

## INTERNATIONAL HUMANITARIAN LAW

- A. The institutional framework
- B. Scope of obligations
- C. Monitoring and enforcement
- D. Conclusion

### A. THE INSTITUTIONAL FRAMEWORK

<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>

- **GENEVA CONVENTIONS, COMMON ARTICLE 3:**

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as a minimum, the following provisions:

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end **the following acts are and shall remain prohibited at any time** and in any place whatsoever with respect to the above-mentioned persons:

- (a) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

...

- **GENEVA CONVENTION RELATIVE TO THE TREATMENT OF PRISONERS OF WAR**

(hereinafter “Third Convention” or GC III)

*Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949*

Entry into force: 21 October 1950

Journalists as war correspondents:

**Article 4**

A. Prisoners of war, in the sense of the present Convention, are persons belonging to one of the following categories, who have fallen into the power of the enemy:

...

4. Persons who accompany the armed forces without actually being members thereof, such as civilian members of military aircraft crews, **war correspondents**, supply contractors, members of labour units or of services responsible for the welfare of the armed forces, provided that they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card similar to the annexed model.

**Article 13**

Prisoners of war must at all times **be humanely treated**. Any unlawful act or omission by the Detaining Power causing death or seriously endangering the health of a prisoner of war in its custody is prohibited, and will be regarded as a serious breach of the present Convention. In particular, no prisoner of war may be subjected to physical mutilation or to medical or scientific experiments of any kind which are not justified by the medical, dental or hospital treatment of the prisoner concerned and carried out in his interest.

Likewise, prisoners of war must at all times be **protected, particularly against acts of** violence or intimidation and against insults and public curiosity. Measures of reprisal against prisoners of war are prohibited.

- **GENEVA CONVENTION RELATIVE TO THE PROTECTION OF CIVILIAN PERSONS IN TIME OF WAR**  
(hereinafter "Fourth Convention" or GC IV)

*Adopted on 12 August 1949 by the Diplomatic Conference for the Establishment of International Conventions for the Protection of Victims of War, held in Geneva from 21 April to 12 August 1949*

Entry into force: 21 October 1950

**Article 4**

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a Party to the conflict or Occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it.

**Article 27**

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the Party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the Parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

#### **Article 28**

The **presence of a protected person** may **not** be used to **render** certain points or areas **immune from military operations**.

- **PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF INTERNATIONAL ARMED CONFLICTS** (Protocol 1)

Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts  
Entry into force: 7 December 1979, in accordance with article 95

#### **Article 79.—Measures of protection for journalists**

1. **Journalists** engaged in dangerous professional missions in areas of armed conflict shall be considered **as civilians** within the meaning of Article 50, paragraph .

2. They shall be protected as such under the Conventions and this Protocol, provided that they take no action adversely affecting their status as civilians, and without prejudice to the right of war correspondents accredited to the armed forces to the status provided for in Article 4 A (4) of the Third Convention.

3. They may obtain an identity card similar to the model in Annex II of this Protocol. This card, which shall be issued by the government of the State of which the journalist is a national or in whose territory he resides or in which the news medium employing him is located, shall attest to his status as a journalist.

#### **Article 50.—Definition of civilians and civilian population**

1. A civilian is any person who does not belong to one of the categories of persons referred to in Article 4 A (1), (2), (3) and (6) of the Third Convention and in Article 43 of this Protocol. In case of doubt whether a person is a civilian, that person shall be considered to be a civilian.

#### **Article 51.—Protection of the civilian population**

1. The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations. To give effect to this protection, the following rules, which are additional to other applicable rules of international law, shall be observed in all circumstances.

...

especially, para. 4:

4. Indiscriminate attacks are prohibited. Indiscriminate attacks are:
  - (a) Those which are not directed at a specific military objective;

(b) Those which employ a method or means of combat which cannot be directed at a specific military objective; or

(c) Those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol;

and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

**Article 52.—General protection of civilian objects**

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.

2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military of advantage.

3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

- **PROTOCOL ADDITIONAL TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949, AND RELATING TO THE PROTECTION OF VICTIMS OF NON-INTERNATIONAL ARMED CONFLICTS**  
(Protocol II)

*Adopted on 8 June 1977 by the Diplomatic Conference on the Reaffirmation and Development of International Humanitarian Law applicable in Armed Conflicts*  
Entry into force: 7 December 1978, in accordance with article 23

**Article 1.—Material field of application**

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol **shall not apply** to situations of internal disturbances and tensions, such as riots, isolated and **sporadic acts of violence** and other acts of a similar nature, as not being armed conflicts.

**Article 13.—Protection of the civilian population**

1. The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations. To give effect to this protection, the following rules shall be observed in all circumstances.

2. The civilian population as such, as well as individual civilians, shall not be the object of attack. Acts or threats of violence the primary purpose of which is to spread terror among the civilian population are prohibited.
3. Civilians shall enjoy the protection afforded by this Part, unless and for such time as they take a direct part in hostilities.

## B. SCOPE OF OBLIGATIONS

- **Common Article 1 (of GC III, GC IV, Protocol 1)**

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

*Prosecutor v. Dusko Tadic a/k/a "DULE"*

*Decision on the defence motion for interlocutory appeal on jurisdiction (2 October 1995)*

103. Common **Article 3** contains not only the substantive rules governing internal armed conflict but also a procedural mechanism inviting parties to internal conflicts to agree to abide by the rest of the Geneva Conventions. As in the current conflicts in the former Yugoslavia, parties to a number of internal armed conflicts have availed themselves of this procedure to bring the law of international armed conflicts into force with respect to their internal hostilities. For example, in the 1967 conflict in Yemen, both the Royalists and the President of the Republic agreed to abide by the essential rules of the Geneva Conventions. Such undertakings reflect an understanding that certain fundamental rules should apply regardless of the nature of the conflict.

134. All of these factors confirm that **customary international law imposes criminal liability for serious violations of common Article 3**, as supplemented by other general principles and rules on the protection of victims of **internal armed conflict**, and for breaching certain fundamental principles and rules regarding means and methods of **combat in civil strife**.

<http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>

- **THIRD GENEVA CONVENTION (GC III)**

### **Article 129**

The High Contracting Parties undertake **to enact any legislation** necessary to provide effective penal **sanctions** for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the **obligation to search** for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the present Convention.

#### **Article 130**

**Grave breaches** to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: **wilful killing, torture or inhuman treatment**, including biological experiments, **wilfully causing great suffering or serious injury to body or health**, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention.

#### **Article 121**

Every death or serious injury of an internee, caused or suspected to have been caused by a sentry, another internee or any other person, as well as any death the cause of which is unknown, shall be immediately followed by an **official enquiry** by the Detaining Power.

A communication on this subject shall be sent immediately to the Protecting Power. The evidence of any witnesses shall be taken, and a report including such **evidence shall be prepared** and forwarded to the said Protecting power.

If the enquiry indicates the guilt of one or more persons, the Detaining Power shall take all necessary steps to ensure the prosecution of the person or persons responsible.

### ▪ **FOURTH GENEVA CONVENTION (GC IV)**

#### **Article 146**

The High Contracting Parties undertake to **enact any legislation** necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention defined in the following Article.

Each High Contracting Party shall be under the **obligation to search** for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its own legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a *prima facie* case.

Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than the grave breaches defined in the following Article.

In all circumstances, the accused persons shall benefit by safeguards of proper trial and defence, which shall not be less favourable than those provided by Article 105 and those following of the Geneva Convention relative to the Treatment of Prisoners of War of August 12, 1949.

### Article 147

**Grave breaches** to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: **wilful killing, torture or inhuman treatment**, including biological experiments, **wilfully causing great suffering or serious injury to body or health**, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property.

### Article 149

At the request of a Party to the conflict, **an enquiry** shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

## ▪ PROTOCOL 1

### Article 80.—Measures for execution

1. The High Contracting Parties and the Parties to the conflict shall without delay take all necessary measures for the **execution** of their obligations under the Conventions and this Protocol.

2. The High Contracting Parties and the Parties to the conflict shall give orders and instructions to ensure observance of the Conventions and this Protocol, and shall supervise their execution.

### Article 85.—Repression of breaches of this Protocol

1. The provisions of the Conventions relating to the repression of breaches and grave breaches, supplemented by this Section, shall apply to the repression of breaches and grave breaches of this Protocol.

...

3. In addition to the grave breaches defined in Article 11, the following acts shall be regarded as grave breaches of this Protocol, when committed wilfully, in violation of the relevant provisions of this Protocol, and causing death or serious injury to body or health:

- (a) Making the civilian population or individual civilians the object of attack;
  - (b) Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
  - (c) Launching an attack against works or installations containing dangerous forces in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 (a) (iii);
  - (d) Making non-defended localities and demilitarized zones the object of attack;
  - (e) Making a person the object of attack in the knowledge that he is *hors de combat*;
- [...]

(The emphasis in italics is in the original)

**Article 86.—Failure to act**

1. The High Contracting Parties and the Parties to the conflict shall repress grave breaches, and take **measures necessary to suppress all other breaches**, of the Conventions or of this Protocol which result from a failure to act when under a duty to do so.

2. The fact that a breach of the Conventions or of this Protocol was committed by a subordinate does not absolve his superiors from penal or disciplinary responsibility, as the case may be, if they knew, or had information which should have enabled them to conclude in the circumstances at the time, that he was committing or was going to commit such a breach and if they did not take all feasible measures within their power to prevent or repress the breach.

**C. MONITORING AND ENFORCEMENT**

There is no standard mechanism that monitors or enforces international humanitarian law, as defined by the Geneva Conventions and the two Protocols. This task, however, can be assumed by member states or UN organs.

**1) Member States<sup>1</sup>**

▪ **PROTOCOL 1**

**Article 88.—Mutual assistance in criminal matters**

1. The High Contracting Parties shall afford one another the **greatest measure of assistance** in connexion with criminal proceedings brought in respect of grave breaches of the Conventions or of this Protocol.

2. Subject to the rights and obligations established in the Conventions and in Article 85, paragraph 1, of this Protocol, and when circumstances permit, the High Contracting Parties shall co-operate in the matter of extradition. They shall give due consideration to the request of the State in whose territory the alleged offence has occurred.

3. The law of the High Contracting Party requested shall apply in all cases.

The provisions of the preceding paragraphs shall not, however, affect the obligations arising from the provisions of any other treaty of a bilateral or multilateral nature which governs or will govern the whole or part of the subject of mutual assistance in criminal matters.

**Article 89.—Co-operation**

In situations of serious violations **of the Conventions or of this Protocol**, the High Contracting Parties undertake to act, jointly or individually, in co-operation with the **United Nations** and in conformity with the **United Nations Charter**.

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<sup>1</sup> Yves Beigdeder, Judging war crimes and torture: French justice and international criminal tribunals and commissions (1940-2005), (Martinus Nijhoff, 2006), at 221 ‘The trial of Maurice Papon’.

## 2) The Security Council of the United Nations

Comment: The Security Council is primarily concerned with the implementation of the UN Charter, rather than of international humanitarian law.

UN Charter

<http://treaties.un.org/doc/Publication/CTC/uncharter.pdf>

### Article 39

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.

### Article 41

The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations.

### Article 42

Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.

### 2.1. *Ad hoc International Tribunals established by the Security Council*

INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

<http://www.icty.org/>

*Resolution 827 (1993), adopted by the Security Council at its 3217<sup>th</sup> meeting, on 25 May 1993*

S/RES/827 (1993), 25 May 1993

....

Expressing once again its grave alarm at continuing reports of widespread and flagrant violations of international humanitarian law occurring within the territory of the former Yugoslavia, and especially in the Republic of Bosnia and Herzegovina, including reports of mass killings, massive, organized and systematic detention and rape of women, and the continuance of the practice of "ethnic cleansing", including for the acquisition and the holding of territory,

Determining that this situation continues to constitute a threat to international peace and security,

Determined to put an end to such crimes and to take effective measures to bring to justice the persons who are responsible for them,

Convinced that in the particular circumstances of the former Yugoslavia the establishment as an ad hoc measure by the Council of an international tribunal

and the **prosecution of persons responsible for serious violations of international humanitarian law** would enable this aim to be achieved and would contribute to the restoration and maintenance of peace,

Believing that the establishment of an international tribunal and the prosecution of persons responsible for the above-mentioned violations of international humanitarian law will contribute to ensuring that such violations are halted and effectively redressed,

...

Acting under Chapter VII of the Charter of the United Nations,

...

2. Decides hereby to establish an international tribunal for the sole purpose of prosecuting persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia between 1 January 1991 and a date to be determined by the Security Council upon the restoration of peace and to this end to adopt the Statute of the International Tribunal annexed to the above-mentioned report;

[http://ap.ohchr.org/documents/alldocs.aspx?doc\\_id=8961](http://ap.ohchr.org/documents/alldocs.aspx?doc_id=8961)

### **3) Other monitoring mechanisms**

#### ***3.1 Enquiry Procedure***

##### **Article 132 GC III, Article 149 GC IV**

At the request of a Party to the conflict, an enquiry shall be instituted, in a manner to be decided between the interested Parties, concerning any alleged violation of the Convention.

If agreement has not been reached concerning the procedure for the enquiry, the Parties should agree on the choice of an umpire who will decide upon the procedure to be followed.

Once the violation has been established, the Parties to the conflict shall put an end to it and shall repress it with the least possible delay.

#### ***3.2. The International Fact-Finding Commission***

##### **▪ PROTOCOL I:**

##### **Article 90.—International Fact-Finding Commission**

1. (a) An International Fact-Finding Commission (hereinafter referred to as “the Commission”) consisting of fifteen members of high moral standing and acknowledged impartiality shall be established.

...

2. (a) The High Contracting Parties may at the time of signing, ratifying or acceding to the Protocol, or at any other subsequent time, declare that they recognize *ipso facto* and without special agreement, in relation to any other High Contracting Party accepting the same obligation, the competence of the Commission to enquire into allegations by such other Party, as authorized by this Article.

...

(c) The Commission shall be competent to:

- (i) Enquire into any facts alleged to be a grave breach as defined in the Conventions and this Protocol or other serious violation of the Conventions or of this Protocol;
  - (ii) Facilitate, through its good offices, the restoration of an attitude of respect for the Conventions and this Protocol.
- (d) In other situations, the Commission shall institute an enquiry at the request of a Party to the conflict only with the consent of the other Party or Parties concerned.

### ***3.3. International Investigating inquiries by the Security Council***

The Security Council is empowered to set up enquiry commissions acting under Chapter VII (Action with respect to threats to the peace, breaches of the peace and acts of aggression) of the UN Charter.

*- Resolution adopted by the Security Council at its 5040<sup>th</sup> meeting, on 18 September 2004*  
*S/RES/1564 (2004)*

12. *Requests* that the Secretary-General rapidly establish an international commission of inquiry in order immediately **to investigate reports of violations of international humanitarian law and human rights law in Darfur** by all parties, to determine also whether or not acts of genocide have occurred, and to identify the perpetrators of such violations with a view to ensuring that those responsible are held accountable, *calls on* all parties to cooperate fully with such a commission, and *further requests* the Secretary-General, in conjunction with the Office of the High Commissioner for Human Rights, to take appropriate steps to increase the number of human rights monitors deployed to Darfur;  
 (the emphasis in italics is in the original)

[http://www.un.org/Docs/sc/unsc\\_resolutions04.html](http://www.un.org/Docs/sc/unsc_resolutions04.html)

### ***3.4. Resolutions and Reports***

#### 3.4.1. GENERAL ASSEMBLY

*- General Assembly Resolution 51/108. Situation of human rights in Afghanistan*  
 A/RES/51/108, 82nd plenary meeting, 12 December 1996

9. Strongly urges all parties to the conflict to take all necessary measures to ensure the safety of all personnel of humanitarian organizations and representatives of the media in Afghanistan;

<http://www.un.org/documents/ga/res/51/a51r108.htm>

*- General Assembly Resolution 60/147*  
*Basic principles and guidelines on the right to a remedy and reparation for victims of gross violations of international human rights law and serious violations of international humanitarian law*  
 A/RES/60/147, published on 21 March 2006.

## II. Scope of the obligation

3. The obligation to respect, ensure respect for and implement international **human rights law and international humanitarian law** as provided for under the respective bodies of law, includes, inter alia, the duty to:

- (a) Take appropriate **legislative and administrative** and other appropriate measures to prevent violations;
- (b) **Investigate** violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law;
- (c) Provide those who claim to be victims of a human rights or humanitarian law violation with equal and **effective access to justice**, as described below, irrespective of who may ultimately be the bearer of responsibility for the violation;  
and
- (d) Provide **effective remedies to victims**, including reparation, as described below.

## VII. Victims' right to remedies

11. **Remedies for gross violations of international human rights law and serious violations of international humanitarian law** include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

### 3.4.2. SECURITY COUNCIL

- *Resolution 1193 (1998) on the situation in Afghanistan*  
adopted by the Security Council at its 3921<sup>st</sup> meeting, S/RES/1193 (1998)

12. Reaffirms that all parties to the conflict are bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who commit or order the commission of grave breaches of the Conventions are individually responsible in respect of such breaches;

<http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Afgh%20SRES1193.pdf>

- *Resolution 1738 (2006)*  
*Adopted by the Security Council at its 5613<sup>th</sup> meeting, on 23 December 2006*  
S/RES/1738 (2006)

...

*Reaffirming* that parties to an **armed conflict** bear the primary responsibility to take all feasible steps to ensure the **protection of affected civilians**,

*Recalling* the Geneva Conventions of 12 August 1949, in particular the Third Geneva Convention of 12 August 1949 on the treatment of prisoners of war, and the Additional Protocols of 8 June 1977, in particular article 79 of the Additional Protocol

I regarding the protection of journalists engaged in dangerous professional missions in areas of armed conflict,

*Emphasizing* that there are existing prohibitions under international humanitarian law against attacks intentionally directed against civilians, as such, which in situations of armed conflict constitute war crimes, and *recalling* the need for States to **end impunity** for such criminal acts,

*Recalling* that the States Parties to the Geneva Conventions have **an obligation to search for persons alleged to have committed**, or to have ordered to be committed a grave breach of these Conventions, and an obligation to try them before their own courts, regardless of their nationality, or may hand them over for trial to another concerned State provided this State has made out a prima facie case against the said persons,

...

*Recognizing* that the consideration of the **issue of protection of journalists** in armed conflict by the Security Council is based on the urgency and importance of this issue, and recognizing the valuable role that the Secretary-General can play in providing more information on this issue,

1. *Condemns* intentional attacks against journalists, media professionals and associated personnel, as such, in situations of armed conflict, and calls upon all parties to put an end to such practices;

2. *Recalls* in this regard that journalists, media professionals and associated personnel engaged in dangerous professional missions in areas of armed conflict **shall be considered as civilians and shall be respected and protected as such**, provided that they take no action adversely affecting their status as civilians. This is without prejudice to the right of war correspondents accredited to the armed forces to the status of prisoners of war provided for in article 4.A.4 of the Third Geneva Convention;

3. *Recalls also* that media equipment and installations constitute civilian objects, and in this respect shall not be the object of attack or of reprisals, unless they are military objectives;

4. *Reaffirms* its condemnation of all incitements to violence against civilians in situations of armed conflict, further **reaffirms the need to bring to justice**, in accordance with applicable international law, individuals who incite such violence, and indicates its willingness, when authorizing missions, to consider, where appropriate, steps in response to media broadcast inciting genocide, crimes against humanity and serious violations of international humanitarian law;

(The emphasis in italics is in the original)

[http://www.un.org/Docs/sc/unsc\\_resolutions06.htm](http://www.un.org/Docs/sc/unsc_resolutions06.htm)

- *Resolution 1872 (2009)*

*Adopted by the Security Council at its 6127<sup>th</sup> meeting, on 26 May 2009*

S/RES/1872 (2009)

...

*Reiterating* its serious concern at the worsening humanitarian situation in Somalia and *calling on* all Member States to contribute to current and future consolidated humanitarian appeals,

...

*Expressing* its concern that **serious crimes, in particular killing** and maiming, have been committed against civilians and humanitarian staff, in the ongoing conflict in Somalia and *reaffirming* the importance of the fight against **impunity**,

*Recalling* its resolution 1844 (2008), imposing measures against those individuals or entities who have been designated as engaging in or providing support for acts that threaten the peace, security or stability of Somalia, acting in violation of the arms embargo or obstructing humanitarian assistance to Somalia,

...

*Determining* that the situation in Somalia constitutes a threat to international peace and security in the region,

*Acting* under Chapter VII of the Charter of the United Nations,

...

5. *Condemns* the recent resurgence in fighting and *calls* for the end of all hostilities, acts of armed confrontation and efforts to undermine the Transitional Federal Government;

...

22. *Requests* the Secretary-General, through his Special Representative for Somalia and UNPOS, to work with the Transitional Federal Government to develop its capacity to address human rights issues and to support the Justice and Reconciliation Working Group to counter impunity;

(the emphasis in italics is in the original)

[http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1872\(2009\)](http://www.un.org/Docs/journal/asp/ws.asp?m=S/RES/1872(2009))

Comment: this resolution addresses issues that have arisen in the context of non-international armed conflicts

### 3.4.3. Final report to THE PROSECUTOR BY THE COMMITTEE ESTABLISHED TO REVIEW NATO BOMBING CAMPAIGN AGAINST THE FEDERAL REPUBLIC OF YUGOSLAVIA (2000)

iii) The Bombing of the RTS (Serbian TV and Radio Station) in Belgrade on 23/4/99

77. Assuming the station was a legitimate objective, the civilian casualties were unfortunately high but do not appear to be clearly disproportionate. Although NATO alleged that it made "every possible effort to avoid civilian casualties and collateral damage" (Amnesty International Report, *ibid*, June 2000, p. 42), some doubts have been expressed as to the specificity of the warning given to civilians by NATO of its intended strike, and whether the notice would have constituted "effective warning ... of attacks which may affect the civilian population, unless circumstances do not permit" as required by Article 57(2) of Additional Protocol I.

... it is possible that casualties among civilians working at the RTS may have been heightened because of NATO's apparent failure to provide clear advance warning of the attack, as required by Article 57(2).

...As Western journalists were reportedly warned by their employers to stay away from the **television station** before the attack, it would also appear that some Yugoslav officials may have expected that the building was about to be struck. ...Although knowledge on the part of Yugoslav officials of the impending attack

would not divest NATO of its obligation to forewarn civilians under Article 57(2), it may nevertheless imply that the Yugoslav authorities may be partially responsible for the civilian casualties resulting from the attack and may suggest that the advance notice given by NATO may have in fact been sufficient under the circumstances.

[http://www.icty.org/x/file/About/OTP/otp\\_report\\_nato\\_bombing\\_en.pdf](http://www.icty.org/x/file/About/OTP/otp_report_nato_bombing_en.pdf)

#### 3.4.4. THE HUMAN RIGHTS COUNCIL

- *Resolution Assistance to Somalia in the field of human rights*  
UN Commission on Human Rights, E/CN.4/RES/1995/56, 3 March 1995)

(Preamble)

Deploring continued attacks, acts of reprisal, abductions and other acts of violence committed against United Nations personnel, personnel of other humanitarian organizations and non-governmental organizations and **representatives of the international media** in Somalia, sometimes resulting in serious injury or death,

2. Strongly urges all parties in Somalia to respect the human rights and fundamental freedoms of all, to prevent violations of international humanitarian law and human rights, to apply criminal justice standards and to protect United Nations personnel, including contingents forming part of the United Nations Operation in Somalia II, humanitarian relief workers and representatives of the **international media**;

<http://www.unhcr.org/refworld/country,,UNCHR,RESOLUTION,SOM,456d621e2,3b00f0aa10,0.html>

- *Resolution Assistance to Somalia in the field of human rights*  
UN Commission on Human Rights [replaced by the Human Rights Council],  
E/CN.4/RES/1996/1, 27 March 1996)

Para11:

11. Condemns the murder of politicians, national officials, missionaries and **journalists**;

<http://www.unhcr.org/refworld/country,,UNCHR,RESOLUTION,BDI,,3b00f24dc,0.html>

1) Special Sessions of the Human Rights Council:

*11<sup>th</sup> Special Session of the Human Rights Council: "The human rights situation in Sri Lanka" – 26, 27 May 2009*

*Resolution adopted by the Council at its eleventh special session*

*S-11/1 Assistance to Sri Lanka in the promotion and protection of human rights*

A/HRC/S-11/2

*Condemning* all attacks that the Liberation Tigers of Tamil Eelam launched on the civilian population and its practice of using civilians as human shields,

...

2. *Welcomes* the continued commitment of Sri Lanka to the promotion and protection of all human rights and encourages it to continue to uphold its human rights obligations and the norms of international human rights law;

...

6. *Encourages* the Government of Sri Lanka to continue to persevere in its efforts towards the disarmament, demobilization and rehabilitation of former child soldiers, recruited by **non-State armed actors in the conflict** in Sri Lanka, their physical and psychological recovery and reintegration into society, in particular, through educational measures, taking into account the rights and specific needs and capacities of girls, in cooperation with relevant United Nations organizations;

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/11specialsession/A-HRC-S-11-2-E.doc>

2) Special Procedures mechanism (Special Rapporteur): INDEPENDENT EXPERT ON THE SITUATION OF HUMAN RIGHTS IN SUDAN

<http://www2.ohchr.org/english/countries/sd/mandate/index.htm>

- *Report of the independent expert on the situation of human rights in the Sudan, Mohammed Chande Orthman: Addendum*  
Human Rights Council, 14<sup>th</sup> session, A/HRC.14.41/Add.1

### **1. Protection of humanitarian workers from harassment and attack**

25. During the reporting period, attacks were persistently made against humanitarian workers and UNAMID staff, incidents of abduction of international aid workers and armed ambushes against UNAMID peacekeepers were also witnessed. A total of 111 United Nations vehicles were carjacked in 2009. These incidents underscore the extremely difficult and volatile conditions in which UNAMID and other actors on the ground are carrying out their respective mandates. UNAMID personnel were also targeted by direct attacks on five occasions, resulting in the death of six peacekeepers.

...

### **C. Accountability and justice**

29. The judicial response to serious human rights abuses remained weak during the reporting period. To date, the Government has failed to bring to justice those responsible for the law enforcement operation in Kalma, near Nyala, South Darfur, in August 2008, which resulted in the death of 33 internally displaced persons. Yet again, no one has been charged for the numerous carjackings and attacks on humanitarians that have occurred in Darfur since the beginning of 2008. In South Darfur, where intertribal fighting accounted for most of the civilian deaths in 2009, no criminal investigation is known to have been initiated for the killing of civilians and other human rights violations committed in the context of those events. The Special Prosecutor appointed by the Government to investigate crimes committed in Darfur

since 2003 and thereafter is yet to lay charges against anyone as a result of his investigations. On a positive note, on 9 June 2009, two people, including a member of the PDF, were charged and tried in an El Geneina court in West Darfur for robbing and shooting an aid worker.

30. Immunities continue to exist for law enforcement and security agents under various laws, including the Police and Armed Forces Acts. The new NISS bill, which was passed by the National Legislature in December 2009, grants NISS personnel immunity from criminal prosecution and civil liability that can only be lifted by the Director of the Service (recommendation 3.2).

31. The Government of the Sudan has not cooperated with the International Criminal Court in investigating and prosecuting international crimes committed in Darfur. Indeed, new amendments introduced to the Criminal Procedure Act included a provision that prohibits the institution of criminal proceedings against any Sudanese national for any act that may constitute a violation of international humanitarian law, including war crimes, crimes against humanity and genocide, except “before the Sudanese police, general prosecution and the judiciary” (recommendation 3.3).

32. In the reporting period, the Government made considerable progress in legal reform to ensure the harmonization of national laws in accordance with the Interim National Constitution and with the country’s obligations under international human rights law. New laws, such as the Child Act 2009 and the Press and Printed Materials 2009, were also passed; however, the reform of other laws, such as the NISS bill and the Criminal Procedure Act, failed to meet international human rights standards (recommendation 3.5).

#### **D. Monitoring implementation of recommendations**

35. The Government did not extend a standing invitation to special procedures during the reporting period; however, it approved the request of the independent expert to visit the Sudan and provided full support and assistance to the expert’s mission in January 2010. The Government also welcomed and fully facilitated the visit to the Sudan of a four-member delegation from the African Commission on Peoples and Human Rights in late October 2009. The delegation, inter alia, followed up on the Commission’s 2004 fact-finding report on the human rights and humanitarian situation in Darfur.

(the emphasis is in the original)

[http://ap.ohchr.org/documents/dpage\\_e.aspx?m=95&m=172](http://ap.ohchr.org/documents/dpage_e.aspx?m=95&m=172)

#### **D. CONCLUSION**

Media professionals are protected by international humanitarian law (IHL) either as war correspondents within the meaning of Article 4, GC III or as civilians under Article 79 of Protocol 1. IHL protects the physical integrity of journalists, rather than freedom of expression. If a journalist (as a civilian) moves to an area which constitutes a military target, his/her civilian status does not make a military attack

unlawful. As Article 28 of GC IV states, '[t]he presence of a protected person may not be used to render certain points or areas immune from military operations.' In addition, it should be noted that because of the lack of a consistent and centralised system, the international enforcement of IHL is still exceptional, and has not so far been used for isolated incidents of violence.