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CIVIL AND POLITICAL RIGHTS

**Written statement* submitted by the Permanent Assembly for Human Rights (ADPH),
a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 February 2005]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

TOWARDS A NEW INTERNATIONAL INSTRUMENT FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

Firstly, the Permanent Assembly for Human Rights wants to mention the work of the Inter-sessional open-ended working group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance.

The human rights organizations of Argentina follow closely the activity of the working group chaired by the Ambassador France, Mr. Bernard Kessedjian and we congratulate him for the progress achieved.

The disappearance of people is the "violation of all violations" as it puts the victim beyond the reach of all legal protection systems. Clandestinely detained, the victim undergoes ignominious torture and a clandestine death which circumstances are hidden along with their mortal remains so that the truth is never known. All information is denied to the relatives who live in anguish and transmit this anguish from generation to generation. The enforced disappearance of people constitutes, therefore, a crime against humanity.

We are deeply concerned about the attempts, during the discussions of the working group, to classify the actions carried out by non-state actors in armed conflicts as enforced disappearance of people, where humanitarian law should be applied. Introducing these actions in a legal instrument based on international human rights dilutes the concept of state responsibility and might open again a door towards impunity. We insist that only the State violates human rights, by action or omission, because it is its only guarantor and the one responsible of protecting the rights of its citizens. It is for this reason that when we speak of human rights we say that the holder of these rights is the human being and the one obliged by these rights is the State.

The enforced disappearance of people is a crime that has its own autonomy and has particular characteristics which require the creation of a criminal figure of its own as well as the establishment of a legal instrument that ensures a proper protection of citizens against these violations since the international legal system lacks such a tool.

During the meetings of the working group there have been intense discussions about the mechanisms of protection against this type of violations. These mechanisms essentially imply the possibility of saving lives or not, and for this reason we hope the working group achieves the drafting of a convention with an independent protection mechanism and faculties for immediate verification, with a group of independent experts who has flexible capacities to respond to individual denunciations and visit to the countries which are object of these denunciations. This is a nonnegotiable position. The establishment of a mechanism which solely requests the submissions of

state reports and has no power to act effectively upon denunciations of enforced disappearances of people cannot be accepted.
