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Text proposed by United States delegation

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RELEASED IN FULL

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.”**

Article 2. At end of paragraph one, add a new sentence as follows:

**“The same shall apply to an attempt to commit an enforced disappearance and to an act by a person which 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.”**

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COMMISSION ON HUMAN RIGHTS

E/CN.4/2004/WG.22/Misc.20

Working Group on a draft legally binding  
normative instrument for the protection of  
all persons from enforced disappearance  
Geneva, 12-23 January 2004

16 January 2004

*LC8*

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PROPOSAL OF  
THE UNITED STATES  
E/CN.4/2004/WG.22/Misc.20

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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16 January 2004

**USC Proposed Text**

**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.”**

**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.”**

**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.”**

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E/CN.4/2005/WG.22/USA.2  
09/02/2005

US Proposal

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Article 4 (former article 2)

Each State Party shall ensure that an enforced disappearance is fully covered under its criminal or penal law.

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REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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E/CN.4/2004/WG.22/Misc.47

Working Group on a draft legally binding  
normative instrument for the protection of  
all persons from enforced disappearance  
Geneva, 12-23 January 2004

23 January 2004

LC12A

## PROPOSAL OF THE UNITED STATES

### ACCES TO INFORMATION

States Parties shall take the necessary measures within their domestic legal systems to ensure respect for the freedom of family members, and other persons with a legitimate interest within the meaning of Article 12 (4), to seek and receive information regarding the whereabouts and fate of a disappeared person, or a person who, it is reasonably believed could become a victim of an enforced disappearance.

### ACCÈS À L'INFORMATION

Les Etats parties prennent les mesures nécessaires, dans le cadre de leur ordre juridique interne, pour assurer le respect de la liberté des membres de la famille, et des autres personnes ayant un intérêt légitime telles que décrites à l'article 12 (4), de rechercher et recevoir des informations relatives au sort et au lieu où se trouve la personne disparue, ou une personne qui, croit-on raisonnablement, pourrait devenir victime d'une disparition forcée.

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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**Text proposed by United States delegation**

**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.”**

**Article 2. At end of paragraph one add a new sentence as follows:**

**“The same shall apply to an attempt to commit an enforced disappearance and to an act by a person which 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.”**



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COMMISSION ON HUMAN RIGHTS

E/CN.4/2004/WG.22/Misc.21

Working Group on a draft legally binding  
normative instrument for the protection of  
all persons from enforced disappearance  
Geneva, 12-23 January 2004

16 January 2004

LC14

PROPOSAL OF  
THE UNITED STATES  
E/CN.4/2004/WG.22/Misc.21

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 12 AUG 2009 200706444

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COMMISSION ON HUMAN RIGHTS

E/CN.4/2004/WG.22/Misc.46

Working Group on a draft legally binding  
normative instrument for the protection of  
all persons from enforced disappearance  
Geneva, 12-23 January 2004

23 January 2004

LC16

PROPOSAL OF THE UNITED STATES

ART. 3 - F

The present instrument is without prejudice to the provisions of international humanitarian law, including the obligations of the High Contracting Parties to the four Geneva Conventions of 12 August 1949 and the Additional Protocols thereto of 8 June 1977, or to the opportunity available to any State Party to authorize the International Committee on the Red Cross to visit places of detention in situations not covered by international humanitarian law.

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 12 AUG 2009 200706444

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Enforced or Involuntary Disappearances (L.59)  
Explanation of Position

Mr. Chairman, the United States has long been and remains among the strongest champions of the right of everyone to be free from enforced or involuntary disappearances. Toward this end, the United States has actively participated in the on-going negotiations of the open-ended working group to elaborate a legally binding instrument to protect all persons from enforced disappearances. The text of L.59 – quite appropriately – attaches considerable importance to the on-going negotiations on that instrument and welcomes the substantial progress made thus far by the negotiators. For this, Mr. Chairman, we must commend Ambassador Bernard Kessedjian, the Permanent Representative of France, for his steadfast and very capable chairmanship of the working group.

The United States, however, wishes to underscore its strongly held view that the negotiation of this new instrument should not be unduly rushed. On the other hand, the negotiation of such an important instrument need not require an extended period of years to complete. What is most important is that the final instrument be carefully-crafted, comprehensively-analyzed, consensus-based, and by no means subject to arbitrary timeframes for its completion. It is our hope and expectation that these guiding principles will continue to shape this negotiating process. For it is only within that framework that the final instrument can expect to win adoption by consensus and universal acceptance within the international community.

Within these considerations in mind, the U.S. is pleased to join consensus in the adoption of this resolution. Thank you, Mr. Chairman.

Delivered by T. Michael Peay , April 19, 2004

Drafted: TMPeay

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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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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 HRCCommittee) 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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LC51

E/CN.4/2006/57  
page 31

**Article 2**

For the purposes of this Convention, enforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.

**Article 3**

Each State Party shall take appropriate measures to investigate acts defined in article 2 committed by persons or groups of persons acting without the authorization, support or acquiescence of the State and to bring those responsible to justice.

**Article 4**

Each State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offence under its criminal law.

**Article 5**

The widespread or systematic practice of enforced disappearance constitutes a crime against humanity as defined in applicable international law and shall attract the consequences provided for under such applicable international law.

**Article 6**

1. Each State Party shall take the necessary measures to hold criminally responsible at least:
  - (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
  - (b) A superior who:
    - (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
    - (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
    - (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

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LC57A

Restatement (Third)

Ch. 1

HUMAN RIGHTS

§ 702

aliens may not be denied education provided for other children). See also *Serrano v. Priest*, 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241 (1971), *appeal after remand*, 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929 (1976), *certiorari denied*, 432 U.S. 907, 97 S.Ct. 2951, 53 L.Ed. 2d 1079 (1977) (education is fundamental right under California Constitution). Except for those few rights that require no affirmative governmental action, but only abstention from interference, e.g., the right to join a trade union, Art. 8(1) (a), the provisions of this Covenant are inherently non-self-executing. See § 111(3), (4). By adhering to this Covenant, the United States would be obligated to take legislative, executive, and other measures, federal or State, generally of the kind that are already common in the United States, "to the maximum of its available resources." "with a view to achieving progressively the

full realization" of those rights. Since there is no definition or standard in the Covenant, the United States would largely determine for itself the meaning of "full realization" and the speed of realization, and whether it is using "the maximum of its available resources" for this purpose. The United States would, however, be required to submit reports for consideration by the United Nations Economic and Social Council "on the measures which they have adopted and the progress made in achieving the observance of the rights recognized" in the Covenant, Art. 16.

9. *Previous Restatement.* The previous Restatement referred to human rights in relation to the international standard of justice protecting aliens. See § 165, Comment b. Section 118, Reporters' Note, refers to the propriety of dealing with human rights by treaty.

### § 702. Customary International Law of Human Rights

A state violates international law if, as a matter of state policy, it practices, encourages, or condones

- (a) genocide,
- (b) slavery or slave trade,
- (c) the murder or causing the disappearance of individuals,
- (d) torture or other cruel, inhuman, or degrading treatment or punishment,
- (e) prolonged arbitrary detention,
- (f) systematic racial discrimination, or
- (g) a consistent pattern of gross violations of internationally recognized human rights.

#### Comment:

a. *Scope of customary law of human rights.* This section includes as customary law only those human rights whose status as customary law is generally accepted (as of 1987) and whose scope

selves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in Article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949, or by the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5

Where, in the territory of a Party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the Occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or Occupying Power, as the case may be.

Article 6

The present Convention shall apply from the outset of any conflict or occupation mentioned in Article 2.

In the territory of Parties to the conflict, the application of the present Convention shall cease on the general close of military operations.

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10. *Requests* the Office of the High Commissioner to provide for the Commission at its sixty-third session an updated version of the report requested in resolution 2003/33;

11. *Decides* to consider this question at its sixty-third session under the same agenda item.

LC63

56th meeting  
19 April 2005

[Resolution adopted without a vote.  
See chap. XI, paras. 282 to 284.]

### 2005/27. 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,

*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,

*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,

*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.4/2005/65 and Add.1);

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

(a) To continue to promote communication between families of disappeared persons and the Governments concerned, particularly when ordinary channels have failed, 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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(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 are most urgent from a humanitarian perspective and 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 sixty-second session;

3. *Deplores* the fact that some Governments have not provided for a long period of time substantive replies concerning claims of enforced disappearances in their countries and have not given due consideration to relevant recommendations concerning this subject made in the reports of the Working Group;

4. *Urges* States:

(a) To promote and give full effect to the Declaration on the Protection of All Persons against Enforced Disappearance;

(b) To cooperate with the Working Group and help it to carry out its mandate effectively and, in that framework, give serious consideration to requests for visits to their countries;

(c) To prevent the occurrence of enforced disappearances, including by guaranteeing that any person deprived of liberty is held solely in officially recognized and supervised places of detention, guaranteeing access to all places of detention by authorities and institutions whose competence in this regard has been recognized by the concerned State, maintaining official, accessible, up-to-date registers and/or records of detainees and ensuring that detainees are brought before a judicial authority promptly after detention;

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(d) To work to eradicate the culture of impunity for the perpetrators of enforced disappearances and to elucidate cases of enforced disappearances as crucial steps in effective prevention;

(e) To prevent and investigate with special attention enforced disappearances of persons belonging to vulnerable groups, especially children, and to bring the perpetrators of these enforced disappearances to justice;

(f) To take steps to provide adequate protection to witnesses of enforced or involuntary disappearances, human rights defenders acting against enforced disappearances, and the lawyers and families of disappeared persons against any intimidation or ill-treatment to which they might be subjected;

5. *Urges* the Governments concerned:

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

(b) To continue their efforts to elucidate the fate of disappeared persons and to ensure that competent authorities in charge of investigation and prosecution are provided with adequate means and resources to resolve cases and bring perpetrators to justice;

(c) To make provision in their legal systems for victims of enforced or involuntary disappearances or their families to seek fair, prompt and adequate reparation and in addition, where appropriate, to consider symbolic measures recognizing the suffering of victims and restoring their dignity and reputation;

(d) To address the specific needs of the families of disappeared persons;

6. *Reminds* States:

(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 penal law;

(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 brought to justice;

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(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;

7. *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 accepted visits of the Working Group to 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, are cooperating at the international and the bilateral levels, have developed or are developing appropriate mechanisms to investigate any claims of enforced disappearance that are brought to their attention, and encourages all the Governments concerned to expand their efforts in this area;

8. *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;

9. *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;

10. *Acknowledges* the improvement in the staffing granted to the Working Group 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 taken for the wide dissemination and promotion of the Declaration;

11. *Requests* the Working Group to report on its activities to the Commission at its sixty-second session;



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12. *Takes note* 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 disappearance (E/CN.4/2005/66) and welcomes the additional substantial progress made during the third and fourth sessions 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 in one formal session before the end of 2005 with a view to the completion of its work, and to report to the Commission at its sixty-second 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 former independent expert to examine the existing international criminal and human rights framework for the protection of persons from enforced or involuntary disappearance, the former Chairman-Rapporteur of the sessional working group on the administration of justice of the Sub-Commission on the Promotion and Protection of Human Rights, who submitted to the sessional working group in 1998 a draft international convention on the protection of all persons from enforced disappearance (E/CN.4/Sub.2/1998/19, annex), and also a representative of the Working Group on Enforced or Involuntary Disappearances to participate in the activities of the intersessional working group;

16. *Decides* to consider this matter at its sixty-second session under the same agenda item;

17. *Also decides* to recommend to the Economic and Social Council the following draft decision for adoption:

[For the text, see chap. I, sect. B, draft decision 8.]

*56th meeting  
19 April 2005*

[Resolution adopted without a vote.

See chap. XI, paras. 285 to 289.]

**2005/28. Arbitrary detention**

*The Commission on Human Rights,*

*Reaffirming* articles 3, 5, 9, 10 and 29, as well as other relevant provisions of the Universal Declaration of Human Rights,

*Recalling* articles 9 to 11 and 14 to 22 of the International Covenant on Civil and Political Rights,

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**DEPARTMENT OF STATE**  
OFFICE OF THE LEGAL ADVISER  
HUMAN RIGHTS AND REFUGEES

LC76

L/HRR, ROOM 3422  
2201 C STREET, N.W.  
WASHINGTON, D.C. 20520-6310

**Fax**

To:

*Jim Burger*

From: Gilda Brancato

Fax:

*DCD/CCG*

Fax: (202)736-7028

Phone:

*203 697-9771*

Phone: (202) 647-4065 or x 72773

Pages:

*703 614-9789*

Date:

SUBJECT:

*Proposed forced disappearances  
Convention*

COMMENTS:

*Attached is reporting cable from  
US Mission on final negotiating  
draft. the final UN Report has not yet  
been published.  
Just sent you 2 emails with  
materials related to the treaty as  
drafted.  
Happy Holidays! Gilda*

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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Confirmation Report - Memory Send

Time : Dec-09-2005 03:44pm  
Tel line :  
Name :

Job number : 963  
Date : Dec-09 03:43pm  
To : 95140080  
Document pages : 004  
Start time : Dec-09 03:43pm  
End time : Dec-09 03:44pm  
Pages sent : 004  
Status : OK

Job number : 963

\*\*\* SEND SUCCESSFUL \*\*\*

*Handwritten notes:*  
FBI Report cable from US mission. The final UN Report has not yet been published on website. You should have received 2 emails from me, one containing the draft treaty text and the other an update on negotiations and a copy of format guidance taking points for final session. Sincerely, Glida Brancato

COMMENTS: Disappears treaty draft text  
SUBJECT:  
To: Tom Bottoms  
Fax: 514-0080  
Phone: 514-1436  
From: Glida Brancato  
Fax: (202) 736-7028  
Phone: (202) 647-4065 or x 72773  
Date:

**FAX**

L/HRR, ROOM 3422  
2201 C STREET, N.W.  
WASHINGTON, D.C. 20520-6310

DEPARTMENT OF STATE  
OFFICE OF THE LEGAL ADVISER  
HUMAN RIGHTS AND REFUGEES

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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**DEPARTMENT OF STATE**  
OFFICE OF THE LEGAL ADVISER  
HUMAN RIGHTS AND REFUGEES

LC76B

L/HRR, ROOM 3422  
2201 C STREET, N.W.  
WASHINGTON, D.C. 20520-6310

# Fax

To: - Tom BOWENS DGS	From: Gilda Brancato
Fax: 514-6080	Fax: (202)736-7028
Phone: 514-1436	Phone: (202) 647-4065 or x 72773
Pages:	Date:

SUBJECT: UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

COMMENTS:

Disappearance Treaty draft Text

FYI Reporting cable from US mission. The final UN Report has not yet been published on website. You should have received 2 emails from me, one containing the draft treaty text and the other an update on negotiations and a copy of Fatemah's interview taking place for final session.

Sincerely,  
Gilda Brancato

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LC96

**THE MISSING**  
the right to know

**The Missing:**  
Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence  
and to assist their families

**International Conference of Governmental and Non-Governmental Experts  
Geneva, 19 - 21 February 2003**

**OUTCOME**

**Working Group on the *Observations and Recommendations***

**Report by the Chairman to the Plenary**  
Mr Nicolas Michel, Director, Directorate of Public International Law, Federal Department of  
Foreign Affairs, Switzerland

**Observations and Recommendations**  
Adopted by Consensus on 21 February 2003

Geneva, February 2003

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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# UNCLASSIFIED

**The Missing:  
Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence  
and to assist their families**

**International Conference of Governmental and Non-Governmental Experts  
Geneva, 19 - 21 February 2003**

**Working Group on the *Observations and Recommendations***

**Report by the Chairman to the Plenary**

**Mr Nicolas Michel, Director, Directorate of Public International Law, Federal Department of Foreign  
Affairs, Switzerland**

The objective of the Working Group was to have an overview of the *Observations and Recommendations*<sup>1</sup>, to share considerations on this document's relationship to the process launched by the ICRC on *The Missing*, and to comment upon and clarify its text. The Working Group was not intended to be a forum for negotiations, nor the *Observations and Recommendations* to be a legally binding document. There was a common understanding that the *Observations and Recommendations* should not be interpreted in anyway as undermining existing legal standards. The *Observations and Recommendations* should be seen as an operational tool containing practical measures.

As it was understood that the *Observations and Recommendations* were to be adopted by consensus, additional comments and proposals on this text had to be presented in a separate but related document. These comments and proposals are presented in this Report, which is part of the official Acts of the Conference. The *Observations and Recommendations* are to be read together with this Report.

The Working Group was open to all Conference participants and was well attended. As the Chairman of the Working Group, my role was enormously facilitated by the positive and constructive atmosphere prevailing during our work.

The substantive work of the Working Group began with a presentation demonstrating the links between the contents of the *Observations and Recommendations* and the ICRC Report: *The Missing and Their Families – Summary of the Conclusions arising from Events held prior to the International Conference of Governmental and Non-governmental Experts (19-21 February 2003)*<sup>2</sup>. The Working Group then proceeded to discuss each section of the text in order to obtain clarifications and exchange views. I will do my best to reflect the main points.

Many participants expressed their gratitude for the work done by the governmental and non-governmental experts as well as by the ICRC in the preparation of the text and for the text's added value, which will stimulate all actors in better understanding and implementing the full spectrum of operational best practices related to the problem of persons unaccounted for. It was repeated that the *Observations and Recommendations* should be seen as a focal point for future practical action.

During the discussion, it was recalled that the term "missing persons" should be understood in its broadest sense. *Missing persons or persons unaccounted for* are those whose families are without news of them and/or are reported missing on the basis of reliable information. People become unaccounted for due to a wide variety of circumstances, such as displacement, whether as an internally displaced person or a refugee, being killed in action during an armed conflict, or forcibly or involuntarily disappearing. Particular attention was drawn to the vulnerability of children, and it was said that, in addition to the term "unaccompanied children" used in the text, reference to the term "separated children" should also be made. Regardless of the circumstances for which a person becomes unaccounted for, the families need to know the fate of their relative. However, different approaches are needed to handle the varied circumstances.

Because of the reference to armed conflict and internal violence in the text, several participants raised the question whether all persons unaccounted for are covered by the *Observations and Recommendations*. Armed conflict and internal violence take place in a large number of contexts in the world today, and most circumstances in which persons become unaccounted for occur in these situations. Nevertheless, it was emphasized that the work of the experts in this process on *The Missing* may, in fact, be used in efforts concerning persons missing in all situations, if appropriate.

The need to recognize the universal right to know was strongly advocated. Numerous participants affirmed its existence and customary character; others specifically referred to regional and domestic jurisprudence on the right to know. It was also affirmed that the right to know can, in addition to the specific reference in Art. 32 of the

<sup>1</sup> TheMissing/Conf/02.2003/EN/1

<sup>2</sup> ICRC/TheMissing/01.2003/EN/10

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## Working Group on the *Observations and Recommendations* Report by the Chairman to the Plenary

First Additional Protocol of 1977 applicable in international armed conflicts, be deduced from the Geneva Conventions' general obligations to provide information on detainees and internees, thus, demonstrating the existence of the families' right to know. In addition, the right to know was compared with other rights, such as the right to health, as not being obligations of result. This means that in the face of proven impossibility to provide information, there could be no violation of the right to know. These delegations were in favour of introducing stronger language on the right to know. However, other participants made the reminder that the Working Group was discussing a consensus-orientated text in a forum with inherent limitations, as there are representatives of States, inter-governmental organisations and non-governmental organisations as well as independent experts involved. These participants expressed the view that not all agree that there is a universal right to know; they mentioned that not all States adhere to the First Additional Protocol of 1977 and some debate the customary character of this right.

Some participants spoke of the essential role played by National Societies of the Red Cross and Red Crescent in the clarification of the fate of missing persons by the reestablishment of family links (RFL) and through tracing programs. Addressing the problem of *The Missing* at the International Conference of the Red Cross and Red Crescent to be held in Geneva in December, 2003, will further stress this issue's importance and facilitate coordinated action.

When referring to preventive measures, the need for *effective* protection was emphasized. When discussing internationally recognized standards on the deprivation of liberty, it was recalled that the right to access to justice, including *habeas corpus*, must be respected in all circumstances. In addition, as the text makes specific mention of international humanitarian and human rights law, it was suggested to also refer to refugee law.

It was further said that preventive measures must and can indeed be taken by armed groups. Unless armed groups are included in the solutions, the problem of missing persons will be far from adequately addressed. Obligations foreseen by international humanitarian law applicable in non-international armed conflicts are equally addressed to States and armed groups taking part in the conflict. Practical means, taking into account the specificities of armed groups, should be explored and developed, including in cooperation with these groups.

Regarding the clarification of the fate of persons unaccounted for, it was repeated that clarification entails fully elucidating the fate, including the whereabouts and, if dead, the cause of death. In order to maximize the effectiveness in clarifying the fate of persons unaccounted for, the proper handling of personal information is essential. It was highlighted that the information collected be used only for the humanitarian purpose for which it was collected, so as not to once again sacrifice the dignity of the persons concerned. The need for special safeguards on personal data and the need to respect the relevant standards and principles on the protection of personal data were stressed. It was also stated that information must be properly preserved for historical and research purposes.

While recognizing that information on the fate of a missing relative is essential for the family, several participants made the reminder that the other needs of the families must not be ignored. For example, if the missing family member is dead, the swift return of the human remains is fundamental to many families in order for them to complete the mourning process. The needs of the families for acknowledgement and accountability were referred to. With respect to accountability, it was clarified that in the text "government authorities" includes the judiciary.

Despite the fact that many participants would have preferred the use of stronger language, the *Observations and Recommendations* will nourish this process on resolving the problem of people unaccounted for as a result of armed conflict and internal violence and to assist their families. This process is complementary to others. As an example, specific reference was made to the *UN inter-sessional open-ended working group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances*.

Certain participants referred to the lack of resources as a main reason for not correctly dealing with the issue of missing persons. For instance, without adequate resources the often very expensive methods necessary to identify the dead are not used, nor are means of personal identification easily available.

Finally, it has been reaffirmed that the issue of missing persons and their families must be appropriately addressed. Further social stigmatisation of families of missing persons will thus be avoided. Those responsible can no longer ignore missing persons or their families.



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## The Missing:

Action to resolve the problem of people unaccounted for as a result of armed conflict or internal violence and to assist their families

International Conference of Governmental and Non-Governmental Experts  
Geneva, 19 - 21 February 2003

### Observations and Recommendations Adopted by Consensus on 21 February 2003

The participants in this Conference

- (I.) *Appreciating and drawing upon* the process launched by the International Committee of the Red Cross (ICRC) on the "Missing and their Families" and recognising the importance of exploring, and heightening international awareness of, the problem of people unaccounted for as a result of armed conflict or internal violence<sup>3</sup>,
- (II.) *Recognising* that uncertainty about the fate of their family members is a harsh reality for countless families, including relatives and close friends, which are thus themselves victims of the situation,
- (III.) *Recognising* that until they know whether their family members are alive or dead, families are unable to gain closure on the violent events that disrupted their lives and to move on to personal or community rehabilitation and reconciliation,
- (IV.) *Alarmed* that the resentment caused by the humiliation and suffering of families and neighbours often undermines relations between communities for future generations,
- (V.) *Aware* that preventing persons from becoming unaccounted for and addressing the consequences when they occur are complex tasks that involve numerous actors and require coordination,
- (VI.) *Having regard* to the relevant international instruments and standards of international humanitarian and human rights law and aware that the United Nations and the International Conferences of the Red Cross and Red Crescent have addressed this topic and continue to do so,
- (VII.) *Convinced* of the need to take action to prevent persons from becoming unaccounted for, to ascertain their fate, to assist their families and to hold accountable those responsible for events leading to persons becoming unaccounted for,

**Make the following observations and recommendations and encourage their dissemination and application:**

1. It is essential to protect all persons from becoming unaccounted for, without distinction as to the deliberate or incidental character of the events leading to the persons becoming unaccounted for.
2. It is essential that families are allowed to know the fate, including the whereabouts and, if dead, the cause of death, of their family members who are unaccounted for.
3. The principal responsibility in preventing all persons from becoming unaccounted for and in ascertaining the fate of all those unaccounted for as soon as reported missing lies with government authorities; armed groups also have a responsibility in this regard.
4. Inter-governmental organisations and the ICRC, acting in conformity with their respective mandates, should be available to support government authorities and armed groups in fulfilling their responsibilities, and, when they cannot or will not meet their responsibilities, inter-governmental organisations and the ICRC should act accordingly.
5. Non-governmental organisations, acting in accordance with their own mandates, should maximize efforts to prevent persons from becoming unaccounted for and to clarify the fate of those who have become unaccounted for.
6. It is essential that all those involved respect each individual's inherent human dignity in all circumstances.

<sup>3</sup> For the purpose of these Observations and Recommendations, internal violence means internal disturbances (internal strife) and situations requiring a specifically neutral and independent institution and intermediary in conformity with the *Statutes of the International Red Cross and Red Crescent Movement*, article 5(2)(d) and 5(3), adopted by the Twenty-fifth International Conference of the Red Cross at Geneva in October 1986 and amended by the Twenty-sixth International Conference of the Red Cross and Red Crescent at Geneva in December 1995.

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## Observations and Recommendations Adopted by Consensus on 21 February 2003

7. Every effort should be made to respect the cultural, social and religious or spiritual context specific to each situation.

### 8. Prevention

Respect for international humanitarian and human rights law is fundamental in preventing persons from becoming unaccounted for. It is important that full implementation by States Parties and dissemination of these obligations be ensured. Preventive measures that can be taken include:

- 8.1 providing means of personal identification to all members of the armed forces and armed groups;
- 8.2 making means of personal identification easily available to all concerned persons;
- 8.3 respecting internationally recognised standards regarding the deprivation of liberty, providing immediate notification to families, counsel or other persons having a legitimate interest in the detained persons and preventing extra-judicial executions, torture and detention in secret locations;
- 8.4 ensuring that family members wherever they may be, including members of armed forces or armed groups and their family members, can communicate with each other at regular intervals;
- 8.5 accountability, including fighting impunity.

### 9. Clarification of the fate of persons unaccounted for

It is crucial that families receive information on the individual fate of their unaccounted for family members. The families and communities also need both acknowledgment of the events leading to persons becoming unaccounted for and perpetrators held accountable. Measures that can be taken include:

- 9.1 government authorities and armed groups enabling independent investigations to be carried out to clarify the fate of persons unaccounted for and to provide information;
- 9.2 avoiding obstruction of, interference with or impediments to the clarification of the fate of persons unaccounted for;
- 9.3 setting up, whenever necessary, complementary mechanisms, judicial or non-judicial, to respond to the families' needs;
- 9.4 addressing issues related to reparation;
- 9.5 providing to the family, in accordance to judicial guarantees and procedures and privacy rights, information collected during criminal investigations that sheds light on the fate of a person unaccounted for.

### 10. Information management and the processing of files on persons unaccounted for

Coordination of the activities of all those involved and sharing information will heighten the effectiveness of the action taken to ascertain the fate of persons unaccounted for. Measures that can be taken include:

- 10.1 ensuring that the information collected on persons unaccounted for be comprehensive, yet limited to that which is necessary for the purpose identified and is impartially collected and processed;
- 10.2 sharing information on the methods and objectives of the data collection and processing procedures by those involved;
- 10.3 exchanging between those involved the information collected in a manner consistent with point 10.5 and without endangering victims, the persons collecting the information or the sources of the information;
- 10.4 centralising the information collected to increase the possibilities of informing the families about the fate of their members, in particular by:
  - A. at the latest at the outbreak of an armed conflict, setting up an Information Bureau to collect and transmit information;
  - B. forwarding to a neutral, impartial and independent humanitarian organisation, such as the ICRC, personal information that may serve to ascertain the fate of persons unaccounted for;
- 10.5 respecting the relevant standards and principles on the protection of personal information whenever information, including medical and genetic information, is managed and processed.

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Observations and Recommendations  
Adopted by Consensus on 21 February 2003

## 11. Management of human remains and of information on the dead

The principle responsibility in the proper handling of all the dead without adverse distinction and in providing information to the families with a view to preventing anxiety and uncertainty lies with government authorities and armed groups. Measures that can be taken include:

- 11.1 ensuring that all feasible measures are taken to identify the human remains of those who died and to record their identity;
- 11.2 avoiding obstruction of, interference with or impediments to the identification of human remains;
- 11.3 issuing death certificates;
- 11.4 ensuring that all those involved respect the legal rules and professional ethics applicable to the management, exhumation and identification of human remains;
- 11.5 ensuring that forensic specialists, whenever possible, carry out the procedures to exhume and identify human remains;
- 11.6 ensuring adequate training to all persons collecting information on the dead and handling human remains;
- 11.7 beginning a process of exhumation and identification only once a framework has been agreed upon by all those concerned and ensuring that the framework includes:
  - A. the establishment of protocols for exhumation, *ante mortem* data collection, autopsies and identification based on scientifically valid and reliable methods and technologies and/or customary, clinical or circumstantial evidence that are deemed appropriate and which have been previously adopted by the scientific community;
  - B. appropriate means of associating the communities and the families in the exhumation, autopsy and identification procedures;
  - C. procedures for handing over the human remains to the family;
- 11.8 respecting and developing professional ethics and standards of practice for forensic specialists working in international contexts.

## 12. Support for the families

The material, financial, psychological and legal needs faced by families awaiting clarification of their family members' fate should be addressed by the concerned authorities, when necessary with the support of inter-governmental and non-governmental organisations as well as of the ICRC. Measures that can be taken include:

- 12.1 providing targeted assistance with the aim, as soon as circumstances allow, of promoting the families' self-sufficiency;
- 12.2 addressing the legal situation of persons unaccounted for and the consequences for family members, including in terms of property administration, guardianship and parental authority;
- 12.3 ensuring children special support and protection, and in particular taking measures to reunite unaccompanied children with their families;
- 12.4 ensuring that the needs of single heads of families be the object of special attention, taking into consideration the specific needs faced by women in such situations;
- 12.5 ensuring that the families of persons unaccounted for benefit from support programmes in order to adapt to their altered situations and come to terms with the events; psychological support, and whenever necessary and feasible psychiatric treatment, should be provided to those in need; all programmes should be built, as much as possible, on the local health and healing systems;
- 12.6 encouraging family networks and associations, which can provide a forum for mutual support.

## 13. Families and mourning

Respect for the dead and for local funeral rites supports peace and social order. The process by which the families are informed that a family member has died and human remains and/or personal effects are returned needs to be well prepared. In addition:

- 13.1 the dead and the mourning practices of individuals and communities concerned need to be respected in all circumstances;
- 13.2 commemorations, the planning and organisation of which should be left to the families and communities concerned, need to be supported.

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Delivered  
by  
Perule  
Bart on

EXPLANATION OF POSITION

LC105

The United States <sup>was</sup> ~~is~~ pleased to join consensus ~~[redacted]~~ on this resolution addressing the serious problem of forced disappearances. With respect to the instrument being drafted on the disappearances issue, the United States Government supports treaty negotiations that are conducted in one annual two-week formal session, which provides for transparency and inclusiveness of all negotiating partners. The objective must be to produce a well-drafted, well-vetted instrument that reflects consensus, without deadlines for completion of negotiations.

With respect to the resolution itself, The United States does not interpret the disappearances resolution as an attempt to restate or affect provisions of the law with regard to detention.

UNCLASSIFIED

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\* *Arbour*  
*Other States-*  
*amend*

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Distr.  
RESTRICTED

*LC 147*

E/CN.4/2005/CRP.4  
7 March 2005

Original: FRENCH  
ENGLISH and FRENCH  
ONLY

COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
14 March – 22 April 2005  
Item 11 b) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF  
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**Working paper prepared by the Chairman of the Working Group  
to elaborate a draft legally binding normative instrument for the protection  
of all persons from enforced disappearance, at the end of its 4<sup>th</sup> session  
(31 January – 11 February 2005)**

UNITED STATES DEPARTMENT OF STATE  
REVIEW AUTHORITY: SHARON E AHMAD  
DATE/CASE ID: 13 AUG 2009 200706444

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B5, B6

LC48B

PA/L/IO :

BBC correspondent in Geneva Imogen Foulkes asked to interview Amb. Tichenor (on the record) or our legal advisor (on background) for a BBC radio feature of 45 minutes on the draft convention on enforced disappearances. [redacted]

B5

Foulkes's question is : What is the U.S. position on the draft convention? She needs this by is Tuesday (6/27). Others to be interviewed include NGO's, as well as other missions - esp. Chile and Argentina given their past experiences.

Foulkes's cellphone number is [redacted] Her email address is [redacted]@bbc.co.uk.

B6  
B6

Please let PA Geneva know what is decided, and what is done.

- Brooks .

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

RELEASED IN PART

B6

LC53

**Brancato, Gilda M**

**From:** Imogen Foulkes [redacted]@bbc.co.uk  
**Sent:** Wednesday, June 28, 2006 9:35 AM  
**To:** Brancato, Gilda M  
**Subject:** RE: phone call with Legal Adviser Wednesday

B6

Hi Gilda, thank you so much, I'm here and I really appreciate you taking the time. You can call either my cell phone [redacted] the latter might give us better quality. As I explained, it's really a background briefing, not recorded and not quoted unless I request that at the time and you agree. Many thanks and I look forward to talking to you.

B6

Imogen Foulkes  
BBC Geneva Correspondent  
Office C 205 United Nations, Geneva  
tel (+) [redacted]  
mobile [redacted]

B6

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

**From:** Brancato, Gilda M [mailto:BrancatoGM@state.gov]  
**Sent:** Tue 6/27/2006 11:22 PM  
**To:** Imogen Foulkes  
**Cc:** Hata, Marianne J; Robinson, Brooks A; Prosser, Sarah E  
**Subject:** phone call with Legal Adviser Wednesday

Dear Ms. Foulkes - Thank you for being available tomorrow for your requested conversation on background with John Bellinger and me on the draft Convention to Protect All Persons from Forced Disappearances. We are on Mr. Bellinger's schedule to call you at noon Washington time, which would be 6 pm your time. I regret that there was not an earlier time available. We will call you at [redacted] unless you prefer a different number. Look forward to talking with you then.

B6

Thank you, Gilda Brancato, Office of the Legal Adviser, Human Rights and Refugees.

<http://www.bbc.co.uk/>

This e-mail (and any attachments) is confidential and may contain personal views which are not the views of the BBC unless specifically stated.

If you have received it in error, please delete it from your system. Do not use, copy or disclose the information in any way nor act in reliance on it and notify the sender immediately. Please note that the BBC monitors e-mails sent or received. Further communication will signify your consent to this.

LC58

Brancato, Gilda M

**From:** Robinson, Brooks A(Geneva)  
**Sent:** Wednesday, June 28, 2006 9:48 AM  
**To:** Brancato, Gilda M; Hata, Marianne J  
**Cc:** Prosser, Sarah E; Kovar, Jeffrey D; DePirro, Velia M; Siekert, Magda S; Cassel, Lynn L; Denig, Paul; Wilbur, Richard M  
**Subject:** About Wed BBC interview with Bellinger Adviser on enforced disappearances convention  
**Importance:** High

RELEASED IN PART  
 B6

Gilda / Marianne:

Thanks for putting this together.

I just called Imogen Foulkes, who confirmed she got Gilda's email (below) and will be ready for the call at noon DC time; she'll send you the land-line number she'd like you to use instead of her cellphone.

FYI: Foulkes said the focus of the program is less on governments / member states, and more on the families affected by enforced disappearances, with examples coming primarily from Latin America and Sri Lanka.

At this point, her characterization of the USG position is along the lines of, "The US has expressed some reservations." The point of interviewing John Bellinger is to get a bit more flesh to that, and to have a USG voice characterize our position - and not have only what human rights NGOs say about the US position.

Also, she said that since the Convention makes mention of secret places of detention, she needs US comment on that.

Foulkes said the first project this will be for is BBC World TV and BBC Asia Today programs, which will probably be broadcast Thursday morning. A version of the story is also likely be broadcast on BBC Radio when the Human Rights Council concludes on the Convention. She thinks we should be able to find the listing (and maybe even video clip and/or transcript) on BBC website tomorrow morning.

- Brooks

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

**From:** Brancato, Gilda M  
**Sent:** Wednesday, June 28, 2006 12:22 AM  
**To:** [redacted]@bbc.co.uk  
**Cc:** Hata, Marianne J; Robinson, Brooks A; Prosser, Sarah E  
**Subject:** phone call with Legal Adviser Wednesday

B6

Dear Ms. Foulkes - Thank you for being available tomorrow for your requested conversation on background with John Bellinger and me on the draft Convention to Protect All Persons from Forced Disappearances. We are on Mr. Bellinger's schedule to call you at noon Washington time, which would be 6 pm your time. I regret that there was not an earlier time available. We will call you at [redacted] unless you prefer a different number. Look forward to talking with you then.

Thank you, Gilda Brancato, Office of the Legal Adviser, Human Rights and Refugees.

UNITED STATES DEPARTMENT OF STATE  
 REVIEW AUTHORITY: SHARON E AHMAD  
 DATE/CASE ID: 19 AUG 2009 200706444

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B6, B5

LC103

**From:** [redacted]  
**To:** [redacted] LevinJ@state.gov, AswadEM@state.gov, DePirroV@state.gov,  
KovarJD@state.gov, BartonPJ@state.gov  
**Cc:** BRANCATOGM@state.gov; [redacted]  
**Subject:** Re: Please read/change to disappearances statements  
**Date:** Sun, 18 Jun 2006 16:40:18 +0000

B6

Dear all - Best of luck at the HRC on Monday - it should be a wild ride (though less wild than if we were a member!! ) - let us know how we may be of help as the session rolls on. Evelyn and I will aim to be on the morning phone calls, and thank you Evelyn for the Geneva emails above.

Jan and Velia - I sent out to you and a wide group the two HRC forced disappearances convention statements for the USG (oral and written) as well as two background documents by email Friday night. Please be sure to make the following

B5

[redacted]

and I thank you. Please confirm receipt of this email.

Best of luck! And thanks again, Gilda

----- Original message -----

**From:** [redacted]  
**Hi, all - I'm just adding Gilda's home e-mail address as she would like to send you guidance on enforced disappearances by Monday morning your time. Best, EA**

B6

**Check out AOL.com today.** Breaking news, video search, pictures, email and IM. All on demand. Always Free.

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REVIEW AUTHORITY: JOHN S BLODGETT  
DATE/CASE ID: 18 AUG 2009 200706444

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B6

LC 137

**Brancato, Gilda M (Main State)**

**From:** Brancato, Gilda M (Main State)  
**Sent:** Wednesday, January 19, 2005 5:06 PM  
**To:** Brooks, Waldo W; Johnson, Thomas A; Sicade, Lynn M (DRL); Manning, Denise; Barton, Paula J; Danies, Joel D  
**Cc:** Dorosin, Joshua L; Jacobson, Linda; Harris, Robert K; Barrios, Stacy M; Peay, T Michael; Gale, Hanny; Kovar, Jeffrey D; Witten, Samuel M; Camponovo, Christopher N (DRL); Butler, Michael A (DRL); Lucas, William E; Lagon, Mark P; Kozak, Michael G (DRL); Legal-L-HRR-d; Deeks, Ashley S  
**Subject:** RE: URGENT/for transmission/USG redlines for forced disappearances treaty

Joel - Attached is a final paper, for Mission Geneva to transmit to the French mission, on critical provisions ("red lines") for the United States Government in negotiation of the forced disappearances treaty text, as requested by the French chair.

Please ensure that the paper is transmitted on Thursday Jan. 20, so that the French ambassador and his staff [redacted] have had the opportunity to review the paper prior to their treaty "pre-negotiation" on January 24, which the USG cannot attend. In this regard, after you submit the English text, it would be immensely helpful to the French ambassador if the mission could provide an informal French translation, if possible. Thank you.

B6

Thank you Joel very much, and thank you to those who took the time to review the document on a rush basis.



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Much appreciated, Gilda

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