny  
**Subject:** Re: LEGAL-#24995-v1-CAT\_JBB\_open.DOC

B5

-----Original Message-----

**From:** Schou, Nina E <SchouNE@state.gov>  
**To:** Bellinger, John B(Legal) <BellingerJB@state.gov>  
**CC:** Legal-L-HRR <Legal-L-HRR@state.gov>; Haines, Avril D <HainesAD@state.gov>; Dorosin, Joshua L <DorosinJL@state.gov>; Kovar, Jeffrey D <KovarJD@state.gov>; Hata, Marianne J <HataMJ@state.gov>; Gale, T Hanny <GaleTH@state.gov>  
**Sent:** Tue May 02 13:46:50 2006  
**Subject:** RE: LEGAL-#24995-v1-CAT\_JBB\_open.DOC

We'll do our best. We're leaving shortly. I will discuss with Marianne to see that you have hard copies, and hopefully in your book.

-----Original Message-----

**From:** Bellinger, John B(Legal)(Room 6423)  
**Sent:** Tuesday, May 02, 2006 1:46 PM  
**To:** Schou, Nina E  
**Cc:** Legal-L-HRR; Haines, Avril D; Dorosin, Joshua L; Kovar, Jeffrey D; Hata, Marianne J; Gale, T Hanny  
**Subject:** Re: LEGAL-#24995-v1-CAT\_JBB\_open.DOC

Can you print and put in my book? I leave at 200 pm.

-----Original Message-----

**From:** Schou, Nina E <SchouNE@state.gov>  
**To:** Bellinger, John B(Legal) <BellingerJB@state.gov>  
**CC:** Legal-L-HRR <Legal-L-HRR@state.gov>; Haines, Avril D <HainesAD@state.gov>; Dorosin, Joshua L <DorosinJL@state.gov>; Kovar, Jeffrey D <KovarJD@state.gov>; Hata, Marianne J <HataMJ@state.gov>; Gale, T Hanny <GaleTH@state.gov>  
**Sent:** Tue May 02 13:44:06 2006  
**Subject:** FW: LEGAL-#24995-v1-CAT\_JBB\_open.DOC

John,

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: ARCHIE M BOLSTER  
DATE/CASE ID: 22 JUN 2009 200706444

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Here are two documents for your review. The first is your opening statement. This has been cleared by DOJ and DHS. We hadn't received any comments from DOD.

The second is the oral script we will use during the first session of the hearing. As discussed previously, it is the reduced version of our longer Q's and A's. This has been cleared by DOJ and DHS and the counsel's office for the Joint Chiefs.

If possible, we would appreciate your edits to the script, and any additional edits you may have on your opening statement, by midday Geneva time Wednesday so that we may incorporate them. If you would like to email the text, please do so to any of our accounts, and cc Jeff Kovar in Geneva. If you would like to make pen and ink edits, please fax them to Jeff Kovar at the mission (011-41-22-749-4343).

Thanks for your help and your leadership. We'll celebrate when this is over.

Best,  
Nina

<<LEGAL-#24995-v1-CAT\_JBB\_open.DOC>>

2  
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GE32

Lee, Michelle G

**From:** Robinson, Brooks A  
**Sent:** Wednesday, May 03, 2006 9:26 AM  
**To:** Kovar, Jeffrey D  
**Cc:** Cassel, Lynn L; Lubetkin, Wendy C; DePirro, Velia M; Barton, Paula J  
**Subject:** FW: AI's CAT briefing - Corrected Version  
**Attachments:** cover.doc; Summary.doc; Main text.doc

RELEASED IN PART  
B6

YEs, see below.

\*\*\*\*\*

**From:** DePirro, Velia M  
**Sent:** Tuesday, May 02, 2006 4:37 PM  
**To:** Robinson, Brooks A  
**Subject:** FW: AI's CAT briefing - Corrected Version

Brooks: here's the latest from Amnesty.

Velia De Pirro  
 Political Counselor  
 U.S. Mission Geneva  
 (41) 22-749-4111

**From:** [Redacted] B6  
**Sent:** Tuesday, May 02, 2006 1:35 PM  
**To:** DePirro, Velia M  
**Cc:** Levin, Jan; Kovar, Jeffrey D; Barton, Paula J; [Redacted] B6  
**Subject:** Fw: AI's CAT briefing - Corrected Version

Dear Velia,

I am forwarding below, again for information, a corrected copy of the supplementary brief to the CAT shared with you last week in connection with the forthcoming consideration of the report of the USA.

The corrections pertain to typographical errors in footnotes, the proper name of the British Indian Ocean territory of Diego Garcia, a new Annex II, which reproduces excerpts from the Convention against Torture, and the deletion of the mention of Egypt in the list of countries with secret CIA-run detention facilities on page 19.

With best regards.  
Peter

[Redacted]

B6

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Rue du Cendrier 22  
CH-1201 Genève  
Suisse



B6

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This message has been scanned for viruses by BlackSpider MailControl

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**Lee, Michelle G**

**From:** Hill, Steven R  
**Sent:** Tuesday, July 24, 2007 9:13 PM  
**To:** Kovar, Jeffrey D  
**Cc:** Levin, Jan; Gale, T Hanny; DePirro, Vella M; Bettauer, Ronald J; Legal-HRR-DL; Padmanabhan, Vijay M; Barks-Ruggles, Erica J (DRL); Sicade, Lynn M (DRL); IO-RHS-Human Rights-DL  
**Subject:** CAT - One-Year Follow-Up Document for Transmittal  
**Attachments:** LEGAL-#53330-v1-CAT\_One\_Year\_Update\_Transmittal\_Letter.DOC; Williamson Declaration.pdf; LEGAL-#51098-v3-CAT\_Follow\_Up\_FINAL.DOC

Jeff:

As discussed, please transmit the attached one-year follow-up (including annexes) to the Committee Against Torture. Since the one year deadline is July 25, please transmit NLT COB tomorrow (Wednesday).



B5

A draft cover letter is also attached. The six annexes to the report are listed below. Due to the size of the files, for all but the first item, I'm providing a link to the file in an online location so that you can have them printed them locally. (Be advised that this will take some time due to the length of some documents.)

Please confirm transmittal and forward to us a scanned copy of the signed cover letter.

Thanks very much for your help.

Steve

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Annexes

1. Declaration of Clint Williamson (attached)
2. Department of Defense Directive 2310.01E - [http://www.defenselink.mil/pubs/pdfs/Detainee\\_Prgm\\_Dir\\_2310\\_9-5-06.pdf](http://www.defenselink.mil/pubs/pdfs/Detainee_Prgm_Dir_2310_9-5-06.pdf)
3. Army Field Manual 2-22.3, Human Intelligence Collector Operations [www.fas.org/irp/doddir/army/fm2-22-3.pdf](http://www.fas.org/irp/doddir/army/fm2-22-3.pdf)
4. Military Commissions Act of 2006 (P.L. 109-366) - [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109\\_cong\\_bills&docid=f:s3930enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_bills&docid=f:s3930enr.txt.pdf)
5. Sexual Violence Reported by Correctional Authorities, 2005 (Department of Justice, Bureau of Justice Statistics) - <http://www.ojp.usdoj.gov/bjs/pub/pdf/svrca05.pdf>
6. Department of Homeland Security, "Hurricane Katrina: What Government Is Doing" - [http://www.dhs.gov/xprepresp/programs/gc\\_1157649340100.shtm](http://www.dhs.gov/xprepresp/programs/gc_1157649340100.shtm)

RELEASED IN PART

B5, B6

West, Lora

**From:** Brancato, Gilda M  
**Sent:** Monday, June 19, 2006 4:13 PM  
**To:** Brancato, Gilda M; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL); McKee, Amy E; Padmanabhan, Vijay M; Williams, Kendi  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR; Bettauer, Ronald J; Cassel, Lynn L; Leatham, Rachel M  
**Subject:** RE: Final disappearances USG intervention at HRC (written and oral statements)

Attached for your records is the final version of the written and oral USG statements on the forced disappearances convention, with final corrections, and comments from DoD, DoJ, and NSC incorporated. Please discard the versions of



LEGAL-#26706-v1- LEGAL-#26432-v1-  
 Oral\_Statement... Statement\_at\_2...

these two documents distributed on Friday night.

Paula and Jan, I will forward a copy of our written statement to  of the UK Mission in Geneva and to other missions I have been in contact with on the issue. Thank you.

B6

**From:** Brancato, Gilda M  
**Sent:** Friday, June 16, 2006 7:45 PM  
**To:** Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL); McKee, Amy E  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR; Bettauer, Ronald J; Cassel, Lynn L; Leatham, Rachel M  
**Subject:** RE: Final disappearances USG intervention at HRC (written and oral statements)

Attached for USG delegation at the HRC are two USG statements on the draft Disappearances Convention, a lengthy written statement for distribution, submission into the record as an official UN document, and for posting on our website, as well as a two pager intended for delivery in the two minutes allotted to us. Also attached for our information is our Closing statement at the 2005 fifth round of negotiations (this has been made public) and an information memo to John Bellinger as background (for internal Department and Mission use only). Thank you, good night and good luck!!~ wish we were there with you all!! << File: LEGAL-#26432-v1-Statement\_at\_2006\_HRC\_on\_Forced\_Disappearances\_text.DOC >> << File: LEGAL-#26706-v1-Oral\_Statement\_on\_Disappearances\_at\_HRC.DOC >> << File: LEGAL-#26632-v1-Forced\_Disappearances\_Update\_to\_JBB.DOC >> << File: LEGAL-#18367-v1-Disappearances\_treaty\_USG\_Final\_Statement.DOC >>

**From:** Brancato, Gilda M  
**Sent:** Tuesday, June 13, 2006 6:53 PM  
**To:** Brancato, Gilda M; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: Final disappearances text.pdf/for clearance/USG intervention at HRC

As promised, attached for your clearance is an expanded Statement of the USG on the draft Disappearances Convention, to be delivered and entered into the record at the HRC. Please comment and clear by Thursday COB. Thank you very much, Gilda << File: LEGAL-#26432-v1-Statement\_at\_2006\_HRC\_on\_Forced\_Disappearances\_text.DOC >>

**From:** Brancato, Gilda M  
**Sent:** Thursday, June 08, 2006 7:37 PM  
 UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: ARCHIE M BOLSTER  
 DATE/CASE ID: 06 AUG 2009 200706444

1

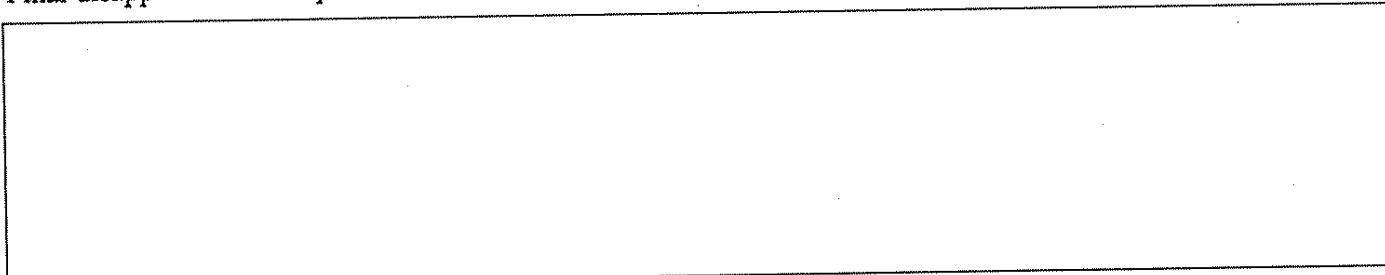
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UNCLASSIFIED

**To:** Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (BRL); Legal-L-HRR  
**Subject:** Final disappearances text.pdf/for clearance/USG intervention at HRC

<< File: LEGAL-#26432-v1-Statement\_at\_2006\_HRC\_on\_Forced\_Disappearances\_text.DOC >> << File: Final disappearances text.pdf >>



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Also attached FYI is the final text of the instrument (Annex I to the Report starting at page 30), the Report of the Fifth and final session of the Working Group (US interventions and objections are noted in paras 86, 94, 100-01, 104, 109, 114, 117, 125, and 126) and our Closing Statement at the Fifth Session on pages 48-49 of the Report.

After I receive Department clearances I will circulate to DOJ, DoD, and possibly NSC for clearance. Thank you all, Gilda

GE46

West, Lora

**From:** Brancato, Gilda M  
**Sent:** Saturday, June 17, 2006 1:45 AM  
**To:** Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL); McKee, Amy E  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR; Bettauer, Ronald J; Cassel, Lynn L; Leatham, Rachel M  
**Subject:** RE: Final disappearances USG intervention at HRC (written and oral statements)

Attached for USG delegation at the HRC are two USG statements on the draft Disappearances Convention, a lengthy written statement for distribution, submission into the record as an official UN document, and for posting on our website, as well as a two pager intended for delivery in the two minutes allotted to us. Also attached for our information is our Closing statement at the 2005 fifth round of negotiations (this has been made public) and an information memo to John Bellinger as background (for internal Department and Mission use only). Thank you, good night and good luck!!- wish



LEGAL-#26432-v1- Statement\_at\_2...  
LEGAL-#26706-v1- Oral\_Statement...  
LEGAL-#26632-v1- Forced\_Disappe...  
LEGAL-#18367-v1- Disappearances...

we were there with you all!!

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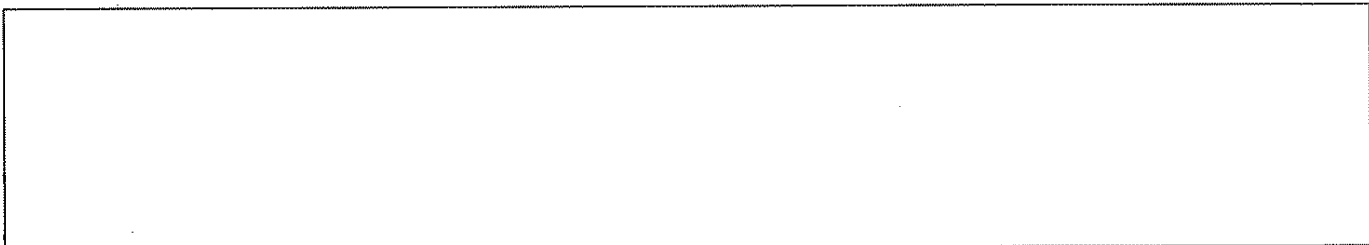
**From:** Brancato, Gilda M  
**Sent:** Tuesday, June 13, 2006 6:53 PM  
**To:** Brancato, Gilda M; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: Final disappearances text.pdf/for clearance/USG intervention at HRC

As promised, attached for your clearance is an expanded Statement of the USG on the draft Disappearances Convention, to be delivered and entered into the record at the HRC. Please comment and clear by Thursday COB. Thank you very much, Gilda << File: LEGAL-#26432-v1-Statement\_at\_2006\_HRC\_on\_Forced\_Disappearances\_text.DOC >>

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**From:** Brancato, Gilda M  
**Sent:** Thursday, June 08, 2006 7:37 PM  
**To:** Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** Final disappearances text.pdf/for clearance/USG intervention at HRC

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## UNCLASSIFIED

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UN<sup>2</sup>CLASSIFIED

UNCLASSIFIED

RELEASED IN PART

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GE47

West, Lora

**From:** Brancato, Gilda M  
**Sent:** Thursday, June 15, 2006 12:52 AM  
**To:** Brancato, Gilda M; Johnson, Thomas A; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Sicade, Lynn M (DRL); Witten, Samuel M  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: URGENT/Final disappearances text/for clearance/info memo to L

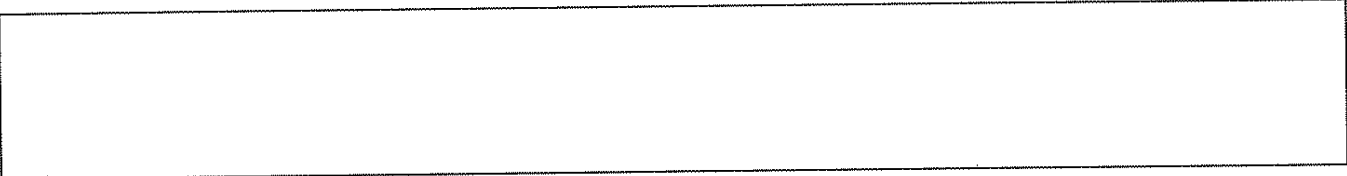
TO Sam W, Tom J, Lynn S, Jeff K, Bob H: We would like to provide John Bellinger with a short info memo on the disappearances draft convention, so may we have your clearances on the attached one-pager by Thursday COB (so sorry for the short fuse, Bob begins leave this weekend and the convention could be adopted by HRC as early as next week).



LEGAL-#26632-v1-  
 Forced\_Disappe...

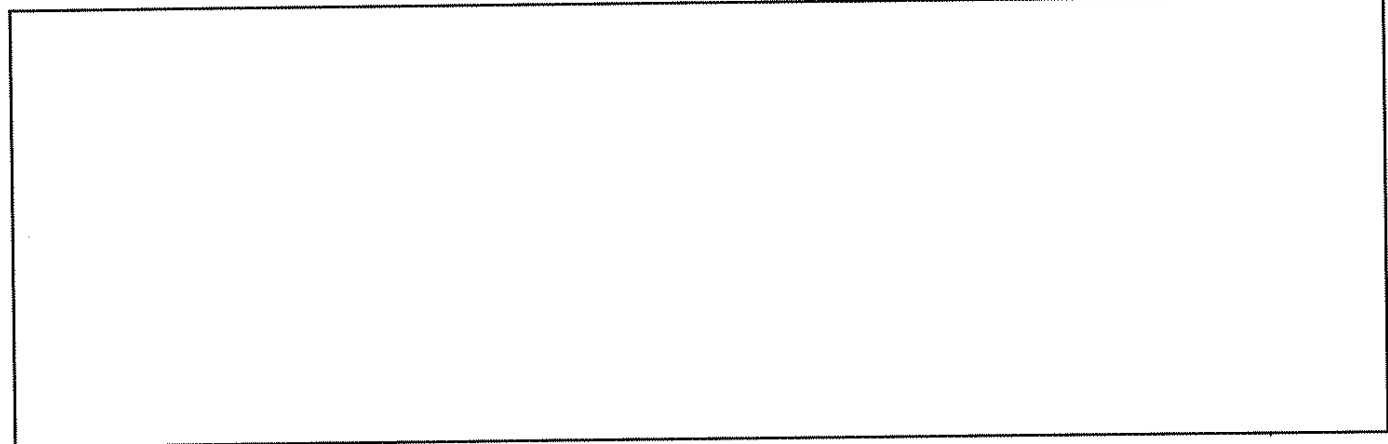
. All others are copied for their information. Thank you, and again apologies for the short fuse.

**From:** Brancato, Gilda M  
**Sent:** Wednesday, June 14, 2006 1:23 PM  
**To:** Johnson, Thomas A; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: Final disappearances text.pdf/for clearance/USG intervention at HRC



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**From:** Johnson, Thomas A  
**Sent:** Wednesday, June 14, 2006 11:03 AM  
**To:** Brancato, Gilda M; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: Final disappearances text.pdf/for clearance/USG intervention at HRC



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-----Original Message-----

**From:** Brancato, Gilda M  
**Sent:** Tuesday, June 13, 2006 6:53 PM  
**To:** Brancato, Gilda M; Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
**Cc:** Rohn, Douglas C; DePirro, Velia M; Barton, Paula J; Dorosin, Joshua L; Propp, Kenneth R; Noyes, Julieta V (DRL); Legal-L-HRR  
**Subject:** RE: Final disappearances text.pdf/for clearance/USG intervention at HRC

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**Sent:** Thursday, June 08, 2006 7:37 PM  
**To:** Lagon, Mark P; Witten, Samuel M; Kovar, Jeffrey D; Levin, Jan; Harris, Robert K; Padmanabhan, Vijay M; Deeks, Ashley S; Manning, Denise; Johnson, Thomas A; Sicade, Lynn M (DRL)  
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**Subject:** Final disappearances text.pdf/for clearance/USG intervention at HRC

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After I receive Department clearances I will circulate to DOJ, DoD, and possibly NSC for clearance. Thank you all,  
 Gilda