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PROMOTION AND PROTECTION OF ALL HUMAN RIGHTS, CIVIL, POLITICAL, ECONOMIC, SOCIAL AND CULTURAL RIGHTS, INCLUDING THE RIGHT TO DEVELOPMENT

**Summary of the panel discussion on the question of missing persons prepared by
the Office of the United Nations High Commissioner for Human Rights***

Note by the Secretariat

1. In its Resolution 7/28 entitled “Missing Persons” adopted on 28 March 2008, the Human Rights Council (Council) decided to hold, at its ninth session, a panel discussion on the question of missing persons and to invite experts of the International Committee of the Red Cross (ICRC), delegates of Governments and non-governmental organizations (NGOs), as well as national human rights institutions and international organizations to participate therein. The Office of the United Nations High Commissioner for Human Rights was requested to prepare a summary of the panel’s deliberations with a view to subsequently charging the Human Rights Council Advisory Committee (Advisory Committee), with the preparation of a study on best practices in the matter. Accordingly, the panel discussion on the question of missing person was held during the ninth session of the Council, on Monday 22 September 2008.

2. The panel was composed of Ms. Cordula Droege, Legal Adviser, Legal Division of the ICRC, Dr. Vefaeddin Ibayev, Judge of the Supreme Court of Azerbaijan, Ms. Karyne Minasyan, Director of the Human Rights Center for Prisoners of Wars (PoWs), Hostages and Missing in Action (MiA) and Coordinator in Armenia of the International Working Group for PoWs, Hostages and MiA, Mr. Marco Sassoli, Professor, Geneva Academy on Human Rights and International Humanitarian Law, Mr. Michel Veuthey, Professor, Vice-President of the International Institute of Humanitarian Law (Sanremo Institute), Ms. Kathryine Bomberger, Director-General of the International Commission on Missing Persons (ICMP). The Office of the

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United Nations High Commissioner for Human Rights was represented by Ms. Kyung-wha Kang, Deputy High Commissioner for Human Rights (DHC). The panel was moderated by His Excellency Ambassador Luis Alfonso De Alba, Permanent Representative of Mexico to the United Nations Office and other International Organizations in Geneva.

3. The panel's main objective was to raise awareness of the issue of persons reported missing in connection with armed conflicts, highlighting the human rights aspects and implications. The panel also aimed to identify practical recommendations to address the issue of missing persons, as well as best practices (see annex I for the concept paper of the Panel, including modalities).

OPENING REMARKS

4. Ms. Kang, DHC, opened the panel discussion by paying tribute to the ICRC for its commitment and efforts on the issue of missing persons. At the outset, she advised that when addressing the issue of missing persons, the focus should be on victims of displacement in times of violence or armed conflict as well as on those who are reported missing through coercive action, including the victims of enforced disappearances. She also stressed that the relatives of missing persons, exposed to emotional pain and potentially to social and economic marginalization, are also to be considered victims.

5. Ms. Kang further noted that on the question of missing persons, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights and, most recently, the International Convention for the Protection of All Persons from Enforced Disappearances (ICED) provide for a clear legal framework. In particular, she considered the adoption of the ICED as a great step forward in the fight against impunity and recalled the support provided by the Office of the United Nations High Commissioner for Human Rights to the work of the Working Group on Enforced or Involuntary Disappearances (WGEID). She noted that since its inception in 1980, almost 52,000 cases have been brought to its attention, but recalled that the vast majority of cases remain unreported mainly for fear of reprisals while the majority of reported cases remained unresolved due to insufficient cooperation with the mechanism. In this connection, the DHC called on all States to ratify the core human rights treaties, including the ICED.

6. The DHC called for a collective effort to put an end to impunity and referred to the recommendations addressed to numerous States by the United Nations Human Rights Committee, deploring the failure to take immediate and effective steps to investigate all unresolved cases of missing persons and to adequately inform their family members. She stated that the failure to bring to justice those responsible for enforced disappearances and to provide redress to victims constitute breaches of the ICCPR.

7. Lastly, Ms. Kang stressed the importance of criminalizing violations of international humanitarian norms and international human rights standards under the national legislations. Furthermore, she referred to measures to be adopted in order to guarantee the right to truth, such as effective tracing activities, conducting investigations of cases, developing appropriate forensic expertise, treating the mortal remains with dignity and respect and ensuring adequate management of information.

PRESENTATIONS

8. Ms. Droege, Legal Adviser, Legal Division of the ICRC, offered elements to clarify the relationship between the problem of missing persons and that of enforced disappearances. The scope of the question of missing persons being, in her view, broader than that of enforced disappearances. She explained that soldiers reported missing during conflicts or children reported missing during mass displacement of populations in situations of conflict would fall under the category of missing persons, whereas people taken into detention, their fate and whereabouts denied, could be victims of enforced disappearance and would also fall into the category of missing persons. She further considered that, when addressing the issue of missing persons, two main aspects should be stressed namely, the need for all parties to a conflict to cooperate with each other and the need to establish adequate mechanisms, institutions, legislations and capacities. Yet, due consideration should be paid to the needs of the relatives of persons reported missing in connection, for example, to issues relating to their civil status, inheritance or pension rights.

9. Ms. Droege recalled that international humanitarian law (IHL) provides for a detailed legal framework on the question of missing persons and stressed the importance of incorporating it into domestic legislation. In this regard, she informed that the ICRC has developed a draft model law, containing the main elements to be taken into account by States when drafting legislation on the issue.

10. Lastly, she recalled the recommendations adopted at the ICRC Conference on missing persons held in February 2005 as well as the recommendations adopted at the 28th International Conference of the Red Cross and Red Crescent held in December 2003, where all States parties to the Geneva Conventions reiterated their commitment to the question of missing persons.

11. Dr. Ibayev, Judge of the Supreme Court of Azerbaijan, stressed the importance of incorporating IHL into national legislation, including the right of family members to be informed of the fate of their missing relatives. In particular, he referred to the case-law of the European Court of Human Rights, according to which the suffering caused by the refusal to provide family members with information on the fate of their missing relatives can amount to inhumane treatment. He further stressed the need to define the legal status of missing persons and that of their family members, including the obligation of States to provide necessary assistance to those affected by the issue so as to reintegrate them into social life.

12. Dr. Ibayev made a number of proposals that can be summarized as follows. First, he suggested that measures on implementation of IHL should be adopted by States in times of peace so as to ensure that IHL is immediately applicable in case of conflict. Second, he highlighted the importance of conducting educational programs on IHL and trainings of military personnel. Third, he argued that international mechanisms of supervision of the status of domestic implementation of IHL could be established so as to reach a common law approach when dealing with the question of missing persons. In particular, he stated that due attention should be paid to the level of implementation of IHL into domestic legislation during the examination of States' reports under the ICCPR, the United Nations Committee against Torture (CAT) and the Universal Periodic Review. Fourth, he considered that the ICRC should be allowed to visit all persons detained during armed conflicts. In this regard, he suggested exploring the potential of

the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the CAT, at both the regional and international levels. Lastly, he considered that agreements concluded between States parties to a conflict should envisage the implementation of relevant provisions of IHL and recommended that the international community provides States with adequate financial and technical assistance to this end.

13. Ms. Minasyan, Director of the Human Rights Center for Prisoners of Wars (PoWs), Hostages and Missing in Action (MiA) and Coordinator in Armenia of the International Working Group for PoWs, Hostages and MiA, noted that State Commissions on missing persons, PoWs and hostages were created in all countries of the south-Caucasus. However, she considered that, in spite of the professionalism of their staff, these Commissions could not always effectively address all issues arising when dealing with the question of missing persons. Accordingly, she expressed the opinion that civil society organizations could play a fundamental role on different issues such as the provision of psychological rehabilitation for affected family members.

14. Ms. Minasyan further recommended that the international community provide NGOs with adequate financial and technical assistance and that, when dealing with the question of missing persons, the Council considers the possibility of setting up joint working groups or committees comprising of government representatives, relatives of missing persons and civil society representatives.

15. Mr. Sassoli stated that the issue of missing persons and that of enforced disappearances should be treated separately. He reiterated the need for IHL to be effectively implemented and pointed out that IHL can only work in practice if belligerents, or former belligerents, cooperate with each other.

16. Reflecting on the reasons for which information on the fate of missing persons is at times denied by parties either during or post conflict, he noted that information is not disclosed as a means to continuing the conflict or because prosecution is feared. On the other hand, those who should receive the information might not wish to receive it so as to avoid any acknowledgment of their role in the conflict and to possibly perpetuate hatred between peoples.

17. In conclusion, he recalled the recommendations of the 2003 ICRC Conference on a number of relevant issues such as the coordination of assistance, the return of personal effects, the role and responsibilities of forensic specialists, the means of identification of human remains, the family involvement in the collection of ante mortem data and the processing of tracing files or graves registration services.

18. Mr. Veuthey also noted that on the issue of missing persons both IHL and human rights law provide clear rules applicable under any circumstances. He underlined the need for their effective implementation as well as for education and training of military personnel and civilians. In this regard, he expressed the readiness of the Sanremo Institute to cooperate with the Council.

19. Ms. Bomberger argued that new instruments and mechanisms could be explored when dealing with the issue of missing persons. For example, she suggested the establishment of inter-ministerial commissions, working in parallel with rule of law mechanisms, which would report

directly to executive bodies. Consultations to this end should include civil society in order to raise awareness of the victims' rights, including economic and social rights as well as the right to know.

20. Lastly, she referred to the potential offered by new technologies and science such as forensic archeology, forensic anthropology or the integrated use of DNA.

INTERACTIVE DIALOGUE

21. The presentations by panellist were followed by an inter-active dialogue with States members of the Council. During which it was stressed that the issues of missing persons and enforced disappearances should be addressed separately.

22. It was recalled that the question of missing persons bears consequences not only for the victims but also for their families, especially women and children, in terms of emotional pain and financial difficulties. It was stressed that the issue of missing persons can also obstruct confidence-building among parties to international conflicts and it impedes friendly relations among States. Similarly, in internal conflicts, it can exacerbate polarization in a society.

23. Furthermore, it was pointed out that IHL and human rights law clearly define obligations of States parties to armed conflicts. In particular, it was stressed that the Geneva Conventions and their Additional Protocols affirm the right of the families to be informed of the fate of missing relatives. It was recalled that all parties to a conflict have an obligation to search for the persons reported missing. They shall also facilitate enquiries made by members of families, encourage the work of organizations engaged in this task and provide lists showing the exact location and markings of the graves, together with particulars of the deceased interred therein. On these issues, the role of the ICRC was acknowledged. It was also suggested that the study of the Advisory Committee should include a specific section on the right to truth.

24. In conclusion, the importance of the adoption of the ICED was highlighted as a means to further address legal and political issues associated with the question of missing persons in the context of armed conflicts. States were repeatedly called upon to implement their obligations pursuant to IHL and international human rights law.

CONCLUDING REMARKS

25. In her final remarks, Ms. Bomberger recalled the need for an all-encompassing approach in dealing with the question of missing persons and reiterated that new technologies and science can provide for new avenues of exploration when addressing the issue. Mr. Sassoli considered that the question of missing persons remains a humanitarian issue, which depends on the political will of the parties concerned and not on technology. He stated that should new mechanisms be established, their mandate and scope should remain separate from and be complementary to those of the ICRC and the WGEID.

26. Mr. Veuthey acknowledged the role that civil society could play when addressing the question of missing persons with the establishment and the functioning, for example, of mechanisms of transitional justice.

27. Dr. Ibayev expressed the opinion that new mechanisms could be explored and suggested that the Advisory Committee consider the possibility of establishing a mandate on this issue. Ms. Droege considered that there already exist a number of mechanisms, organizations and institutions, each with its own mandate and methods of work, dealing with the question of missing persons. She argued that one does not substitute the other and that all efforts should be undertaken to effectively address the question of missing persons.

28. The moderator, Luis Alfonso De Alba, expressed appreciation for the fruitful and substantial discussion, and encouraged the Advisory Committee to take into account the recommendations

Annex I

[ENGLISH ONLY]

Panel discussion on missing persons

(Concept paper)

Background

The problem of missing persons is one of the most acute challenges stemming from the armed conflicts. Armed conflicts are accompanied by the widespread violations of international humanitarian law and human rights law of millions of people around the world.

In today's world, thousands of people are still missing and their families are uncertain about their fate. Determining the fate of persons reported missing in connection with the armed conflict and alleviating the plights of their relatives should be among main tasks of all the relevant stakeholders, especially states; states bear primary responsibility to prevent persons from going missing and to search and identify the victims. The families and relatives have a right to know the fate of the missing as a result of armed conflict.

Relevant international foras, including the Human Rights Council should keep this issue under constant attention.

On 28 March 2008 Human Rights Council adopted by resolution 7/28 on missing persons. According to the Paragraph 11 of that resolution, "the HRC decides to hold a panel discussion on the question of missing persons at its ninth session and to invite experts of the International Committee of the Red Cross, delegates of Governments and non-governmental organizations as well as national human rights institutions and international organizations to participate therein".

Date

The Panel will take place on 22 September 2008 from 15:00 to 18:00 in Room XVII within the ambits of its 9th session of the Human Rights Council.

Focus and objectives

The aim of the panel is to raise awareness of the gravity of the problem of persons reported missing in connection with armed conflict, to highlight the human rights aspects/implications in and around the issue and to urge all relevant stakeholders to pay attention to this issue and continue to address the human rights consequences thereof. Panel will seek practical recommendations to address this issue, voice out the best practices.

Format

Ambassador Martin Ihoeoghian Uhomoibhi, President of the Human Rights Council, will open the panel (5 minutes).

Moderator

Luis Alfonso De Alba, Ambassador and Permanent Representative of Mexico
Kyung-wha Kang, Deputy High Commissioner of Human Rights will make opening statement (introductory remarks) – 5 minutes

Panelists

Dr. Vefaeddin Ibayev, Judge of the Supreme Court of Azerbaijan - 7 minutes;

Mrs. Karine Minasyan, Director of the Human Rights Center for Prisoners of Wars (POWs), Hostages and Missing in Action (MIA), Coordinator in Armenia International Working Group for PoWs, Hostages and MIA – 7 minutes;

Mrs. Cordula Droege, Legal Adviser, Legal Division of the International Committee of the Red Cross - 7 minutes;

Mr. Marco Sassoli, Professor, Geneva Academy on Human Rights and International Humanitarian Law - 7 minutes;

Mr. Michel Veuthey, Professor, Vice-President of the International Institute of Humanitarian Law - 7 minutes;

Ms. Kathryne Bomberger, Director-General of the International Commission on Missing Persons - 7 minutes

Interactive dialogue

The panelists will be followed by delegates representing states from each regional group (3 minutes each). Interactive dialog will be divided into two slots of 60 minutes each (45 minutes for comments and questions from the floor, followed 15 minutes for comments and replies by panelists including concluding remarks).
Civil society representatives can take the floor.

Concluding remarks

Concluding remarks by the Moderator and the President of the Human Rights Council (3 minutes)

Participation

The Permanent Missions, national human rights institutions, international organizations and non-governmental organizations are encouraged to participate and to make their contributions to the panel.

The list of speakers will be opened on 22 September, at 15:00.

Outcome

According to paragraph 11 of the HRC resolution on “Missing persons”, High Commissioner of Human Rights will prepare a summary of the panel’s deliberations and the HRC will task the Advisory Committee, at the ninth session, with the preparation of a study on best practices in the matter.

Annex II

[ENGLISH ONLY]

List of speakers – Interactive Dialogue

Member and Observer States: Pakistan (on behalf of the Organization of the Islamic Conference), Cyprus, Morocco, France (on behalf of the European Union), Greece, Turkey, Azerbaijan, Israel, Islamic Republic of Iran, Argentina

National Human Rights Institutions: Conseil Consultatif des Droits de l'Homme (Morocco), Procuraduria de los Derechos Humanos (Guatemala)

Non-governmental organizations: Cairo Institute for Human Rights Studies, International Human Rights Association of American Minorities, International Movement Against All Forms of Discrimination and Racism, Interfaith International, European Union for Public Relations (Joint statement with International Institute for Peace), Centre for Human Rights and Peace Advocacy (Joint statement with World Peace Council), Latin American Committee for the Defence of Women's Rights, Al-Hakim Foundation, Association of World Citizens

Delegations taking the floor in the exercise of the right of reply: Algeria, Syrian Arab Republic, Sri Lanka, Morocco, Algeria (2nd reply), Morocco (2nd reply)
