



**Resolution 1868 (2012)<sup>1</sup>**  
Provisional version

## **The International Convention for the Protection of all Persons from Enforced Disappearance**

Parliamentary Assembly

1. The Parliamentary Assembly recalls that the problem of enforced disappearances and missing persons is far from resolved, also in Europe. Some 14 000 persons are still missing in the Western Balkans alone, 2 300 in the North Caucasus region of the Russian Federation, and close to 2 000 in Cyprus. Countless persons are also missing after the conflicts in the South Caucasus region.
2. The continuing suffering of relatives and friends of missing persons, recognised by the European Court of Human Rights as amounting to torture and inhuman and degrading treatment, remains a formidable obstacle to lasting peace and reconciliation.
3. The Assembly therefore welcomes the considerable efforts already made by the international community to elucidate the fate of missing persons, notably in the Western Balkans region, where the International Commission on Missing Persons (ICMP) has been able to account for 26 000 of the 40 000 persons who went missing after the conflicts in the region, and in Cyprus, where the bi-communal Commission on Missing Persons, under the aegis of the United Nations, resumed work in 2006 and has so far identified and returned to their families the bodies of 300 individuals.
4. The Assembly stresses the importance of genuine political will on all sides of the conflict to uncover the truth, regardless of the ethnic, religious or political backgrounds of the victims and of the suspected perpetrators. In particular, the search for burial sites by duly mandated experts must be allowed everywhere, even in military or otherwise restricted areas, on the basis of reasonable indications.
5. The international community as a whole must demonstrate political will by providing sufficient resources for search and identification efforts, taking into account their long-term nature, and by developing an appropriate international legal framework for protection from enforced disappearances.
6. The Assembly therefore warmly welcomes the entry into force, in December 2010, of the United Nations International Convention for the Protection of all Persons from Enforced Disappearance (hereafter “the UN Convention”), which the Assembly called for in its [Resolution 1463 \(2005\)](#) on enforced disappearances.
  - 6.1. The Assembly welcomes in particular that the UN Convention:
    - 6.1.1. explicitly recognises a new human right not to be subjected to enforced disappearance;
    - 6.1.2. imposes specific obligations on States to prevent enforced disappearances and to combat impunity;
    - 6.1.3. provides for a broad definition of the term of “victim” of an enforced disappearance;
    - 6.1.4. enshrines new rights, such as the right to the truth and to appropriate measures to search for, locate and release disappeared persons;

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1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 9 March 2012 (see Doc. 12880, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Pourgourides). See also Recommendation 1995 (2012).

- 6.1.5. establishes a new type of international monitoring mechanism: the Committee on Enforced Disappearances.
- 6.2. The Assembly, recognising that the UN Convention is necessarily a compromise, nevertheless regrets that some of its recommendations in [Resolution 1463 \(2005\)](#) were not taken into account in the UN Convention, in particular the convention:
  - 6.2.1. fails to fully include in the definition of enforced disappearances the responsibility of non-State actors;
  - 6.2.2. remains silent on the need to establish a subjective element of intent as part of the crime of enforced disappearance;
  - 6.2.3. refrains from placing limits on amnesties or jurisdictional and other immunities;
  - 6.2.4. severely limits the temporal jurisdiction of the Committee on Enforced Disappearances.
- 6.3. The Assembly also notes with regret that only 35 member States of the Council of Europe have so far signed the UN Convention and that only nine of those States have ratified it.
7. The Assembly welcomes recent developments in the Council of Europe that are favourable to the fight against enforced disappearances, including:
  - 7.1. the case law of the European Court of Human Rights extending its temporal jurisdiction over enforced disappearances by stressing the ongoing nature of the procedural obligation to investigate a disappearance;
  - 7.2. the adoption by the Committee of Ministers of the Guidelines on Eradicating Impunity for Serious Human Rights Violations.
8. The Assembly recalls its [Resolution 1371 \(2004\)](#) on disappeared persons in Belarus, which has still not been acted upon by the Belarusian authorities, and notes that recent legal developments may permit the authorities of other countries to prosecute the suspects named in its report.
9. In view of the above considerations, the Assembly invites:
  - 9.1. the competent authorities of the member States of the Council of Europe to fully and expeditiously investigate all cases in which there is a reasonable suspicion that an enforced disappearance may have occurred within their jurisdiction, and to avail themselves of all legal means at their disposal to take jurisdiction over cases that occurred in other countries whose authorities have failed to take appropriate action;
  - 9.2. the member States of the Council of Europe which have not yet done so to sign and ratify the United Nations International Convention for the Protection of all Persons from Enforced Disappearance and invites those member States which have ratified the convention to contribute actively to the functioning of this instrument, in particular by making declarations under Articles 31 and 32 of the convention recognising the competence of the Committee on Enforced Disappearances to consider communications from individuals claiming to be victims of violations of this convention, following the example of Belgium, France, Montenegro, the Netherlands, Serbia and Spain;
  - 9.3. the member States of the Council of Europe to:
    - 9.3.1. consider launching the process of drawing up a European convention for the protection of all persons from enforced disappearance, based on the achievements of the UN Convention;
    - 9.3.2. give their unrelenting political support and make available the necessary human, technical and financial resources to existing and new national and international efforts aimed at resolving the grave humanitarian crises caused by the numerous unresolved cases of missing persons throughout Europe.
10. The Assembly calls on the Committee on Enforced Disappearances elected in May 2011 to make full use of its competences under the UN Convention in order to play an active role in the prevention and elucidation of enforced disappearances, in close co-operation and co-ordination with the United Nations Human Rights Council and its Working Group on Enforced and Involuntary Disappearances (WGEID), whose humanitarian action without geographical limits deserves continued support.

11. Finally, the Assembly encourages the European Court of Human Rights and the member States to continue making determined use of all instruments available under the European Convention on Human Rights in order to protect against enforced disappearances and ensure that perpetrators are held to account.