



**EXPLANATION OF VOTE AFTER THE VOTE BY AMBASSADOR AJAI MALHOTRA ON A/C.3/61/L.17 TITLED "INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE" ON NOVEMBER 13, 2006**

Mr. Chairman,

India has consistently supported efforts to deal with the problem of enforced disappearance. We believe that the most effective instrument for prevention of enforced disappearance is the guarantee of a State that it respects civil and political rights and will fulfil its obligations to its people. We also consider that the existing body of international human rights law and international humanitarian law, if reinforced by adequate political will and resources, provides a comprehensive framework to tackle this unacceptable phenomenon. What is needed is the enforcement and implementation of the law by the State. The international community must, therefore, focus primarily on strengthening national capacities of States in this regard.

It is against this as a backdrop that India had approached the negotiations for a legally binding instrument on enforced disappearance. However, we were not convinced about the need for a separate Convention or the creation of a new monitoring body to deal with this issue. In our view, an Optional Protocol to the International Convention on Civil and Political Rights would have provided a preferred solution.

It also remains of concern to us that the text still retains certain drawbacks. Thus, the 'constructive ambiguity' in the definition of enforced disappearance creates two different standards of proof for the same crime, one here and another in Rome Statute. The missing element of 'intent' and 'knowledge' in the definition will not help in easing the burden of proof as *mens rea* is an essential element for criminalisation of any act. Accordingly, we would have preferred if 'intent' had been more clearly incorporated in the definition of 'enforced disappearance'. Furthermore, the exclusion of non-state actors from the definition ignores contemporary threats, which require our collective and determined response.

Having said that, Mr. Chairman, given our commitment to deal with enforced disappearance and recognizing that States have different legal systems and national contexts that make it unrealistic to expect complete agreement on all aspects of this issue, we have joined others in adopting this international instrument. We have done so with the following understanding:

First, it is our interpretation that this instrument allows national jurisdictions to criminalize the offence of enforced disappearance in accordance with their respective legal systems and constitutional procedures.

Second, as regards remedy and compensation, there is no statutory right to compensation in a Common Law system such as India's. However, the Indian judiciary, at all levels, as well as the National Human Rights Commission of India, regularly grant remedy and compensation to victims of human rights abuse.

Thank you, Mr. Chairman.

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