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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

**Azerbaijan, Switzerland, Ukraine, United States of America and Uzbekistan:
draft resolution**

Missing persons

The General Assembly,

Guided by the purposes, principles and provisions of the Charter of the United Nations,

Guided also by the principles and norms of international humanitarian law, in particular the Geneva Conventions of 12 August 1949¹ and the Additional Protocols thereto of 1977,² as well as international standards of human rights, in particular the Universal Declaration of Human Rights,³ the International Covenant on Economic, Social and Cultural Rights,⁴ the International Covenant on Civil and Political Rights,⁴ the Convention on the Elimination of All Forms of Discrimination against Women,⁵ the Convention on the Rights of the Child⁶ and the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993,⁷

Welcoming the entry into force on 23 December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance,⁸

¹ United Nations, *Treaty Series*, vol. 75, Nos. 970-973.

² *Ibid.*, vol. 1125, Nos. 17512 and 17513.

³ Resolution 217 A (III).

⁴ See resolution 2200 A (XXI), annex.

⁵ United Nations, *Treaty Series*, vol. 1249, No. 20378.

⁶ *Ibid.*, vol. 1577, No. 27531.

⁷ A/CONF.157/24 (Part I), chap. III.

⁸ Resolution 61/177, annex.



Recalling all previous relevant resolutions on missing persons adopted by the General Assembly, as well as the resolutions and decisions adopted by the Commission on Human Rights and the Human Rights Council,

Noting with deep concern that armed conflicts are continuing in various parts of the world, often resulting in serious violations of international humanitarian law and international human rights law,

Noting that the issue of persons reported missing in connection with international or non-international armed conflicts, in particular those who are victims of serious violations of international humanitarian law and international human rights law, continues to have a negative impact on efforts to put an end to those conflicts and inflicts grievous suffering on the families of missing persons, and stressing in this regard the need to address the issue, inter alia, from a humanitarian and rule of law perspective,

Considering that the problem of missing persons may raise questions of international humanitarian law and international human rights law, as appropriate,

Bearing in mind that cases of missing persons involve conduct that may constitute criminal offences, and stressing the importance of ending impunity for violations of international humanitarian law and international human rights law with respect to missing persons,

Cognizant that States that are parties to an armed conflict have a responsibility for countering the phenomenon of missing persons, taking all appropriate measures to prevent persons from going missing and determining the fate of missing persons and for recognizing their accountability as regards implementing the relevant mechanisms, policies and laws,

Bearing in mind the effective search for and identification of missing persons using forensic sciences, and recognizing that great technological progress has been made in this field, including DNA forensic analysis, which can significantly assist efforts to identify missing persons and to investigate violations of international humanitarian law and international human rights law,

Recognizing that the establishment and effective work of competent national institutions can play a crucial role in clarifying the fate of missing persons in connection with armed conflict,

Recognizing also the importance of addressing the legal situation of missing persons in connection with armed conflict and supporting their family members in national policies that include a gender perspective, as appropriate,

Recognizing further that respect for and implementation of international humanitarian law can reduce the number of cases of missing persons in armed conflict,

Stressing the importance of measures to prevent persons from going missing in connection with armed conflict, which may include enacting national legislation, producing and providing proper means of identification, the establishment of information bureaux, grave registration services and registers of deaths, and ensuring accountability in cases of the missing,

Taking note of the four-year plan of action for the implementation of international humanitarian law adopted by the Thirty-first International Conference of

the Red Cross and Red Crescent, held in Geneva from 28 November to 1 December 2011, which, inter alia, invites States, as part of its fourth objective, to consider, in the light of the right of families to know the fate of their relatives, enacting appropriate legislation or arrangements to ensure adequate participation and representation of victims and their families as well as access to justice and protection for victims and witnesses, especially women and children, in proceedings before their courts and in other transitional justice mechanisms concerning serious violations of international humanitarian law,

Taking note also of the report by the Human Rights Council Advisory Committee on best practices in the matter of missing persons,⁹

Taking note with appreciation of the report of the Secretary-General prepared pursuant to General Assembly resolution 65/210 of 21 December 2010,¹⁰

Noting with appreciation the ongoing international and regional efforts to address the question of missing persons and the initiatives undertaken by international and regional organizations in this field,

1. *Urges* States to strictly observe and to respect and ensure respect for the rules of international humanitarian law, as set out in the Geneva Conventions of 12 August 1949¹ and, where applicable, in the Additional Protocols thereto of 1977;²

2. *Calls upon* States that are parties to an armed conflict to take all appropriate measures to prevent persons from going missing in connection with the armed conflict, to account for persons reported missing as a result of such a situation and to ensure the effective investigation and prosecution of offences linked to missing persons, consistent with their international obligations;

3. *Reaffirms* the right of families to know the fate of their relatives reported missing in connection with armed conflicts;

4. *Also reaffirms* that each party to an armed conflict, as soon as circumstances permit and, at the latest, from the end of active hostilities, shall search for the persons who have been reported missing by an adverse party;

5. *Calls upon* States that are parties to an armed conflict to take all necessary measures, in a timely manner, to determine the identity and fate of persons reported missing in connection with the armed conflict and, to the greatest extent possible, to provide their family members, through appropriate channels, with all relevant information that they have on their fate, including their whereabouts or, if they are dead, the circumstances and cause of their death;

6. *Recognizes*, in this regard, the need for appropriate means of identification and for the collection, protection and management of data on missing persons and unidentified remains according to international and national legal norms and standards, and urges States to cooperate with each other and with other concerned actors working in this area, inter alia, by providing all relevant and appropriate information related to missing persons;

⁹ A/HRC/16/70.

¹⁰ A/67/267.

7. *Requests* States to pay the utmost attention to cases of children reported missing in connection with armed conflicts and to take appropriate measures to search for and identify those children and to reunite them with their families;

8. *Invites* States that are parties to an armed conflict to cooperate fully with the International Committee of the Red Cross in establishing the fate of missing persons and to adopt a comprehensive approach to this issue, including all such legal and practical measures and coordination mechanisms as may be necessary, based on humanitarian considerations only;

9. *Urges* States that are parties to an armed conflict to cooperate, consistent with their international obligations, in order to effectively solve cases of missing persons, including by providing mutual assistance in terms of information-sharing, victim assistance, location and identification of missing persons and recovery, identification and return of human remains,

10. *Urges* States, and encourages intergovernmental and non-governmental organizations, to take all necessary measures at the national, regional and international levels to address the problem of persons reported missing in connection with armed conflicts and to provide appropriate assistance as requested by the concerned States, and welcomes in this regard the establishment and efforts of commissions and working groups on missing persons;

11. *Calls upon* States, without prejudice to their efforts to determine the fate of persons reported missing in connection with armed conflicts, to take appropriate steps, with regard to the legal situation of missing persons and the needs and accompaniment of their family members, in such fields as social welfare, psychological and psychosocial support, financial matters, family law and property rights;

12. *Invites* States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to further their engagement in order to follow forensic best practices as they apply to preventing and resolving cases of missing persons in connection with armed conflict;

13. *Also invites* States, national institutions and, as appropriate, intergovernmental, international and non-governmental organizations to ensure the development and proper management of archives pertaining to missing persons and unidentified remains in connection with armed conflict, as well as access to those archives in accordance with relevant applicable laws and regulations;

14. *Stresses* the need to address the issue of missing persons as a part of peace and peacebuilding processes, with reference to all justice and rule of law mechanisms, including the judiciary, parliamentary commissions and truth-finding mechanisms, on the basis of transparency, accountability and public involvement and participation;

15. *Invites* relevant human rights mechanisms and procedures, as appropriate, to address the problem of persons reported missing in connection with armed conflicts in their forthcoming reports to the General Assembly;

16. *Requests* the Secretary-General to submit to the Human Rights Council at its relevant session and to the General Assembly at its sixty-ninth session a comprehensive report on the implementation of the present resolution, including relevant recommendations;

17. *Also requests* the Secretary-General to bring the present resolution to the attention of all Governments, the competent United Nations bodies, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations;

18. *Decides* to consider the question at its sixty-ninth session.
