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Fédération internationale des ligues des droits de l'Homme
International Federation for Human Rights
Federación internacional de los derechos humanos
الغدرالية الدولية لحقوق الانسان

**OBSERVATIONS BY THE ICJ AND THE FIDH ON THE INTERNATIONAL CONVENTION FOR
THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE AND
PROCEDURAL ARGUMENTS INVOKED TO PREVENT ITS ADOPTION**
(Geneva, 21 March 2006)

The International Commission of Jurists (ICJ) and the International Federation for Human Rights (FIDH) acknowledge various procedural arguments according to which it would be legally impossible or difficult to adopt the draft *International Convention for the Protection of All Persons from Enforced Disappearance* (the Convention) at the 62nd session of the Commission on Human Rights.

In this regard, the ICJ and the FIDH would like to make the following observations:

- 1.- In accordance with Resolution A/60/L.48 adopted by the General Assembly on 15 March 2006, which establishes the Human Rights Council, and bearing in mind that the Commission on Human Rights is a subsidiary organ of the Economic and Social Council (ECOSOC), there is no legal obstacle to the adoption of the Convention by the Commission on Human Rights and its transmission to the General Assembly, through the ECOSOC.
- 2.- In accordance with paragraph 13 of Resolution A/60/L.48, the General Assembly recommends the ECOSOC to abolish the Commission on 16 June 2006, and to request the Commission to conclude its work at its 62nd session. Accordingly, the Commission's functions and abilities are maintained until then.
- 3.- The ICJ and the FIDH do not share the interpretation of Resolution A/60/L.48 according to which the Commission would not be allowed to take action and adopt the Convention.
 - Indeed, operative paragraph 6 of Resolution A/60/L.48 refers to the ability of the new Human Rights Council to assume, improve and rationalize "all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights in order to maintain a system of special procedures, expert advice and complaint procedure". In other words, Resolution A/60/L.48 gives the Human Rights Council a mandate to maintain a system of special procedures, of advice and complaint, and nothing else.
 - In the ICJ and the FIDH's view, operative paragraph 6 does not encompass the inter-sessional Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances, established by Resolution 2001/46 of the Commission on Human Rights. The concerned special procedures, expert advice and complaint procedure correspond to well-defined categories in the United Nations practice, that is to say: expert and monitoring mandates, be they thematic (such as the Special Rapporteur on torture or the Working Group on arbitrary detention), or geographic (such as the independent expert on Burundi), as well as the 1503 procedure and various

modalities concerning offices of the High Commissioner for Human Rights in the field that inform the Commission on Human Rights.

- The inter-sessional Working Group is neither a special procedure by mandate or by nature, nor an expert advice mechanism or a complaint procedure. It is a temporary procedure with a standard-setting mandate and a specific mission that expires (Commission on Human Rights Decision 2000/109), that is: elaborating a new human rights treaty.
- According to the United Nations practice, documentation and website of the Office of the High Commissioner for Human Rights, standard-setting inter-sessional Working Groups have never been included in the list of special procedures, expert advice and complaint procedures, or treaties as such.
- In this regard, the inter-sessional Working Group on a draft legally binding normative instrument for the protection of all persons from enforced disappearances cannot be considered as a mandate or a mechanism which Resolution A/60/L.48 operative paragraph 6 refers to.

4.- The ICJ and the FIDH do not share the interpretation according to which the adoption of a resolution to adopt the Convention will jeopardize special procedures, expert advice and complaint procedure, and particularly their transferral to the future Human Rights Council. The integrity of these special procedures and their transferral to the future Human Rights Council are already secured, thanks to operative paragraph 6 of Resolution A/60/L.48. It is undeniable that, in this regard, the Commission on Human Rights cannot take any action that would be detrimental to the work of the future Council or undermine Resolution A/60/L.48.

5.- The ICJ and the FIDH consider that Resolution A/60/L.48 does not guarantee that the Human Rights Council is going to take action on the draft Convention, even though the Commission on Human Rights requests it to do so, since this request would not bind the Human Rights Council. Besides, there is a huge risk that, if the Council decides to consider the draft Convention, it could be submitted to a new standard-setting process and that its adoption could be postponed for several years or *sine die*.

6.- Operative paragraph 13 of Resolution A/60/L.48 recommends the ECOSOC to request the Commission on Human Rights to conclude its work at its 62nd session. Moreover, it is clear that the Commission on Human Rights, by its resolution 2005/27 of 19 April 2005 (paragraphs 13 and 14), decided to conclude its work regarding the draft Convention at its 62nd session, since it requested the inter-sessional Working Group to meet for a new working formal session and to hold informal consultations “with a view to the completion of its work” and to present a report to the Commission at its 62nd session. As a matter of fact, on 23 September 2005, the inter-sessional Working Group did complete its work when it adopted the draft *International Convention for the Protection of All Persons from Enforced Disappearance* (E/CN.4/2006/57). Thus, the draft Convention adopted by the Working Group is now before the Commission and there is no procedural obstacle to its adoption by the Commission and its transmission to the General Assembly via the ECOSOC.

Postponing *sine die* the adoption of the Convention or choosing an uncertain transferral to the Human Rights Council, based on non-existing procedural arguments, would lead to unpredictable results if not to results contrary to those expected. The ICJ and the FIDH finally consider that it would be a bad signal that would affect the credibility of the future Human Rights Council, to renounce or to postpone the adoption of this important treaty.

International organs, such as the Commission on Human Rights or the Human Rights Council are not abstract entities: they are composed of Member States who, as such, should not escape their responsibilities. It would be incomprehensible for associations of victims’ families of enforced disappearance and for NGOs that have been working for many years in favour of the adoption of this Convention, if the Convention would not be adopted, while the work of elaboration has been completed, and while no procedural obstacle exists.