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**For debate in the Standing Committee — see Rule 15 of the Rules of Procedure**

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**Missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions**

Report

Committee on Migration, Refugees and Population

Rapporteur: Mr Leo PLATVOET, Netherlands, Group of the Unified European Left

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*Summary*

Little progress has been made in solving the issue of the missing in Armenia, Azerbaijan and Georgia, notwithstanding that most of the missing disappeared in the early 1990s.

7 643 persons remain missing, including 4 604 Azerbaijanis and 947 Armenians from the conflict over the Nagorno-Karabakh region, 1 763 Georgians and 197 Abkhaz from the conflict over the Abkhazia region and 10 Georgians and 122 South Ossetians from the conflict over the South Ossetia region.

There are unconfirmed reports that some of the missing from the conflict over the Nagorno-Karabakh region may still be alive and held in secret detention. These reports are denied by the authorities and "administrations" concerned, but the issue continues to haunt the families of the missing and serves only to raise tension in the region.

Solving the issue of missing persons is a humanitarian and human rights issue and not a political issue. It is therefore essential that all parties to the conflict treat it in this way. Families of the missing and societies affected by the conflict will not be able to move on until progress on the issue has been made.

The families have a right to know the fate of missing relatives and the authorities and "administrations" have a responsibility to take all necessary measures to establish the fate of the missing. The rights and obligations relating to the missing are entrenched in international humanitarian law and human rights law, and are established by international customary law.

Far greater co-operation between the different parties is needed if the issue of the missing is to be solved. This co-operation needs to extend to agreeing consolidated lists of the missing, establishing a multilateral mechanism for co-operation between commissions for missing persons and working together on tracing, mapping, identification and management of human remains.

Families of the missing need social, material and psychological support, and the memory of the missing needs to be respected.

In the realisation of its mandate under international humanitarian law, The International Committee of the Red Cross (ICRC) plays a pivotal role in assisting the authorities and "administrations" in the region, and full support should be given to the ICRC in its essential work.

#### **A. Draft resolution**

1. The issue of missing persons in Armenia, Azerbaijan and Georgia continues to cause tremendous suffering for the families of the missing. It also fuels tension in the region and hampers efforts to find a peaceful solution to the conflicts over the regions of Nagorno-Karabakh, Abkhazia and South Ossetia.
2. The parties to a conflict or situation of internal violence bear the primary responsibility for preventing disappearances, clarifying the fate of missing persons and responding to the needs of the families.
3. The issue of missing persons is a humanitarian problem with human rights and international humanitarian law implications. It should not be treated as a political issue and consequently should not be dependent on the political settlements of the disputes in the region.
4. Resolving the issue of missing persons could contribute to reducing levels of hostility, mistrust and intolerance, building confidence in the region and facilitating efforts to find a political settlement to the disputes in the region.
5. Time is of the essence when seeking to solve the issue of the missing. Time delays extend the uncertainty and suffering of the families and reduce the likelihood of finding, identifying and returning the missing.
6. The total number of missing persons in the region of Armenia, Azerbaijan and Georgia can be calculated at 7 643 persons. This includes, according to the respective parties, 4 604 Azerbaijanis and 947 Armenians from the conflict over the region of Nagorno-Karabakh and 1 763 Georgians and 197 Abkhaz from the conflict over the region of Abkhazia. In relation to the conflict over the region of South Ossetia, the Georgian authorities have indicated figures of 10 Georgians and 122 South Ossetians missing from the conflict.
7. The right to know the fate of missing relatives is a fundamental right of the families concerned and should be guaranteed. The right to know is firmly entrenched in international humanitarian law. Furthermore, state practice establishes as a norm of customary international law, applicable in both international and non-international armed conflicts, the obligations of each party to the armed conflict to take all feasible measures to account for persons reported missing as a result of armed conflict, and to provide their family members with any information it has on their fate. The right to know is also anchored in the rights protected under the European Convention on Human Rights, notably Articles 2, 3, 5, 8, 10 and 13.
8. The Parliamentary Assembly, though acknowledging the efforts made by the authorities, regrets that the issue of the missing in Armenia, Azerbaijan and Georgia remains largely unsolved, notwithstanding the passage of over twelve years since the end of hostilities in the region.
9. The Assembly is concerned by the continuing allegations of secret detention of missing persons and considers that all such allegations should be addressed to the European Committee for the Prevention of Torture (CPT) in order that they are fully investigated. The persistent rumours serve only to raise tension in the region and cause further suffering for the families, in particular as the possibility of finding missing persons alive after such a long period of time is extremely remote.
10. The Assembly emphasises that the issue of the missing cannot be solved unilaterally by one side to the conflict and that close co-operation and co-ordination is necessary between the different sides to the conflict. In this respect, the Assembly considers it essential to address its recommendations not only to Armenia, Azerbaijan and Georgia, but also to the "administrations" of the Nagorno-Karabakh, Abkhazia and South Ossetia regions through the authorities of the countries concerned. It re-affirms the sovereignty and territorial integrity of Armenia, Azerbaijan

and Georgia and the recommendations outlined in this resolution do not imply any form of political recognition for the regions of Nagorno-Karabakh, Abkhazia and South Ossetia.

11. The Assembly therefore calls on Armenia, Azerbaijan and Georgia as well as the "administrations" of the regions of Nagorno-Karabakh, Abkhazia and South Ossetia:

11.1. to provide full support to solving the issue of the missing;

11.2. to treat the matter as a humanitarian and human rights issue and not a political issue;

11.3. to refrain from acting on the basis of reciprocity in dealing with the issue of the missing. Sharing of information or taking steps, for example, should not be conditional on the other side also providing information or taking steps;

11.4. to adopt and implement, in accordance with relevant international standards, an appropriate domestic legal framework, combined with the necessary regulatory measures, to deal with the issue of the missing and reflecting relevant international obligations;

11.5. to agree on consolidated lists of the missing with the International Committee of the Red Cross (ICRC) and with the other parties to the conflict;

11.6. to ensure the establishment and functioning of commissions dealing with the missing and guarantee their day to day functioning through adequate structures such as working groups or other appropriate mechanisms. These commissions and associated structures should have a clear mandate established by law, and the necessary resources and powers in order to:

11.6.1. actively collect, centralise and process all information on persons unaccounted for and on related events and burial places;

11.6.2. organise, implement and monitor all the necessary work of tracing all missing persons (combatants and civilians on all sides), including the recovery and identification of human remains;

11.6.3. inform the families on progress in solving the issue of the missing and support them according to their specific needs;

11.6.4. establish links and working relationships with their counterpart commissions and working groups, and draw up together appropriate memoranda of understanding to guide them in their work;

11.6.5. safeguard the humanitarian and non-judicial function of their work;

11.6.6. include representatives of the families of the missing in their composition, as appropriate;

11.7. to establish a multilateral co-ordination mechanism for each respective conflict (Nagorno-Karabakh, Abkhazia and South Ossetia) to deal with the definition and implementation of the processes of clarification of the fate of missing persons, in particular the processes of recovery and identification of human remains;

11.8. to collect, manage and protect data, such as *ante-mortem* data, to identify the missing, to provide in this respect training and psychological support for those collecting such data and also to provide psychological support for the family members providing such data;

11.9. to take all necessary steps to recover and identify the human remains of the missing, to include:

11.9.1. mapping and exchanging information on possible burial sites;

11.9.2. agreeing on procedures to follow when excavating grave sites and identifying human remains;

11.9.3. training for those handling human remains so as to assure standards and harmonise techniques;

11.10. to provide for an appropriate domestic legal framework to clarify the legal status and to guarantee the interests of all persons reported missing and to provide for appropriate legal and administrative measures to meet the legal and material needs of family members and dependants, thus covering such matters as the custody of the children of the missing person, inheritance rights, re-marriage rights, pension rights and entitlements to public assistance;

11.11. to provide material, social and psychological assistance to the families of the missing;

11.12. to take steps to protect the memory of the missing, including through support for books of remembrance, monuments and museums for the missing, remembrance days for the missing.

12. The Assembly also calls on Armenia, Azerbaijan and Georgia as well as the "administrations" of the regions of Nagorno-Karabakh, Abkhazia and South-Ossetia:

12.1. to provide support for civil society initiatives in favour of the families of the missing and those linked with solving the issue of the missing;

12.2. to facilitate contacts, including cross-border contacts, between families of the missing;

12.3. to take public position at the highest level in favour of a resolution of the missing issue and to refrain from statements in relation to the missing which may stir up animosity and hatred towards other sides in the conflict;

12.4. to ensure parliamentary oversight of the issue of the missing, including through a discussion on the contents of this Resolution.

13. The Assembly recognises that progress in solving the issue of the missing varies from one conflict to another and therefore proposes making a number of priority recommendations to each of the parties. These recommendations should not in any way be seen to limit the priority for all parties to have strong and operational commissions, to actively collect information, to establish co-ordination mechanisms, to provide the necessary legal framework, to cater for the needs of the families of the missing and other measures mentioned above.

14. The Assembly calls on Armenia, as a priority:

14.1. to ensure that its commission becomes fully operational and that a working group is established to deal with day to day issues;

14.2. to ensure that working contacts are established with the commission operating in Azerbaijan;

14.3. to complete the collection of *ante-mortem* data;

14.4. to gather and exchange relevant information concerning possible grave sites.

15. The Assembly calls on Azerbaijan, as a priority:

15.1. to ratify the two additional Protocols to the Geneva Convention;

15.2. to ensure that working contacts are established with the commission operating in Armenia and that a *modus operandi* for working with the commission in the Nagorno-Karabakh region is developed;

15.3. to complete the collection of *ante-mortem* data;

- 15.4. to gather and exchange relevant information concerning possible grave sites.
16. The Assembly calls on the "administration" of the Nagorno-Karabakh region, as a priority:
  - 16.1. to develop a *modus operandi* for working with the commission in Azerbaijan;
  - 16.2. to complete the collection of *ante-mortem* data;
  - 16.3. to gather and exchange relevant information concerning possible grave sites.
17. The Assembly calls on Georgia, as a priority:
  - 17.1. to continue its work in identifying grave sites and share this information with the Abkhaz and South Ossetian sides;
  - 17.2. to continue with the training of those responsible for exhumations and carry these out with the other sides once standards and techniques are harmonised;
  - 17.3. to refrain from applying any conditionality in co-operation with the Abkhaz commission.
18. The Assembly calls on the "administration" of the Abkhazia region, as a priority:
  - 18.1. to adopt terms of reference of the commission dealing with the issue of missing persons, taking fully into account the recommendations of the International Committee of the Red Cross (ICRC);
  - 18.2. to provide additional support and resources for the commission to have a day-to-day capacity in dealing with the issue of missing persons;
  - 18.3. to refrain from applying any conditionality in co-operation with the Georgian commission;
  - 18.4. work with the Georgian commission on identifying further grave sites;
  - 18.5. to continue the training of those responsible for exhumations and carry out exhumations with the other side once standards and techniques are harmonised.
19. The Assembly calls on the "administration" of the South Ossetia region, as a priority:
  - 19.1. to re-establish the commission on the missing;
  - 19.2. to work together with the Georgian side on identifying possible grave sites.
20. The Assembly also calls on the governments of member states:
  - 20.1. to assist the authorities and "administrations" in the region involved in solving the issue of the missing;
  - 20.2. support the activities of the International Committee of the Red Cross (ICRC);
  - 20.3. to provide support to associations of the families of the missing and civil society actors involved in solving the issue of the missing. Such support should include facilitation of meetings between families of the missing from different sides.
21. The Assembly invites the Council of Europe Commissioner for Human Rights to follow the issue of missing persons in the region and use his influence to promote regional co-operation on the issue.

22. The Assembly invites its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe to consider including the issue of missing persons amongst the issues it monitors in respect of Armenia, Azerbaijan and Georgia.

23. The Assembly also invites the Ad Hoc Committee of the Bureau on the implementation of paragraph 5 of [Resolution 1416](#) (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference to take into account the issue of missing persons in its work.

24. The Assembly invites the Personal Representative of the Chairman-in-Office on the Conflict dealt with by the OSCE Minsk Conference to ensure that full support is given to solving the issue of the missing and that it is treated as a humanitarian and human rights issue and not as a political issue.

25. Assembly invites the United Nations Observer Mission in Georgia (UNOMIG) to give its full support to the process of solving the issue of missing persons in the region of Abkhazia.

26. The Assembly recognises the key role played by the ICRC in working with the parties to the conflict in the region, assisting them in solving the issue of the missing. The Assembly encourages the ICRC to continue its essential work in this area.

## **B. Draft recommendation**

1. The Parliamentary Assembly refers to its Resolution ... (2007) on missing persons in Armenia, Azerbaijan and Georgia from the conflicts over the Nagorno-Karabakh, Abkhazia and South Ossetia regions.

2. It considers that the failure to solve the issue of missing persons in Armenia, Azerbaijan and Georgia causes tremendous suffering for the families of the missing. It continues to fuel tension in the region and hampers efforts to find a peaceful solution to the conflicts over the regions of Nagorno-Karabakh, Abkhazia and South Ossetia.

3. It recognises that experience gained in dealing with the issue of the missing in the Balkans can contribute to solving the issue of the missing in other parts of Europe and elsewhere.

4. It recognises that the longer it takes to establish functioning mechanisms to deal with the issue of the missing, the less likely it will be that the missing will be identified and returned to their families.

5. It considers that the European Convention on Human Rights and the case-law under it has developed important standards relevant to the rights of missing persons and members of their family.

6. It believes that the Council of Europe has a role to play in helping to solve the issue of the missing in the region of Armenia, Azerbaijan and Georgia and that the Council of Europe should be ready to react promptly in future situations where persons go missing.

7. Therefore, the Assembly recommends that the Committee of Ministers:

7.1. call upon the Steering Committee for Human Rights (CDDH) to organise a conference on the issue of missing persons from conflicts in Europe and the standards under the European Convention on Human Rights;

7.2. instruct the CDDH to prepare a resolution or guidelines on the steps to be taken by member states to protect the rights of the missing and members of their family during and after conflicts.

7.3. invite the European Committee for the Prevention of Torture (CPT) to examine allegations of missing persons being held in secret detention in Armenia, Azerbaijan and Georgia and to carry out visits also to the regions of Nagorno-Karabakh, Abkhazia and South Ossetia as necessary.

## **C. Explanatory memorandum by Mr Leo Platvoet, Rapporteur**

### **I. Introduction**

1. In the preparation of this report your Rapporteur undertook a fact-finding mission to Armenia, Azerbaijan and Georgia from 5 to 9 June 2006. He returned to the region between 18 and 22 September 2006 to visit the Nagorno-Karabakh and Abkhazia regions. He also visited the International Committee of the Red Cross in Geneva on 24 April 2006.
2. Your Rapporteur would like to thank the different representatives of parliaments, governments, "administrations", intergovernmental organisations and civil society, who provided him with time, information and advice before, during and after his visits. Special thanks are reserved for the families of the missing who shared their stories, sufferings and concerns with the Rapporteur.
3. Your Rapporteur would also like to express particular gratitude to the International Committee of the Red Cross (ICRC) and its staff who provided, within the limits of the confidential dialogue it holds with the parties, a wealth of information, advice and assistance throughout the preparation of this report. The ICRC plays a central and essential role in solving issues of missing persons, not just in the region of Armenia, Azerbaijan and Georgia, but across the world.
4. At the heart of the issue of missing persons is the right of family members to know the fate of missing relatives. Furthermore parties to international armed conflicts must take every possible measure to elucidate the fate of missing persons. These rights and obligations are anchored in humanitarian law and human rights law, and are established by international customary law.
5. In this report "missing persons" should be defined in its widest sense and include persons who have gone missing because of displacement, including refugees and internally displaced persons, those who have disappeared during armed conflicts, including those killed in action or those taken prisoner, and also those who have disappeared forcibly or involuntarily.
6. A decade and a half has passed since conflicts erupted over the regions of Nagorno-Karabakh, Abkhazia and South Ossetia. As a result of these conflicts there are many thousands of persons still not accounted for and classified as missing. In terms of the conflict over the Nagorno-Karabakh region, there are, according to the respective sides 4 604 Azerbaijanis missing and 947 Armenians. From the conflict in Abkhazia, the Georgian authorities calculate there to be 1 763 missing and the Abkhaz put their total of missing at 197 persons. Finally from the conflict in South Ossetia, the Georgian authorities calculate there to be 10 persons missing from the Georgian side and 122 persons from the South Ossetian side. This gives a total figure for the region of 7 643 persons missing, over 2 450 of whom are civilians.
7. Your Rapporteur is aware of reports circulating that some of these missing may still be alive, held in secret detention by the authorities or "administrations" or by private persons. Your Rapporteur notes however that all relevant authorities and "administrations" deny the holding of any missing persons whether as hostages or for other purposes.
8. In the issue of the missing, time is not on the side of the missing or their families. Time only extends the uncertainty and suffering and reduces the likelihood of finding, identifying and returning the missing. Some families have been waiting for fourteen years and longer and are unable to move on with their lives, family members are dying without receiving answers to the question of the missing. Time is therefore of the essence in dealing with this issue.
9. Your Rapporteur at the outset wishes to emphasise his regret that too little progress has been made in solving the issue of missing persons in the region. If a yard-stick is needed in this respect it is the Balkans, where much greater progress has been made in a shorter period of time. This said there are currently positive signs that the parties have expressed a will to solve the issue of the missing and to this end are ready to engage more fully with one another and with institutions such as the ICRC.
10. Part of the reason why such little progress has been achieved on the issue of the missing is that it has been treated as a political issue rather than as a humanitarian and human

rights issue. Your Rapporteur considers it important that all the parties involved recall their humanitarian and human rights obligations and the need to comply with these regardless of the political dictates of reaching negotiated settlements of the conflicts in the region. By beginning to solve the issue of the missing, a contribution can be made to help solving the conflicts in the region and reducing levels of intolerance, hostility and mistrust.

11. The issue of missing persons can not be solved unilaterally by one side to a conflict and requires close co-operation between all parties. It is essential in this respect to work closely not only with the authorities in Armenia, Azerbaijan and Georgia but also with the "administrations" set up in the regions of Nagorno-Karabakh, Abkhazia and South Ossetia.

12. Your Rapporteur considers it important to affirm the sovereignty and territorial integrity of Armenia, Azerbaijan and Georgia and underline that nothing in this report should imply any form of political recognition for the regions of Nagorno-Karabakh, Abkhazia and South Ossetia.

13. The ICRC has a great deal of experience in dealing with the missing. The authorities and "administrations" in the region will need to use this experience to its fullest in dealing with the issue of the missing.

## **II. Approach to the report**

14. With a view to having a consistent approach to the issue of missing persons in member states of the Council of Europe, your Rapporteur has taken into account and drawn from two recent reports of the Assembly, namely the report of the Committee on Migration, Refugees and Population on Persons unaccounted for as a result of armed conflicts or internal violence in the Balkans<sup>1</sup> (Mr Mevlüt Çavuşoğlu, Turkey, European Democratic Group) and the report of the Committee on Legal Affairs and Human Rights on enforced disappearances<sup>2</sup> (Mr Pourgourides, Cyprus, Group of the European People's Party).

15. Your Rapporteur has chosen to remain with the idea of treating the issue of missing persons from the region in one report, rather than creating separate reports for different countries or conflicts. Where appropriate he has given country or conflict specific information.

## **III. Historical background to the issue of the missing**

16. The issue of the missing in Armenia, Azerbaijan and Georgia arises from three conflicts, the first in relation to the Nagorno-Karabakh region, the second concerning the region of Abkhazia and the third concerning the region of South Ossetia.

17. The conflict in the Nagorno-Karabakh region is long standing and rooted in history. It became an armed conflict in 1992, and the fighting between Armenians and Azerbaijanis did not stop until 1994. During the conflict and its preceding events, hundreds of thousands of people from both sides were displaced and thousands of people were killed. The conflict, for which there is still no final settlement, is essentially a conflict between two principles: territorial integrity and self-determination. During the armed conflict, the United Nations Security Council passed [Resolutions 822](#) (1993), [853](#) (1993), [874](#) (1993) and [884](#) (1993) calling on Armenia and Azerbaijan to restore peace, protect civilians and liberate the territories occupied in the course of the conflict. Also confirmed in these Resolutions is the sovereignty and territorial integrity of Azerbaijan and other states of the region. Major parts of these Resolutions have not yet been implemented. Ethnic Armenians have established a "government" in the Nagorno-Karabakh region with its "capital" in Khankendi / Stepanakert. This "government" is not recognised by any Council of Europe member state and Armenia while not recognising the area as an independent state maintains close political, economic and military relations. Armenia has soldiers stationed in the Nagorno-Karabakh region and the surrounding occupied districts. It is in these areas that most of the missing disappeared during the conflict<sup>3</sup>.

18. The Assembly has adopted<sup>4</sup> a number of Resolutions and Recommendations on the conflict in the Nagorno-Karabakh region, the most recent of which was [Resolution 1416](#) (2005). In this the Assembly expressed its concern over large-scale ethnic expulsion, it reaffirmed that independence and secession of a regional territory from a state could only be achieved through a lawful and peaceful process. It also reiterated that occupation of foreign territory by a member state constitutes a grave violation of that state's obligations as a member of the Council of Europe and reaffirmed the right of displaced persons to return safely and with dignity.

19. The conflict in Abkhazia arose from demands from the Abkhazian population for greater autonomy and objections of the Georgian population of preferential treatment for the Abkhazian population. War broke out in Abkhazia on 15 August 1992, a cease-fire was signed in July 1993, which was broken by the Abkhazian army which recaptured Sukhumi on 27 September 1993 causing a massive exodus of Georgians. A new cease-fire was signed on 14 May 1994<sup>5</sup>. Abkhazia is not recognised by any Council of Europe member state. Most of the missing from the conflict disappeared in the region of Abkhazia. The Assembly in its [Resolution 1119](#) (1997) on the conflicts in Transcaucasia addressed the situation in Abkhazia and called for the inviolability of borders, extensive autonomy and the right to return of refugees and displaced persons.

20. The conflict in South Ossetia came about as a result of rising nationalism among both Georgian and Ossetians. Violent conflict broke out towards the end of 1991 and many refugees fled the region with a large number leaving to North Ossetia. In 1992, Georgia accepted a ceasefire<sup>6</sup>. The mix of Georgian-inhabited and Ossetian-inhabited communities being governed by the separatist "administration" and Georgian authorities respectively in non contiguous territorial entities makes solving the issue of the missing particularly complicated.

#### **IV. International law**

21. There is a duty on all actors in situations of armed violence to respect humanitarian law and avoid abuses. State authorities and armed groups bear primary responsibility for preventing people from becoming unaccounted for and ascertaining the fate of those who go missing and handle the dead in a respectful manner. They must provide information to the relatives of the missing and provide them with appropriate support. States also have a duty to investigate suspected cases of extra-legal, arbitrary detention and summary executions or enforced disappearances. Where appropriate they must ensure that criminal proceedings are initiated and reparations paid.

22. Central to guaranteeing these standards of humanitarian law are the four Geneva Conventions for the protection of war victims of 12 August 1949 (Geneva Conventions I to IV) and their Additional Protocols ( I and II ) of 8 June 1977<sup>7</sup>, as well as customary international law applicable to both international and non-international armed conflict. Two main principles that stand out are that the parties to an armed conflict must take every possible measure to elucidate the fate of missing persons<sup>8</sup>, and that families are entitled to know the fate of their relatives<sup>9</sup>.

23. Armenia, Azerbaijan and Georgia have each ratified the four Geneva Conventions, but only Armenia and Georgia have ratified the two Additional Protocols of 1977. It is important that Azerbaijan accepts the full panoply of humanitarian standards offered by these instruments and your Rapporteur therefore urges the authorities of Azerbaijan to ratify these Protocols without delay.

24. Your Rapporteur is pleased to note that the United Nations General Assembly adopted the International Convention for the Protection of all Persons from Enforced Disappearances in December 2006 "*Affirming* the right to know the truth about circumstances of an enforced disappearance and the fate of the disappeared person, and the respect of the right to freedom to seek, receive and impart information to this end". This Convention, once adopted by the UN General Assembly and ratified by States, will help strengthen the protection of an important part of the larger issue of missing persons.

25. The European Convention on Human Rights has no provisions dealing explicitly with missing persons but a number of its articles have been interpreted in such a way as to provide clear protection to the missing and members of their family. The most relevant articles are Article 2 – Right to life; Article 3- Prohibition of torture; Article 5 – Right to liberty and security; Article 6 para. 1 – Right to a fair trial; Article 8 Right to family life; Article 13 – Right to an effective remedy.

26. Case-law under the European Convention on Human Rights has provided greater clarity on the rights to be respected in this matter. For example, insufficient investigation into the fate of a missing persons or the failure by the authorities to hand over information in their possession may be considered as a form of torture or inhuman treatment of the missing person's families and friends (Article 3). Likewise, any detention which is not officially recognised by the authorities and which is followed by the person's disappearance constitutes a

violation of the right to liberty and security (Article 5) and also of the right to life (Article 2). Observance of the right to an effective remedy (Article 13) requires the authorities not only to pay damages but also to conduct a thorough and effective investigation with a view to identifying and punishing those responsible, if a relative claims, on reasonable grounds, that a member of his or her family disappeared when in detention<sup>10</sup>. As a final point, the European Convention on Human Rights applies to any state that exercises effective control<sup>11</sup>. Bearing in mind the nature of the conflicts in the region and the intervention of third party forces both during and after the conflicts, issues of jurisdiction may be particularly relevant.

27. The leading case on the issue of missing persons under the European Convention on Human Rights is the case of Cyprus against Turkey in which one of the complaints of the Cypriot Government was that "about 1, 491 Greek-Cypriots were still missing 20 years after the cessation of hostilities, these persons were last seen alive in Turkish custody and their fate has never been accounted for by the respondent State." The Court found that "there has been a continuing violation of Article 2 of the Convention on account of the failure of the authorities of the respondent State to conduct an effective investigation into the whereabouts and fate of Greek-Cypriot missing persons who disappeared in life-threatening circumstances." The Court also found a continuing violation of Article 5. With regard to the relatives, the Court found a violation of Article 3, considering that "the silence of the authorities of the respondent State in the face of the real concerns of the relatives attained a level of severity that could only be categorised as inhuman treatment".<sup>12</sup>

## **V. Domestic law**

28. The task of translating these different humanitarian and human rights standard into domestic law is a challenge for the authorities and "administrations". A national legislation relating to missing persons and their families needs to cover<sup>13</sup>, *inter alia*, the right to know, the establishment of a responsible command, training and dissemination in the field international humanitarian law and international human rights law within the armed and security forces and in civil society, the use of force by law enforcement officials, means and measures of identification for members of the armed forces and for persons at risk, protection of persons deprived of their liberty, communication between family members, treatment of the dead and graves, identification of human remains, collecting and forwarding of information, the legal situation of missing persons and their relatives and the protection and management of personal data.

29. Your Rapporteur recognises that there may be good reasons for bringing together into a single law, relevant provisions relating to missing persons. In this respect your Rapporteur notes the work that was carried out in Bosnia and Herzegovina to adopt a specific law on missing persons and notes that the ICRC is working on a model law on missing persons for CIS countries. Your Rapporteur considers that the authorities should examine the appropriateness of such a model law once it is available for discussion.

30. Your Rapporteur is pleased to note that during discussions with the Armenian commission, recognition was given of the need to clarify the legislative framework, including the notion of missing person and that the Armenian authorities were looking into the possibility of preparing a special law or introducing amendments to a number of different laws.

## **VI. Political structures for co-operation**

31. Your Rapporteur has already highlighted that the issue of the missing needs to be dealt with as a humanitarian and human rights issue and not as a political issue.

32. That said, he understands that there must be a political willingness allowing this to happen. In his contacts with the authorities and "administrations" on all sides your Rapporteur received assurances that this matter would be dealt with as a humanitarian and human rights issue.

33. Certain international political structures have a role in over viewing and encouraging progress on the issue of missing persons.

34. In relation to the missing from the conflict over the Nagorno-Karabakh it is important that the OSCE Minsk Process and the Personal Representative of the Chairman in Office on the Conflict Dealt with by the OSCE Minsk Conference keep this issue on their agendas.

35. In relation to the conflict in Abkhazia, the Secretary General of the United Nations and his Special Representative, as well as the group of Friends of the Secretary General (comprising France, Germany, the Russian Federation, the United Kingdom and the United States) together also with the OSCE all have a role in the process of solving the issue of missing persons.

36. Within the Council of Europe the issue of missing persons in the region of Armenia, Azerbaijan and Georgia is not officially on the agenda. Your Rapporteur considers that it could, following this report, be examined by the Parliamentary Assembly's Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe amongst the issues it monitors in respect of Armenia, Azerbaijan and Georgia. Furthermore the Ad Hoc Committee of the Bureau on the implementation of paragraph 5 of [Resolution 1416](#) (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, should also be invited to place the issue on its agenda. The issue could also be taken up by the Council of Europe Human Rights Commissioner in his contact with the three countries in the region.

## **VII. The role of the International Committee of the Red Cross (ICRC)**

37. The International Committee of the Red Cross (ICRC) has, since the eruption of the conflicts, been present in the region. It currently has offices in Yerevan, Baku, Tbilisi and also a permanent presence in the Nagorno-Karabakh, Abkhazia and South Ossetia regions.

38. It has played a central and important role in helping to solve the issue of the missing. It has contributed to the identification, exchange and return of prisoners, hostages and the missing in the region.

39. While the ICRC has been the focal point and assisted many families in the region looking for missing relatives, the ICRC takes great care in clarifying that it is the responsibility of the authorities and "administrations" to solve the issue of the missing and assist the families.

40. In order to clarify what still needs to be done on the issue of the missing in the region, the ICRC has recently submitted a memorandum to the authorities in Armenia and Azerbaijan. This represents a set of proposals which can be taken to solve the issue of the missing and ICRC has offered its support in implementing the memorandum.

41. The memorandum covers assistance to the commissions established to solve the issue of the missing (including co-operation between the relevant commissions), assistance in the collection and management of information on the missing (including work on consolidated lists and assistance in the collection of *ante-mortem* data), advice to the authorities in recovering and identifying the remains of the missing (for example, helping to devise a framework for this work and mobilising forensic experts and providing training) and also assistance to the authorities in supporting the families of the missing in their material and psychological needs and support for relevant commemoration and remembrance. Similar papers were submitted by the ICRC in August-September to the Georgian authorities and the Abkhaz "administration".

42. From discussions with the authorities in Armenia and Azerbaijan, your Rapporteur understands that this memorandum has been well received. Your Rapporteur considers that the memorandum provides an essential working document for the parties. With a view to transparency in the process as well as for the benefit of the families of the missing, your Rapporteur hopes that the memorandum will be made public by the authorities of both countries.

## **VIII. Lists of the missing**

43. When dealing with the issue of the missing it is important to have a consolidated list of the missing agreed between the different parties.

44. The ICRC, in principle collects information on persons unaccounted for in relation with a conflict mainly based on tracing requests opened by family members or submitted by the authorities. On their side the authorities and "administrations" should also collect and record information on victims and missing persons based on military reports, media reports and information from families and friends. One of the priorities in the region is therefore for the ICRC and the authorities and "administrations" to combine their lists and then for the parties to agree on a consolidated list.

45. Statistics on the missing are constantly evolving as work is carried out on consolidating lists and collecting *ante-mortem* data. The statistics provided hereafter reflect data collected by your Rapporteur during his visits to the region. The situation of the Armenian list is as follows: According to the Armenian authorities the total number of missing persons on their list (military and civilian) is 947. Of these persons, 224<sup>14</sup> are from Armenia and 723<sup>15</sup> are from the Nagorno-Karabakh region. By contrast the ICRC has opened 385 tracing requests concerning Armenians from Armenia and approximately 700 to 800 requests concerning Armenians from the Nagorno-Karabakh region. The ICRC is currently checking its own list as against the list provided by the parties. New cases are still being opened and some are being closed (for example when persons are found to be living abroad).

46. In Azerbaijan, according to the authorities, 4,604<sup>16</sup> persons are listed as missing. ICRC by contrast has registered, as of June 2006, 3,247 persons as missing<sup>17</sup>. The ICRC is in the process of checking the two lists with a view to harmonising them. Included in the Azerbaijani list are 783 persons whom the authorities consider may still be alive and held as prisoners or hostages in Armenia or in the Nagorno-Karabakh region. This issue is dealt with in more detail at the end of the report.

47. In Georgia there is a list established by the Georgian authorities for the missing from the South Ossetian conflict (10 from the Georgian side and 122 from the Ossetian side) and from the Abkhazian conflict (1,763 missing Georgians<sup>18</sup> and, 197 Abkhaz<sup>19</sup> (this latter figure is provided by the Abkhaz side and not the Georgian side).

## **IX. Commissions on the missing**

48. Under the Geneva Convention, the authorities are required to set up an Information Bureau and Graves Registration Service<sup>20</sup>. Each of the three countries in the region have set up, to a greater or lesser extent, such bodies in the guise of commissions on the missing. A commission also exists in the Nagorno-Karabakh and in Abkhazia regions. In South Ossetia there is currently no commission operating although one was previously established.

49. The responsibilities of these commissions should be three-fold. They should firstly act as a central point for the collection and processing of information on missing persons, burial places and circumstances surrounding the disappearance of missing persons. They should be responsible for organising or overseeing all steps in tracing the missing and recovering and identifying the remains. Finally they should be responsible for providing support to the families of the missing.

50. These commissions should deal with the issue of missing on both sides to the conflict and should work in an open and transparent manner, keeping families of the missing informed of developments, involving all relevant actors in its work (including families of the missing, civil society representatives, ICRC, etc.), dealing with the issue as a humanitarian and not a political issue, and not conditioning its work on the results achieved by any other side. In addition the commissions need to co-operate with their counterparts. Furthermore the commissions in carrying out their work should be able to rely on an operative working group, responsible for the day to day work on the missing.

### *i. The commission in Armenia*

51. In Armenia, under Decree NH-553 of 18 April, 2000 a State Commission on Issues of War Prisoners, Hostages and the Missing Persons, was set up. This commission is headed by the Minister of Defence and comprises representatives of the different Ministries dealing with the issue of missing persons. It includes a representative of NGOs. Your Rapporteur regrets however that it does not include a representative of families of the missing.

52. The role of the commission is to register war prisoners, hostages and the missing, co-ordinate search activities, return war prisoners and missing persons, organise conferences and meetings, keep in permanent touch (daily) with all bodies dealing with the issue, monitor and submit recommendations concerning the legislative framework, keep relatives informed, make recommendations on material and monetary assistance to the socially vulnerable families, etc.

53. Notwithstanding that this commission was set up in 2000<sup>21</sup>, it is not yet fully operational. Your Rapporteur has been informed that a working group has been established to engage in fact finding (including an archaeologist, forensic expert, psychologist, computer

specialist and others). This working group, however, does not yet appear to be operational and there is no one employed to work full-time on the issue. Your Rapporteur understands that a new vice-Chairperson has been appointed to this commission and that this signifies a fresh impetus for the commission and its work. Your Rapporteur hopes that this will be the catalyst necessary to advance the work of the commission and its working group. Your Rapporteur also hope that the commission will now take further steps to advance co-operation with the commission in Azerbaijan, including with representatives of Azerbaijanis previously living in the Nagorno-Karabakh region. Efforts should also be made to ensure that there is a transparent flow of information, including to members of the families of the missing.

54. Your Rapporteur has received a copy of a draft law on an Information Bureau of Missing Persons prepared by an NGO, the Helsinki Citizens' Assembly Vanadzor. This draft provides a good starting point for further reflection on the role and functioning of the Armenian commission and its Working Group and your Rapporteur encourages the authorities to examine this draft carefully in the context of its review of legislation concerning missing persons.

*ii. The commission in Azerbaijan*

55. The State Commission for Prisoners of War, Hostages and Missing Persons in Azerbaijan was set up in 1993 to locate missing persons, to arrange for the release of prisoners of war and hostages and to coordinate the activities of other state organisations on this issue. Representatives on the commission are governmental and there are no representatives of the families of the missing<sup>22</sup>. Your Rapporteur considers that this is a gap that needs filling.

56. A working group has been established which has 15 people working for it. This group co-ordinates work in the various regions of Azerbaijan.

57. The State commission carries out investigations. Queries are sent to different government agencies in order to obtain the necessary information. Witnesses, fellow combatants of missing persons, citizens freed from captivity are questioned.

58. According to the authorities, the commission has been able to solve a number of cases of the missing from its list. The fate of 407 persons has been clarified. 190 persons are alive and in other countries, 93 persons were killed and buried by their own relatives and 124 persons were reported as missing twice.

59. The commission has successfully worked on the release of 1,381 persons during the period 1998-2006. All of these persons have been interviewed in order to clarify the fate of those that remain missing. Recent releases have however been limited to returns of persons who have strayed across the frontier. The commission operates a web-site<sup>23</sup>, deals with the social problems of members of the families and directs appeals to relevant State structures.

60. The commission has recently shown increasing willingness to look at the issue of missing Armenians. It has examined a list of missing persons from the Armenian side submitted by the ICRC with 414 names on it. According to the commission, the vast majority of persons on the list (378) were lost during military encounters in the occupied zones and the commission is therefore unable to deal with these cases.

61. Your Rapporteur welcomes evidence that the work of the commission has recently become less politicised, but considers that further steps are needed to advance co-operation with the Armenian commission, including with representatives of Armenians in Nagorno-Karabakh. Efforts should also be made to ensure that there is a transparent flow of information, including to members of the families of the missing.

*iii. The commission in the Nagorno-Karabakh region*

62. A separate commission on missing persons has been established in the Nagorno-Karabakh region which has good co-operation with the Armenian commission but no co-operation with the commission in Azerbaijan.

63. This commission is in the process of establishing a working group for which it will receive support from the "administration" and from the ICRC. It is important that when this is set up, it includes representatives of the families of the missing amongst its members.

*iv. Co-operation between the commissions dealing with the missing from the Nagorno-Karabakh conflict*

64. Your Rapporteur considers that co-operation between the commissions is of primordial importance in solving the issue of the missing.

65. Your Rapporteur regrets that between the commissions in Armenia and Azerbaijan, there is almost no co-operation. On two occasions, and most recently in March 2005 in Georgia, these commissions met, facilitated by the NGO, the International Working Group for the Release of Prisoners and Hostages and the Tracing of Missing Persons of the Karabakh Conflict (IWG). At the last meeting discussions were apparently focussed primarily on exchange of prisoners and there was little or no progress made on solving the issue of missing persons.

66. Your Rapporteur understands that at the first of the two meetings of the commissions of Armenian and Azerbaijan, a representative of the commission established in the Nagorno-Karabakh region was present, but at the second meeting in 2005 the Azerbaijani side did not want a member present. Your Rapporteur is acutely aware of the political issues involved, but highlights the need for progress on the humanitarian and human rights front. Without the co-operation and recognition of the need to involve all parties in the issue of the missing, including Armenians and Azerbaijanis from Nagorno-Karabakh, it will be impossible to make real progress on the issue of missing persons in the region.

67. Your Rapporteur therefore considers it imperative that a working structure for co-operation between the commissions in Armenia and Azerbaijan is set up which includes representatives of Armenians and Azerbaijanis from the Nagorno-Karabakh region.

68. Your Rapporteur is aware of the proposals of the International Working Group for the Release of Prisoners and Hostages and the Tracing of Missing Persons of the Karabakh Conflict to establish an International commission for looking into the issue of the missing, with persons on the commission acting in an individual capacity but coming from the region and chosen by the different parties to the conflict.

69. Your Rapporteur considers that in so far as the proposal of the International Working Group provides a grass roots civil society initiative to build confidence in solving the issue of missing persons, it is to be welcomed.. Ultimately, however, if the issue of the missing is to be resolved, the mechanism of the ICRC involving co-operation between all relevant commissions needs to be operational.

*v. The commission in Georgia*

70. A State Commission on missing persons was established in 1996 and in 2005 was transferred under the wing of the Ministry of Refugees and Accommodation. The commission has 8 employees. Notwithstanding that this commission is operational, your Rapporteur considers that it could be further strengthened at the management level and by increasing its powers to obtain information and increasing its capacity to work in the regions.

71. The commission meets with the Abkhaz commission, although the meetings would not appear to be frequent. Lists of missing have been exchanged and work includes sharing information, determining grave charts, exhumation, repatriation, identification and funeral arrangements. In order to manage the negotiation process both sides have worked out a certain "conscience code", including the requirement not to lie, not to blame the other side, to perceive the other side as a partner, to be impartial, frank and honest and be ready to compromise. Your Rapporteur has noted however that notwithstanding this code of conduct, progress is often influenced by conditionality (with one side demanding delivery from the other side as a condition for onward going co-operation).

*vi. The commission in the Abkhazia region*

72. Although a commission was established immediately after the war, there is currently no legal basis for its operation and functioning. The Abkhaz "administration" has expressed its intention to adopt new statutes for their commission, for which ICRC is helping in the drafting.

73. Notwithstanding the lack of a statute, two persons are working as members of the commission. They receive support from the "administration", and technical support from the ICRC.

74. Your Rapporteur considers that once the commission has a statute, it should be given additional resources (office space, transportation, human resources, etc.) and the capacity to work full-time on the issue. It is also important that family members of the missing are represented on the commission.

*vii The commission in the South Ossetia region*

75. A commission on missing persons has existed in South Ossetia, and meetings have taken place between the South Ossetian and Georgian commissions and lists have been exchanged. That said, there is not at present a functioning commission in South Ossetia and in the last 3 to 4 years no meetings have taken place, there has been no progress on solving any of the cases of the missing and no grave sites have been identified.

76. Your Rapporteur considers it important that the commission in South Ossetia be re-established as a priority. Without this mechanism in place the prospects for making any progress on the missing will remain at a stand-still.

*viii. Comments on the work of the commissions in the region*

77. Your Rapporteur has a number of general comments to make about the commissions and their operation and functioning.

78. A primary concern is that the commissions focus largely on the missing of their own side. It is important that the mandates of the commissions make it clear that they also have responsibility, in so far as they have information or control over the relevant territory, for clarifying the fate of the missing on the other side or sides as well.

79. Your Rapporteur is also concerned that these commissions need to be as de-politicised as possible, work in a transparent manner and have, alongside members of government bodies, representatives of civil society and also representatives of the families of the missing.

80. The commissions need to have the possibility of functioning on a day to day basis through the establishment of a working group or other mechanism thereby fulfilling the obligation under humanitarian law to create an information bureau on missing persons.

81. The commissions and their working groups, where appropriate, need to have the necessary powers (such as to demand and receive information) and resources to carry out their work.

82. Much clearer co-ordinating mechanisms need to be established between commissions, to replace current ad-hoc working arrangements.

**X. Process of tracing, mapping, identification and management of human remains**

83. The process of tracing, mapping, identification and management of human remains requires a carefully orchestrated professional approach, with the co-ordination and co-operation of all parties. Without such an approach, it will not be possible to identify with certainty the remains or reach agreement on their repatriation.

84. Many of the missing will never be found or identified for a range of reasons. Many of the burial sites were never mapped in the first place nor clearly identified. Bodies were often buried quickly and often not to sufficient depth. Other bodies could not be recovered and buried due to ongoing hostilities or due to the dangers of entering areas that were land mined. These bodies would have rapidly decomposed and the remains dispersed by forces of nature.

85. That said there are many sites where it should be possible to give answers to the families of the missing, in particular where there are large numbers of missing. For example in

Baboushera in the region of Abkhazia, 32 to 33 of the victims who died in an air crash have yet to be returned, this notwithstanding that 59 of the victims have already been returned.-

86. One obstacle that has been brought to the attention of your Rapporteur is the demand for reciprocity by certain sides in identifying and returning remains. Your Rapporteur considers that co-operation should be unconditional. Humanitarian law is not subject to any principle of reciprocity.

87. It is not excluded that the recovery of remains could provide evidence of crimes, details of which need to be recorded and acted upon by the authorities and "administrations". This however should not be the responsibility of the commissions working on the missing and the commissions should carry out an exclusively humanitarian and non-judicial mandate.

*i. Tracing, mapping and preserving sites*

88. An important step is to identify, map and preserve burial sites. Little however has been done in a systematic way. With the passing of time, with the movement away of persons with knowledge and with the death of some of those with information, it is becoming increasingly important to tackle this aspect of the missing. Information needs to be collected from different sources including from high ranking officers, combatants and civilians who all may have information concerning burial sites. Your Rapporteur considers that more effort needs to be made to encourage people, for example with incentives or guarantees of anonymity, to come forward with information about the missing.

89. In Armenia and Azerbaijan the process of identifying, mapping and preserving sites is in its infancy. In Armenia the authorities recognise they do not have the necessary information about burial sites. This problem can only be remedied by calling for information, investigating and through co-operation with the commission in Azerbaijan. For information on sites of the missing from Azerbaijan, information will need to be exchanged with the commission in Armenia and the commission in the Nagorno-Karabakh region.

90. In Georgia, the situation is more advanced. Discovered graves include those at Matcharki, Qetevan, Kolkhida, Fackha and Baboushera. The Minister of Refugees and Accommodation of Georgia stated to your Rapporteur that the Georgian side knows where the missing are and has the technical expertise and funds to deal with the issue as long as there is the political will on the side of the Abkhaz to facilitate the process. The Minister also made it clear that transfer of information on missing persons will take place with the "administration" in Abkhazia without pre-condition.

91. Notwithstanding this positive evaluation by the Minister, your Rapporteur understands that there are many more sites that need to be identified, over and above the 38 that have currently been mapped with the Abkhaz side. Your Rapporteur therefore encourages both sides to continue their co-operation in this respect.

*ii. Recovering, identifying and management of remains*

92. It is important for a framework to be agreed between the parties for this work to be carried out. This needs to cover the securing of graves and sites where remains are found, ensuring that remains are not spoilt and that they are handled professionally, identifying the remains using *ante-mortem* and *post-mortem* data or through DNA testing where applicable, returning identified remains, handling unidentified remains and maintaining burial sites. Those involved in this work need appropriate training before carrying it out. The authorities should also define a clear framework for forensic investigations into the missing, identifying the jurisdictional authorities to whom the experts should report.

93. There is little that has been done on recovering, identifying and managing the remains of those who went missing following the Nagorno-Karabakh conflict. The Halo Trust, which is carrying out de-mining, when it finds mortal remains, re-buries them and marks the site as the parties are currently not in a position to deal with and identify them.

94. In Georgia more progress has been made concerning the remains of persons missing following the conflict in Abkhazia. According to the Georgian authorities, the remains of 167 Georgians have been returned and the remains of 49 Abkhaz have been sent back. Exhumations

are done jointly by the Georgian and Abkhaz authorities and "administration". In Georgia identification of the remains takes place at the Centre of Medical Expertise of Tbilisi where the remains of 79 persons have been examined and the Expertise Centre of Zugdidi where the remains of 22 persons have been examined. The ICRC has carried out two workshops on forensics, one with the Abkhaz side and the other with the Georgian side. Additional training is scheduled by the ICRC for those involved in excavation work.

95. Your Rapporteur notes that there is a need, across the region, for further training of those involved in recovering, identifying and managing remains in order to assure certain standards and harmonise techniques.

*iii. Ante-mortem data*

96. In the field of *ante-mortem* data collection there is progress. Ante-mortem data is information obtained from members of the family about the missing persons, their physical characteristics, dental records, etc. This is then compared with post-mortem data (i.e. data from the remains recovered) in order to successfully identify the remains of the missing.

97. In Armenia, Azerbaijan, and the Nagorno-Karabakh region, the ICRC has set up a project for collecting *ante-mortem* data. Training and psychological support will be given to those collecting data and rules will have to be put in place for data protection.

98. In Georgia, the process of collecting *ante-mortem* data has been completed. This has been done with the assistance of the ICRC and with international experts. Ante-mortem data has also been collected in the Abkhazia region.

*iv. DNA testing*

99. In Armenia the Forensic Expertise Centre of the Health Care Ministry has expressed a readiness to carry out DNA analytical work and is prepared to send two technicians for further training.

100. In Georgia a request has been made to the European Union<sup>24</sup> to fund the establishment of a Caucasus DNA Centre, to help solve the issue of the missing.

101. Your Rapporteur recognises that DNA testing may also provide an additional means of identifying the missing, although he understands that there are difficulties associated with this process, including the cost involved, the facilities and expertise required and the accuracy of the testing. He therefore considers that any plans for the use of such testing should be discussed closely with the ICRC.

## **XI. Assistance to the families of the missing**

102. In the course of the Rapporteur's visits to the region he met with well over 60 members of families of the missing.

103. While the concerns of families differed from country to country, the overwhelming issue was the need to establish the fate of the missing. In Armenia and Azerbaijan the hope that some of the missing were still alive was still real for many of the families. In Georgia, by comparison, there was a much greater level of acceptance that the missing were no longer alive and importance was placed on identifying grave sites and the process of return of the remains of the missing.

104. The material needs of the families were secondary, but nonetheless present. In Georgia, for example, following a survey of needs of the families, moral support, recognition and assistance in finding work were also mentioned as priorities for the families.

105. Your Rapporteur was somewhat concerned by the lack of clarity concerning the material assistance available for members of the families throughout the region, with important distinctions based on whether the missing were combatants or civilians, whether payments were from one ministry or another (a point particularly raised in Georgia), whether a person had reached retirement age or not, whether a person lived in the capital or in the provinces, etc.

106. Your Rapporteur notes that compatibility exercises on domestic law and its compatibility with humanitarian law are being carried out with the assistance of the ICRC and that they offer the possibility of highlighting problems in the administrative and legal framework linked to assistance for family members.

107. Your Rapporteur considers that much greater effort is needed to provide clarity and advice to the families of the missing as to their entitlements, including what may be regarded as reparations (acknowledgement, compensation, commemorations, social and psychological support and even, where appropriate, justice). It is also necessary to create a clear administrative framework to deal with the material needs of the families, whether in terms of pension payments, lump sum payments, housing and education subsidies, discretionary payments, payments for children, parents widows and widowers, etc. Your Rapporteur therefore urges the authorities to consider carefully the recommendations which come out of the compatibility studies and act appropriately on these.

*i. Psychological assistance*

108. A number of initiatives to provide psychological support to the families of the missing have been undertaken. In Armenia, certain rehabilitation centres offer psychological assistance to the families of the missing, although resources are limited. In Georgia, according to the authorities, the Georgian Centre for the Rehabilitation of Torture victims provides a certain amount of support both for families and those who are working with the families in the collection of *ante-mortem* data.

109. Notwithstanding these different initiatives your Rapporteur understands from the families of the missing and from the ICRC that little or no psychological support is available for the vast majority of families of the missing in the region. Your Rapporteur therefore urges the authorities and "administrations" to analyse, together with the humanitarian organisations working in this issue, the needs in this area and to take appropriate action.

*ii. Meetings of families of the missing*

110. Your Rapporteur is aware of a number of initiatives that have taken place in the region allowing for the families of the missing (notably the mothers and wives of the missing) to meet together. These meetings, for example, have taken place between Armenians and Azerbaijanis and between Georgians and Abkhazians. In view of the continuing conflict and restrictions on movement, these meetings have been few and far between, but they have nonetheless taken place. They would appear to have had a mixed success. Families have understandably had high hopes of finding information about their relatives, but have been frustrated by the enormity of the task at hand. Families have also found the reception and communication with families on opposite sides not always easy, with tensions rising to the surface.

111. Notwithstanding the difficulties of these meetings, family members of the missing were anxious to have the opportunity of holding joint meetings and visiting places where they believed their family members were held, perished or went missing.

112. Your Rapporteur considers that such meetings can contribute to the process of coming to terms with the loss of family members and may provide answers for some of the family members. Your Rapporteur is sensitive to the fact that such meetings require careful preparation to avoid unnecessary suffering and frustration on the part of family members, but considers that further initiatives are required in this area.

## **XII. Remembrance**

113. Your Rapporteur was struck by the number of requests of families for greater recognition to be given to the memory of the missing, including through the building of proper memorials and the creation of official lists of the missing.

114. A number of steps have been taken by the authorities and "administrations" to commemorate the missing. For example in Armenia, there is a monument in Yerablour and June 29<sup>th</sup> is the day set aside for commemorating missing combatants. It is covered by television and involves interviews with families of the missing. August 30<sup>th</sup> is also commemorated as the day of the missing. In the Nagorno-Karabakh region, a museum of remembrance has been set up.

115. In Azerbaijan a monument has been erected at the Martyrs' Avenue in Baku and streets, schools, parks and other places are named after the missing and commemorative plaques are put up. A Law on the immortalisation of the memory of those who died for their homeland was adopted on 20 May 1997 outlining specific measures to be taken. A book entitled "Release us from captivity" has been published in Azerbaijan to highlight information on 753 persons missing but alleged to be alive.

116. In Georgia, family members of the missing have, with the assistance of the ICRC, opened a museum (the "Memory Museum") in the Fraternity Cemetery of Digomi. They have also published an album commemorating the loss of Georgian and Abkhaz fighters. The authorities have erected a large memorial with the names of the deceased marked on the memorial. Certain streets and schools are named after missing persons. A newspaper is published jointly by the NGO "Expectance" together with the State commission, providing information about the missing. A request has been made to the authorities, but not granted, for support for building a small church. In Abkhazia a "Book of memory" is currently under preparation by the families association "Mothers of Abkhazia".

117. Notwithstanding these different steps, your Rapporteur has heard a number of complaints from families. These concern the failure of the authorities and "administrations" to respond to letters, to support initiatives of families of the missing, to include representatives of families of the missing in structures dealing with the missing and also to commemorate or be represented at meetings commemorating the missing. Your Rapporteur therefore considers that greater sensitivity needs to be shown towards the families of the missing and further efforts should be made to promote remembrance.

118. Your Rapporteur however considers that commemorations should not be used for political purposes or result in the stoking up of tension with other parties to the conflict. Your Rapporteur is also conscious that remembrance may be the last stage in the process of resolving the issue of the missing. Until many of the questions about the missing are resolved, remembrance may not be a timely issue for some of those persons involved.

### **XIII. Role of civil society**

119. Your Rapporteur was struck by the few family associations that exist in the region to help the families of the missing and the lack of resources available to the few organisations that exist. This is in contrast to the situation in the Balkans where family members of the missing are relatively well organised and represented.

120. The authorities, the "administrations" and the international community could play a more proactive role in assisting the families of the missing to organise themselves, including through the provision of funding, provision of premises, equipment for communication, etc. Your Rapporteur however considers it important not to politicise this support and to allow the families of the missing to run their own independent organisations.

121. Apart from family associations, there are a number of other civil society initiatives. One of these is the International Working Group (IWG) for release of prisoners and hostages and tracing of missing persons in the Karabakh conflict. This group works with a number of local NGOs such as the Prisoners-of-war, Hostages and Missing People Rights Protection Center in Armenia, the Society for Humanitarian Researches of Azerbaijan and the Center for Civil Initiatives of Nagorno Karabakh.

122. The IWG has acted as a relay between the commissions on the Armenian and Azerbaijani sides, submitting information requests and investigating with its own resources a limited number of cases. The IWG has, as noted earlier, succeeded in organising two meetings between the relevant commissions in Baku in September 1999 and in Tbilisi in March 2005.

123. It has also worked on repatriation of the remains of missing persons, in the past in co-operation with the ICRC, and has had some success working on exchange of prisoners of war and hostages. It has worked on exposing various myths about the missing (including the holding of prisoners of war in secret detention centres, prisons, quarries, etc.). The IWG has made an important contribution to the issue of the missing. It merits support for its efforts from the authorities, the "administrations" and from international funders and backers.

124. Important work is also being carried out by other civil-society representatives, including for example the Helsinki Citizens' Assembly of Vanadzor. This NGO provides free legal advice on human rights issues and has prepared a draft law on "Missing Persons". It promotes civil society initiatives and peace building (including through commemorating the missing on 30 August), and encourages contacts between the three countries in the region. The Helsinki Citizen's Assembly in Azerbaijan, as another example, contributed to passing the 1997 law "On Compulsory Personal Insurance of Military Servicemen" that benefits the families and this NGO intends to lobby for a law which would entitle families of missing civilians to this insurance payment.

#### **XIV. Role of Ombudspersons in the region**

125. Your Rapporteur met the three Ombudspersons in the region and considers that they too could play a role in helping to solve the problem of the missing. In Armenia, for example, the Ombudsman expressed himself willing, in principle, to take up complaints concerning missing persons, including from Azerbaijanis. He suggested however that these complaints might best come through the Office of the Ombudsperson in Azerbaijan.

126. Your Rapporteur considers that the Ombudspersons in the region should follow the issue of the missing and take up individual complaints as appropriate.

#### **XV. Role of the media**

127. The media have an important role to play in ensuring that accurate information is made available about missing persons and the situation of the families, including on remembrance days for the missing.

128. The media must be careful to ensure that they do not circulate information likely to raise false expectations for the families of the missing, or contribute to intolerance or hatred of other ethnic groups.

129. Your Rapporteur recalls in this respect Recommendation No. R (97) 20 of the Committee of Ministers on "Hate Speech" and also [Resolution 1416](#) (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, in which the Assembly condemned any expression of hatred portrayed in the media of Armenia and Azerbaijan.

#### **XVI. Reports of persons missing still being alive**

130. Your Rapporteur was struck by the reports he received from families of the missing and also from the authorities and "administrations" that a number of those missing were thought still to be alive and held in official or non-official captivity. If these reports were true, many of these persons would have been held in captivity for a dozen years or more.

131. While most of these reports concerned Azerbaijanis, with a list of 790 names provided by the authorities of Azerbaijan, a number also concerned Armenians<sup>25</sup>. Your Rapporteur heard reports of secret detention camps, of gold mines and chemical plants where captives were being held and forced to work. There were reports of missing persons being held as slaves in private families, of women being forced into prostitution and allegations of organ trafficking. There were also reports of hostage taking, ransoms demanded and exchanges organised.

132. Your Rapporteur is aware of the impact of these reports on the families of the missing. Many have had their hopes raised, a number have sold their homes to find money to pay for information or the release of their family members and many have been swindled.

133. Your Rapporteur notes that Armenia and Azerbaijan are covered by the main human rights instruments of the Council of Europe, including the European Convention on Human Rights and the European Convention for the Prevention of Torture. The existence of any person in secret detention would be a major violation of these two Conventions.

134. Your Rapporteur notes that the authorities of both countries deny holding any persons in secret detention. The "administration" in the Nagorno-Karabakh region also denies holding any persons in secret detention.

135. Your Rapporteur, on the basis of the information and assurances provided to him, finds it unlikely that there are still persons held in secret captivity following the conflicts, although he can not be definitive on this issue.

136. In view of the suffering of the families involved, and the depth of feeling in both Armenia and Azerbaijan on this issue, your Rapporteur considers that certain steps need to be taken to resolve this issue which continues to fuel tension and suspicion between the two countries.

137. Allegations of secret detention should be lodged officially with the European Committee for the Prevention of Torture (CPT) which has a mandate to visit places where persons may be held in detention in order that the allegations be examined, followed-up and ultimately reported on.

138. The commissions established to deal with the issue of missing persons should also follow-up on any reports they receive of persons held in secret detention and the Ombudspersons in the region should react to any individual complaints they receive.

## **XVII. Hostage taking**

139. Your Rapporteur is aware of the problem of hostage taking, and while the problem appears to have subsided your Rapporteur considers that should hostage taking re-occur the authorities and "administrations" should use all means available to stamp out the practice. While hostage taking and the missing are two very different phenomena with different legal obligations, your Rapporteur considers that steps must be taken to deal with both issues.

## **XVIII. Prosecution of crimes and truth and reconciliation**

140. The process of solving the issue of the missing may well provide evidence of crimes or war which will need to be acted upon by the authorities and the "administrations".

141. Your Rapporteur is aware that the Public Prosecutor's Office in Azerbaijan has, for example, been carrying out investigations over the last 3 years of crimes allegedly committed by Armenians during the Nagorno-Karabkh conflict. Other parties to the different conflicts in the region have also raised such issues.

142. These allegations need to be investigated, but they should not interfere with the humanitarian and non-judicial work of the commissions dealing with the missing.

143. Your Rapporteur considers that truth and reconciliation exercises may have a role to play in clarifying events and helping communities move forward. Such exercises would undoubtedly benefit families of the missing waiting for answers about the fate of the missing.

## **XIX. Conclusion**

144. The issue of the missing in Armenia, Azerbaijan and Georgia has to be tackled as a humanitarian and human rights issue and not as a political issue.

145. Solving the issue can not be done unilaterally. It will need co-operation and co-ordination amongst all parties.

146. The different commissions looking into the issue of the missing will need to work together on matters such as the consolidation of lists of the missing and the process of tracing, mapping, identification and management of human remains.

147. The authorities and "administrations" should continue working in close co-operation with the ICRC and make full use of the ICRC's experience and expertise.

148. Further assistance needs to be given to the families of the missing to cover their material, social and psychological need. Steps also need to be taken to promote remembrance of the missing.

149. Concrete allegations that some of the missing from the Nagorno-Karabakh conflict or other conflicts are still alive and held in secret detention need to be examined and clarified once and for all.

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## **APPENDIX 1**

### **Programme of visit of the Rapporteur to Armenia, Georgia and Azerbaijan 4 - 9 June 2006**

#### **Sunday 4<sup>th</sup> June**

16h15 Informal meeting with family of missing persons at the Hotel Marriott

18h00 Meeting at the offices of ICRC with Mr Yves Arnoldy

(Head of Delegation of ICRC, Armenia). Mr Djordje Drndarski (Head of Mission Stepanakert), Catherine Patronoff (ICRC).

19h30 Informal dinner at hotel with Yves Arnoldy (Head of Delegation ICRC), Mr Djordje Drndarski (Head of Mission Stepanakert), Catherine Patronoff (ICRC), OSCE Ambassador Vladimir Pryakhin, SRSG of Council of Europe (Bojana Urumova).

#### **Monday 5<sup>th</sup> June**

9h00 – 12h30 Meetings with families and representatives of the missing persons

12h30 – 14h00 Lunch

14h00 – 16h00 Meeting with members of the commission dealing with missing persons

16h15 – 17h00 Meeting with Mr. Armen Haroutyunyan, Ombudsman of the Republic of Armenia

17h15 – 17h45 Meeting with Mr. Tigran Torosyan, President of the National Assembly, Head of the PACE Armenian delegation, National Assembly of the Republic of Armenia

18h00 – 19h00 Meeting with ICRC at ICRC's office

20h00 Dinner hosted by Mr. Tigran Torosyan, President of the National Assembly, Head of PACE Armenian delegation

#### **Tuesday 6<sup>th</sup> June**

08h00 Departure for Bagratashen (Armenian-Georgian border)

11h00 Arrival in Bagratashen (Armenian time)

12.30 – 14.15 Informal lunch with Mr. Igor GAON, local Representative of the Secretary General of the Council Europe, with Mr. Samuel EMONET, Protection Coordinator (ICRC) and with Mr. Guillaume A. SIEMIENSKI, Head of Human Dimension OSCE Mission

14.30 – 18.00 Meeting with ICRC and with families and representatives of the missing persons

18.15 – 19.15 Meeting with Mr. Giorgi KHEVIASHVILI, Minister on Refugees and Settlement

19.30 Dinner hosted by Georgian Delegation to the PACE

### **Wednesday, 7 June**

09.00 Meeting with Mr. Vladimer DOBORJGINIDZE, Representative of the commission dealing with missing persons

11.00 Meeting with Mr. Shota MALASHKHIA, Chairperson of the ad hoc Commission of the Parliament of Georgia on Restoration of Territorial Integrity and Ms Nino KALANDADZE, vice Chair of the Committee on Legal affairs of the Parliament of Georgia

12.00 Meeting with Mr. Sozar SUBARI, Ombudsman of Georgia

13.00 Lunch

14.00-15.00 Meeting with ICRC

17.30 Flight from Tbilisi to Baku

19:30 Arrival in Baku

### **Thursday 8<sup>th</sup> June**

9:00 – 12:00 Meeting with ICRC

12:00 – 14:00 Informal lunch with ICRC

14:00 – 17:30 Meeting with families and representatives of the missing persons

17:30 – 18:30 Meeting with the members of Delegation of the Milli Mejlis (Parliament) of the Republic of Azerbaijan to the PACE

19:30 Official dinner with the members of Delegation of the Milli Mejlis (Parliament) of the Republic of Azerbaijan to the PACE

### **Friday 9<sup>th</sup> June**

9:00 – 10:30 Meeting with Mrs. Elmira Suleymanova, Human Rights Commissioner (Ombudsperson) of the Republic of Azerbaijan

10:30 – 12:00 Meeting with the members of the State Commission of the Republic of Azerbaijan on prisoners of war, hostages and missing persons

12:00 – 14:00 Lunch

14:00 – 15:00 Meeting with Mr. Elmar Mammadyarov, Minister  
of Foreign Affairs of the Republic of Azerbaijan

15:00 – 16:00 Meeting with Mr. Zakir Garalov, Prosecutor  
General of the Republic of Azerbaijan

16:00 – 17:00 Meeting with Mr. Ogtay Asadov, Chairman of  
the Milli Mejlis (Parliament) of the Republic of  
Azerbaijan

17.30 Press Conference

### **Saturday 10<sup>th</sup> June**

Departure from Baku

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## **APPENDIX 2**

### **Programme**

of visit of the Rapporteur

to Nagorno-Karabakh and Abkhazia regions

### **17-23 September 2006**

#### **Sunday 17 September**

13.00 pm Travel to Khankandi / Stepanakert

18.00 pm Arrival in Khankandi / Stepanakert

#### **Monday 18 September**

Contacts in Khankandi / Stepanakert

09.00 Meeting with ICRC – Head of Mission Djordje Drndarski

11.00 Meeting with Masis Mailyan

12.30 Meeting with Vahram Atanisyan

14.30 Meeting with Vera Grigoryan , Head of the Union of Families of Missing and with  
family members of the missing

17.00 Meeting with ICRC

#### **Tuesday 19 September**

09.00 Departure to Yerevan / Tbilisi

- 16.00 Arrival Yerevan  
17.00 Departure for border with Georgia  
20.00 Arrival at Georgian border  
22.00 Arrival in Tbilisi

### **Wednesday 20 September**

- 09.00 Flight Tbilisi to Sukhumi  
12.00 Briefing with ICRC – Zarvan Raniero Owsia (Head of Mission)  
14.00 Meeting with Guli Kitchba – Mothers of Abkhazia  
15.00 Meeting with Adgur Butba and Robert Bassaria – Members of the Commission dealing with Missing Persons  
16.00 Meeting with families of the missing

### **Thursday 21 September**

- 10.00 Meeting with Zarvan Raniero Owsia – ICRC – Head of Mission  
11.00 Meeting with Alexander Zalatinskovich Ankvab and Leonid Ivanovich Lakerbaya  
12.30 Meeting with Sergej Mironavich Shamba  
14.00 Meeting with UNOMIG – Ivo Petrov, Deputy Special Representative of the Secretary General

### **Friday 22 September**

- 09.30 Wrap up session with Zarvan Raniero Owsia – ICRC – Head of Mission  
13.00 Meeting with Vladlen Stefanov, Head, Human Rights Office in Abkhazia (UNOMIG),  
14.00 Departure for Sukhumi

### **Saturday 23 September**

Departure from Tbilisi

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*Reporting Committee:* Committee on Migration, Refugees and Population

*Reference to committee:* [Doc. 10631](#), Reference No. 3154 of 25 November 2005

*Draft resolution and draft recommendation* unanimously adopted by the Committee on 24 January 2007

*Members of the Committee:* Mr Mevlüt **Çavuşoğlu** (Chairperson), Mr Jean-Guy **Branger** (1<sup>st</sup> Vice-Chairperson), Mr Doug **Henderson** (2<sup>nd</sup> Vice-Chairperson), Mr Ibrahim Özal (3<sup>rd</sup> Vice-Chairperson), Mrs Tina Acketoft, Mr Pedro **Agramunt**, Mr Külle Arjakas, Mr Walter Bartoš, Mr Ryszard Bender, Mr Akhmed Bilalov, Mr Italo Bocchino, Mrs Olena Bondarenko, Mrs Mimount Bousakla (alternate: Mr Paul **Wille**), Mr Márton Braun, Lord Burlison (alternate: Mr Michael

**Hancock**), Mr Sergej Chelemendik, Mr Christopher **Chope**, Mr Boriss **Cilevičs**, Mrs Minodora **Cliveti**, Mr Ivica Dačić, Mr Joseph Debono Grech, Mr Taulant Dedja, Mr Nikolaos Dendias, Mr Abílio **Dias Fernandes**, Mr Karl Donabauer (alternate: Mr Ewald **Lindinger**), Mrs Lydie Err (alternate: Mr Norbert **Haupt**), Mr Valeriy Fedorov, Mr Oleksandr Feldman, Mrs Margrét Frimannsdóttir, Mrs Gunn Karin Gjøl (alternate: Mr Øyvind **Vaksdal**), Mrs Angelika Graf, Mr John **Greenway**, Mr Andrzej Grzyb (alternate: Mr Andrzej **Grzesik**), Mr Ali Riza **Gülçiçek**, Mr Michael **Hagberg**, Mrs Gultakin **Hajiyeva**, Mr Bernd Heynemann, Mr Ilie Ilaşcu, Mrs Iliana Iotova, Mr Tadeusz **Iwiński**, Mr Mustafa Jemilev, Mr Tomáš Jirsa, Mrs Eleonora Katseli, Mr Hakki **Keskin**, Mr Dimitrij Kovačič, Mr Andros **Kyprianou**, Mr Geert Lambert, Mr Jean-Marie Le Guen, Mr Massimo Livi Bacci, Mr Younal Loutfi, Mr Jean-Pierre Masseret, Mr Giorgio Mele (alternate: Mr Pasquale **Nessa**), Mrs Ana Catarina **Mendonça**, Mr Morten Messerschmidt, Mr Paschal Mooney, Mr Gebhard **Negele**, Mr alevi Olin, Mrs Vera **Oskina**, Mrs María Josefa Porteiro Garcia, Mr Cezar Florin Preda, Mr Dušan Proroković, Mr Gabino Puche (alternate: Mr Adolfo **Fernández Aguilar**), Mr Milorad Pupovac, Mr Marc Reymann, Mr Alessandro Rossi, Mr Samad Seyidov, Mr Luzi Stamm, Mr Sergiu Stati, Mrs Terezija Stoisits, Mr Giacomo **Stucchi**, Mr Vilmos Szabó, Mrs Elene **Tevdoradze**, Mr Tigran **Torosyan**, Mrs Ruth-Gaby Vermot-Mangold, Mr Andrej **Zernovski**, Mr Emanuelis Zingeris, Mr Vladimir Zhirinovskiy, ZZ... (alternate : Mr Ed **van Thijn**), ZZ... (alternate: Mr Leo **Platvoet**).

N.B. The names of the members who took part in the meeting are printed in **bold**

*Secretaries of the Committee:* Mr Halvor Lervik, Mr Mark Neville, Ms Dana Karanjac

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<sup>1</sup> See [Resolution 1414](#) (2004) and [Recommendation 1685](#) (2004) on Person unaccounted for as a result of armed conflicts or internal violence in the Balkans.

<sup>2</sup> See [Resolution 1463](#) (2005) and [Recommendation 1719](#) (2005) on Enforced disappearances.

<sup>3</sup> Source see [Doc. 10364](#) The conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference, Report, Political Affairs Committee, Rapporteur Mr David Atkinson, United Kingdom, European Democratic Group

<sup>4</sup> The Assembly adopted back in 1994 [Resolution 1047](#) on the conflict in Nagorno-Karabakh welcoming the cease fire. In its later [Resolution 1119](#) (1997) on the conflicts in Transcaucasia, it called on the parties to the conflicts to work towards the political settlement of the disputes and recognised the inviolability of borders. Its most recent [Resolution 1416](#) (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference calls on Armenia and Azerbaijan to foster political reconciliation and to tackle the issue of refugees and displaced persons. The Assembly has also adopted recommendations to the Committee of Ministers, including [Recommendation 1251](#) (1994) on the conflict in Nagorno-Karabakh and [Recommendation 1690](#) (2005) on the conflict over the Nagorno-Karabakh region dealt with by the OSCE Minsk Conference. These recommendations call on the Committee of Ministers to provide assistance to the peace process, to monitor the compliance of the parties with the Security Council Resolutions and to take steps to build confidence in the region.

<sup>5</sup> Source, see [Doc 7793](#) Report on conflicts in Transcaucasia, Committee on Relations with European Non-Member Countries, Rapporteur Mr Jean Seitlinger, France, Group of the European People's Party

<sup>6</sup> For further information see South Ossetia, from Wikipedia ([http://en.wikipedia.org/wiki/South\\_Ossetia](http://en.wikipedia.org/wiki/South_Ossetia))

<sup>7</sup> ICRC Missing persons and their families. Recommendations for drafting national legislation. Fact Sheet.

<sup>8</sup> Geneva Convention 1, Articles 19-20; Geneva Convention II, Articles 16-17; Geneva Convention II, Articles 122- 125; Geneva Convention IV, Articles 136 – 141; Additional Protocol 1, Articles 32 – 33. J.M. Henckaerts / I. Doswald-Beck. *Customary International Humanitarian Law*, ICRC, Cambridge, Cambridge University Press, 2005, rule 117

<sup>9</sup> Additional Protocol I, Article 32. . J.M. Henckaerts / I. Doswald-Beck. *Customary International Humanitarian Law*, ICRC, Cambridge, Cambridge University Press, 2005, rule 117

<sup>10</sup> Missing Persons and European Convention of Human Rights, by M. Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe, Geneva, February 19, 2003.

<sup>11</sup> See for example the Case of Ilaşcu and others v. Moldova and Russia, Judgment 8 July 2004 (Application No. 48787/99)

<sup>12</sup> Information taken from [Doc.10679](#) Enforced disappearances, Report Committee on Legal Affairs and Human Rights, Rapporteur: Mr Christos Pourgourides, Cyprus, Group of the European People's Party, para. 35. For a fuller examination of the case-law European Court of Human Rights on enforced disappearances please also see this document.

<sup>13</sup> For further information on what should be included in domestic legislation see ICRC, Missing persons and their families. Recommendations for drafting national legislation. Fact sheet.

<sup>14</sup> Of which, according to the authorities, 11 are civilians.

<sup>15</sup> Of which , according to the authorities, 473 are civilians (although ICRC have indicated a higher proportion of military missing to civilian missing)

<sup>16</sup> Of this number 904 are civilians

<sup>17</sup> Of this number approximately 15% are civilians

<sup>18</sup> Of this number 968 are civilians

<sup>19</sup> This number includes 68 persons who went missing after being evacuated from a psychiatric hospital.

<sup>20</sup> See the 1949 Geneva Conventions (Geneva Convention III, Article 120 and 122 and Geneva Convention IV, Article 136).

<sup>21</sup> Decree NH-553 of the President of the Republic of Armenia of April 18, 2000

<sup>22</sup> Notwithstanding that some members of the commission are relatives of the missing, your Rapporteur does not consider that this obviates the need for direct representation of the families on the commission.

<sup>23</sup> <http://www.human.gov.az/> > eng

<sup>24</sup> Request by the Charity Fund of the Lost Fighters Assistance in Abkhazia, addressed through the ICRC to the European Union.

<sup>25</sup> Your Rapporteur also heard rumours that Georgian and Abkhaz persons were being held in secret detention centres, but little or no credence was given to these stories by the interlocutors with whom your Rapporteur met.