Bertrand G. Ramcharan

The Security Council and the Protection of Human Rights

International Studies in Human Rights

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THE SECURITY COUNCIL AND THE PROTECTION OF HUMAN RIGHTS

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The Security Council and the Protection of Human Rights

by

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Foreword

This is a thought-provoking and path-breaking work. It is providing stimulating reading and new insights for all those who take interest in the United Nations, its policies and, in particular, the role which the Security Council has to play, and is playing, with a view to securing a maximum of international peace in a world which is still characterized by governmental disregard of human rights, where the observance of human rights, as in past decades, remains subject to political considerations, and where politicians and leaders seem to be all too willing to sacrifice the ideal of properly respecting the inherent rights of the individual to the constraints of foreign policy and to the perceived necessity of quickly diffusing politically explosive situations, even at the expense of human rights.

Proper regard for human rights has today acquired a new dimension, and that is what this book is about. The United Nations must not only act as the guardian of peace, in accordance with its Charter, it has also evolved into a guardian of human rights. These two roles, complementary as they are, are by now clearly perceived by the Security Council on which the Members of the United Nations have conferred primary responsibility for the maintenance of international peace and security (Article 24). Over the years, the Security Council, not the least as a result of initiatives undertaken by successive Secretaries-General, has come to realize the intimate linkage between gross patterns of violations of human rights and the maintenance of peace. By now, when adopting its decisions, the Council is taking the situation of human rights into account to an ever-increasing degree.

One can argue, as the author is doing, that while being faithful to its core role of acting for the maintenance of international peace and security, the Council is indeed taking into consideration the global quest for human rights. Human rights is increasingly part of the United Nations ethic, and this ethic has had its unavoidable impact on the policies of the Security Council.

If my memory serves me well, there have been earlier attempts to inject a human rights dimension into the work of the Council. I remember certain instances which occurred during my time as Director of the Security Council Division of the United Nations Secretariat, but that was a different time. The matrix of the Cold War did not allow for the consideration of human rights as a meaningful element in the political debates of the Security Council, debates which far too often at that time ended without appropriate and effective results. Nowadays, however, human rights considerations have become more pronounced, and indeed have become an important element of the activity of the Security Council.

This book takes us along a journey through the practice of the Council over half a century, and filters out some important evolving principles. It traces the influence of human rights in the areas of humanitarian intercession, conflict prevention, peace-making, peace-keeping and peace-building. It also looks at the work of the Security Council in integrating a human rights dimension in combating terrorism. In his research the author could not only rely on the records concerning the practices of the Council, but also on his own experience as a senior member of the United Nations Secretariat who witnessed the current evolution from different vantage points.

The author's conclusions throw new light on very important recent developments concerning the policies of the Security Council. It is a singular merit of the book that it discusses the human rights dimension without losing sight of the political responsibilities of the Council and the political constraints under which any institution, charged with the maintenance of international peace and security, has to operate.

We are indebted to the author for a brilliant and future-oriented study.

Kurt Herndl
Former Assistant Secretary-General for Human Rights, and
Director of the Security Council Division of the United Nations Secretariat
28 March 2002

*Introduction**

The aim of this work is to trace the evolving practice of the Security Council in addressing human rights issues. The practice in the Security Council indicates the following policy framework:

I. Policy Framework

A. The Legislative and Normative Principle: The practice of the Council is replete with examples of resolutions and decisions in which it has placed its authority behind the corpus of human rights and humanitarian law. From this one can conclude that the norms of international human rights and humanitarian law are an integral part of the legislative, policy and intellectual framework of the Security Council as it grapples with issues of international peace and security.

B. The Principle of Democratic Legitimacy: It is possible to deduce from the recent practice of the Security Council the principle of democratic legitimacy, namely, that governments should be based on popular consent, the rule of law and respect for human rights, and that governments freely elected and faithful to the mandate given them by the people, should not be violently overthrown. In the case of Sierra Leone for example, the Security Council gave voice to this principle consistently.

C. The Principle of Justice: The Security Council's establishment of international tribunals to deal with allegations of war crimes and crimes against humanity in the former Yugoslavia and in Rwanda provide the basis for postulating the principle of justice, namely that the Security Council is prepared at times to provide legal sanction against

* The views expressed throughout this work are those of the author purely in his personal capacity.

those accused of grave breaches of international human rights and humanitarian law.

D. The Principle of Respect for Human Rights and Humanitarian Law during conflicts: There are numerous examples in which the Security Council has called on parties to conflict to respect international human rights norms and norms of humanitarian law.

E. The Conflict Prevention Principle: The Security Council is gradually developing a practice of being briefed on developments in the human rights area. One can postulate an emerging principle of attentiveness to human rights indicators for purposes of early warning and conflict prevention.

F. The Peace-making Principle: One can deduce from the practice of the Security Council in evaluating the work of peace negotiators in particular conflicts the principle that in the drafting of peace agreements every effort should be made to incorporate into them solid regimes for the promotion and protection of human rights in the future.

G. The Peace-keeping Principle: Increasingly, as the Security Council establishes United Nations peace-keeping and observer operations, it endows them with a human rights component.

H. The Peace-building Principle: Human rights are increasingly integrated in peace-building activities.

I. The Protection Principle: The Security Council's establishment of safe havens and safe areas provide the basis for postulating the protection principle. However, the Council has found it easier to legislate than to enforce.

J. The Confidence-Building Principle: While seeking to take account of the preceding principles, one should never lose sight of the fact that the Security Council is an organ that, by the very nature of its mandate, needs to strive for pragmatic compromises. At times therefore it will, perforce, be called upon to apply the confidence-building principle; that is to say that the Council must work together with those in a position to bring conflicts to an end through pragmatic approaches.

K. The Political Principle: Flowing from the confidence-building principle is the political principle namely that as the organ that theoretically groups the most powerful nations in the world, it is unavoid-

able that they will often be moved by political considerations. The political principle is inherent in the nature of the Security Council and is probably crucial to its overall success. One should therefore never lose sight of it.

L. The Power Principle: Closely related to the political principle is the power factor: namely that on occasions the overwhelming power of some of its members will, unfortunately, be applied in ways that are at variance with the human rights and justice principles. That, alas, is a reality of the international order at the start of the twenty-first century.

II. Legal Foundations

The competence of the Security Council to deal with gross violations of human rights has gained growing acceptance through practice. The Commentary on the Charter of the United Nations edited by Bruno Simma recognized this thus:

> In later years, a question that gained importance in the practice of the Security Council was whether the Security Council could concern itself with human rights violations, a problem which was already touched upon in the debate on the Spanish question. This question was discussed in the case of Angola and with regard to the situation in Southern Africa, namely the South African apartheid regime. In the course of these discussions, the decisions on whether the Security Council could become active in cases of human rights violations without first determining the existence of a threat to the peace in the sense of Chapter VII of the Charter, and specifically on whether it could exercise powers that went beyond those enumerated in Art.24(2), second sentence, was again left open, because with increasingly strong argumentation the Security Council has qualified gross violations of human rights as constituting a threat to the peace in the sense of the Charter. In the course of these discussions, it also became clear that the position taken in the Spanish and the Trieste Cases, according to which the Security Council was considered to possess the necessary powers under Art.24(1) to fulfil its tasks in the maintenance of peace beyond the enumeration in

Art.24(2) second sentence, was still accepted. This position of the Security Council was corroborated by the *Namibia* advisory opinion of the International Court of Justice.[1]

As will be shown in this work, the role of the Security Council in the protection of human rights has become even more explicit in its contemporary practice.

III. Responsibility to Protect

The recent report of the International Commission on Intervention and State Sovereignty, which was unanimously agreed by the twelve Commissioners, had as its central theme "The Responsibility to Protect": the idea that sovereign states have a responsibility to protect their own citizens from avoidable catastrophe – from mass murder and rape, from starvation – but that when they are unwilling or unable to do so, that responsibility must be borne by the broader community of states.

As regards the responsibility to protect, the report asserts the basic principle that state sovereignty implies responsibility, and the primary responsibility for the protection of its people lies with the state itself. Where a population is suffering serious harm, as a result of internal war, insurgency, repression or state failure, and the state in question is unwilling or unable to halt or avert it, the principle of non-intervention should yield to the international responsibility to protect.

According to the Commission, the foundations of the responsibility to protect, as a guiding principle for the international community of states, lie in: (a) obligations inherent in the concept of sovereignty; (b) *the responsibility of the Security Council, under Article 24 of the UN Charter, for the maintenance of international peace and security*; (c) specific legal obligations under human rights and human protection declarations, covenants and treaties, international humanitarian law and national law; (d) *the developing practice of* states, regional organizations and *the Security Council itself.*

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1. B. Simma (Ed.), Commentary on the Charter of the United Nations (1995), p.406.

In the view of the Commission, the responsibility to protect embraces three specific responsibilities: (a) *The responsibility to prevent:* to address both the root causes and direct causes of internal conflict and other man-made crises putting populations at risk. (b) *The responsibility to react:* to respond to situations of compelling human need with appropriate measures, which may include coercive measures like sanctions and international prosecution, and in extreme cases military intervention. (c) *The responsibility to rebuild:* to provide, particularly after a military intervention, full assistance with recovery, reconstruction and reconciliation, addressing the causes of the harm the intervention was designed to halt or avert.

The Commission was firm in its view that p*revention is the single most important dimension of the responsibility to protect:* prevention options should always be exhausted before intervention is contemplated, and more commitment and resources must be devoted to it. The exercise of the responsibility to both prevent and react should always involve less intrusive and coercive measures being considered before more coercive and intrusive ones are applied.

Proceeding from the responsibility to protect to principles for military intervention, the Commission put forward "the just cause threshold". In its view, military intervention for human protection purposes is an exceptional and extraordinary measure. To be warranted, there must be serious and irreparable harm occurring to human beings, or imminently likely to occur, of the following kind: (a) large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or (b) large scale 'ethnic cleansing', actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.

The Commission advocated the following precautionary principles: (a) *Right intention*: The primary purpose of the intervention, whatever other motives intervening states may have, must be to halt or avert human suffering. Right intention is better assured with multilateral operations, clearly supported by regional opinion and the victims concerned. (b) *Last resort*: Military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored, with reasonable grounds for

believing lesser measures would not have succeeded. (c) *Proportional means*: The scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective. (d) *Reasonable prospects*: There must be a reasonable chance of success in halting or averting the suffering which has justified the intervention, with the consequences of action not likely to be worse than the consequences of inaction.

The Commission also addressed the issue of the *right authority* that can authorize military intervention. In its view, *there is no better or more appropriate body than the United Nations Security Council to authorize military intervention for human protection purposes.* The task is not to find alternatives to the Security Council as a source of authority, but to make the Security Council work better than it has. Security Council authorization should in all cases be sought prior to any military intervention action being carried out. Those calling for an intervention should formally request such authorization, or have the Council raise the matter on its own initiative, or have the Secretary-General raise it under Article 99 of the UN Charter. The Security Council should deal promptly with any request for authority to intervene where there are allegations of large scale loss of human life or ethnic cleansing. It should in this context seek adequate verification of facts or conditions on the ground that might support a military intervention. The permanent members of the Security Council should agree not to apply their veto power, in matters where their vital state interests are not involved, to obstruct the passage of resolutions authorizing military intervention for human protection purposes for which there is otherwise majority support. If the Security Council rejects a proposal or fails to deal with it in a reasonable time, alternative options are:

i. consideration of the matter by the General Assembly in Emergency Special Session under the "Uniting for Peace" procedure; and
ii. action within area of jurisdiction by regional or sub-regional organizations under Chapter VIII of the Charter, subject to their seeking subsequent authorization from the Security Council.

The Security Council should take into account in all its deliberations that, if it fails to discharge its responsibility to protect *in conscience-shocking situations* crying out for action, concerned states may not rule out other means to meet the gravity and urgency of that situation – and that the stature and credibility of the United Nations may suffer thereby.

The Commission advanced the following operational principles for military intervention:

a. Clear objectives; clear and unambiguous mandate at all times; and resources to match.
b. Common military approach among involved partners; unity of command; clear and unequivocal communications and chain of command.
c. Acceptance of limitations, incrementalism and gradualism in the application of force, the objective being protection of a population, not defeat of a state.
d. Rules of engagement which fit the operational concept; are precise; reflect the principle of proportionality; and involve total adherence to international humanitarian law.
e. Acceptance that force protection cannot become the principal objective.
f. Maximum possible coordination with humanitarian organizations.

The United Nations Secretary-General, Kofi Annan, on 15 February 2002, voiced his strong backing for this new report on the Responsibility to Protect – an endeavour he called "critical to the credibility and authority of the international community."

Speaking at a seminar of the International Peace Academy in New York on the report, Mr. Annan said the title itself embodied the idea he had put forward in a 1999 speech to the UN General Assembly on safeguarding the sanctity of life: "As your report notes, I sought to develop the idea of two notions of sovereignty: one for States, another for individuals," he told the seminar. "This idea was rooted firmly in the UN Charter which affirms the sovereignty of States even as it challenges us to save succeeding generations from the scourge of war."

The Secretary-General pointed out that when the sovereignty of States conflicted with the sovereignty of individuals, "we as an interna-

tional community need to think hard about how far we will go to defend the former over the latter." He stressed that human rights would have little meaning "if a principle guarded by States were always allowed to trump the protection of citizens within them."

Looking at the current context, Mr. Annan noted that the terrorist attacks of 11 September had shifted the debate – and the action – away from military intervention on behalf of others to intervention in self-defence. He acknowledged prevailing concerns about what this new environment may mean for human rights. "How much freedom do you give up for security and safety?" he asked. "And if you give up too much, do you in the end have security and safety?"

For its part, the UN's future mission would be defined by a more profound awareness of the sanctity and dignity of every human life, Mr. Annan stated. "This will require us to look beyond the framework of States, and beneath the surface of nations or communities," he said. "We must focus, as never before, on improving the conditions of the individual men and women who give the State or nation its richness and character." In other words, we must pay more attention to human security rooted in human rights.

IV. Human Rights and Human Security

A recent report issued by the U.S. Department of State recognized the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society – including non-governmental organizations, labour/trade unions, and local communities – can play in advancing these goals. It developed a set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. The report acknowledged that security is a fundamental need, shared by individuals, communities, businesses, and governments alike, and acknowledged the difficult security issues faced by Companies operating globally. It recognized that security and respect for human rights could and should be consistent.[2]

To be secure is to be safe, protected. Security is a secure condition or feeling.[3] International human rights norms define the meaning of human security. The Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of the Discrimination Against Women, the International Convention on the Elimination of Racial Discrimination, the Convention on the Rights of the Child, and the Convention on the Rights of Migrant Workers and Their Families are all meant to make human beings secure in freedom, in dignity, with equality and the protection of human rights.

It was a major breakthrough of the Universal Declaration of Human Rights to provide basic guarantees regarding food, health, education, housing, protection of the family, democracy, participation, the rule of law, and protection against enslavement, torture, cruel or inhuman or degrading treatment or punishment. These seminal provisions were amplified in the subsequent conventions and they have a simple rationale: these human rights and fundamental freedoms must be respected, assured, and protected, if the individual human being is to be secure, to develop to the fullness of his or her personality, and to breathe the air of liberty.

Whether it be for the citizen or the non-citizen, whether it be for the migrant, the refugee or the displaced person, whether it be for a member of a minority or an indigenous community, the essence of human security is to respect the human rights and fundamental freedoms that have been distilled and articulated by the international community. Article 28 of the Universal Declaration of Human Rights is of importance from this point of view. That Article provides that everyone is entitled to a social and international order in which the rights recognized in the Declaration can be realized. The link between human rights and the social and international orders lead us to our second proposition, namely, that individual, national and international security are all inter-linked within an embracing concept of human security. Upholding human rights is the way to achieve individual, national and international security.

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2. Voluntary Principles on Security and Human Rights, 20 December 2000.
3. The Oxford Modern English Dictionary, Oxford University Press, 1992.

In *People, States and Fear,*[4] Professor Buzan demonstrated the linkages between individual, national and international security. His argument was a simple one. Individual security must be the basis for national security, and national security grounded in individual security must be the basis of international security. In the contemporary world, there are so many situations that make the headlines where oppression leads to gross violations of human rights, occasioning conflicts, occasioning displacement, occasioning the movements of refugees and migrants, and occasioning human suffering on massive scales. So many societies are riven with strife and poverty because democracy, the rule of law, and respect for human rights are illusory.

In *Development as Freedom*, Professor Amartya Sen lucidly brought out the linkages between development and freedom. Paul Johnson, in *Modern Times,*[5] demonstrated how the lack of freedom had impoverished many countries. One can point to situation after situation in different parts of the world where the lack of freedom saps the creative capacity of the people and impoverishes them. Where people are free, they are inspired to create and to produce. They can be more efficient as they draw upon individual and corporate enterprise and explore new ways of doing things. Controlled economies are well-known to be inefficient economies. Where there is oppression and corruption, development can hardly take place. The centrality of human rights for development is therefore of the utmost importance. This brings us to the proposition that respect for human rights is necessary for the prevention of conflicts.

Leaving aside the debate over the proposition that democracies usually do not wage war on one another, one can point to many situations in today's world where different ethnic groups or different parts of a population have ended up in conflict because the ground rules in the society do not provide them with decent or equitable life-chances or where one ethnic group feels that it is the victim of unfair treatment. Respect for human rights includes economic, social and cultural rights, as well as civil and political rights. It includes protection of chil-

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4. B. Buzan, People, States and Fear: The National Security Problem in International Relations. Chapel Hill. The University of North Carolina Press. 1983.
5. Paul Johnson, Modern Times. The World from the Twenties to the Eighties. Harper & Row, 1983.

dren and women, of minorities, indigenous populations, internally-displaced persons, migrants. A society that is striving in good faith for human rights, that is imbued with the spirit of respect for human rights, that is aspiring for a culture of human rights, is one that can lessen the risks of conflict. Strategies of conflict prevention must therefore be built integrally upon strategies of promoting and protecting human rights. The best conflict prevention strategy, at the end of the day, is a strategy of respecting human rights. Approaches to peace-making, peace-keeping and peace-building must also be anchored in the promotion and protection of human rights, a proposition to which we shall turn next.

While not underestimating the complexity of the peace-making task, it would be a fair proposition that a peace that is not accompanied by strategies for the promotion and protection of human rights is unlikely to be a lasting peace. The incorporation of human rights in peace-making has been the subject of much discussion, and one should be careful about laying down too many strictures upon a peace-maker. Each peace-maker will try to chart a road to peace. It would be fair to expect that, however difficult that road, the peace-maker's package should include future strategies to uphold human rights. This has been done in situations in Central America, in Cambodia, in the former Yugoslavia, and elsewhere. One must build upon these experiences and try to provide practical human rights tools to the peace-maker. This leads us to our next proposition, namely, that human rights must be integral to peace-keeping as well as peace-building.

The peace that is put together by a peace-maker, with an integral human rights component, must be taken forward and safeguarded by peace-keepers and by peace-builders. This is why peace-keeping operations nowadays have human rights sections as standard components. More and more, peace-building packages have human rights chapters. The strategic importance of human rights to peace-keeping and peace-building was well brought out by Secretary-General Kofi Annan in his address to world leaders at the General Assembly on 10th November 2001.

The Secretary-General stressed that the United Nations must always stand for the rule of law in international and domestic affairs.

"The United Nations must place people at the centre of everything it does" – enabling them to meet their needs and realize their full potential. In presenting "four burning issues", the Secretary-General cited the eradication of extreme poverty, the struggle against HIV/AIDS, the prevention of deadly conflict, and tackling the root causes of political violence. He declared: "The common thread connecting all these issues is the need to respect fundamental human rights". And he added:

> "I am determined to integrate human rights even more fully into every aspect of our work."

Increasingly, humanitarian workers are finding that, even as they provide relief and assistance to those in need, they must be attentive to human rights concerns. It is all part of a growing realization that protection challenges are shared by the international community as a whole. The protection of internally-displaced people poses formidable challenges.

Having made the case above for the centrality of human rights in concepts of human security and in policies and strategies of realizing human security, one must now turn to the question: What should one do in the coming period to advance human security through human rights? The tasks of promoting and protecting human rights in a world of tyrants, rampant poverty, conflicts, displacements, refugee outflows, and trafficking in human beings should not be underestimated. While much has been achieved in the first half century of the United Nations, one should not underestimate the enormity of the challenge that remains ahead. Strategies of setting targets of ten, fifteen or twenty years have not been spectacularly successful, and one should be careful to prescribe courses of action that are structural and strategic and can hope to make a difference. In discussing the nexus between human rights and human security, one should therefore be careful about high-sounding prescriptions that might lead to nowhere. Strategic points of entry are of the essence and we shall suggest some of them below. In our submission, we should pursue human rights strategies of governance.

It surely must be a sound proposition to say that the role of governments, nationally, regionally and internationally should be to help realize the rights and freedoms that are contained in the international human rights conventions. In those conventions, the international

community has defined what it considers to be the elements of human security. The starting point of governments should therefore be to ask the question: How can one devise policies and methods of governance that can help realize the specific rights and freedoms in the main human rights conventions?

The quest for just governance is as old as human history. Herbert Muller, in *Freedom in the Ancient World*,[6] recounted the efforts of humanity, from time immemorial, for freedom under the rule of law. F.H. Hinsley, in *Power and the Pursuit of Peace*,[7] traced the intellectual history of the search for a rules-based international society grounded in laws, organizations, institutions of justice, and policies for the advancement of human welfare and progress. The history of international cooperation in the twentieth century is a tale of efforts to keep the peace rooted in justice and respect for human rights and in economic and social progress. This was, and remains, the vision of the United Nations: peace, justice, respect for human rights, and economic and social progress in an interlocking relationship. Alas, it is a vision under challenge in a world of power disequilibria, of uneven quality of governance, of economic and social disparities, of contending value systems, and of shocking violations of human rights. If we are to vindicate and achieve the vision of the Charter, policies and strategies of governance must be rooted in respect for human rights – nationally, regionally and internationally. Without respect for human rights the blueprint of the Charter is unimplementable and it would be a misnomer to speak of global governance.

It is important to be clear about the strategic importance of respect for human rights in the processes of global governance. In the first place, conflicts cannot be prevented or peace maintained in a world of wanton violations of human rights. In the second place, respect for human rights is the requirement for efficiency and effectiveness in governance. One is all too familiar with societies which, in the past half-century of international cooperation, have squandered vast amounts of resources and aid basically because government was unrepresentative and, as a direct consequence, inefficient and often corrupt. Put simply, development is illusory without freedom. Ama-

6. London. Secker & Warburg, 1962.
7. Cambridge University Press, 1967.

rtya Sen has made this case convincingly in his work, *Development and Freedom*, referred to earlier. In the third place, the principle of non-discrimination, a bedrock principle of international human rights law, enables one to strive for more equitable societies even within the level of resources available. In the fourth place, development strategies that have as their key objectives the realization of core economic, social and cultural rights and civil and political rights have the best prospect of leading to tangible improvements in the lives of human beings: people-oriented development, human security. In essence, what this calls for are *human rights strategies of governance*: a conscious decision by governments and subjects that the aim of governance is to advance achievement of the key human rights, civil and political, economic, social and cultural.

UNDP's human development report 2000 convincingly argued that development strategies have to be anchored in human rights reasoning and have to be influenced in their conception and implementation by international human rights norms. Respect for human rights is therefore critical for a successful development strategy. The protection of human rights is thus at the heart of the Charter's strategy of a world of peace grounded in the rule of law and economic and social progress. Without protection of human rights the Charter's vision cannot be realized, and the mission of the Security Council cannot be achieved.

In the following chapters, we shall see to what extent the Security Council has realized this fundamental truth.

CHAPTER I

Principles for Dealing with Human Rights Issues in the Security Council

I. Introduction

The Security Council is at the apex of the Charter system that looks to a world in which peace would be maintained on the basis of respect for human rights, political, economic and social progress and justice. It is therefore understandable that eyes are increasingly turned towards the Council in the hope that it would use its authority to uphold international norms of human rights and humanitarian law. This is all the more so in view of the fact that in dealing with situations of international and internal conflicts, the Security Council has adopted a series of decisions that have engendered hopes and frustrations at the same time. These include the designation of safe areas and safe havens, the establishment of international tribunals to bring to justice those accused of grave breaches of human rights and humanitarian laws, and the upholding of what may be deemed the principle of democratic legitimacy: namely, that the violent overthrow of a popular, democratically-elected government will not be recognised or tolerated. The Security Council is, nevertheless, a political organ and often is not able to live up to the expectations of the human rights constituency. This invites an exploration of the evolving principles in the attitude of the Security Council to international human rights and humanitarian law.

II. The Historical Background

Sydney Bailey, in his pioneering work, *The UN Security Council and Human Rights,*[1] lamented that, with so many of the wars in the

world since 1945 rooted in the perception that human rights were being denied, the Security Council did not develop procedures for dealing with human rights issues, either by the establishment of a permanent subsidiary organ under Article 29 of the Charter, or by close collaboration with the Commission on Human Rights under Articles 65 and 68 of the Charter. 'Unfortunately', he wrote, 'for more than four decades, the Security Council did its best to avoid taking up human rights issues, and it has not yet developed consistent procedures for dealing with such matters'.[2] He nevertheless remained hopeful that "the Security Council will increasingly be asked to take up issues of human rights.".[3]

Bailey identified two phases in the Council's treatment of human rights: the first from 1946 to 1989, and the second from 1989 to 1994. In the first phase, Bailey found, the Council acted in a cautious, empirical, and haphazard way. There was uncertainty regarding what was meant by 'matters essentially within the domestic jurisdiction of any state', particularly in regard to colonial questions. Some of the colonial powers did their best to maintain the position that events in their dependent territories were matters of domestic jurisdiction and therefore beyond the scope of UN intervention. This contention sometimes delayed Security Council action, but rarely prevented it altogether. In the background was the veto of the Permanent Five. It was not necessary for a permanent member of the Council to cast a negative vote; it was usually sufficient to threaten to do so. In the second phase, the Council began to venture forth into the area of human rights. For the most part, the story told is one of the human rights issue being raised by individual countries in the Security Council, but with little or no follow-up in the decisions of the Council. Two cases, however, stood out in Bailey's assessment, and were significant from the point of view of the development of the doctrines of the Security Council in its handling of human rights issues: Southern Rhodesia and South Africa. The Council employed sanctions to uphold the right to self-determi-

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1. Sydney Bailey, *The UN Security Council and Human Rights*, London and New York, St. Martin's Press, 1994, Intro., xiii; 142pp. Notes; Index.
2. Id. p. x.
3. Id. p. 142.

nation in the first, and condemned the crime of apartheid in the second.

III. The Role of the Security Council

In the Charter of the United Nations the Members of the United Nations confer on the Security Council primary responsibility for the maintenance of international peace and security. In discharging its duties, the Security Council acts on behalf of the membership in accordance with the Purposes and Principles of the United Nations. The members of the United Nations agree to accept and carry out the decisions of the Council.

(A) Pacific settlement of disputes

The Charter of the United Nations calls first upon the parties to any dispute whose continuance is likely to endanger the maintenance of international peace and security to try to solve their dispute by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice. However, when the Security Council deems it necessary, it is mandated to call upon the parties to settle their dispute by such means. The Security Council may also investigate any dispute or situation; recommend appropriate procedures or methods of adjustment; and make other recommendations to the parties with a view to a pacific settlement of a dispute.

(B) Threats to the peace, breaches of the peace and acts of aggression

The Security Council is mandated to determine the existence of any threat to the peace, breach of the peace, or act of aggression. It may indicate provisional measures, may apply economic sanctions, or take such other action as may be necessary to maintain international peace and security.

(c) The Council's peace efforts advance human rights

The proposition may readily be accepted that the maintenance of peaceful relations within, as well as among countries, facilitates the enjoyment, promotion and protection of human rights. The UN General Assembly has recognized this on several occasions, in instruments such as the Universal Declaration of Human Rights, the Declaration on the Preparation of Societies for Life in Peace and the Declaration on the Right of Peoples to Peace. The nexus between the maintenance of international peace and security and human rights has been explored in reports prepared for the UN Sub-Commission on the Promotion and Protection of Human Rights.

Indeed, the Charter of the United Nations sees international peace and security being built on the foundations of economic and social justice, respect for human rights and fundamental freedoms, respect for the rules of international law, the peaceful settlement of disputes and collective security. This is the peace and security concept over which the Security Council presides. It is significant in this regard that the Security Council is required, by Article 24 of the Charter, to act in accordance with the Purposes and Principles of the United Nations, the former explicitly embracing human rights as a core objective. Further, Article 34 of the Charter gives the Council authority to investigate any dispute or any situation which may lead to a dispute, while Article 36 allows it, at any stage of a dispute or a situation of like nature, to recommend appropriate procedures or methods of adjustment. Article 40 of the Charter even permits the Security Council to suggest such provisional measures as it deems necessary or desirable.

Using these competences, human rights issues could be interwoven into the work of the Council for the maintenance of international peace and security, especially since many threats to or breaches of international peace and security turn on issues of human rights, as we shall see presently.

(d) Many situations dealt with by the Council have involved issues of human rights

The Council has dealt with many conflicts and disputes that revolved around the right of self-determination, the principles of

equality and non-discrimination, the rights of minorities and gross violations of human rights. The right of peoples to self-determination was, and remains, at the heart of the Middle East problem. Issues of equality and non-discrimination have been at the core of the Council's efforts to deal with the threats to international peace and security posed by the apartheid system in South Africa. The rights of the two communities in Cyprus have prompted the Council's efforts to promote a solution in that strife-tom country. The Council has had to grapple with massacres – such as at Sharpeville in South Africa in 1960 – which involved shocking violations of human rights. Thus human rights issues have been at the centre of many of the situations dealt with by the Council. Humanitarian questions have also come to the fore on many occasions – as seen earlier.

(E) INTERNAL CONFLICTS AND GROSS VIOLATIONS OF HUMAN RIGHTS

Recently, the Council has had to take account of the growing number of internal conflicts which involve gross violations of human rights. Many of these internal conflicts include ethnic clashes and refugee situations. Concern with such situations was very much in evidence during the Security Council summit in January 1992. Addressing the Council on that occasion, Secretary-General Boutros-Ghali said:

> "Civil wars are no longer civil, and the carnage they inflict will not let the world remain indifferent. The narrow nationalism that would oppose or disregard the norms of a stable international order and the micro-nationalism that resists healthy economic or political integration can disrupt a peaceful global existence. Nations are too inter-dependent, national frontiers are too porous and transnational realities – in the spheres of technology and investment, on the one side, and poverty and misery, on the other – too dangerous to permit egocentric isolationism."

The Secretary-General called for a new strategy to be adopted by the United Nations to respond to the autonomistic or *irredentist* demands of ethnic or cultural communities. President George Bush of the United States advocated at the Summit session an irrevocable commitment to democratic principles, "including equal rights for minorities" and, above all, the sanctity of even a single individual against the

unjust power of the state. Foreign Minister Geza Jeszenszky of Hungary considered that respect for human rights and the rights of national minorities were integral parts of international collective security. Therefore, it was indispensable for the Security Council to take resolute action to defend and protect those rights. The presence, whatever needed, of UN personnel to guarantee the enforcement of those rights should be seen as an integral part of United Nations peacebuilding activities.

Federal Chancellor Franz Vranitzky of Austria said that many of the questions then on the Council's agenda related clearly to internal conflicts born of ethnic. nationalistic or religious rivalries or were a result of long-suppressed grievances. Nevertheless, they all sooner or later affected regional or international peace and security.

The Prime Minister of Cape Verde, Carlos Veiga, pointed out that national conflicts sometimes were as destructive as the fiercest international conflicts. The enormous loss of life and the human tragedy they produced demanded no less attention and no less a speedy response from the international community. Apart from the loss of human lives, every major national conflict had an international dimension, for it generated massive numbers of refugees, thus creating social pressure in neighbouring countries and threatening their peace and stability.

Russian President Boris Yeltsin argued that the time had come to consider a global system for the protection of the world community. A normative consensus for this quest for protection has been laid down by the General Assembly in an important declaration.

(F) Declaration on the Prevention and Removal of Disputes and Situations which may threaten International Peace and Security and on the Role of the United Nations in this Field (1988)

In 1988 the General Assembly adopted, without a vote, a Declaration on the Prevention and Removal of Disputes and Situations which may threaten International Peace and Security and on the Role of the United Nations in this Field. It contains significant provisions on the role of the Security Council. Paragraph 8 of the Declaration urges the Security Council to consider making use of the various means at its disposal, "including the appointment of the Secretary-General as rapporteur for a specified question." Paragraph 9 adds that when a partic-

ular dispute or situation is brought to the attention of the Security Council without a meeting being requested, the Council should consider holding consultations with a view to examining the facts of the dispute or situation and keeping it under review, when needed, with the assistance of the Secretary-General. The States concerned should have the opportunity of making their views known. In such consultations, consideration should be given to employing such informal methods as the Security Council deems appropriate, including confidential contacts by its President. (para. 10).

As to the action which the Security Council should consider in such consultations, the Declaration mentions, *inter alia*:

(a) Reminding the States concerned to respect their obligations under the Charter.

(b) Making an appeal to the States concerned to refrain from any action which might give rise to a dispute.

(c) Making an appeal to the States concerned to take measures which might help to remove, or to prevent the continuation or deterioration of, the dispute situation.

(d) Consider sending, at an early stage, fact-finding or good offices missions or establishing appropriate forms of United Nations presence, including observers and peace-keeping operations, as a means of preventing the further deterioration of the dispute or situation in the areas concerned.

The Security Council was also recommended to consider encouraging and, where appropriate, endorsing efforts at the regional level by the States concerned or by regional arrangements or agencies to prevent or remove a dispute or situation in the region concerned. (para. 13).

Taking into consideration any procedures that may have already been adopted by the States directly concerned, the Security Council was further urged to consider recommending to them appropriate procedures or methods of settlement of disputes or adjustment of situations, and such terms of settlement as it deems appropriate. (para. 14).

Finally, the Security Council, if it were appropriate for promoting the prevention and removal of disputes or situations, was urged, at an early stage, to consider making use of the provisions of the Charter

concerning the possibility of requesting the International Court of Justice to give an advisory opinion on any legal question. (para. 15).

IV. PRINCIPLES FOR DEALING WITH HUMAN RIGHTS ISSUES

The practice of the Council, which will be presented in this work, indicates that the following principles have influenced it in addressing human rights issues.

(A) THREAT TO INTERNATIONAL PEACE AND SECURITY

On 9 November 1996, the Security Council determined "that the magnitude of the present humanitarian crisis in eastern Zaire constitutes a threat to international peace and security in the region."[4]

(B) THE INTEGRATION OF HUMAN RIGHTS IN CONFLICT RESOLUTION

In a Presidential statement on Georgia, the Security Council expressed "its support for the Secretary-General's efforts to find ways of improving the observance of human rights in the region as an integral part of the work towards a comprehensive settlement."[5] In a similar statement on Liberia, the Security Council stressed "the importance of respect for human rights in Liberia."[6] In a follow-up resolution on Liberia, the Council urged "all Liberian parties to cooperate with the peace process, including by respecting human rights and facilitating humanitarian activities and disarmament." The Council stressed "the importance of respect for human rights in Liberia, not least in the period leading up to elections, and emphasizes the human rights aspect of the mandate of UNOMIL."[7]

In resolution 1217 (1998) of 22 December 1998 on Cyprus, the Council reaffirmed its position that a settlement must be based on a State of Cyprus with a single sovereignty and international personality

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4. S/RES/1078 (1996), 9 November, 1996.
5. S/PRST/1996/20: The situation in Georgia.
6. S/RES/1059 (1996), 31 May 1996.
7. Resolution 1100 (1997), Liberia.

and a single citizenship, with its independence and territorial integrity safeguarded, and comprising two politically equal communities as described in the relevant Security Council resolutions, in a bi-communal and bi-zonal federation, and that such a settlement must exclude union in whole or in part with any other country or any form of partition or secession.

(c) Democratic legitimacy

In a Presidential Statement on Burundi, the Security Council declared its grave concern "at recent information on political developments in Burundi. It strongly condemns any attempt to overthrow the present legitimate Government by force or coup d'état."[8] Likewise, in a resolution on Liberia, the Council expressed "its support for the resolve of the ECOWAS Ministers not to recognize any Government in Liberia that comes to office through the use of force."[9] In the same vein, the Council "emphasized that the holding of free and fair elections as scheduled is an essential phase of the peace process in Liberia."[10]

In the case of Sierra Leone, the Council affirmed that it would "continue to support the development of peace and democracy in Sierra Leone." [11]

(d) The highest standards of human rights

The Council has, on various occasions, expressly come out in favour of the highest standards of human rights. In a 1996 resolution on Croatia, it reaffirmed "the importance of full compliance by the parties with their commitments as specified in the Basic Agreement to respect the highest standards of human rights and fundamental freedoms and to promote an atmosphere of confidence among all local residents irrespective of their ethnic origin, and, in this context, urges the Government of the Republic of Croatia to ensure respect for the rights of all national ethnic groups."[12]

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8. S/PRST/1996/31, 24 July, 1996.
9. S/RES/1059, 31 May, 1996.
10. Resolution 1100 (1997): Liberia.
11. S/PV/3720, Sierra Leone (4 December, 1996).

(E) The Rights of Women

On 28 August 1998, the Council, deeply concerned at the continuing discrimination against girls and women and at other violations of human rights and of international humanitarian law in Afghanistan, reaffirmed that all parties to the conflict were bound to comply with their obligations under international humanitarian law and in particular the Geneva Conventions of 12 August 1949, and that persons who committed or ordered the commission of grave breaches of the Conventions were individually responsible in respect of such breaches. The Council urged the Afghan factions to put an end to the discrimination against girls and women and to other violations of human rights as well as violations of international humanitarian law and to adhere to the internationally accepted norms and standards in this sphere.[13]

(F) International Humanitarian Law

The Council has on many occasions underlined "the obligation of all concerned strictly to respect the relevant provisions of international humanitarian law."[14] The Security Council has consistently called upon all parties to the conflict and all others concerned to respect strictly the provisions of international humanitarian law. For example, the Council has "stressed the importance of respect for human rights in Liberia as well as the need to rehabilitate promptly the penitentiary system in this country."

In resolution 1216 (1998) of 21 December 1998 on Guinea Bissau, the Council called upon all concerned, including the Government and the self-proclaimed military junta to respect strictly relevant provisions of international law, including humanitarian and human rights law, and to ensure safe and unimpeded access by international humanitarian organizations to persons in need of assistance as a result of the conflict.

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12. Resolution 1079 (1996), Croatia.
13. S/RES/1193, 28 August 1998.
14. Resolution 1080 (1996), on the Great Lakes region of Africa.

(G) THE DUTY OF THE STATE

In a Presidential Statement on the protection of UN personnel, the Council underlined that "...the host country and others concerned must take all appropriate steps to ensure the safety and security of United Nations personnel and premises." [15]

(H) THE DUTY OF ALL CONCERNED

In a Presidential Statement on Albania, the Council appealed "to all concerned to refrain from the use of violence and to respect the legitimate institutions and to reach a peaceful solution to the crisis on the basis of democratic principles." It called upon the parties involved "to continue the political dialogue...and to live up the commitment undertaken" and urged that all political forces responsibly cooperate, in view of lowering tensions and facilitate the stabilization of the country.[16]

(I) NON-USE OF VIOLENCE

In a Presidential Statement on the then Zaire, the Council warned that it was "gravely concerned at the deteriorating situation in the Great Lakes region, in particular eastern Zaire, and at the effect which the continued fighting is having on the inhabitants of the region and condemns all acts of violence. It underlines the urgent need for a comprehensive and coordinated response by the international community to prevent any further escalation of the crisis there."[17] In one resolution it reiterated "its condemnation of all acts of violence, and its call for an immediate cease-fire and a complete cessation of all hostilities in the region."[18] In another resolution, on Albania, the Council condemned "all acts of violence and calls for their immediate end."[19] Likewise, in a third resolution, the Council condemned "all acts of violence

15. S/PRST/1997/13: Use of force against United Nations personnel.
16. S/PRST/1997/14: Albania.
17. S/PRST/1996/44, 1 October 1996.
18. Resolution 1080 (1996), Great Lakes.
19. Resolution 1101 (1997), Albania.

and calls for an immediate cease-fire and a complete cessation of all hostilities in the region."[20]

(J) IMPUNITY

In a communication to the Secretary-General on Burundi, the members of the Security Council stated their belief that it was "vital that measures to deal with the problem of impunity should be addressed in the context of a negotiated political settlement in Burundi.[21]

(K) MINORITY RIGHTS

In a Presidential Statement of 3 July 1996, the Council said it was "deeply concerned at the failure by the Croatian Government to take sufficient measures to safeguard the rights of the local Serb population and to ensure their safety and well-being. The Council is also deeply concerned at the Croatian Government's failure to promote conditions, including satisfactory procedures, facilitating the return of all Croatian Serbs who wish to do so. The Council strongly deplores such failure to act."

The Council noted that "the Croatian Government has begun to cooperate with international human rights mechanisms, and that it has considered various initiatives for the protection of minority rights. Nevertheless the Council underlines that the Croatian Government must undertake determined and sustained efforts to ensure respect for the protection of the rights of Croatian Serbs and to provide for their safeguarding in the legal and constitutional framework of the Republic of Croatia, including by the reactivation of the relevant articles of its Constitutional Law. The Council reminds the Croatian Government that its obligation to promote respect for, and protection of, such rights cannot be made conditional upon other factors, including upon political negotiations with the Federal Republic of Yugoslavia." [22]

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20. S/RES/1078 (1996), 9 November 1996.
21. Letter of 24 September 1996 to the Secretary-General on Burundi.
22. S/PRST/1996/29, 3 July, 1996.

L. AIDS

By resolution 1308 (2000), adopted on 17 July 2000, the Security Council, expressed its deep concern at the extent of the HIV/AIDS pandemic worldwide, and at the severity of the crisis in Africa in particular. It recognized that the spread of HIV/AIDS could have a uniquely devastating impact on all sectors and levels of society, and reaffirmed the importance of a coordinated international response to the HIV/AIDS pandemic, given its possible growing impact on social instability and emergency situations. The Council further recognized that the HIV/AIDS pandemic was also exacerbated by conditions of violence and instability, which had increased the risk of exposure to the disease through large movements of people, widespread uncertainty over conditions, and reduced access to medical care.

Stressing that the HIV/AIDS pandemic, if unchecked, might pose a risk to stability and security, the Council expressed concern at the potential damaging impact of HIV/AIDS on the health of international peace-keeping personnel. It recognized the efforts of those Member States which had acknowledged the problem of HIV/AIDS and, where applicable, had developed national programmes, and encouraged all interested Member States which had not already done so to consider developing, in cooperation with the international community and UNAIDS, where appropriate, effective long-term strategies for HIV/AIDS education, prevention, voluntary and confidential testing and counselling, and treatment of their personnel, as an important part of their preparation for their participation in peace-keeping operations. The Council requested the Secretary-General to take further steps towards the provision of training for peace-keeping personnel on issues related to preventing the spread of HIV/AIDS and to continue the further development of pre-deployment orientation and ongoing training for all peace-keeping personnel on these issues. It encouraged interested Member States to increase international cooperation among their relevant national bodies to assist with the creation and execution of policies for HIV/AIDS prevention, voluntary and confidential testing and counselling, and treatment for personnel to be deployed in international peace-keeping operations.

The Council encouraged, in this context, UNAIDS to continue to strengthen its cooperation with interested Member States to further

develop its country profiles in order to reflect best practices and countries' policies on HIV/AIDS prevention education, testing, counselling and treatment. The Council further expressed keen interest in additional discussion among relevant United Nations bodies, Member States, industry and other relevant organizations to make progress, *inter alia*, on the question of access to treatment and care, and on prevention.

M. Gender Justice

On the occasion of the first International Women's Day of the new millennium, members of the Security Council recognized that peace was inextricably linked with equality between women and men. They affirmed that the equal access and full participation of women in power structures and their full involvement in all efforts for the prevention and resolution of conflicts were essential for the maintenance and promotion of peace and security.

Members of the Council also recognized that while entire communities suffered the consequences of armed conflict, women and girls were particularly affected. The impact of violence against women and violation of the human rights of women in conflict situations was experienced by women of all ages. Women and children also constituted the majority of the world's refugees and internally-displaced persons.

Members of the Council noted that although women played an important role in conflict resolution, peace-keeping and peace-building, they were still under-represented in decision-making in regard to conflict. If women were to play an equal part in security and maintaining peace, as called for in the Beijing Platform for Action, they must be empowered politically and economically and represented adequately at all levels of decision-making, both at the pre-conflict stage and during hostilities, as well as at the point of peace-keeping, peace-building, reconciliation and reconstruction.

Members of the Council also noted that during times of armed conflict and the collapse of communities, the role of women was crucial in preserving social order, and as peace educators both in their families and in their societies, thereby playing an important role in fostering a culture of peace in strife-torn communities and societies.

Members of the Council called upon all concerned to refrain from human rights abuses in conflict situations, often in gender-specific ways, to respect international humanitarian law and human rights law, to promote and protect the human rights of women and girls, and to promote non-violent forms of conflict resolution and a culture of peace.

Members of the Council recalled the obligation to prosecute those responsible for grave breaches of international humanitarian law, while welcoming the inclusion as a war crime, in the Rome Statute of the International Criminal Court, of all forms of sexual violence and noting the role the Court could play in ending impunity for perpetrators of such crimes. Members of the Council stressed that efforts should be strengthened to provide protection, assistance and training to refugee women, other displaced women in need of international protection and internally-displaced women in conflict situations. Members of the Council underscored the importance of promoting an active and visible policy of mainstreaming a gender perspective into all policies and programmes at all levels while addressing armed or other conflicts.

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Even if the foregoing practice is encouraging, the pressure is growing for the Security Council to act more assertively to protect people at risk.

V. The Expectations of the World Community for More Effective Action by the Security Council

In the aftermath of the United Nations experience in Rwanda and Srebrenica, the pressure has mounted on the Security Council to act firmly for the protection of endangered communities. The Report of the Independent Inquiry during the 1994 Genocide in Rwanda found that *the delay in identifying the events in Rwanda as a genocide was a failure by the Security Council.* The reluctance by some States to use the term genocide was motivated by a lack of will to act, which was

deplorable. If there is ever to be effective international action against genocide, States must be prepared to identify situations as such, and to assume the responsibility to act that accompanies that definition. The Inquiry hoped that the stronger recognition given today to the need to ensure human security and to guarantee the safety of individual human beings from human rights violations, will also mean that States will not shy away from identifying events as genocide, and responding to them with action. It continued: "It is important to add the following: the imperative for international action is not limited to cases of genocide. The United Nations and its member states must also be prepared to mobilise political will to act in the face of gross violations of human rights which have not reached the ultimate level of a genocide. Particular emphasis must be placed on the need for preventive action: the will to act needs to be mobilised before a situation escalates to a genocide."[23]

The Inquiry found that the lack of direct contact between the substantive departments concerned and the Security Council had created a disconnect which had had a negative effect on the quality of the information provided to the Security Council, and must have made the understanding of substantive officers in the Secretariat of the deliberations of the Council much more difficult. *Representatives of several Members of the Security Council whom the Inquiry interviewed complained that the quality of information from the Secretariat was not good enough. The Inquiry commented that more could have been done by those Member States with in-depth knowledge of the situation in Rwanda to share information with the Secretariat.*[24]

The relationship between the Secretary-General and the Security Council, the Inquiry commented, was a unique feature of the Charter of the United Nations. The Secretary-General had the opportunity, but also the responsibility, to bring to the attention of the Council issues which required action. The role of the Secretary-General in relation to the Council, in true crisis situations such as that of the Rwandan genocide, was one which could only to a limited extent be performed by proxy. *Without the opportunity of direct personal contacts between the Secretary-General and the Security Council as a whole, and with its*

23. Report of the Independent Inquiry, p.20.
24. Ibid, p. 25.

members, the role of the Secretary-General in influencing Council decision-making cannot be as effective or powerful as if he were present.[25]

The Inquiry emphasized that "a deliberate and systematic attempt to terrorize, expel or murder an entire people must be met decisively with all necessary means, and with the political will to carry the policy through to its logical conclusion". Faced in Rwanda with the risk of genocide, and later the systematic implementation of a genocide, the United Nations had an obligation to act which transcended traditional principles of peacekeeping. In effect, there could be no neutrality in the face of genocide, no impartiality in the face of a campaign to exterminate part of a population. *While the presence of United Nations peacekeepers in Rwanda may have begun as a traditional peacekeeping operation to monitor the implementation of an existing peace agreement, the onslaught of the genocide should have led decision-makers in the United Nations – from the Secretary-General and the Security Council to Secretariat officials and the leadership of UNAMIR – to realize that the original mandate, and indeed the neutral mediating role of the United Nations, was no longer adequate and required a different, more assertive response, combined with the means necessary to take such action.*[26]

The United Nations, the Inquiry recommended, – and in particular the Security Council and troop contributing countries – must be prepared to act to prevent genocide or gross violations of human rights wherever they may take place. The political will to act should not be subject to different standards.[27]

The Inquiry recommended that the Secretary-General initiate a United Nations action plan to prevent genocide. The time had come to make the obligation under the Genocide Convention to "prevent and to punish" genocide a concrete reality in the daily work of the United Nations. The plan should aim to increase awareness and capacity system-wide to prevent and counteract genocide and other massive human rights violations, and should result in the implementation in practice of the lessons learned from the tragedies of Rwanda and the former Yugoslavia. Each part of the United Nations system, including Member States, should examine what active steps they should take to

25. Ibid, p. 26.
26. P. 27.
27. Ibid, p. 28

counteract such horrific crimes. The plan should include a follow-up mechanism to ensure that such steps are taken.[28]

Faced with these growing expectations, the Secretary-General of the United Nations, Kofi Annan, has led the way in calling for a more active role for the Security Council. "Most of us", he has argued, "would prefer, I think – especially now that the cold war is over – to see such decisions taken collectively, by an international institution whose authority is generally respected. And surely the only institution competent to assume that role is the Security Council of the United Nations. The Charter clearly assigns responsibility to the Council for maintaining international peace and security. I would argue, therefore, that only the Council has the authority to decide that the internal situation in any State is so grave as to justify forceful intervention.

"The Council's authority depends not only on the representative character of its membership but also on the quality and speed of its decisions. Humanity is ill served when the Council is unable to react quickly and decisively in a crisis."[29] He has called for the Security Council to have at its disposal a small rapid reaction force, ready to move at a few days' notice. Member States must have appropriately trained stand-by forces immediately available, and must be willing to send them quickly when the Security Council requests it.[30]

The decision to intervene, he has submitted, can only be taken by the Security Council:

> "Unless the Security Council can unite around the aim of confronting massive human rights violations and crimes against humanity, then we will betray the very ideals that inspired the founding of the United Nations."[31]

A renewal of the effectiveness and relevance of the Security Council, the Secretary-General continued, must become a cornerstone of our efforts to promote international peace and security in this century.[32] Unless the Security Council can unite around the aim of con-

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28. Ibid, p. 29.
29. The Question of Intervention, Kofi A. Annan, United Nations Department of Public Information (1999), p.11.
30. Ibid, p.12.
31. Ibid, p.27.
32. Ibid, p.31.

fronting massive human rights violations and crimes against humanity, then it will betray the very ideals that inspired the founding of the United Nations. This is the core challenge of the Security Council and the United Nations as a whole in the new century: to unite behind the principle that massive and systematic violations of human rights conducted against an entire people cannot be allowed to stand.[33] It is a core challenge to the Security Council and to the United Nations as a whole in the twenty-first century: to forge unity behind the principle that massive and systematic violations of human rights – wherever they may take place – should not be allowed to stand.[34] In the event that forceful intervention becomes necessary, one must ensure that the Security Council – the body charged with authorizing force under international law – is able to rise to the challenge. As important as the Council's enforcement power is its deterrent power. The Charter requires the Council to be the defender of the common interest, and unless it is seen to be so – in an era of human rights, interdependence, and globalization – there is a danger that others could seek to take its place.[35]

Secretary-General Kofi Annan sees United Nations intervention as including peace-keeping, humanitarian assistance, rehabilitation, and reconstruction.[36] Intervention, he told the General Assembly in September 1999, should be defined as broadly as possible 'from the most pacific to the most coercive' and be applied to all regions.[37] He has called for the UN to send human rights abusers a decisive message – including the threat of military action: "Massive and systematic violations of human rights, wherever they may take place, should not be allowed to stand."[38] "If States bent on criminal behaviour know that frontiers are not an absolute defence, if they know that the Security Council will take action to halt crimes against humanity, then they will not embark on such a course of action in expectation of sovereign

33. Ibid, p.23.
34. Ibid, p.39.
35. Ibid, p.42.
36. See K. Annan, "Two Concepts of Sovereignty", Economist, 18-24 September 1999, pp. 49-50.
37. A/54/PV.4. See also UN Press Release GA/9595, 20 September 1999.
38. Id.

impunity." Secretary-General Annan called for a new security system that would not juxtapose unilateral intervention, as in Kosovo, and paralysis, as in the 1994 massacres of more than 500,000 people in Rwanda. He noted, however, that military measures without Security Council authority as in Kosovo could set dangerous precedents.

However, the Secretary-General has been challenged on this issue. Algeria's President Abdelaziz Bouteflika, the then head of the OAU, strongly rebuffed his call for humanitarian intervention. He said any outside action had to have the consent of the government concerned: ..."We remain extremely sensitive to any undermining of our sovereignty."[39] Earlier, countries such as Egypt and India had also challenged the theses of the Secretary-General on this subject in the Security Council. They emphasized the principle of consent and respect for the provisions of the Charter.[40]

Conclusion

From the materials reviewed in this Chapter, two conclusions stand out: first, a great deal is already being done in the Security Council for the protection of human rights. Second, much more is expected of the Council. In the next Chapter we shall try to trace how the Security Council has sought to intercede in cases where protection was needed and to distil some principles for its humanitarian intercession.

39. Financial Times, 21 September 1999.
40. S/PV/4046.

CHAPTER II

Humanitarian Intercession

INTRODUCTION

This Chapter will look at the practice of the Security Council with regard to humanitarian intercession.

I. THE SECURITY COUNCIL AND HUMANITARIAN INTERCESSION

The first forays of the Council had been into humanitarian issues. On these it is worth noting that the ground rules of humanitarian assistance in the United Nations have been, traditionally, that humanitarian assistance must be provided in accordance with the principles of humanity, neutrality, and impartiality. The sovereignty, territorial integrity and national unity of States must be fully respected in accordance with the Charter of the United Nations. In this context, humanitarian assistance should be provided with the consent of the affected country and in principle on the basis of an appeal by the affected country. The United Nations has recognized that each State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State had the primary role in the initiation, organization, coordination, and implementation of humanitarian assistance. It has been recognized, however, that the magnitude and duration of many emergencies might be beyond the response capacity of many affected countries. International cooperation to address emergency situations and to strengthen the response capacity of affected countries was thus of great importance. Such cooperation should be provided in accordance with international and national laws.[1]

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1. See on this G.A. resolution 46/182.

A. A CAUTIOUS APPROACH

In 1947 the Commission of Investigation established by Security Council resolution 15 (1946) of 19 December 1946 asked the Council whether the Commission's request to the Greek Government to postpone the execution of persons sentenced to death by that Government for political offences was covered by its terms of reference. By resolution 17 (1947), the Security Council advised the Commission that it was not empowered to request the appropriate authorities of Greece, Albania, Bulgaria and Yugoslavia to postpone the execution of any persons sentenced to death, unless the Commission had reason to believe that the examination of any such persons as a witness would assist the Commission in its work, and made its request on that ground.[2]

B. AN OPENING

At its 349th meeting, on 13 August 1948, the Council asked its president to send the following telegram to the United Nations Mediator on the Middle East Question:

> "I have the honour to inform you that the Security Council, having taken, note, at the 349th meeting, held on 13 August, of the Mediator's telegram of 12 August concerning the destruction of the water-pumping station at Latrun, asked me, as a preliminary measure, to request the Mediator to make all efforts and take steps to ensure water supply to the population of Jerusalem."[3]

C. HIJACKING

By resolution 286 (1970) of 9 September 1970, the Council, gravely concerned at the threat to innocent civilian lives from the hijacking of aircraft and any other interference in international travel, "appealed to all parties concerned for the immediate release of all passengers and crews without exception, held as a result of hijackings and other interference in international travel. The Council also called on

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2. Adopted at the 101st meeting by 9 votes to none, with 2 abstentions (Poland, Union of Soviet Socialist Republics).
3. Adopted by 8 votes to 1 (Syria), with 2 abstentions (Argentina, China).

States to take all possible legal steps to prevent further hijackings or any other interference with international civil air travel."[4]

Subsequently, on 20 June 1972, the Council adopted the following decision by consensus:

> "Members of the Security Council are gravely concerned at the threat to the lives of passengers and crews arising from the hijacking of aircraft and other unlawful interference with international civil aviation. In these circumstances, they wish to reaffirm Security Council resolution 286 (1970) of 9 September 1970 and to recall that the General Assembly has expressed its deep concern about the situation.
>
> "Members of the Security Council condemn and consider it necessary to put an end to acts that arc directed against the safety of civil aviation and that are being perpetrated in various parts of the world presenting serious obstacles to the normal use of air transportation, an important means of international intercourse.
>
> "The Security Council calls upon States, to take all appropriate measures within their jurisdiction to deter and prevent such acts and to take effective measures to deal with those who commit such acts.
>
> "The Security Council invites all States to expand and intensify co-operative international efforts and measures in this field, in conformity with Charter obligations, with a view to ensuring the maximum possible safety and reliability of international civil aviation."

D. *Human suffering in armed conflict*

On 21 December 1971, the Security Council adopted Resolution 307 (1971) on the India-Pakistan conflict. The Council called upon all those concerned: "... to take all measures necessary to preserve human life and for the observance of the Geneva Conventions of 1949 and to apply in full their provisions as regards the protection of the wounded and sick, prisoners of war and civilian population."

It further called for international assistance in the relief of suffering and the rehabilitation of refugees and their return in safety and dignity to their homes, and for full cooperation with the Secretary-

4. Adopted at the 1552nd meeting.

General to that effect. Furthermore, the Council authorized the Secretary-General to appoint, if necessary, a special representative to lend his good offices for the solution of humanitarian problems.[5]

In the 1974 conflict in Cyprus, the Council enunciated even clearer humanitarian principles: "Conscious of its special responsibilities under tile United Nations Charter" and noting that a large number of people in Cyprus had been displaced, and were in dire need of humanitarian assistance, the Council was "mindful of the fact that it is one the foremost purposes of the United Nations to lend humanitarian assistance in situations such as the one currently prevailing in Cyprus."

It therefore called upon all parties "to do everything in their power to alleviate human suffering, to ensure the respect of fundamental human rights for every person and to refrain from all action likely to aggravate the situation." The Council, furthermore, expressed its: "grave concern at the plight of the refugees and other persons displaced as a result of the situation in Cyprus and urged the parties concerned, in conjunction with the Secretary-General, to search for peaceful solutions to the problems of refugees and take appropriate measures to provide for their relief and welfare and to permit persons who wish to do so to return to their homes in safety."[6]

In relation to another situation, Lebanon, the President of the Council, after consultations with the members, made the following statement on 4 June 1982: "The President and the members of the Security Council have learned with concern of the serious events which occurred today in Lebanon and of the loss of human life and the destruction caused by those events. The President and the members of the Council make an urgent appeal to all the parties to adhere strictly to the cease-fire that had been in effect since 24 July 1981 and to refrain immediately from any hostile act likely to provoke an aggravation of the situation."[7]

At the 2387th meeting, on 3 August 1982, the President of the Council read out the following statement:

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5. Adopted at the 1621st meeting by 13 votes to none, with 2 abstentions (Poland, Union of Soviet Socialists Republics).
6. Resolution 361 on 30 August 1974. Adopted unanimously at the 1795th meeting.
7. *Report of the Security Council*, 1982, A/37/2, p. 10.

"Following consultations with the members of the Security Council, I have been authorized to make the following statement on their behalf in connection with the present grave situation in Lebanon:

1. The Members of the Security Council are seriously concerned at the prevailing high state of tension and at reports of military movements and continued outbreaks of firing and shelling in and around Beirut.

3. They insist that all parties must observe strictly the terms of resolution 516 (1982). They call, further, for the immediate lifting of all obstacles to the dispatch of supplies and the distribution of aid to meet the urgent needs of the civilian population in accordance with the previous resolutions of the Council. The members of the Security Council will keep the situation under close review."[8]

At the 2496th meeting, on 11 November 1983, the President, after consultations with the members of the Council, read out the following statement:

"... The Members of the Security Council wish to express their profound concern at the recent and current developments in northern Lebanon which have caused and are still causing widespread suffering and loss of human life ..."

On 24 May 1985, the following statement was made by the President of the Security Council, on behalf of Council Members, regarding the situation in Lebanon:

"The Members of the Security Council express their serious concern at the heightened violence in certain parts of Lebanon in the past few days.

"They take note of and fully support the statement issued on 22 May 1985 by the Secretary-General, which also refers to the situation in and around the Palestinian refugee camps, and his appeal to all concerned to make every possible effort to put an end to violence involving the civilian population.

"... They reaffirm that the sovereignty, independence and territorial integrity of Lebanon must be respected.

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8. Resolution 518 (1982), which was adopted on 12 August 1982, again demanded the immediate lifting of all restrictions on the City of Beirut in order to permit the free entry of supplies to meet the urgent needs of the civilian population in Beirut.

"In response to their humanitarian concern, they strongly appeal for restraint, in order to alleviate the sufferings of civilians in Lebanon."

E. THE RIGHTS OF CIVILIAN POPULATIONS

On 19 June 1982, the Security Council unanimously adopted resolution 512 (1982) in which it expressed its deep concern at the sufferings of the Lebanese and Palestinian civilian populations. Referring to the humanitarian principles of the Geneva Conventions of 1949 and to the obligations arising from the regulations annexed to the Hague Convention of 1907, the Council called upon all parties to the conflict to respect the rights of the civilian populations, to refrain from all acts of violence against those populations and to take all appropriate measures to alleviate the suffering caused by the conflict, in particular, by facilitating the dispatch and distribution of aid provided by United Nations agencies and by non-governmental organizations, in particular, the International Committee of the Red Cross.[9]

The Council appealed to Member States to continue to provide the most extensive humanitarian aid possible and stressed the particular humanitarian responsibilities of the United Nations and its agencies, including the United Nations Relief and Works Agency for Palestine Refugees in the Near East, towards civilian populations. It called upon all the parties to the conflict not to hamper the exercise of those responsibilities and to assist in humanitarian efforts.

On 4 July 1982, the Council, by resolution 513 (1982) again unanimously called for respect for the rights of the civilian populations without any discrimination and repudiated all acts of violence against those populations. It called, further, for the restoration of the normal supply of vital facilities such as water, electricity, food and medical provisions, particularly in Beirut.

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9. See, similarly, resolution 520 (1982) adopted on 17 September 1982 which reaffirmed "its resolutions 512 (1982) and 513 (1982), which call for respect for the rights of the civilian populations without any discrimination, and repudiates all acts of violence against those populations." Similarly, resolution 512 (1982), adopted on 19 September 1982, reaffirmed "once again its resolutions 512 (1982) and 513 (1982), which call for respect for the rights of the civilian populations without any discrimination, and repudiates all acts of violence against those populations."

F. *Respect for Humanitarian Law*

At its 2524th meeting, on 30 March 1984, the President of the Council read out the following statement, on behalf of the members of the Council, pertaining to the conflict between Iran and Iraq:

> "They express their grave concern about all reported violations in the conflict of the rules of international law and of the principles and rules of international conduct accepted by the world community to prevent or alleviate the human suffering of warfare and affirm strongly the conclusion of the Secretary-General that these humanitarian concerns can only be fully satisfied by putting an end to the tragic conflict that continues to deplete the precious human resources of Iran and Iraq.
>
> "The members of the Council:
> (...) condemn all violations of international humanitarian law and urge both parties to observe the generally recognized principles and rules of international humanitarian law which are applicable to armed conflicts and their obligations under international conventions designed to prevent or alleviate the human suffering of warfare."[10]

Earlier, on 26 January 1984, the President had issued the following statement after consultations in the Council held on the same date:

> "... In this connection, the Security Council recalls its previous resolutions stressing the applicability of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and urges that no steps be taken which could lead to further aggravation of tension in the area."

G. *Symbolic protection of the United Nations flag*

On 2 December 1983, the Security Council was called into consultation at the request of the Secretary-General after he received an appeal from Yassir Arafat, Chairman of the Palestine Liberation Organization (PLO), requesting use of the United Nations flag for ships

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10. See also resolution 540 (1983): "Condemns all violations of international humanitarian law, in particular the provisions of the Geneva Conventions of 1949 in all their aspects; calls for the immediate cessation of all military operations against civilian targets, including city and residential areas."

which would evacuate armed elements from Tripoli in northern Lebanon.

There were further consultations on Saturday, 3 December. The Council agreed to the use of the flag after the Secretary-General told it that the only reason would be purely humanitarian, to facilitate the resolution of a situation which had already cost many innocent lives and created great destruction. Secretary-General Pérez de Cuéllar said that actual arrangements for the evacuation were primarily a matter for the Lebanese Government and the parties to an agreement that had been negotiated with the help of Saudi Arabia and Syria.[11]

On 3 December 1983, the following statement was made by the Secretary-General at the Security Council consultations:

> "I would like to make it clear that the only issue I have raised is the request for the flying of the United Nations flag, alongside the national flag of the ship concerned, on the ships which would evacuate the armed elements of the Palestine Liberation Organization from Tripoli. The reason for doing this would be on purely humanitarian grounds to facilitate the resolution of a situation which has already cost many innocent lives and created great destruction. The permission to use the United Nations flag would be given to the countries under whose flags the ships involved are operating.
>
> "I understand that the probable number of ships involved would be approximately five to evacuate some 3,000 armed elements with the possible addition of another 1,000 militia, carrying personal weapons only. The probable destination of the ships would be Tunis and the Yemen Arab Republic. There would be no financial implications and the only purpose would be to provide symbolic protection. The nationalities of the ships concerned and dates of departure would apparently be decided after my reply concerning the use of the flag is received.
>
> "The actual arrangements for this evacuation are obviously primarily a matter for the Lebanese Government and the parties to the agreement that has been negotiated with the help of Saudi Arabia and Syria. I spoke, yesterday afternoon, on the telephone to President Gemayel and, among other issues, mentioned this problem to him. As I understand it, the Lebanese Government has no objection

11. *Press Release* SG/SM/3496 - SC/4588.

to the use of the United Nations flag on the evacuation ships, provided, as is the normal practice, the Lebanese flag is also flown in Lebanese territorial waters. I still naturally remain in consultation with the Government of Lebanon in this matter, which obviously requires its concurrence. I need hardly add that any action I take will be in line with the overall objective of respecting the sovereignty and authority of the Government of Lebanon.

"I wish to repeat that the humanitarian factor is the one which concerns me. I have consulted the Council because I felt that this was the right thing to do on a matter of such importance.

"In taking my decision, therefore, I would like to have the understanding of the Council on this matter."[12]

Following the publication of the above-mentioned statement, the following statement was issued by the President of the Security Council:

"With reference to the statement made public by the Secretary-General today, and after consultations with the members of the Council, I confirm, as President of the Security Council, that his statement has the support of the members of the Council."[13]

H. Apartheid

By its resolution 554 (1984), the Council solemnly declared:

"that only the total eradication of apartheid and the establishment of a non-racial democratic society based on majority rule, through the full and free exercise of universal adult suffrage by all the people in a united and unfragmented South Africa, can lead to a just and lasting solution of the explosive situation in South Africa."

The Council, therefore:

"urged all governments and organizations not to accord recognition to the results of the so-called 'elections' and to take appropriate action, in cooperation with the United Nations and the Organization of African Unity and in accordance with the present resolution, to assist the oppressed people of South Africa in their legitimate struggle for a non-racial, democratic society."[14]

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12. S/16194, 3 December 1983.
13. S/16195, 3 December 1983.

I. Massacres

Resolution 556 (1984) of the Council, which dealt with the situation in South Africa, condemned the continued massacres of the oppressed people, as well as the arbitrary arrest and detention of leaders and activists of mass organizations. It also demanded the immediate cessation of the massacres and the prompt and unconditional release of all political prisoners and detainees.

J. Individual cases

On 9 April 1982, the Security Council adopted resolution 503 (1982) by which it recalled its resolution 473 (1980) and its statement of 5 February 1981 regarding the death sentences passed by the Transvaal Division of the Supreme Court at Pretoria on Ncimbithi Johnson Lubisi, Petrus Tsepo Mashigo and Naphtali Manana, three members of the African National Congress of South Africa.

Gravely concerned at the confirmation of the death sentences by the South Africa Court on 7 April 1982 and deeply concerned that the carrying out of the death sentences would further aggravate the situation in South Africa, the Council called upon the South Africa authorities to commute the death sentences and urged all States and organizations to use their influence and to take urgent measures in conformity with the Charter of the United Nations, the resolutions of the Security Council and relevant international instruments to save the lives of the three men.

Similarly, by resolution 525 (1.982), adopted on 7 December 1982, the Security Council, having considered the question of the death sentences passed on 19 August 1981 in South Africa on Mr. Anthony Tsotsobe, Mr. Johannes Shabangu and Mr. David Moise, recalling its statement of 4 October 1982 regarding the death sentences passed on 6 August 1982 in South Africa on Mr. Thelle Simon Mogoerane, Mr.

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14. See also resolution 556 (1984) which reiterated "its condemnation of the apartheid policy of the South African regime and South Africa's continued defiance of the resolutions of the United Nations and designs further to entrench apartheid, a system characterized as a crime against humanity."

Jerry Semano Mosololi and Mr. Marcus Thabo Motaung, members of the African National Congress of South Africa, and reiterating its urgent appeal for executive clemency, expressed its grave concern at the confirmation by the Appellate Division of the Supreme Court of South Africa on 26 November 1982 of the death sentences imposed on Mr. Anthony Tsotsobe, Mr. Johannes Shabangu and Mr. David Moise.

K. A PLEA CONCERNING PRINCIPLE OF NON-INTERFERENCE

On 15 January 1991 the representative of the Permanent Mission of Cote d'Ivoire to the United Nations wrote to the President of the Security Council drawing attention to the final communiqué of the extraordinary session of the Authority of Heads of State and Government of the Economic Community of West African States (ECOWAS) concerning the economic and social situation in Liberia. He requested a meeting of the Security Council. Attached to his letter was a proposed draft statement to be issued by the President of the Council.

On 22 January 1991 the Security Council met to consider the request. The representative of Liberia opened the debate and expressed his relief that the Security Council was responding, for the first time, to the tragic consequences of a civil war that had devastated Liberia for over a year. He said:

> That a response is now being made, more than one year since the conflict started, raises, in my opinion, the imperative need to review, arid perhaps reinterpret, the Charter, particularly its provision which calls for non-interference in the internal affairs of member states. Regrettably, the strict application of this provision has hampered the effectiveness of the Council and its principal objective of maintaining international peace and security. As a result, millions of innocent men, women and children have continued to be victimized by conflicts through-out the world, and this world body, which has the moral obligation and authority, has been prevented from averting these human tragedies.

Following a statement by the representative of Nigeria, speaking as the Alternate Chairman of Countries Members of the ECOWAS, the President of the Security Council called upon the parties to the conflict in Liberia to continue to respect the cease-fire agreement which

they had recently signed and to cooperate fully with the ECOWAS to restore peace and normalcy in Liberia.

On 13 February 1992 the Ambassador of Liberia to the United Nations wrote to the Secretary-General of the United Nations to inform him that "in a spirit of reconciliation, Liberians have reached a national consensus to hold free and fair elections, under international supervision, as a strategy for settling the Liberian conflict. As a manifestation of our commitment, we have held consultative meetings among ourselves and have established a five-member Elections Commission."

The Ambassador continued: "The elections will be held in accordance with the ECOWAS Peace Plan of the ECOWAS Standing Mediation Committee, which was approved by the Authority of the ECOWAS Heads of State and Government and endorsed by Liberians at the National Conference in March 1991."

On behalf of his government, he requested that, "in accordance with General Assembly Resolution 46/137 of 17 December 1991, the United Nations provide financial and technical assistance to help the Elections Commission prepare for and conduct the forthcoming elections. In addition, we request that United Nations observers be sent to Liberia to follow the electoral processes".

L. A PARTICULAR CASE

In resolution 688 (1991), the Security Council dealt explicitly with the nexus between violations of human rights and their impact upon international peace and security. In that resolution the Council expressed its grave concern over the repression of the Iraqi civilian population in many parts of Iraq. including in Kurdish-populated areas, which had led to a massive flow of refugees towards and across international frontiers and to cross-border incursions, and which had threatened international peace and security in the region. The Council was deeply disturbed by the magnitude of the human suffering involved. Accordingly, it condemned "the repression of the Iraqi civilian population in many parts of Iraq, including most recently in Kurdish-populated areas, the consequences of which threaten international peace and security in the region". The Council demanded that Iraq, as a contribution to removing the threat to international peace and secu-

rity in the region, immediately end this repression and, in the same context, expressed the hope that an open dialogue would take place to ensure that the human and political rights of all Iraqi citizens were respected.

The Council also requested the Secretary-General to pursue his humanitarian efforts in Iraq and to report forthwith, if appropriate on the basis of a further mission to the region, on the plight of the Iraqi civilian population, and in particular the Kurdish population, suffering from the repression in all its forms inflicted by the Iraqi authorities. Other provisions of the resolution requested the Secretary-General to address urgently the critical needs of the refugees and displaced Iraqi population and appealed to all member states and to all humanitarian organizations to contribute to those relief efforts. The Council demanded, further, that Iraq cooperate with the Secretary-General to these ends.

In response to the requests of the Council, the Secretary-General appointed an Executive Delegate, Prince Sadruddin Aga Khan, to help him deal with the situation in northern Iraq. The mandate of the Executive Delegate included the following:

- To facilitate the identification of needs and future problems and to suggest appropriate measures.
- To prepare, together with relevant Components of the United Nations system, timely consolidated appeals and ensure their regular updating.
- To act as a catalyst to highlight humanitarian needs and stimulate a generous response from the international community, as required.
- To keep the Secretary-General informed about humanitarian issues relating to the Gulf crisis by constant monitoring and reporting.
- To maintain contacts, at a high level, with all governments, particularly those directly concerned, both in Geneva and in the field.

(i) Approach of the Executive Delegate

While recognizing that "humanitarian and political interests converge in the aversion of catastrophe", the Executive Delegate stressed

the humanitarian nature of his mandate in a report to the Secretary-General dated 15 July 1991. His broad approach was stated as follows in paragraph 134 of his report:

> The mandate assigned to me as the Secretary-General's Executive Delegate is of a humanitarian nature: political determinations are not in my purview. Indeed, we have consistently focused upon the needs of the most vulnerable groups, wherever they may be identified and located throughout the country. The United Nations presence in Iraq, which for the purposes of our operation has been managed through United Nations humanitarian centres with their accompanying complement of United Nations guards, has monitored and reported on the provision of humanitarian assistance and advised the authorities in this respect. This will continue to constitute a major priority. The right to food, water, shelter and adequate health care are amongst the most fundamental of all human rights and must be assured to all people in all areas. As with all the key rights and freedoms set out in the Universal Declaration of Human Rights and the International Covenants, there can be no discrimination whatsoever in their enjoyment. Due note was taken, during our stay in Iraq, of the authorities' declared objective of fostering the democratic process, with its intrinsic attributes of political pluralism and freedom of the press. The present negotiations with the Kurdish leadership were cited as an example of this trend.

A cardinal humanitarian principle emphasized by the Executive Delegate was that innocent civilians – and above all the most vulnerable – should not be held hostage to events beyond their control (paragraph 138). The creation of confidence, which was lacking in some parts of the country, was crucial in the assessment of the Executive Delegate (paragraph 136).

A Memorandum of Understanding, signed with the government of Iraq on 18 April 1991, provided the parameters within which the Executive Delegate functioned.

On the part of the government of Iraq it provided for:

- Adequate measures including the provision of humanitarian assistance to alleviate the suffering of the affected Iraqi civilian population (paragraph 1).
- A pledge of full support to and cooperation with the United Nations (paragraph 2).

- Facilitation of safe passage of emergency relief commodities throughout the country (paragraph 12).
- Establishment of a relief distribution and monitoring structure to permit access to all civilians covered by the relief programme, as soon as possible (paragraph 13).
- Cooperation in granting United Nations field staff access to the parts of the country requiring relief by air or road as needed to facilitate the implementation and monitoring of the programme (paragraph 15).
- Help in the prompt establishment of United Nations offices in support of humanitarian centres (UNHUCS) (paragraph 17).
- Cash contributions in local currency (paragraph 19).
- Access by the Coordinator to a high-level government official (paragraph 14).

On the part of the Executive Delegate it called for:

- Adequate measures including the provision of humanitarian assistance to alleviate the suffering of the affected Iraqi civilian population (paragraph 1).
- Promoting the voluntary return home of Iraqi displaced persons and taking humanitarian measures to avert new flows of refugees and displaced persons from Iraq.
- A humanitarian presence in Iraq, wherever such presence may be needed (paragraph 4).
- The establishment of United Nations sub-offices and humanitarian centres in agreement and cooperation with the government of Iraq (paragraph 4). Both sides agreed that the measures to be taken for the benefit of the displaced persons should be based primarily on their personal safety and the provision of humanitarian assistance and relief for their return and normalization of their lives in their places of origin (paragraph 3).
- UNHUCS were to facilitate the provision of humanitarian assistance to the needy and also monitor the over-all situation in this regard to advise the Iraqi authorities regarding measures needed to enhance their work (paragraph 6).
- Securing routes of return (paragraph 7).

- Organization of airlifts to the areas concerned as well as transportation by road (paragraph 8)
- Simultaneous humanitarian assistance and relief to displaced persons, returnees and all other populations covered by the relief programme.

(ii) General principles

- The implementation of the above-mentioned provisions was to be without prejudice to the sovereignty, territorial integrity, political independence, security and non-interference in the internal affairs of the Republic of Iraq (paragraph 21).
- Humanitarian assistance was impartial and all civilians in need, wherever they are located, were entitled to receive it (paragraph 11).
- The measures to be taken for the benefit of the displaced persons should be based primarily on their persona safety and the provision of humanitarian assistance and relief for their return and normalization of their lives, in their places of origin (paragraph 3).
- The principle of safe passage (para graph 12).
- The principle of access (paragraphs 15 and 13).
- The principle of cooperation (para graphs 2 and 4).
- The criterion of all necessary measures (paragraph 4).
- The element of monitoring (paragraph 6 and 13).
- The provision of advice (paragraphs 6 and 14).

Some resolutions of the Security Council also contained guidance. Of particular relevance was resolution 706 of 15 August 1991 in which the Security Council flagged the following concerns:

- The need for equitable distribution of humanitarian relief to all segments of the Iraqi civilian population through effective monitoring and transparency.
- The need for unhindered access by international humanitarian organizations to all those in need of assistance in all parts of Iraq.
- The need for "all feasible and appropriate United Nations monitoring and supervision for the purpose of assuring their equitable distribution to meet humanitarian needs in all

regions of Iraq and to all categories of the Iraqi civilian population, as well as all feasible and appropriate management relevant to this purpose".

M. New Avenues for Dealing with Internal Conflict

On 20 January 1992 Somalia's representative to the United Nations wrote to the President of the Security Council drawing attention to the conflict in that country and seeking the assistance of the Council. On 23 January 1992 the Security Council unanimously adopted Resolution 733, which expressed grave alarm at the rapid deterioration of the situation in Somalia, the heavy loss of human life and widespread material damage resulting from the conflict in the country. Concerned that the continuation of the situation constituted a threat to international peace and security, the Council requested Secretary-General Boutros-Ghali to increase humanitarian assistance, to contact all the parties involved in the conflict, to seek their commitment to the cessation of hostilities, to promote a cease-fire and compliance therewith and to assist in the process of a political settlement.

The Council decided, under Chapter VII of the Charter, to implement a general and complete embargo on all deliveries of weapons and military equipment to Somalia. It called upon all parties to cooperate with the Secretary-General, to take all the necessary measures to ensure the safety of personnel sent to provide humanitarian assistance, to assist them in their task and to ensure full respect for the rules and principles of international law regarding the protection of civilian populations. The Council further called upon all states and international organizations to contribute to the efforts of humanitarian assistance to the population in Somalia.

On 3 February 1992 Somalia's representative to the United Nations wrote again to the President of the Security Council, expressing his "gratitude to you and the members of the Security Council for your decision to consider the problem of the worsening political and security situation in my country"[15] with Resolution 733. He proceeded to present views on "approaches to the problems of Somalia" and concluded as follows:

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15. S/235007.

> "In conclusion, let me assure the Council that any measures – even if coercive – to resolve the current crisis in Somalia cannot and will not be interpreted as interference in our internal affairs since their effect will be the saving of human lives and the restoration of human dignity. The situation cries out for the help of the United Nations and particularly the Security Council. The Somali people are bewildered by what they see as the callous indifference of the international community, but their eyes are nevertheless focused on the United Nations. They are pleading with you to stop the bleeding of their country. Please help by acting now."[16]

In a report to the Security Council of 11 March 1992, submitted pursuant to Resolution 733, the Secretary-General observed:

> "The tragic situation in Somalia is extraordinarily complex and has so far eluded conventional solutions. New avenues and innovative methods commensurate with the humanitarian and political situation at hand need to be explored in order to facilitate a peaceful settlement. In this connection, the collaborative effort of the United Nations and the regional intergovernmental organizations undertaken in the context of Chapter VIII of the Charter of the United Nations has proved to be very effective and has set a useful precedent for future cooperation."[17]

The Secretary-General also said: "It would be important for the Security Council to underline the individual and collective responsibilities of the leaders of the factions to save lives and to assist in the distribution of humanitarian assistance."[18]

The debate on the situation in the Security Council on 17 March 1992 was interesting.

India took the view that: "The sheer magnitude of the problem and its continuation constitute a threat to the peace and security of the region. The Somali situation is thus *sui generis* and, as the Secretary-General points out, has eluded conventional solutions. The principles, drawn from the United Nations Charter, which the Security Council must always build upon in its consideration of the issues before it, have

16. Ibid., p.5.
17. S/23693, para. 72.
18. Ibid., para. 79.

nevertheless to be applied in this case also. But, as the Secretary-General himself concludes, new avenues and innovative methods commensurate with the humanitarian and political situation at hand need to be explored to facilitate a peaceful settlement. In this, the collaborative role being played by the regional organizations along with the United Nations, in the context of Chapter VIII of the Charter, assumes importance."[19]

"The substantive problem that Somalia must face is the absence of a civil society," Venezuela declared. "The international community as a whole, and the Security Council in particular, can, should and must respond effectively with the assistance and advice in this extraordinary African tragedy to which the international community too long remained dangerously indifferent."[20]

China – while expressing appreciation for the report of the Secretary-General and supporting the adoption by the Security Council of a resolution on this issue – nevertheless believed "that the Somali question should be peacefully settled mainly by the Somali people themselves through consultations and dialogues. Only at the request and with the support and cooperation of the Somali people can any external endeavours, including the United Nations monitoring mechanism and humanitarian relief, be genuinely effective."[21]

Ecuador took a similar position: "It is for the Somali people and their leaders to fulfil their fundamental responsibility of seeking, through dialogue and peaceful negotiation, an appropriate and lasting solution to this crisis."[22]

On 24 April 1992, the Security Council adopted Resolution 751 by which it decided to establish a United Nations operation in Somalia (UNOSOM) and requested the Secretary-General to facilitate an immediate and effective cessation of hostilities and the maintenance of a cease-fire throughout the country in order to promote the process of reconciliation and political settlement in Somalia and to provide urgent humanitarian assistance.

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19. S/PV.3060, pp. 31-32.
20. Ibid., p. 61.
21. Ibid., pp. 43-44.
22. Ibid., p. 52.

II. Principles for Humanitarian Intercession

The practice of the Security Council indicates that it may review any situation from point of view of the maintenance of international peace and security; it may also investigate any situation from the point of view of maintenance of international peace and security. The Security Council has intervened in cases such as the following:

A. *The situation involves a breach of international peace and security.* (Powers under the Charter.)

In relation to the then Zaire: the Council determined that "the magnitude of the present humanitarian crisis in eastern Zaire constitutes a threat to international peace and security in the region."[23]

B. *The humanitarian situation is of such magnitude as to warrant intervention.*

In relation to the situation in Somalia, the Indian representative in the Security Council articulated the principle that: "The sheer magnitude of the problem and its continuation constitute a threat to the peace and security of the region. The Somali situation is thus *sui generis* and...has eluded conventional solutions...."[24]

C. *The Government requests.*

It is clear that if the government concerned requests, the Council would probably respond positively.

D. *The situation involves a breakdown of governmental authority.*

If there is a total breakdown of government authority, as in Somalia, the Council can clearly act.

E. *The situation involves an international crime, e.g. apartheid.*

The Security Council vigorously condemned the Apartheid system on many occasions.

F. *The situation involves terrorism.*

The Council is on record as having condemned terrorism in general and in particular situations.

G. *The situation involves gross violations of international humanitarian and human rights law.*

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23. S/RES.1078 (1996), 9 November 1996.
24. S/PV.3060, pp.31-32.

On 15 September 1999, in resolution 1264, the Council expressed "its concern at reports indicating that systematic, widespread and flagrant violations of international humanitarian and human rights law have been committed in East Timor", and stressed "that persons committing such violations bear individual responsibility."

H. *The situation involves the protection of humanitarian convoys.*

In relation to the conflict in Bosnia, the Council acted repeatedly for the protection of humanitarian convoys.

I. *The situation involves the protection of civilians in armed conflict.*

On 19 February 1992, the Security Council expressed its deep concern about the renewed and rising cycle of violence in southern Lebanon and elsewhere in the Middle East. The Council statement read in part as follows:

> "The members of the Council are deeply concerned about the renewed and rising cycle of violence in southern Lebanon and elsewhere in the region. The Council deplores in particular the recent killings and the continued violence which threatens to claim additional lives and to destabilize the region further. The members of the Council call upon all those involved to exercise maximum restraint in order to bring such violence to an end."

In a 1998 Presidential Statement on Angola, the Security Council expressed "its deep concern at the worsening humanitarian situation in Angola" and emphasized the responsibility of the Government of Angola and the leadership of UNITA to facilitate humanitarian assistance efforts, guarantee the safety and freedom of movement of humanitarian workers and permit an independent assessment of the needs of the civilian population, to be carried out swiftly in any part of the country as necessary. The Council also expressed concern at the plight of those most vulnerable groups, such as children, women, the elderly and internally displaced persons who are particularly at risk and need special protection. The Council urged the Government of Angola and the leadership of UNITA to ensure full respect for international humanitarian, refugee and human rights law.[25]

In another 1999 Presidential Statement on Angola, the Council expressed its profound concern at the humanitarian impact of the

25. S/PRST/1998/37.

conflict on the Angolan people. It urges the international community to support the Government of Angola in fulfilling its primary responsibility for the humanitarian needs of the Angolan people and, in this regard, urged Member States to fund generously the 1999 Consolidated Humanitarian Appeal for Angola. It called upon all concerned to concur and cooperate with United Nations humanitarian assistance activities on the basis of the principles of neutrality and non-discrimination, to guarantee the security and freedom of movement of humanitarian personnel, and to ensure necessary, adequate and safe access and logistics by land and air. It urged all concerned to cooperate with the human rights activities of the United Nations, which help to lay a basis for lasting peace and national reconciliation.[26]

On 17 September 1999, dealing with the protection of civilians in armed conflict, the Council expressed "its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council's disposal in accordance with the Charter of the United Nations, and notes, in that regard, the relevant recommendations contained in the report of the Secretary-General."

III. Presidential Statement: "Maintaining Peace and Security: Humanitarian Aspects of the Issues Before the Security Council"

In a recent statement, the Security Council indicated that it had considered the humanitarian aspects of issues before it and recalled its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security. It also affirmed its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States.

The Security Council recognized the importance of the humanitarian dimension to the maintenance of international peace and secu-

26. S/PRST/1999/3.

rity and to its consideration of humanitarian issues relating to the protection of all civilians and other non-combatants in situations of armed conflict. It recognized that humanitarian crises can be both causes and consequences of conflicts and that they can affect the Council's efforts to prevent and end conflicts, and deal with other threats to international peace and security.

The Council affirmed that timely consideration of the following humanitarian issues contributes to the prevention of escalation of conflicts and to the maintenance of international peace and security: access for United Nations and associated personnel, other humanitarian personnel and humanitarian supplies to the war-affected civilians; humanitarian components in peace agreements and peace-keeping operations; coordination between the Council and the relevant United Nations organs and agencies and regional bodies; and resource constraints.

The Security Council reaffirmed its concern for the well-being and rights of war-affected civilians and reiterated its call to all parties to a conflict to ensure safe and unimpeded access in accordance with international law by humanitarian personnel to such civilians. The Council recognized that cooperation of all parties concerned was vital for effectiveness and safety in providing humanitarian assistance. In this regard, the Council reiterated its call for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel and humanitarian personnel. The Council stressed the importance of providing assistance to all those in need, with particular emphasis on women and children and other vulnerable groups affected by armed conflict, in accordance with the principle of impartiality.

The Security Council noted that full and timely support for humanitarian components could be critical in ensuring and enhancing the sustainability of any peace agreement and post-conflict peacebuilding. It emphasized the importance of inclusion of humanitarian elements in peace negotiations and agreements including the issue of prisoners of war, detainees and missing persons and others protected by international humanitarian law. The Council invited the Secretary-General to encourage the early consideration of such humanitarian elements in peace negotiations sponsored or supported by the United

Nations, as appropriate. In cases of peace negotiations sponsored or supported directly by Member States, the Council called on Member States to draw, as appropriate, upon the capacity of United Nations funds, programmes and specialized agencies as well as other relevant international humanitarian organizations and regional bodies.

The Security Council also noted that in some instances the integration of humanitarian components into peace-keeping operations would contribute effectively to carrying out their mandate. In this regard, the Council noted the importance of adequate training for peace-keeping personnel in international humanitarian law and human rights and with regard to the special situations of women and children as well as vulnerable population groups. The Council noted with appreciation the inclusion of personnel to handle child protection issues in some recent peace-keeping operations and encouraged the inclusion of such personnel in future operations, particularly in the context of demobilization and reintegration of child soldiers and where there were large numbers of displaced and other war-affected children.

The Security Council underlined the importance of effective coordination among relevant United Nations organs and agencies, regional bodies, other inter-governmental and international organizations, and other humanitarian actors in the field, in situations of ongoing conflict and peace-building through, *inter alia*, the development of strategic frameworks and expressed its willingness to consider ways to improve such coordination. In this regard, the Council noted the need for further improvement of communication, information flows and coordination between the peace-keeping, humanitarian and development aspects of United Nations action.

The Security Council recognized the role played by international humanitarian organizations and non-governmental organizations in providing humanitarian assistance and alleviating the impact of humanitarian crises and further recognized the specific mandate of the International Committee of the Red Cross in this regard. It emphasized the importance for these organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities.

The Security Council noted with concern that inadequate financial support can undermine efforts to address human suffering in certain contexts. The Council recognized the need for appropriate financial support for humanitarian activities and called for adequate bilateral funding of humanitarian activities, bilateral or otherwise, in particular in support of multilateral efforts. The Council noted the importance of early engagement and dispersal of funds from the international financial institutions. The Council also noted with satisfaction that its previous statements calling for full support to the United Nation's Consolidated Appeals have had a positive impact, and expressed its willingness to continue to encourage a generous response to such appeals.

The Security Council encouraged the Secretary-General to continue to include the humanitarian situation in his regular briefing to the Council on countries under review, including on the funding status of the United Nations Consolidated Appeals, where appropriate. It further requested the Secretary-General to ensure that his regular country reports continue to include a substantive, analytical section on humanitarian issues and their impact on international efforts to implement United Nations mandated activities.

Conclusion

Three conclusions stand out from this review of the practice of the Council with regard to humanitarian issues: first, a character in the Council towards greater concern for human suffering. Second, the cajoling nature of the Council, which stems from its still weak position in international relations. Third, the Council's striving towards a higher moral ground. In the succeeding chapters, we shall trace this striving in the areas of peace-making, peace-keeping, and peace-building.

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CHAPTER III

Human Rights in Conflict Prevention

INTRODUCTION

The Security Council has, on more than occasion, underlined the overriding humanitarian and moral imperative as well as the economic advantages of preventing the outbreak and escalation of conflicts. It has highlighted, in this regard, the need to create a culture of prevention and reaffirmed its belief that early warning, preventive diplomacy, preventive deployment, preventive disarmament, and post-conflict peace-building are interdependent and complementary components of a comprehensive conflict prevention strategy. It has emphasised its continuing commitment to addressing the prevention of armed conflicts in all regions of the world.[1]

Universal respect for human rights and fundamental freedoms is crucial to the success of efforts for the prevention of conflict.[2] It is an essential requirement for what the Security Council has called a culture of peace. In the words of the Council, "peace is not only the absence of conflict, but requires a positive, dynamic, participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation. Bearing in mind that causes of conflict are often nurtured in the minds of human beings, the Council calls on Member States, relevant bodies of the United Nations system and other relevant organizations to promote a culture of peace. It recognizes the importance of appropriate implementation of the Declaration and Programme of Action on a Culture of Peace, adopted by the General Assembly on 13 September 1999..., for preventing violence and conflicts as well as strengthening efforts aimed at

1. See the Statement by the President of the Council, S/PRST/2000/25, 20 July, 2000.
2. See, J. Diller, Handbook on Human Rights in Situations of Conflict (1997). Published by Minnesota Advocates for Human Rights.

the creation of conditions of peace and its consolidation through post-conflict peace-building."[3]

The role of human rights in conflict prevention is increasingly recognized in the Security Council and is given practical expression in ways such as the following:

- recognition of the interrelatedness of human security and human rights.
- recognition of the importance of preventing gross violations of human rights within the framework of efforts for conflict prevention.
- recognition that information and insights from the human rights movement can be important in the efforts of the Security Council to prevent conflicts.
- efforts to prevent terrorism – which were discussed in an earlier chapter.

In this chapter we shall review the growing recognition, in and around the Security Council, of the centrality of human rights protection in the quest for conflict prevention, starting with the foundation document, Agenda for Peace.

I. Agenda for Peace

In the history of efforts to develop the role of the United Nations and of the Security Council for conflict prevention, Agenda for Peace stands out as a watershed publication. It culminated a process spearheaded by one of the heroes of the world organization, James Sutterlin. Jim, to his friends, had been in the policy planning staff of the United States Department of State and had then joined the Political Department of the United Nations. When Secretary-General Perez de Cuellar took office Jim played an important role in developing policy initiatives for consideration by the Secretary-General. He was a leading drafter for the Secretary-General and would later help him write his memoirs.

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3. S/PRS T/2000/25.

Jim Sutterlin believed deeply that the United Nations must develop an across-the-board policy of prevention – in the areas of peace and security, development, human rights and humanitarian affairs. Leading up to the fortieth anniversary of the United Nations in 1985, Jim injected into a series of speeches of Secretary-General Perez de Cuellar an emphasis on the preventive approach. We have traced this elsewhere in a work on early warning and preventive diplomacy.[4]

Jim Sutterlin's work reached an important point when he persuaded Secretary-General Perez de Cuellar to establish, in 1987, an office within the Office of the Secretary-General dedicated to early-warning and prevention, as well as to policy planning and the articulation of policies and preventive strategies through speeches of the Secretary-General. He personally sought out this author, who was then Special Assistant to the Director of the human rights programme, to head the speech-writing service of the Secretary-General. Jim was influenced by two things in making this choice – speechwriting acumen and human rights experience. He wanted the human rights background at the heart of the drive for prevention.

Jim articulated this vision of an integrated approach to prevention in a report he drafted for Secretary-General Perez de Cuellar in 1987, Perspectives for the 1990s. It remains one of the seminal pieces of work in the drive for preventive policies and strategies in the United Nations. It argued powerfully that an ounce of prevention was worth a pound of cure. The United Nations must, therefore, give high priority to monitoring potential causes of conflict and communicating warning signs to those in a position to alleviate the situation. First responsibility should lie with the Security Council and with the Secretary-General, who would need to have the means to mount a global watch. Given the strong economic and social factors in regional violence, economic and social developments would have to be followed and assessed in terms of their relevance to international security. There was much that could be foreseen in the economic and social fields for which advance planning was increasingly essential. A crowded world of strained resources could not be managed on an *ad hoc* basis.

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4. B.G. Ramcharan, The International Law and Practice of Early-Warning and Preventive Diplomacy, Martinus Nijhoff Publishers, 1992.

Furthermore, the United Nations must be able to meet emergencies that call for collective effort, whether to contain violent political conflict or to meet natural or man-made disasters. Both in looking ahead and in meeting new crises, information and communication were indispensable tools. Unfortunately, a communication gap had kept environmental, population and development assistance groups apart far too long. Conflicts could best be peacefully resolved before shots were fired. For such preventive action, information and communication were of the highest importance.[5]

Jim Sutterlin again pushed for preventive policies and strategies of the Secretary-General in the 1987 Annual Report, which he drafted. In that report, the Secretary-General urged the Security Council to use peace-keeping forces to head off violence and facilitate the resolution of disputes before armed conflict occurs.[6]

The office for early-warning and prevention that Jim Sutterlin helped establish in 1987 would last until 1992, when its functions would be incorporated by Secretary-General Boutros-Boutros Ghali into the Department of Political Affairs in 1992. This author had served in the office from its inception until its disbandment and he and his colleagues benefitted greatly from the inspiration, advice and guidance of Jim Sutterlin during that period. For Jim Sutterlin – as for the author – the information and insights of the human rights community were crucial for policies and strategies of early-warning and prevention.

As fate would arrange it, this author, as well as Jim Sutterlin, would later become involved in the drafting of Agenda for Peace. The Security Council Summit meeting held in January 1992 had requested Secretary-General Boutros-Boutros Ghali to prepare a report on the prevention of conflicts which would subsequently be submitted as Agenda for Peace. To prepare this report the Secretary-General had established an inter-departmental task force, led by Under-Secretary-General Vladimir Petrovsky and consisting of the key senior officials of the time. The Secretary of the Working Group, who put much work into organizing it and providing it with background materials, was another colleague and friend from ORCI, Tapio Kanninen.

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5. See A/42/512, pp 3,8.
6. Annual Report of the Secretary-General, 1987, A/42/1

After some weeks of deliberations within the Working Group they needed to move from discussion to drafting. They had a multitude of information, submissions and papers. It was at that stage that this author, who was then the head of the speechwriting service of the Secretary-General, was brought in to produce the first draft – which then became the basis for the further development of the document. In the author's drafting of this first effort, Tapio Kanninen was his discussion partner.

The author's first draft was commented upon by the members of the Working Group, their comments taken into account, and the first draft submitted to the Secretary-General. The Secretary-General, a former professor of international law, made substantial comments on the first draft and then brought in Jim Sutterlin and Virendra Dayal to add further insights into the drafting process. Eventually, the Secretary-General would entrust the document in the final drafting stage to one of his newly-appointed speechwriters, Charles Hill, who, with the Secretary-General gave the document its final shape.

Agenda for Peace, as finally published, bore the structure set out by this writer, used its definitions and thrusts, was more ambitious in places, and used concepts that the author has always thought were ill-conceived for the world organization at this stage in its history. One of these, peace enforcement, would subsequently get it into serious troubles.

Be that as it may, Agenda for Peace, as finally published, was hailed as one of the great documents in the history of the United Nations. From the point of view of human rights, it recognized the connection between human rights and conflict prevention as follows:

> "5. The sources of conflict and war are pervasive and deep. To reach them will require our utmost effort to enhance respect for human rights and fundamental freedoms, to promote sustainable economic and social development for wider prosperity, to alleviate distress and to curtail the existence and use of massively destructive weapons."[7]

The Executive Committee on Peace and Security, one of the four Executive Committees established by Secretary-General Kofi Annan as

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7. A/47/277 – S/24111, para.5.

part of his reform programme, has endorsed the following approach worked out by a Task Force, chaired by the author, on the integration of human rights in efforts for conflict prevention:

> "It is important for the conflict prevention activities of the United Nations that human rights concerns figure in the analyses of situations and that coordinated preventive action be undertaken on the basis of the shared analysis, as human rights violations are often part of the underlying causes of a crisis and often reflect structural deficiencies, and gross and systemic human rights abuses are usually indicators of emerging situations. With this in mind, systematic exchange of relevant and timely information becomes essential.
>
> "The Department of Political Affairs, in presenting analyses to the Secretary-General in respect of issues or situations requiring preventive action, should invite the contribution of the OHCHR in preparing such analyses and should incorporate recommendations of the High Commissioner in submissions to the Secretary-General or the Security Council. The OHCHR should, whenever it considers it advisable, bring to the attention of DPA issues or situations for consideration about possible preventive action by the Secretary-General or the Security Council.
>
> "The OHCHR has an important role to play in conflict prevention by offering human rights technical assistance and cooperation, or sending human rights monitors, observers or advisors."

II. The Role of the Secretary-General

In his first address as Secretary-General to the Commission on Human Rights, Secretary-General Kofi Annan deemed United Nations action in the field of human rights an inherent part of preventive diplomacy. The Secretary-General stated:

> "As we review what has been achieved since 1945, we can see how right the drafters of the Charter were to link human rights and the maintenance of peace and security. Today, with 50 years of experience behind us, we can reaffirm the crucial importance of that link. Our experience has also taught us that respect for human rights is

crucial to peace-building, and to the broader task of ensuring development.

"Gross violations of human rights invariably go hand-in-hand with situations which may threaten peace and security and are likely to degenerate into confrontation. The United Nations work in the field of human rights in these situations should be seen as an inherent part of its work in the field of preventive diplomacy." [8]

In a recent report to the Security Council and the General Assembly on the prevention of armed conflict, Secretary-General Annan advanced the following ten principles to guide future approach to conflict prevention.

(1)Conflict prevention is one of the primary obligations of Member States set forth in the Charter, and our efforts in conflict prevention must be in conformity with the Purposes and Principles of the Charter.

(2)Conflict prevention must begin with national governments and local actors. The United Nations and the international community should support their efforts and assist them in building national capacities.

(3)The most useful instruments of prevention are those described in Chapter VI of the Charter, which deals with the peaceful settlement of disputes. Measures under Chapter VII are normally taken only after a conflict has broken out — though they may still have a preventive effect by deterring other potential conflicts. There may also be cases where certain measures under Chapter VII, such as economic sanctions, can be used preventively.

(4)To be most effective, preventive action should be initiated as early as possible.

(5)The primary focus of prevention should be the multidimensional root causes of conflict. The proximate cause of conflict may be an outbreak of public disorder or a protest over a particular incident, but the root causes are more likely to be found in socio-economic inequities, systematic ethnic discrimination, denial of human rights, disputes over political participa-

8. United Nations Press Release, SG/SM/6201, HR/CN/792, of 10 April 1997.

tion, or long-standing grievances over the allocation of land, water and other resources.

(6) An effective preventive strategy requires a comprehensive approach that encompasses both short-term and long-term political, developmental, humanitarian and human rights programmes.

(7) Conflict prevention and sustainable development reinforce each other. An investment in prevention should be seen as a simultaneous investment in sustainable development, since it is obvious that the latter is more likely to happen in a peaceful environment.

(8) United Nations development programmes and activities can also be viewed from a conflict prevention perspective. This, in turn, requires greater coherence and coordination in the United Nations system.

(9) The United Nations is not the only actor in prevention, and may not always be the actor best suited to take the lead. Member States, international and regional organizations, the private sector, non-governmental organizations, and other civil society actors also have very important roles to play.

(10) Effective preventive action by the United Nations requires sustained political will on the part of Member States. This includes, first and foremost, a readiness to provide the United Nations with the necessary political support and resources for undertaking effective preventive action and developing its institutional capacity in this field.

III. Prevention of gross violations of human rights

The two High Commissioners for Human Rights to date, José Ayala Lasso and Mary Robinson, have both emphasized the importance of early warning and preventive action to deter gross violations of human rights. In his first address to the Commission on Human Rights, in 1994, High Commissioner Ayala Lasso told the Commission: "I shall look into the viability of an 'early-warning' mechanism that would enable us to take action in a timely manner to protect

human rights."[9] Later that year, in his first report to the General Assembly, he stated:

> "It will be important in the future to have as early notice as possible of situations in which various elements of the United Nations human rights programme could play a role in preventing the outbreak of serious violations of human rights. The High Commissioner has written to the chairpersons of the treaty-based human rights bodies, to the special rapporteurs, representatives, experts and working groups established by the Commission on Human Rights, as well as to certain United Nations agencies and programmes and non-governmental organizations, to invite them to call to the attention of the High Commissioner any situations that might need his attention within the framework of the promotion and protection of human rights. At their fifth meeting, in September 1994, the chairpersons of the human rights treaty bodies urged the latter to take all appropriate measures in response to situations of massive violations of human rights, including the possibilities of bringing those violations to the attention of the High Commissioner for Human Rights and of the Secretary-General." [10]

On 30 May 1994, High Commissioner Ayala Lasso had announced the establishment of a 24-hour "hot-line" for reporting human rights violations. This took the form of a 24-hour telefax line which would "allow the United Nations Centre for Human Rights in Geneva to monitor, and react rapidly to emergency information related to human rights situations... and will also be available to victims of human rights violations, their relatives or non-governmental organizations."[11] In addition the High Commissioner announced plans to create a "Human Rights Data Base" at his Office in Geneva supported by research and documentation facilities, to gather information that can be used to enhance the role of special rapporteurs responsible for investigating human rights situations around the world."

Two and a half years later the High Commissioner reported to the General Assembly, in 1996, that the development of means which

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9. Address to the Commission on Human Rights, 1994.
10. A/49/36,para. 66; see also, the report of the High Commissioner to the Commission on Human Rights in 1995, E/CN.4/1995/98,para. 34.
11. United Nations Press Release HR/94/20, 30 May 1994. The telefax number of the hotline is +41-22-917-0092.

would prevent human rights violations took a prominent place among his priorities. How was this being done? The two objectives, namely stopping gross violations of human rights, including providing means for relief and redress, on the one hand, and averting the threat of such violations and thus sparing people from suffering, on the other, "are being pursued by similar methods": "through training, assistance in national programmes and monitoring, much can be achieved to prevent difficult human rights situations from degenerating into catastrophic situations. Strengthening preventive human rights activities is wise not only in human terms but also in economic terms.... The High Commissioner also emphasises the need for greater accountability for human rights violations as an indispensable dimension of preventive strategy..."[12]

As he assumed office on 5 April, 1994, the first High Commissioner had been immediately confronted by the need to take urgent action in the face of the tragedy then unfolding in Rwanda. On 14 April, 1994, he addressed a memorandum to the Secretary-General expressing his deep concern at reports of grave human rights violations in Rwanda and suggesting that urgent measures be considered to prevent further deterioration of the human rights situation there. On 26 April, 1994, the High Commissioner requested information on the situation and suggestions for action from a wide range of United Nations agencies, programmes, special rapporteurs of the Commission on Human Rights, chairmen of human rights treaty-based bodies, the OAU, the African Commission on Human and Peoples' Rights, the International Committee of the Red Cross and non-governmental organizations. On the basis of the information and reports he received the High Commissioner called on members of the Commission on Human Rights to consider the advisability of convening the Commission in emergency session to deal with the human rights situation in Rwanda.

In the light of continuing reports of "extremely grave and massive human rights violations", the High Commissioner decided, after consultations with the Secretary-General, to undertake a mission to Rwanda in order to appeal to both parties immediately to stop the

12. Report to General Assembly, 1996, A/51/36, paras. 39 - 41.

human rights violations and to work towards a negotiated settlement of the conflict.[13]

In his conversations with the military commanders of the two sides to the conflict in Rwanda, the High Commissioner said he "clearly expressed the condemnation by the entire international community of the massive and extremely grave human rights violations committed by all those participating in the conflict." He "reminded them of their obligations, as enshrined in the international human rights instruments to which Rwanda is a party and in international humanitarian law, to take effective measures against the killing of innocent civilians, and of their responsibility for acts committed by those under their command." The High Commissioner continued: "I also appealed to them to use their authority to immediately stop the violence, work towards a cease-fire and return to the negotiating table, as called for by the Secretary-General. Furthermore, I urged both sides to grant all those in need full access to humanitarian assistance and allow the civilian population free movement to safe areas of their choice."[14]

High Commissioner Ayala Lasso also responded urgently to the plight of the well-known Nigerian author, Ken Saro Wiwa. On 6 November, 1995, the High Commissioner made an urgent appeal to the Permanent Mission of the United Nations in Geneva and, through an interview on the BBC on 9 November, to the Head of State of Nigeria, expressing his deep concern over the death sentences passed on Ken Saro Wiwa and eight of his fellow-accused. The High Commissioner asked for clemency on behalf of the nine and also offered the Nigerian Government any assistance it might require in order to ensure full compliance with international human rights standards, such as the Intentional Covenant on Civil and Political Rights.[15]

The second High Commissioner Mary Robinson, in her 2000 annual report to the Commission on Human Rights, took nine leading issues featuring on the agenda of the Commission on Human Rights

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13. See the report of the High Commissioner to the Commission on Human Rights, 18 May, 1994, paras, 12 - 15.
14. Report of the High Commissioner to the Commission on Human Rights, 18 May, para. 19.
15. IHCHR News, No.2, p.2.

and sought to show that there was considerable room for preventive strategies. She stated her firm conviction that the evolution of a human rights situation was often a barometer of conflict, and her belief that it would assist the Security Council in its efforts to prevent conflicts to use this barometer. She noted the development of conflict prevention and related mechanisms in regional and sub-regional organizations such as the Organization of African Unity, the Economic Community of West African States, the Southern African Development Community, the Association of South-East Asian States, the Organization for Security and Cooperation in Europe, the Organization of American States and others.

High Commissioner Robinson recapitulated preventive measures in use as follows: urgent appeals by special rapporteurs and thematic mechanisms; requests by treaty bodies for emergency reports; the urgent discussion of situations in bodies such as the Committee on the Elimination of Racial Discrimination; the indication of interim measures of protection under petitions procedures for which treaty bodies are responsible; the urgent dispatch of personal envoys of the Secretary-General, the High Commissioner for Human Rights, or of other organizations; the urgent dispatch of human rights and humanitarian observers or fact-finders; the establishment of international courts; and proposals for the establishment of a rapid reaction force.

She declared her intention, as part of the process of strengthening OHCHR capacity for preventing gross violations of human rights, to devote particular attention to strengthening these areas of OHCHR activities and to seek the assistance of partners as a matter of priority for: the maintenance of a list of eminent persons who could be called upon to offer their good offices to help defuse situations where gross violations of human rights appeared imminent; the development of a capacity for the rapid dispatch of human rights and humanitarian observers or fact-finders in situations of need; the dispatch of personal envoys of the High Commissioner to incipient crisis situations; the submission of urgent reports to the Bureau of the Commission on Human Rights; and the submission of urgent reports to the Secretary-General with the request that he consider making them available to members of the Security Council.

(A) THE PREVENTION OF GENOCIDE

On the prevention of genocide, the High Commissioner noted that the establishment of the International Criminal Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda had sent an important message concerning the prevention of gross violations of human rights and of genocide: whoever committed such violations must be prepared to face the consequences before international criminal tribunals. The adoption of the Rome Statute of the International Criminal Court constituted another major milestone on the path leading to the establishment of a standing body to prosecute and punish genocide, war crimes and crimes against humanity.

She advocated the establishment of a body of human rights and humanitarian observers who could be deployed on an urgent basis in situations where population groups might be at risk. This could be a valuable addition to the practical options at the disposal of the international community in preventing genocide. She further advocated the establishment of a Rapid Reaction Force that could be deployed in situations of urgent need with a view to averting conflict or helping to protect groups in danger as a valuable addition to efforts for the prevention of genocide. Such a rapid reaction capacity would be a tangible signal of the international community's resolve to prevent genocide.

(B) THE PREVENTION OF RACISM AND RACIAL DISCRIMINATION

As for the prevention of racism and racial discrimination, the High Commissioner considered that a strategy for the prevention of racism and racial discrimination required, among others, the following courses of action: (a) the articulation of a vision that embraces all parts of the population; all parts of the population should feel that they have a stake in the future of the country; (b) the pursuit of human rights strategies of governance: acceptance and implementation of internationally recognized norms of human rights, including on equality and non-discrimination; (c) the continuous monitoring of the society to detect and address problems; (d) the presence of mediators who could intercede rapidly if needed; (e) the availability of recourse procedures to victims of racism and racial discrimination; (f)

programmes of education in human rights and tolerance, especially for the young; (g) the pursuit of equitable development; (h) continuous sensitization and training of law enforcement officials; (i) conscious efforts to sensitize mass media and Internet service providers to the dangers of racism and to combat the promotion of racist ideas via the Internet; (j) national, regional and international cooperation to prevent racism and racial discrimination.

(c) Development and prevention

With regard to the right to development and the prevention of human rights violations, the High Commissioner argued that since sustainable development could not be attained without respect for human rights, the promotion and protection of human rights must be a central element of development cooperation. In turn, a culture of human rights and of favourable conditions for the enjoyment by people of their human rights through development cooperation was a tool for the prevention of future human rights violations. She submitted that all actors involved, including donors, recipient Governments and NGOs, should adopt a human rights approach to development cooperation. A number of development agencies had already integrated human rights as a core element of development cooperation and a framework for their activities.

(d) Prevention of gross violations of human rights

Concerning the prevention of gross violations of human rights, the High Commissioner stressed that an emergency response capacity in her Office was required to cope with unforeseen emergency country situations with a bearing on country-specific or thematic special procedures mandates. Accordingly, she was examining options for creating an emergency response task force, which would collate and analyse early-warning data and bring serious incidents and violations to the immediate attention of the appropriate United Nations human rights mechanisms. Her Office was equally considering the establishment of regional and sub-regional presences, a principal function of which would be to monitor early-warning signals and present options to the Office for emergency response activities.

(E) FUNDAMENTAL STANDARDS OF HUMANITY

On fundamental standards of humanity, the High Commissioner advanced three proposals to strengthen the protection of human beings at all times, and thereby prevent gross and systematic violations of human rights. The first pertained to the full implementation of all human rights, in particular non-derogable rights. Although human rights were applicable at all times, including during situations of internal violence, some human rights treaties allowed States, in exceptional circumstances, to derogate from their obligations with regard to certain human rights commitments. It was precisely during periods of internal strife, serious civil unrest or insurgency that the probability that human rights guarantees will be suspended was highest. There was, however, a series of rights contained in the International Covenant on Civil and Political Rights which were non-derogable, including the right to life; the right not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; the right not be held in slavery or servitude; the right not to be imprisoned for failure to perform a contractual obligation; the right not to be subject to retroactive penal measures; the right to recognition as a person before the law; and the right to freedom of thought, conscience and religion. The implementation of non-derogable rights at all times was crucial for the protection of human rights and the prevention of violations thereof. In this respect, the treaty bodies could and should play an important role, through appropriate recommendations in their concluding observations on States parties' reports, or requests for emergency or *ad hoc* reports.

The second proposal advanced by the High Commissioner concerned the rapid ratification by States of the Rome Statute of the International Criminal Court in order to ensure that perpetrators who committed any of the three "core crimes" – crimes against humanity, genocide or war crimes – were brought to justice. That would extend the rule of law, encourage national court systems to prosecute such crimes and, hopefully, deter the perpetration of the most serious violations of human rights in peacetime, situations of internal violence and during war.

Thirdly, the High Commissioner argued, gross and systematic violations of human rights in situations of internal violence might be pre-

vented through the dissemination of information pertaining to existing human rights standards and humanitarian rules and principles as well as education and training programmes in the area of international law. These might be targeted at the police, the armed and security forces, law enforcement officials, as well as humanitarian and peacekeeping personnel and the public. Promoting human rights and humanitarian law might also be undertaken through the provision of advisory services and assistance to Governments in implementing international standards at the national level.

(F) PREVENTION OF SLAVERY

On the prevention of slavery, the High Commissioner submitted that one requirement of international law was that Governments legislate to abolish any of the forms of exploitation characterized as slavery, servile status, or forced labour. Virtually all Governments had adopted such legislation, as far as slavery and institutional practices such as debt bondage and serfdom were concerned. However, even though many Governments had been willing to take the step of declaring the abolition of slavery or institutions such as debt bondage, they had not followed up formal abolition in law with any practical action to secure the freedom of the victims, their rehabilitation, or the protection of potential victims.

(G) PREVENTION OF TRAFFICKING

On the growing problem of trafficking in human beings, the High Commissioner noted that each year, hundreds of thousands of individuals – the majority women and children – were tricked, sold, coerced or otherwise procured into situations of exploitation from which they could not escape. Those women and children were the commodities of a multi-billion-dollar trans-national industry. Trafficking and related practices such as debt bondage and forced prostitution and servitude violated the most basic human rights to which all persons were entitled, including the right to life; the right to dignity and security; the right to just and favourable conditions of work; the right to equality and non-discrimination; the right to health; the right to be recognized as a person before the law. Those were rights all indi-

viduals possessed, irrespective of sex, nationality, social status, occupation or any other difference.

The development of effective and realistic preventive strategies against trafficking required an understanding of its root causes. These included economic factors such as poverty, food scarcity, unemployment, indebtedness and the widening gap between rich and poor countries; social and cultural factors such as violence against women and girls, gender discrimination in the family and the community and by the State; political and legal factors such as lack of appropriate legislation, lack of political will and public sector corruption; and international factors including the growing feminization of labour migration on the one hand and increasingly restrictive immigration policies of recipient countries on the other, the rapidly expanding global sex industry and the increased power and involvement of trans-national organized criminal networks. Uniting all of these different "causes" were the discrimination and inequality which served to prevent women and girls from exercising power over their lives.

Trafficking was not a "typical" human rights problem in the sense that the perpetrators were overwhelmingly private individuals. However, international law was clear on the point that the State could also be held responsible for failures to act which led to violations of recognized rights, even if these violations were committed by private persons or groups. A State that refused to acknowledge the existence of a trafficking problem; that enacted legislation or pursued policies inimical to its resolution; or that failed to extend basic protections to victims would be legally responsible for the resulting human rights violations.

At the national level, the High Commissioner argued, preventive strategies must include strong legislation and effective law enforcement as well as protections for the trafficked persons. In addition to assisting in the identification and prosecution of traffickers, sound legal provisions would encourage national and inter-State reporting and promote uniformity in data collection and analysis. It was particularly important that the crime of trafficking be precisely defined in national law and that detailed guidance be provided as to its various punishable elements. Provision should be made for effective, proportional and dissuasive criminal penalties (including custodial penalties

giving rise to extradition in the case of individuals). Certain protections should be enshrined in legislation, specifically, legal protection of the right of trafficked persons to reside temporarily in the destination country pending completion of judicial proceedings and provision for trafficked persons to be given information and legal assistance as well as appropriate social support. Legislation should prevent trafficked persons from being prosecuted for the illegality of their entry or residence or for the activities they performed as a consequence of their status as trafficked persons.

Effective law enforcement was critical to prevention. Despite the huge numbers involved, it was apparent that only a small fraction of traffickers was reported or apprehended, let alone prosecuted. Instances of official collusion with traffickers were also not unknown. Moreover, while law enforcement would obviously benefit from the cooperation of victims and community members, many individuals were reluctant or unable to report traffickers and serve as witnesses, often fearing or mistrusting police and other officials and unable to count on any protection from the authorities. Effective anti-trafficking law enforcement required skill, vigilance and commitment. It was also necessary to create incentives for trafficked persons and others to come forward to report traffickers.

Trafficking, being a regional and a global phenomenon which could not be dealt with solely at the national level, a strengthened national response could often just mean that the operations of traffickers were moved elsewhere. There was increasing recognition of the important role which cross-border cooperation could play in breaking the cycle of trafficking. Such cooperation was particularly important between countries of origin and countries of destination. Governments of countries of origin and countries of destination should be encouraged to establish bilateral agreements aimed at preventing trafficking and protecting the rights of trafficked persons. Such agreements could also provide for minimum work standards, model contracts and modes of repatriation. Judicial cooperation between States in investigations and judicial processes relating to trafficking and similar offences should also be encouraged as well as assistance in the exchange of related information and the adoption of common

prosecution methodologies. Consideration should be given to developing regional and sub-regional treaties on trafficking.

At the international level, a number of important preventive initiatives were in existence and others were under development. The human rights treaty bodies – particularly the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women – and the special procedures – particularly the Special Rapporteur on violence against women – were playing an increasing role in highlighting the problem of trafficking and in proposing ways of combatting it. Within the United Nations itself, several agencies and programmes, including OHCHR, UNDP, UNICEF, ILO and the Centre for International Crime Prevention had developed anti-trafficking programmes. An important protocol, attached to the draft convention against trans-national organized crime was being negotiated under the auspices of the United Nations Commission on Crime Prevention and Criminal Justice. (This has subsequently been completed).

Good laws, strong law enforcement, and improved cooperation between States would clearly help to prevent trafficking. However, additional prevention strategies, developed on the basis of an understanding of the motivations behind trafficking, were also necessary. The underlying root causes of trafficking should be openly and honestly addressed. Failure to come to terms with these (admittedly more difficult) issues would complicate other preventive efforts from achieving any significant success. Governments of countries of origin had an obligation to ensure that potential migrants were properly informed about the risks of migration. They should also review national laws, policies and practices with a view to identifying and rectifying all forms of discrimination on the basis of sex. Particular attention should be paid to discrimination in relation to economic and social rights. Countries of destination should examine ways and means by which they could provide increased opportunities for legal, gainful and non-exploitative labour migration and should examine the effect on women of repressive and/or discriminatory immigration and migrant labour laws.

At the bilateral, regional and international levels, development cooperation should focus on fighting poverty and discrimination through the adoption of a rights-based approach and ensuring the

integration of a gender perspective. Development cooperation with countries of origin should specifically address the issue of trafficking through, for example, promoting alternative income-generating options for vulnerable women and helping Governments to develop social support programmes for families at risk. Development cooperation should also support NGOs working in trafficking, particularly local and national programmes aimed at assistance to and reintegration of victims.

(H) EDUCATION AND PREVENTION

The High Commissioner also discussed the prevention of violations through human rights education. The importance of the role of human rights education – intended as "a life-long process by which people at all levels of development and in all strata of society learned respect for the dignity of others and the means and methods of ensuring that respect in all societies" in the context of the realization of basic human rights was of importance. Indeed, universal human rights could only be achieved through an informed and continued demand for human rights protection by the people.

(I) IMPUNITY

On combating impunity as a preventive approach, the High Commissioner considered that the agreement reached in Rome showed one area in which the international community was moving in the right direction. However, international criminal law enforcement would not be enough. The international community must act to prevent genocide and other serious human rights violations on a much broader front.

Against this background, we can turn to consider how the human rights dimension is contributing to the efforts of the Security Council for conflict prevention, starting with human rights briefings for the Council.

IV. Human Rights Briefings and Insights for the Security Council

There is a growing trend of human rights briefings for the Security Council. The second High Commissioner for human rights has had occasion to address the Council twice.

A. Addresses by the High Commissioner for Human Rights

The High Commissioner for Human Rights has so far addressed the Security Council on two occasions – on 16 September 1999 and on 23 April 2001. During the first address on 16 September 1999, the High Commissioner told the Council:

> "Conflicts almost always lead to massive human rights violations but also erupt because human rights are violated due to oppression, inequality, discrimination and poverty. These conditions are exacerbated when the State is too weak or unable to address them efficiently. Human rights violations are thus both a consequence of, and a contributing factor to, instability and further conflict. And, as a result of globalization and increasing interdependence between States, conflicts which are essentially internal often have spill-over effects beyond national borders. There is an intrinsic link between systematic and widespread violations of the rights of civilians and the erosion of international peace and security.
>
> "The best protection for civilians in armed conflict is prevention. By addressing the root causes of conflict and seeking to defuse tensions, the atrocities and violations of fundamental rights committed during armed conflict can be prevented. The major building blocks for peace-building and reconciliation are good governance, the rule of law, respect for human rights, a strong civil society, and institutions which can guarantee an environment conducive to stability and peace.
>
> "The Security Council has a vital role to play, both at the prevention stage and, should that fail, in the deployment of peacekeepers to minimise the impact of conflict on civilians. I welcome the fact that the Security Council is looking to adapt its methods of work to focus on the goal of better protecting individuals in the face of this formidable challenge." [16]

During her second address, on 23 April 2001, the High Commissioner recalled that:

> "In recent years, the Security Council has broken new ground in its efforts to implement the Charter's blueprint for the maintenance of international peace and security. It would be fair to say that the security concepts and the strategies and methods of the Council have taken on a distinctly more people-oriented focus grounded in the norms of international law as well as of human rights and humanitarian law."

The High Commissioner then proceeded to set out the following important framework linking the Security Council with the human rights activities of the United Nations:

(a) Human rights standards which may not be derogated from in any circumstances.

International human rights law insists on standards of protection that are applicable in all times, places and circumstances. There is a rich jurisprudence and practice in the human rights area that should be an essential point of departure for the Council in judging the acceptability or unacceptability of behaviour of combatants, States and non-State actors during conflicts, internal or international.

(b) Human rights fact-finding during situations of armed conflicts

Establishing the facts can play a crucial part in the protection of civilians in armed conflicts. In a number of recent instances, including in relation to Afghanistan, Kosovo, East Timor and Sierra Leone, human rights fact-finding missions have taken place. Reports of such missions should be available to the Council.

(c) The Commission on Human Rights' consideration of gross violations of human rights during armed conflicts

In recent years, the Commission on Human Rights has considered and adopted resolutions intended to help stop and prevent gross violations

16. Taken from the original address.

of human rights during conflict situations. The efforts of the Commission are complementary to those of the Security Council and usually entail recourse to one or more of the following methods: the gathering of information, the dispatch of fact-finding missions, public debates, the adoption of resolutions expressing concern and offering recommendations, extension of good offices, and offers of technical cooperation and assistance. OHCHR would be happy to brief members of the Council on what the Commission on Human Rights is doing in relation to such situations.

(d) Human rights mechanisms

The Security Council is increasingly looking to and drawing on the expertise of the Special Mechanisms of the Commission on Human Rights. The Commission had 14 country rapporteurs and 21 thematic rapporteurs. The efforts of the Special Representative of the Secretary-General on Internally-Displaced Persons were of direct relevance to this debate in the Council on the protection of civilians.

(e) OHCHR Field Offices

OHCHR has field offices in a number of situations of recent or ongoing conflicts, including in Burundi, Colombia and Cambodia. Field offices such as these are blazing a new path in the protection of civilians in armed conflict and in the defence of human rights and humanitarian law generally. Special attention had been given to the gender perspective and to protecting women against trafficking and had been attentive to the HIV/AIDS problem in such situations.

(f) Human rights in conflict prevention, peace-making, peace-keeping and peace-building

As part of the reforms instituted by the Secretary-General, human rights are becoming more and more integrated into efforts for conflict prevention, peace-making, peace-keeping and peace-building. This developing experience will be of interest to the Council, and it would be important that it be briefed periodically on significant developments. OHCHR would be more than happy to do this.[17]

17. Taken from the original address.

The High Commissioner also addressed the Counter-Terrorism Committee of the Security Council on 19 February 2002. In her address, the High Commissioner took up the issue of the reports submitted by Member States of the United Nations on their counter-terrorism measures and invited the Committee to pay particular attention to ensuring that such measures do not encroach upon human rights obligations. The High Commissioner invited the Committee to consider questions such as the following:

- Does the domestic law include a definition of terrorism? If so, does this definition incorporate non-violent activities?
- Does the judicial process for a person suspected of engaging in terrorist activities differ in any way for terrorist acts, as compared with other types of serious criminal acts? What is the maximum length of time that a suspect can be held in custody without charge?
- What measures are in place to safeguard against torture? How are allegations of torture dealt with?
- What are the checks and balances within the system to avoid possible incorrect targeting of individuals or groups and to rectify mistakes?
- Is there a system to ensure that asylum-seekers who are fleeing genuine persecution and violence, including, often, acts of terrorism, are not subjected to policies that amount to refoulement?

B. Briefings for the President of the Security Council

In recent years the High Commissioner for Human Rights or her representative in New York has provided regular monthly briefings to the President of the Security Council. On occasions, materials provided by the High Commissioner or her representative have been informally circulated to the Members of the Security Council.

C. Briefings by Special Rapporteurs and Representatives of the Commission on Human Rights

The Security Council has a procedure known as the Arria formula which allows Members of the Council to be briefed informally by UN

representatives or by other persons in a position to provide them with information. To date, the following Special Rapporteurs/Representatives of the Commission on Human Rights have briefed the Security Council under the Arria formula: the Special Rapporteur on Afghanistan; the Special Rapporteur on Burundi; the Special Rapporteur on the Democratic Republic of Congo; the Special Rapporteur on Iraq; and the Special Rapporteur on Violence Against Women.

D. Briefings by UNHCR

The United Nations High Commissioner for Refugees or his representative meets the President of the Security Council periodically and briefs the President on developments affecting refugees and displaced persons. The High Commissioner for Refugees has also addressed the Security Council in formal sessions.

E. Briefings by ICRC

The Representative of the International Committee of the Red Cross in New York also briefs the President of the Security Council regularly. There have also been Arria formula meetings with representatives of the International Committee of the Red Cross.

F. Briefings by human rights NGOs

Amnesty International has periodically met with the President of the Security Council to brief him/her. Amnesty has also met with Members of the Council under the Arria formula.

VI. The Provision of Human Rights Information to the Security Council.

The provision of human rights information to Members of the Security Council could be one of the most important ways of linking the Council to the human rights programme of the United Nations. The reports and activities of the Special Procedures of the United Nations Commission on Human Rights are of particular relevance in

this context. In 2001 the High Commissioner for Human Rights wrote to the President of the Security Council transmitting a consolidated set of executive summaries of all of the reports submitted by the Special Procedures to the Commission on Human Rights that year. This was an important precedent which the Office of High Commissioner plans to repeat in the future.

Conclusion

From the materials reviewed in this Chapter, it would be fair to conclude that the quest for the prevention of gross violations of human rights has engaged actors mostly outside than inside the Security Council. The Council has a strong record of advocacy with regard to the prevention of conflicts and it will be important in the future to link this more to efforts for the prevention of gross violations of human rights. Related to this is the integration of human rights into the work of United Nations peace-makers, a topic to which we turn in the next Chapter.

CHAPTER IV

Human Rights in Peace-Making

INTRODUCTION

The integration of human rights into peace-making is a much debated issue. There are those who argue that the peace negotiator must take full account of human rights considerations in crafting a peace agreement. Some even go so far as to say that a peace agreement that is inconsistent with international human rights norms is not worth the paper it is written on. Others argue that a peace negotiator must do his or her utmost to stop the killings that occur in conflict and must strive for the best agreement attainable in the circumstances.

A Task Force of the Executive Committee on Peace and Security that this author chaired, developed the following recommendations that were endorsed by the Executive Committee in 1998:

> "The promotion and respect for human rights are core components of peace-negotiations and peace-making exercises. To this end, every effort should be made to promote the integration of human rights in peace negotiations and agreements.
>
> "OHCHR, in cooperation with DPA, should develop materials and capacity that could be drawn upon by peace negotiators in drafting human rights provisions of peace agreements. OHCHR should likewise develop model agreements for human rights field presences that could be drawn upon by peace negotiators. OHCHR should offer to advise on, support and/or monitor, the implementation of the human rights component of the peace agreement."

In the circles of peace-makers there has been some reflection on the issue of how human rights can be integrated in the peace-making process. It is recognized that peace negotiations with the mediation or good offices of a representative of the Secretary-General take place under the auspices of the United Nations. The Secretary-General's representative must therefore be mindful that, as an agent of the Organi-

zation, he/she is acting within a framework of established purposes, principles and rules. In this regard, the Purposes and Principles of the United Nations Charter must be promoted and upheld. The United Nations has a record and credibility to defend and cannot condone agreements arrived at through negotiations that would violate Charter principles. Under the Charter, disputes should be settled in conformity with the principles of justice and international law.

There is a consensus that parties must be led to understand that negotiations that are conducted with an awareness of these concerns will contribute to forming the basis for a sustainable peace. The United Nations will thus be in a better position to marshal the support of the System as a whole, regional and other inter-governmental organizations, as well as non-governmental organizations for implementation of the agreements. In addition, agreements signed under the auspices of the Secretary-General must withstand the scrutiny of a variety of constituencies. The Secretary-General's representatives must therefore make every effort to make them politically defensible.

It is understood that for a peace agreement to be durable, the parties, with the assistance of the United Nations Representative, should look ahead to the implementation phase at an early stage of the negotiations. The negotiators should be alerted to the need to address issues of capacity and/or institution-building which, particularly when undertaken in the areas of governance, public security and the judicial system, could contribute to prevent the recurrence of conflict. In view of the importance of issues of governance, legal, electoral and socio-economic reform to the sustainability of peace, peace negotiators should alert the parties to the resources available in the United Nations system and elsewhere and be prepared to engage the various UN agencies and programmes in the provision of support to his/her efforts.

There is awareness that negotiations often take place in a context of human rights violations and violations of the laws of armed conflict. Early commitments to respect human rights and humanitarian principles should therefore be encouraged. Measures that might be considered in this regard could include international access, observation and verification, which might mitigate or deter violations and contribute to the building of confidence in the peace process as a whole.

It needs to be borne in mind that the primary duty is upon the state to guarantee respect for human rights. Violations by state organs and by rebel groups may need to be addressed in different ways. This is without prejudice to individual criminal responsibility for violations of human rights and international humanitarian law for which there is no distinction to be made as between the category of perpetrators.

There is a general consensus that in some circumstances a United Nations Representative may need to acquaint the parties to a conflict with the existence of a body of international law and practice regarding these issues, including those related to current human rights and humanitarian obligations, accountability and amnesties. Every effort should be made to address these questions satisfactorily in the agreements. In the event that this is not possible the parties should be urged to include language that will allow for the possibility of further elaboration of any outstanding issues.

The advice has been tendered that in the event that negotiations are proceeding towards an agreement that may be seriously flawed from the perspective of the United Nations, the United Nations Representative should on the advice of the Department of Political Affairs, the Office of Legal Affairs, and OHCHR, in an appropriate way and at a time of his/her judgment, draw the attention of the parties to the consequences for the sustainability of the agreement and, having regard to international law and opinion, for UN engagement and donor assistance. He/she may even need to warn the parties that, if they cross certain lines, the United Nations might be put in a position where it would have to take a stance, on the public record, concerning aspects of the agreement.

In this context, United Nations Representatives are encouraged to seek guidance from Headquarters should any of the following issues arise during the negotiations, in order to furnish the parties with the necessary advice and assistance:

> allegations of serious human rights violations or violations of international humanitarian law recently committed or currently being committed that might require immediate investigation;
>
> requests for investigation of allegations of serious violations of human rights or international humanitarian law committed in the past. Such demands may raise issues of prosecution of those alleg-

> edly responsible for such acts or for a comprehensive investigation into a systematic pattern of abuses that may lead to the establishment of mechanisms such as "Truth Commissions";
>
> demands for amnesty may be made on behalf of different elements. It may be necessary and proper for immunity from prosecution to be granted to members of the armed opposition seeking reintegration into society as part of a national reconciliation process. Government negotiators may seek endorsement of self-amnesty proposals; however, the UN cannot condone amnesties regarding war crimes, crimes against humanity and genocide or foster those that violate the treaty obligations of the parties in this field.

In the remainder of this chapter we shall examine what guidance the Security Council has given in particular peace-making processes regarding the incorporation of human rights in peace agreements.

Self-Determination: Western Sahara

In a series of resolutions since 1988, the Security Council has laid down the following normative and policy framework for dealing with Western Sahara.

A. Secretary-General's mission of good offices

The Security Council has recognized, and expressed its full support to, the Secretary-General "in his mission of good offices pursued jointly with the current Chairman of the Organization of African Unity, in conformity with General Assembly resolution 40/50 of 2 December with a view to settling the question of Western Sahara."[1] At the same time, the Council seems to have registered the consensual principle as the basis for the exercise of good offices. In its resolution 658 of 27 June 1990, the Security Council recalled that, on 30 August 1988, Morocco and POLISARIO "gave their *agreement in principle* to the proposals of the United Nations Secretary-General and the current

1. S/RES/621 (1988).

Chairman of the OAU in the framework of their joint mission of good offices." (Emphasis added.)

In the face of obstacles encountered in the implementation of the Settlement Plan, the Security Council has requested the Secretary-General "to continue his efforts with the parties to break the impasse blocking the implementation of the Settlement Plan."[2] On the issue of the consent of the parties, the Security Council, in its resolution 1033 of 19 December 1995, welcomed the decision of the Secretary-General to "intensify his consultations with the two parties in order to obtain their agreement to a plan to resolve differences hindering the timely completion of the identification process." In its resolution 1056 of 29 May 1996, the Security Council supported the proposal of the Secretary-General to maintain a political office to continue the dialogue with the parties and the two neighbouring countries and to facilitate any other effort "that could help set the parties on a course towards an agreed formula for the resolution of their differences."

B. *Referendum for self-determination*

From the outset, the Security Council confirmed as an objective the holding of a referendum for self-determination of the people of Western Sahara.[3] In its resolution 1002 of 30 June 1995, the Security Council reiterated "its commitment to holding, without further delay, a free and impartial referendum for the self-determination of the people of Western Sahara in accordance with the Settlement Plan which has been accepted by the two parties." The Security Council has also consistently reaffirmed its commitment to assist the parties to achieve a just and lasting solution to the question of Western Sahara.[4]

C. *Approval of the settlement plan*

In its resolution 658 of 27 June 1990, the Security Council approved the report of the Secretary-General containing the text of the settlement proposals as accepted by the two parties on 30 August 1988,

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2. S/RES/1056 (1996).
3. S/RES/621 (1988).
4. S/RES/1056 (1996).

as well as an outline of the plan provided by the Secretary-General to implement those proposals. The Security Council also approved the finalized implementation plan and a few subsequent modifications to it.

D. Cooperation of the Parties

The Security Council has consistently called upon the two parties to cooperate fully with the Secretary-General in the implementation of the Settlement Plan they accepted.[5] In its resolution 1017 of 22 September 1995, the Security Council called upon the two parties to work henceforth with the Secretary-General and MINURSO in a spirit of genuine cooperation to implement the Settlement Plan in accordance with the relevant resolutions, to abandon their insistence on strict reciprocity in the operation of the identification centres and to cease all other procrastinating actions which could further delay the holding of the referendum.

E. A Vision of the Future

Concerned about the two parties' continuing suspicion and lack of trust, the Security Council has more than once noted that in order for progress to be achieved "the two parties must have a vision of the post-referendum period."[6]

F. Confidence-Building

The Security Council has encouraged the two parties to consider ways to create confidence between themselves and to facilitate the implementation of the Settlement Plan.[7]

G. Humanitarian Issues

The Security Council has called upon the parties, as a demonstration of goodwill, to cooperate with the United Nations in the imple-

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5. S/RES/725 (1991).
6. S/RES/1002 (1995).
7. S/RES/1042 (1996).

mentation of humanitarian aspects of the Settlement Plan such as the release of Saharan political prisoners and the exchange of prisoners of war on humanitarian grounds, as soon as possible, to accelerate implementation of the Settlement Plan in its entirety. The provisions of the Settlement Plan will be presented next.

II. The Highest Standards of Human Rights: The International Conference on the Former Yugoslavia

On 28 August 1992, Secretary-General Boutros Boutros-Ghali wrote to the President of the Security Council transmitting the documents of the London stage of the International Conference on the Former Socialist Federal Republic of Yugoslavia, held on 26 and 27 August 1992. The Secretary-General noted that the decisions taken at the Conference had established a framework within which a comprehensive settlement might be achieved. On 2 September 1992, following consultations with the Members of the Council, the President made a statement on behalf of the Council in which the Council expressed "its full support for the Statement of Principles and the other agreements reached at the London Conference." The Principles endorsed by the Security Council were the following:

i. All parties and others concerned to cease fighting and the use of force;
ii. Non-recognition of advantages gained by force;
iii. The need for all the parties concerned to engage in negotiations;
iv. *Respect for the highest standards of individual rights and fundamental freedoms in a democratic society;*
v. Implementation of constitutional guarantees of the human rights and fundamental freedoms of persons belonging to ethnic and national communities and minorities, the promotion of tolerance and the right to self-determination;
vi. Total condemnation of forcible expulsions, illegal detentions and attempts to change the ethnic composition of populations,

and effective promotion of the closure of detention camps, and of the safe return to their homes of all persons displaced by the hostilities who wish this;

vii. Compliance by all persons with their obligations under international humanitarian law;

viii. Respect for the independence, sovereignty and territorial integrity of all states in the region and respect for the inviolability of frontiers;

ix. A final settlement of all questions of succession to the former Socialist Federal Republic of Yugoslavia to be reached by consensus or by arbitration and the commitment of all parties to recognize each other mutually;

x. Compliance in full with all UN Security Council Resolutions;

xi. The vital need for humanitarian aid with special consideration for the needs of children;

xii. Cooperation in international monitoring, peace-keeping and arms control operations;

xiii. The need to provide international guarantees to ensure the full implementation of all agreements reached within the framework of the International Conference.

III. Dialogue and Reconciliation: Sierra Leone

In a Presidential Statement adopted on 7 January 1999,[8] the Security Council stressed the importance of dialogue and national reconciliation for the restoration of lasting peace and stability to Sierra Leone. It welcomed the efforts to resolve the conflict being undertaken by the Government of President Kabbah, and further endorsed the approach set out in the final communiqué of the meeting in Abidjan of the Committee of Six on Sierra Leone of the Economic Community of West African States (ECOWAS) of 28 December 1998 (S/1998/1236). It welcomed the offers made by leaders in the region aimed at resolving the conflict and in that context urged them, including the ECOWAS Committee of Six, to facilitate the peace process. It also called on

8. S/PRST/1999/1.

the Secretary-General to do all he could to assist in these efforts, including through his Special Representative.

IV. Free and Fair Elections: Central African Republic

In a Presidential Statement of 18 February 1999,[9] the Security Council took note with satisfaction of the commitment expressed by the President of the Central African Republic to maintain peace in the Central African Republic through dialogue and consultation. In this context, it strongly reaffirmed that the complete implementation of the Bangui Agreements (S/1997/561, appendices III-VI) and of the National Reconciliation Pact (S/1998/219) was essential to peace and national reconciliation in the Central African Republic.

The Security Council called upon the Government of the Central African Republic to continue to take concrete steps to implement political, economic, social and security reforms as referred to in the report of the Secretary-General of 23 February 1998 (S/1998/148) and to fulfil the commitments expressed in the letters of 8 January 1998 (S/1998X61, annex) and of 23 January 1999 (S/1999X98, annex) to the Secretary-General by the President of the Central African Republic. It recalled that the success, the future mandate and the ongoing presence of the United Nations Mission in the Central African Republic were closely linked to the fulfilment of these commitments, in particular the immediate resumption of a constructive political dialogue.

The Security Council expressed its concern about the consequences that the prevailing political tensions had for the stability and the functioning of the institutions of the Central African Republic. It reaffirmed that the Government, the political leaders and the people of the Central African Republic bore the primary responsibility for national reconciliation, the maintenance of a stable and secure environment and the reconstruction of their country. It emphasized the importance of continuing efforts in the Central African Republic to settle outstanding contentious issues peacefully and democratically in accordance with the Bangui Agreements. It stressed the need for both

9. S/PRST/1999/7.

the "*Mouvance présidentielle*" and the opposition parties to cooperate closely and work actively with the aim of achieving the political consensus indispensable to stability in the Central African Republic.

The Security Council considered that a smooth preparation of free and fair presidential elections, for which proper steps should be taken as soon as possible, required a certain level of political consensus and the opening of a genuine dialogue between all the constituent parties of the National Assembly. It also considered that consensual preparation for the presidential elections could only reinforce the legitimacy of the next President of the Republic and also secure a sustainable civil peace. It fully supported the Special Representative of the Secretary-General in his call to the Central African political leaders and authorities to resolve the political impasse so the country could move forward, and welcomed the current efforts undertaken to this end.

V. The Necessary Climate: Democratic Republic of the Congo

In a Presidential Statement of 26 January 2000,[10] the Security Council urged all the parties to the Lusaka Ceasefire Agreement to create and sustain the climate necessary for the full implementation of the Agreement. It reaffirmed the territorial integrity and national sovereignty of the Democratic Republic of the Congo, including over its natural resources, in accordance with the principles of the Charters of the United Nations and the OAU. In this regard, it reiterated its call for the immediate cessation of hostilities and the orderly withdrawal of all foreign forces from the territory of the Democratic Republic of the Congo in accordance with the Lusaka Ceasefire Agreement. The Council reaffirmed its support for the Lusaka Ceasefire Agreement and also reaffirmed its resolutions 1234 (1999) of 9 April 1999, 1258 (1999) of 6 August 1999, 1273 (1999) of 5 November 1999, and 1279 (1999) of 30 November 1999.

10. S/PRST/2000/2.

VI. Free and Fair Elections: Haiti

In a Presidential Statement of 15 March 2000,[11] the Security Council recognized that the people and the Government of Haiti bore the ultimate responsibility for national reconciliation, the maintenance of a secure and stable environment, the administration of justice and the reconstruction of their country, and that the Government of Haiti bore particular responsibility for the further strengthening and effective functioning of the Haitian police (HNP) and the justice system. The Council considered that timely, free and fair elections were crucial to democracy and all aspects of Haiti's development, and strongly urged the Haitian authorities to work cooperatively together in order to finalize arrangements for holding credible elections as rapidly as possible so as to restore, promptly and fully, the lapsed parliament and independent local governments.

The Security Council has also strongly urged Haitian authorities to work together to complete arrangements as quickly as possible for long-delayed elections. The call was made in a statement read out at a brief public Council meeting on the ending of the UN Civilian Police Mission in Haiti (MIPONUH), which had been training the country's national police, and its replacement by an International Civilian Support Mission (MICAH) of more than 100 human rights, election and judicial advisers. Commending MIPONUH and all previous missions sent to help Haiti after decades of dictatorship and military rule, the Council said it recognized that its people and Government were ultimately responsible for national reconciliation, maintaining a secure and stable environment, and administering justice and reconstruction. At the same time, "the Security Council considers that timely, free and fair elections are crucial to democracy and all aspects of Haiti's development", the statement said. It strongly urged Haitian authorities "to work cooperatively together in order to finalize arrangements for holding credible elections as rapidly as possible so as to restore, promptly and fully, the lapsed parliament and independent local governments".

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11. S/PRST/2000/8.

VII. A Constitutional and Democratic Order: Guinea-Bissau

In a Presidential Statement of 29 March 2000,[12] the Security Council paid tribute to the people of Guinea-Bissau for the success of the transitional process which had led to the organization of free, fair and transparent elections. The Security Council welcomed the swearing-in of President Kumba Yala on 17 February 2000 and the return to constitutional and democratic order in Guinea-Bissau following the holding of free and fair presidential and legislative elections. The Council affirmed that all concerned, particularly the former military junta, were obligated to recognize and uphold the results of these elections, as part of the Abuja Accord (S/1998/1028, annex).

The Security Council encouraged all concerned in Guinea-Bissau to work together closely in a spirit of tolerance to strengthen democratic values, to protect the rule of law, to depoliticize the army and to safeguard human rights. The Council supported the efforts made by the Government of Guinea-Bissau to redefine the role of the military in Guinea-Bissau in accordance with the rule of law and democracy.

The Security Council expressed its support for the newly-elected Government of Guinea-Bissau and encouraged the new authorities to develop and to implement programmes devised to consolidate peace and national reconciliation. The Council called on the international community to support the Government's three-month transitional programme pending the organization of a new round-table conference. The Council agreed with the comment made by the Secretary-General, in paragraph 24 of his report, to the effect that sustained support of the international community was crucial for the consolidation of the progress achieved so far, and for helping Guinea-Bissau lay a durable foundation for a better life for its people.

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12. S/PRST/2000/11.

VIII. LEGITIMACY: BURUNDI

Expressing its full support for the transitional government of Burundi, the United Nations Security Council on 7 February 2002 said that continued fighting against the legitimate administration was "totally unjustifiable and unacceptable" and presented a threat to the implementation of the country's peace process. In a statement read out at an open meeting by the Council President, Ambassador Adolfo Aguilar Zinser of Mexico, the 15-member body endorsed the legitimacy of the transitional government headed by President Pierre Buyoya, which was established according to an agreement signed by parties to the conflict in Arusha, Tanzania, on 28 August 2000. The Council paid tribute to signatories of that agreement, and particular tribute was paid to President Buyoya. The Council called on rebel groups still fighting to lay down their arms immediately and emphasized that, while the transition was moving ahead according to the established timeframe, time was of the essence for the rebels finally to join the peace process.[13]

IX. A PRINCIPLED POLITICAL SOLUTION: KOSOVO

In resolution 1244 of 10 June 1999, authorizing a civil, security presence in Kosovo, the Security Council decided that a political solution to the Kosovo crisis shall be based on the principles contained in the Statement by the Chairman on the conclusion of the meeting of the G-8 Foreign Ministers held at the Petersberg Centre on 6 May 1999.

The G-8 Foreign Ministers had adopted the following general principles on the political solution to the Kosovo crisis:

- Immediate and verifiable end of violence and repression in Kosovo;
- Withdrawal from Kosovo of military, police and paramilitary forces;

13. S/PRST/2000/11.

- Deployment in Kosovo of effective international civil and security presences, endorsed and adopted by the United Nations, capable of guaranteeing the achievement of the common objectives;
- Establishment of an interim administration for Kosovo to be decided by the Security Council of the United Nations to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo;
- The safe and free return of all refugees and displaced persons and unimpeded access to Kosovo by humanitarian aid organizations;
- A political process towards the establishment of an interim political framework agreement providing for a substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of the KLA;
- Comprehensive approach to the economic development and stabilization of the crisis region.

The G8 Foreign Ministers had also specified that agreement should be reached on the following principles to move towards a resolution of the Kosovo crisis:

1. An immediate and verifiable end of violence and repression in Kosovo.
2. Verifiable withdrawal from Kosovo of all military, police and paramilitary forces according to a rapid timetable.
3. Deployment in Kosovo under United Nations auspices of effective international civil and security presences, acting as may be decided under Chapter VII of the Charter, capable of guaranteeing the achievement of common objectives.
4. The international security presence with substantial North Atlantic Treaty Organization participation must be deployed under unified command and control and authorized to establish a safe environment for all people in Kosovo and to facilitate the safe return to their homes of all displaced persons and refugees.

5. Establishment of an interim administration for Kosovo as a part of the international civil presence under which the people of Kosovo can enjoy substantial autonomy within the Federal Republic of Yugoslavia, to be decided by the Security Council of the United Nations. The interim administration to provide transitional administration while establishing and overseeing the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants in Kosovo.
6. After withdrawal, an agreed number of Yugoslav and Serbian personnel will be permitted to return to perform the following functions:
   - Liaison with the international civil mission and the international security presence;
   - Marking/clearing minefields;
   - Maintaining a presence at Serb patrimonial sites;
   - Maintaining a presence at key border crossings.
7. Safe and free return of all refugees and displaced persons under the supervision of the Office of the United Nations High Commissioner for Refugees and unimpeded access to Kosovo by humanitarian aid organizations.
8. A political process towards the establishment of an interim political framework agreement providing for substantial self-government for Kosovo, taking full account of the Rambouillet accords and the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other countries of the region, and the demilitarization of UCK. Negotiations between the parties for a settlement should not delay or disrupt the establishment of democratic self-governing institutions.
9. A comprehensive approach to the economic development and stabilization of the crisis region. This will include the implementation of a stability pact for South-Eastern Europe with broad international participation in order to further promotion of democracy, economic prosperity, stability and regional cooperation.

10. Suspension of military activity will require acceptance of the principles set forth above in addition to agreement to other, previously identified, required elements.

A military-technical agreement will then be rapidly concluded that would, among other things, specify additional modalities, including the roles and functions of Yugoslav/Serb personnel in Kosovo.

The Security Council decided that the responsibilities of the international security presence to be deployed and acting in Kosovo will include:

a. Deterring renewed hostilities, maintaining and where necessary enforcing a ceasefire, and ensuring the withdrawal and preventing the return into Kosovo of Federal and Republic military, police and paramilitary forces, except as provided in point 6 of annex 2;
b. Demilitarizing the Kosovo Liberation Army (KLA) and other armed Kosovo Albanian groups as required in paragraph 15 below;
c. Establishing a secure environment in which refugees and displaced persons can return home in safety, the international civil presence can operate, a transitional administration can be established, and humanitarian aid can be delivered;
d. Ensuring public safety and order until the international civil presence can take responsibility for this task;
e. Supervising de-mining until the international civil presence can, as appropriate, take over responsibility for this task;
f. Supporting, as appropriate, and coordinating closely with the work of the international civil presence;
g. Conducting border monitoring duties as required;
h. Ensuring the protection and freedom of movement of itself, the international civil presence, and other international organizations;

The Security Council further decided that the main responsibilities of the international civil presence would include:

a. Promoting the establishment, pending a final settlement, of substantial autonomy and self-government in Kosovo, taking full account of annex 2 and of the Rambouillet accords (S/1999/648);
b. Performing basic civilian administrative functions where and as long as required;

c. Organizing and overseeing the development of provisional institutions for democratic and autonomous self-government pending a political settlement, including the holding of elections;
d. Transferring, as these institutions are established, its administrative responsibilities while overseeing and supporting the consolidation of Kosovo's local provisional institutions and other peace-building activities;
e. Facilitating a political process designed to determine Kosovo's future status, taking into account the Rambouillet accords (S/1999/648);
f. In a final stage, overseeing the transfer of authority from Kosovo's provisional institutions to institutions established under a political settlement;
g. Supporting the reconstruction of key infrastructure and other economic reconstruction;
h. Supporting, in coordination with international humanitarian organizations, humanitarian and disaster relief aid;
i. Maintaining civil law and order, including establishing local police forces and meanwhile through the deployment of international police personnel to serve in Kosovo;
j. Protecting and promoting human rights;
k. Assuring the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo.

The Security Council welcomed the work in hand in the European Union and other international organizations to develop a comprehensive approach to the economic development and stabilization of the region affected by the Kosovo crisis, including the implementation of a Stability Pact for South Eastern Europe with broad international participation in order to further the promotion of democracy, economic prosperity, stability and regional cooperation;

Conclusion

The practice of the Security Council in dealing with internal conflicts shows a strong emphasis on human rights in processes of peacemaking. The Council has placed its authority behind negotiated solu-

tions, national dialogue, democracy, the rule of law, respect for human rights, and justice for the victims of gross violations. The same concern for human rights is increasingly in evidence in peace-keeping operations established by the Council, as we shall see in the next chapter.

CHAPTER V

Human Rights in Peace-Keeping

INTRODUCTION

This chapter will look at the practice of the Security Council on the role of human rights in peace-keeping operations. There has, in recent years, been a debate in United Nations circles about how and to what extent human rights should be integrated in peace-keeping operations. The Secretary-General's "Programme for Reform" (A/51/950) stressed that the United Nations human rights programme should be enhanced and fully integrated into the broad range of the Organizations' activities. It also underlined that "human rights are a key element in peace-making and peace-building efforts and should be addressed the context of humanitarian operations".

Several peace-keeping operations have had a human rights component in their mandate and it is likely that this trend will continue. In such instances, there is a clear need for substantive and administrative coordination at all stages of an operation, from planning to liquidation.

The Office of High Commissioner for Human Rights has, since early 1998, taken the view that it would be important to develop and refine models of cooperation and coordination between OHCHR and the Department of Peace-Keeping Operations (DPKO). The Department of Peace-Keeping Operations has concurred on the need to improve cooperation. At the same time, it took the view that such cooperation could not be governed by a rigid format. In its view, it was impossible to predict what form a particular mission would take, the place to be accorded to human rights, and how this would evolve in the course of an operation. While there were certain common elements (e.g. the need to staff and guide human rights offices), the political framework, as defined by the Security Council, and the human rights situation would differ from one operation to the other.

While the Office of High Commissioner argued for an explicit United Nations human rights strategy for virtually any peace-keeping presence, DPKO argued for a more cautious approach. While DPKO welcomed the elaboration of a human rights strategy under OHCHR mandate for a country in which a peace-keeping operation was present, there would, in its view, be many obstacles, some prohibitive, to tying such a strategy specifically to a peace-keeping operation in the absence of a human rights mandate. DPKO also underlined that the question whether human rights were made part of the mandate of a peace-keeping operation was largely out of the hands of the Secretariat, although the Secretary-General could and does make suggestions in this regard whenever he felt it relevant or appropriate. Mandates were often shaped by the parties and subsequently endorsed by the Security Council. Where the negotiating process was under United Nations auspices, there might be an opportunity for OHCHR, in cooperation with DPA, to seek the consent of the parties and the main supporters of the peace process to the inclusion of human rights elements in a peace settlement. On the other hand, DPKO did not believe initially that the training programmes of prospective peace-keepers prior to their deployment should include country specific information and human rights elements, in order to ensure a high standard of behaviour.

The general view of DPKO was that human rights activities in peace-keeping operations should focus on institution-building, rather than on monitoring of human rights. Such an approach was more likely to meet with Security Council approval. It was also important to keep human rights monitoring separate from the political mandates of peace-keeping operations. That would be, it was claimed, to the benefit of monitoring operations, since these would have more freedom to do their work than if part of a peace-keeping operation with a multidimensional mandate.

Fortunately, the discussions between DPKO and OHCHR yielded positive results in a Memorandum of Understanding concluded on 5 November 1999.

I. DPKO-OHCHR Memorandum of Understanding

By a Memorandum of Understanding concluded on 5 November 1999, DPKO and OHCHR undertook, through enhanced cooperation, to seek to increase the effectiveness of United Nations peace-keeping and human rights activities. To these ends, DPKO and OHCHR, in strengthening and expanding their cooperation, pledged that they would seek to establish, institutionalize and maximize the mutual exchange of expertise, advice, information, training and support, drawing upon their respective capacities and mandates. It was agreed that human rights components of peace-keeping operations should normally combine monitoring and promotion so as to ensure a comprehensive approach to human rights, in accordance with international human rights standards. It was recognized that the Security Council or the General Assembly, after considering recommendations by the Secretary-General, determines the specific mandate of a peace-keeping operation, including tasks relating to human rights. The early involvement of OHCHR in the planning and implementation of human rights activities by peace-keeping operations could contribute to the sustainability of the achievements of peace-keeping operations after their withdrawal. The strengthening of national human rights structures and capacities can be an important element in ensuring the sustainability of the achievements of a peace-keeping operation after it withdraws. In such circumstances the early involvement of OHCHR, normally as part of the interdepartmental task forces established for countries in which a peace-keeping operation was being planned, was crucial.

(a) Planning, design and establishment of human rights components of peace-keeping operations

In order to facilitate an integrated approach to peace-keeping and human rights at the earliest possible moment, consultations between DPKO and OHCHR are to take place at the planning stage of peace-keeping operations, it being understood that as the lead Department for peace-keeping operations, DPKO is responsible for planning the operation as an integrated whole, in consultation with other departments, offices, agencies, funds and programmes. OHCHR would par-

ticipate in the interdepartmental task forces that are normally established for countries in which a peace-keeping operation is being planned or whose possible establishment is discussed, contributing proposals on the function and structure of the human rights component for the Secretary-General's reports to the Security Council on the establishment of new peace-keeping operations. It would participate, as appropriate, in assessment and preparatory missions conducted by DPKO related to the formulation of proposals for the establishment of such operations, especially as regards the human rights component of an operation.

(B) INSTITUTIONAL ARRANGEMENTS FOR HUMAN RIGHTS COMPONENTS OF PEACE-KEEPING OPERATIONS

Human rights components of peace-keeping operations would be under the authority of the SRSG or Head of the operation and are to enjoy the same status as other components, including with regard to participation in the internal policy-making process and access to documentation. They would benefit from substantive support and backstopping by OHCHR. This included provision of relevant training, documentation, materials and methodological tools developed by OHCHR as well as advice as required. Staff of the human rights component of peace-keeping operations would communicate informally with colleagues at OHCHR in this regard. The SRSG would be kept fully informed of any informal communication with OHCHR which could have an impact on the mission, bearing in mind paras. 2 and 12 of the Standard Directives for SRSGs dated 31 August 1998.

The activities of human rights components of peace-keeping operations would be based on international human rights standards, as defined in the relevant international treaties, declarations, guidelines and other instruments. In the implementation of their activities, whether of a monitoring or of a technical cooperation nature, and within the framework of their mandate, human rights components of peace-keeping operations would seek to promote an integrated approach to human rights promotion and monitoring, paying due attention to civil, cultural, economic, political and social rights, including the right to development, and to the special needs of women, children, minorities, internally displaced persons, and other

groups requiring special protection. The involvement of other United Nations agencies and programmes with special focus on these areas would be sought to facilitate such integrated approach.

(C) REPORTING AND PUBLIC STATEMENTS

The heads of human rights components of peace-keeping operations are required, in the fulfilment of their duties, to submit periodic and *ad hoc* reports on the human rights situation and the activities of the component to the SRSG with a copy to OHCHR, using OHCHR formats issued after consultation between OHCHR and DPKO.

Human rights components of peace-keeping operations are responsible for drafting of the human rights sections of any internal or public reports issued by the peace-keeping operations including, for example, reports of the Secretary-General to United Nations bodies. OHCHR would be consulted on draft public reports before they are published. OHCHR may consider, in consultation with DPKO, issuing public reports on selected issues or countries based on information received from human rights components of peace-keeping operations.

The SRSG and the High Commissioner for Human Rights, as far as possible, would consult prior to issuing public statements on human rights developments in the country of operation. Public statements by the human rights component are authorized by the SRSG in consultation with OHCHR. The SRSG may bring to the attention of the HCHR situations requiring her public intervention, and recommend the issuance of statements. The HCHR could likewise bring to the SRSG's attention human rights situations that could benefit from the HCHR or SRSG public intervention.[1]

(D) ADMINISTRATION AND FUNDING

When a human rights component is included in the mandate of a peace-keeping operation, funding for that component, including personnel and logistics, would be provided from assessed contributions to the peace-keeping operation concerned, for the activities mandated

1. This paragraph should be read in conjunction with paras. 2 and 12 of the Standards Directives for SRSGs dated 31 August 1998.

for that operation. DPKO and OHCHR may engage in joint fundraising for activities of human rights components of peace-keeping operations. As appropriate, OHCHR may seek to mobilize resources for technical cooperation activities of human rights components of peace-keeping operations, including through existing agreements with other organizations.

(E) HUMAN RIGHTS TRAINING FOR STAFF OF PEACE-KEEPING OPERATIONS

The SRSG or Head of the peace-keeping operation should ensure that all staff of the operation – whether military or civilian – are aware of, and abide by, international human rights and humanitarian law standards. Instructions to this effect shall be issued by the SRSG or Head of operation.

Human rights training – as relevant to their functions – should be provided to all deployed peace-keeping personnel – whether military or civilian – by OHCHR in cooperation with the human rights component of the peace-keeping operation.[2] The SRSG or head of operation should make the necessary arrangements in this regard. Human rights standards should also be part of any briefing or induction programme provided on site to newly-appointed staff of peace-keeping operations.

DPKO and OHCHR are to promote the integration of human rights in the training provided by Member States to their peace-keeping personnel; they should continue to cooperate in the organization of joint training programmes for national trainers of peace-keeping personnel – such as the joint "United Nations Training Programme for Military and Police Trainers on Peace-Keeping, Human Rights and Humanitarian Assistance" – and continue to develop these programmes. OHCHR and DPKO should call upon each other to participate in training activities organized at the national and regional level, including the United Nations Training Assistance Teams (UNTATs).

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2. Generally, resources shall be made available by OHCHR with in-kind contributions by DPKO subject to availability.

(F) INFORMATION ALERT AND EXCHANGE

OHCHR is required to share in a timely manner with DPKO information available from human rights treaty bodies, mechanisms of the United Nations Commission on Human Rights, and OHCHR field presences, with a view to alerting DPKO and integrating human rights concerns in United Nations responses to crises and emergencies. DPKO is to share, on a confidential basis, with OHCHR its situation reports as compiled by the Situation Centre.

When a human rights presence is not part of a peace-keeping operation, information relevant to the protection and promotion of human rights available to the peace-keeping operation should be shared in a timely manner with OHCHR for advice and/or complementary action, as appropriate.

(G) JOINT INITIATIVES

DPKO and OHCHR undertook to arrange appropriate exchanges of staff, to establish an inter-departmental team to work on issues of common concern, and the joint production of public information materials.

II. THE BRAHIMI REPORT

The "Brahimi" Report[3] on United Nations Peace Operations helped place United Nations human rights field offices within the stream of United Nations peace-operations. It emphasized the essential importance of the United Nations system adhering to and promoting _international human rights instruments and standards and international humanitarian law in all aspects of its peace and security activities_. It presented a concept of peace-building as encompassing activities undertaken on the far side of conflict to reassemble the foundations of peace and provide the tools for building on those foundations something that is more than just the absence of war. Thus, peace-

3. A/55/305 - S/2000/809.

building includes, but is not limited to, reintegrating former combatants into civilian society, strengthening the rule of law (for example, through training and restructuring of local police, and judicial and penal reform); improving respect for human rights through the monitoring, education and investigation of past and existing abuses; providing technical assistance for democratic development (including electoral assistance and support for free media); and promoting conflict resolution and reconciliation techniques.

The report also recognized that variables that affect the difficulty of peace implementation include, first, the sources of the conflict which can range from economics (e.g. issues of poverty, distribution, discrimination or corruption), politics (an unalloyed contest for power) and resource and other environmental issues (such as competition for scarce water) to issues of ethnicity, religion or gross violations of human rights. Political and economic objectives, it added, may be more fluid and open to compromise than objectives related to resource needs, ethnicity or religion. Second, the complexity of negotiating and implementing peace will tend to rise with the number of local parties and the divergence of their goals (e.g., some may seek unity, others separation). Third, the level of casualties, population displacement and infrastructure damage will affect the level of war-generated grievance, and thus the difficulty of reconciliation, which requires that past human rights violations be addressed, as well as the cost and complexity of reconstruction.

The Brahimi report recalled the insight of Secretary-General Kofi Annan in his Millennium Report (A/54/2000) that, "every step taken towards reducing poverty and achieving broad-based economic growth is a step toward conflict prevention". Furthermore, in many cases of internal conflict, "poverty is coupled with sharp ethnic or religious cleavages", in which minority rights "are insufficiently respected [and] the institutions of government are insufficiently inclusive". Hence, long-term preventive strategies in such instances must therefore work "to promote human rights, to protect minority rights and to institute political arrangements in which all groups are represented...Every group needs to become convinced that the state belongs to all people".

The Brahimi report noted that elections need the support of a broader process of democratization and civil society-building that includes effective civilian governance and a culture of respect for basic human rights, lest elections merely ratify a tyranny of the majority or be overturned by force after a peace operation leaves.

The Brahimi report noted that United Nations civilian police monitors would not be peace-builders if they simply documented or attempted to discourage by their presence abusive or other unacceptable behaviour of local police officers – a traditional and somewhat narrow perspective of civilian police capabilities. Today, missions might require civilian police to be tasked to reform, train and restructure local police forces according to international standards for democratic policing and human rights, as well as having the capacity to respond effectively to civil disorder and for self-defence. The courts, too, into which local police officers bring alleged criminals and the penal system to which the law commits prisoners also must be politically impartial and free from intimidation or duress. Where peace-building missions require it, international judicial experts, penal experts and human rights specialists, as well as civilian police, must be available in sufficient numbers to strengthen rule of law institutions. Where justice, reconciliation and the fight against impunity required it, the Security Council should authorize such experts, as well as relevant criminal investigators and forensic specialists, to further the work of apprehension and prosecution of persons indicted for war crimes in support of United Nations international criminal tribunals.

The Brahimi report underlined the importance of how the Organization conceives of, and utilizes, civilian police in peace operations, as well as the need for an adequately resourced team approach to upholding the rule of law and respect for human rights, through judicial, penal, human rights and policing experts working together in a coordinated and collegial manner. Furthermore, the human rights component of a peace operation was indeed critical to effective peace-building. United Nations human rights personnel could play a leading role, for example, in helping to implement a comprehensive programme for national reconciliation. The human rights components within peace operations had not always received the political and administrative support that they required, however, nor were their

functions always clearly understood by other components. Thus, the Panel stressed the importance of training military, police and other civilian personnel on human rights issues and on the relevant provisions of international humanitarian law. In this respect, the Panel commended the Secretary-General's bulletin of 6 August 1999 entitled "Observance by United Nations forces of international humanitarian law" (ST/SGB/1999/13).

The Panel recommended a doctrinal shift in the use of civilian police, other rule of law elements and human rights experts in complex peace operations to reflect an increased focus on strengthening rule of law institutions and improving respect for human rights in post-conflict environments. It noted that the Charter clearly encouraged cooperation with regional and sub-regional organizations to resolve conflict and establish and maintain peace and security. The United Nations was already actively and successfully engaged in many such cooperation programmes in the field of conflict prevention, peace-making, elections and electoral assistance, human rights monitoring and humanitarian work, and other peace-building activities in various parts of the world.

The Panel recommended that, before the Security Council agreed to implement a ceasefire or peace agreement with a United Nations-led peace-keeping operation, the Council assure itself that the agreement meets threshold conditions, such as consistency with international human rights standards and practicability of specified tasks and timelines. Such missions must also try to rebuild civil society and promote respect for human rights in places where grievance was widespread and grudges ran deep.

The Panel noted that common United Nations justice package had allowed the application of an interim legal code to which mission personnel could be pre-trained while the final answer to the "applicable law" question was being worked out. Although no work was currently under way within Secretariat legal offices on this issue, interviews with researchers had indicated that some headway had been made toward dealing with the problem outside the United Nations system, emphasizing the principles, guidelines, codes and procedures contained in several dozen international conventions and declarations relating to

human rights, humanitarian law, and guidelines for police, prosecutors and penal systems.

III. Human Rights in Peace-Keeping Operations

A. *Mandates*

The integration of human rights with peace-keeping operations is becoming fairly standard in the Council.

The UN Observer Mission to Liberia (UNOMIL) was established by the Security Council in 1993, with mandate to "report on any major violations of international humanitarian law to the Secretary-General". Two years later this resolution was amended and UNOMIL was mandated to "investigate and report to the Secretary-General on violations of human rights and to assist local human rights groups, as appropriate, in raising voluntary contributions for training and support."

The human rights dimension of the UN peacekeeping operation in Mozambique (ONUMOZ) related almost entirely to the presence and mandate of the UN civilian police. Their duties included carrying out regular patrols, often in concert with the Mozambican police, visiting prisons and police stations, and investigating complaints of human rights violations.

In Angola, UNAVEM III was established to supervise implementation of the Lusaka Peace Agreement. The Lusaka Protocol contained a wide range of human rights provisions but made no separate provision for monitoring of human rights by UNAVEM III. The UN Special Representative set up a Human Rights Unit to monitor violations and to carry out human rights promotion and to report violations to UNAVEM III. UNAVEM III was later replaced by the UN Observer Mission in Angola (UNOMA), which includes civilian police and human rights monitors. There are proposals for an expanded human rights component which would involve the Office of the High Commissioner for Human Rights, thus incorporating Geneva human rights expertise in human rights reporting on New-York based peacekeeping operations. This model could allow the Secretary-General's

Special Representative to keep open channels of communication with the various parties and permit the High Commissioner to raise violations of human rights with those responsible and report publicly on steps taken.

The Security Council treatment of Georgia established a new model for tackling human rights in the Council and marrying New York political decision-making with the expertise of the Geneva-based Office of the High Commissioner for Human Rights. Security Council resolution 1077 in 1996 decided that a human rights office should form part of the UN Observer Mission in Georgia (UNOMIG) and report through the head of the mission to the High Commissioner for Human Rights. The programme is carried out in cooperation with the OSCE and also reports to the OSCE Chairman-in-Office.

The UN Observer Mission in Sierra Leone (UNOMSIL) has a two-part mandate in resolution 1181 (1998). The first part comprises military observers with a mandate to monitor the military and security situation in the country as a whole, including disarmament and demobilization of former combatants and assist in monitoring respect for international humanitarian law. The second part of the mandate incorporates the civilian components of the office of the Special Envoy of the Secretary-General, including "reporting on violations of international humanitarian law and human rights and assisting the Government of Sierra Leone in its efforts to address the country's human rights needs."

B. A HUMAN RIGHTS COMPONENT IN ACTION

A report from DPKO to the Security Council on 8 March 2000 gives a glimpse of the human rights dimension in action. On that day, in his briefing to the Security Council, the Assistant Secretary-General for Peace-keeping Operations noted that in spite of improvements owing to the deployment of UNAMSIL, the human rights situation in Sierra Leone, especially in the Port Loko area, gave cause for serious concern. Rebel elements, both SLA and RUF, continued to perpetrate violence against civilians, including women and girls, in the areas under their control, which abuses, he noted, were not covered by the amnesty offered by the Lomé Agreement.

On the positive side, the Assistant Secretary-General noted, there had been a considerable increase in the release of children, and progress had been made in the establishment of the Truth and Reconciliation Commission and the Human Rights Commission. The human rights component of UNAMSIL had conducted a number of fact-finding missions to the various provinces, he added, and Human Rights Officers would be based permanently in major populated areas as soon as conditions allowed. The Assistant Secretary-General requested that the Council remind the RUF leader, Mr. Foday Sankoh, of his obligations to respect human rights and to cooperate fully with UNAMSIL in its deployment throughout the country.

The Members of the Security Council were unanimous in expressing grave concern about the continuing human rights abuses in the country. While Jamaica highlighted the plight of women and girls, the United States stressed the need for compliance with the sanctions regime, particularly given the fact that the rebels were being supported by the diamond trade. Canada emphasized that the message in that regard should "be as precise as possible so as not to do broad, comprehensive harm to legitimate diamond business".

The United States stressed that the RUF leadership had placed the peace process in jeopardy by its failure to adhere to its agreements, and in so doing had put the lives of peace-keepers in danger. She called on Member States to provide well-equipped troops to the operation in order that full deployment might be realized. Her Government also wished to urge Member States to comply with the existing sanctions and travel ban against the RUF, she added.

The Members agreed on the elements of a statement to the press, expressing the above-mentioned concerns.

Conclusion

One has seen in this chapter the human rights ethic at work in the Security Council in pragmatic ways. The implementation of the human rights recommendations of the Brahimi report would strengthen the interpretation of human rights in peace-keeping operations.

In the next chapter we shall look at the interpretation of human rights in peace-building operations.

CHAPTER VI

Human Rights in Peace-Building

INTRODUCTION

This Chapter will look at the practice of the Security Council regarding the role of human rights in peace-building operations. It will be recalled that the concept of peace-building was given prominence in the report of the Secretary-General, Agenda for Peace. When the drafters of Agenda for Peace – the writer was the drafter of the first, secretariat version – first worked with this concept, they saw it in terms of a broad range of activities that contribute to the foundations for peace. Agenda for Peace, as eventually issued by Secretary-General Boutros Boutros Ghali, approached peace-building as follows:

> "55. Peacemaking and peace-keeping operations, to be truly successful, must come to include peace and advance a sense of confidence and well-being among people. Through agreements ending civil strife, these may include disarming the previously warring parties and the restoration of order, the custody and possible destruction of weapons, repatriating refugees, advisory and training support for security personnel, monitoring elections, advancing efforts to protect human rights, reforming or strengthening governmental institutions and promoting formal and informal processes of political participation.
>
> "In the aftermath of international war, post-conflict peace-building may take the form of concrete cooperative projects which link two or more countries in a mutually beneficial undertaking that can not only contribute to economic and social development but also enhance the confidence that is so fundamental to peace. I have in mind, for example, the projects that bring states together to develop agriculture, improve transportation or utilize resources such as water or electricity that they need to share, or joint programmes through which barriers between nations are brought down by means of freer travel, cultural exchanges and mutually beneficial

youth and educational projects. Reducing hostile perceptions through educational exchanges and curriculum reform may be essential to forestall perceptions through educational exchanges and curriculum reform may be essential to forestall a re-emergence of cultural and national tensions which could start renewed hostilities.

"57. In surveying the range of efforts for peace, the concept of peace-building as the construction of a new environment should be viewed as the counterpart of preventive diplomacy, which seeks to avoid the breakdown of peaceful conditions....Preventive diplomacy is to avoid a crisis; post-conflict peace-building is to prevent a recurrence.

...

"There is a new requirement for technical assistance which the United Nations has an obligation to develop and provide when requested: support for the transformation of deficient national structures and capabilities, and for the strengthening of new democratic institutions. The authority of the United Nations system to act in this field would rest on the consensus that social peace is as important as strategic or political peace. There is an obvious connection between democratic practices – such as the rule of law and transparency in decision-making – and the achievement of true peace and security in any new and stable political order. These elements of good governance need to be promoted at all levels of international and national political communities."[1]

Three years later, in his Supplement to Agenda for Peace, Secretary-General Boutros-Boutros Ghali would recognise the difficulties of implementing such a vision:

"47. The validity of the concept of post-conflict peace-building has received wide recognition. The measures it can use – and they are many – can also support preventive diplomacy. Demilitarisation, the control of small arms, institutional reform, improved police and judicial systems, the monitoring of human rights, electoral reform and social and economic development can be as valuable in preventing conflict as in healing the wounds after conflict has occurred.

"The implementation of post-conflict peace-building can, however, be complicated. It requires integrated action and delicate dealings

1. A/47/277-S/24111, paras. 55-59.

> between the United Nations and the parties to the conflict in respect of which peace-building activities are to be undertaken"[2]

Those who have worked with the concept of peace-building subsequently, whatever definition they gave to the term, have particularly highlighted the human rights dimension. In Canada, for example, the Department for External Affairs defined peace-building in the following terms:

> Peace-building is the effort to strengthen the prospects for internal peace and decrease the likelihood of violent conflict. The over-arching goal of peace-building is to enhance the indigenous capacity of a society to manage conflict without violence. The definition covers peace-building in pre-, mid-, and post-conflict situations.[3]

In this conception, peace-building activities address early warning; environmental security; physical security; individual security; human rights; conflict resolution; social reconstruction; governance and democratic development; institutional/civic capacity-building; policy development; assessment and advocacy; and training. Included in individual security are: gender-specific, sexual orientation-specific and racial/cultural-specific violence. Included in human rights activities are: field operations, investigation, reporting, training and advocacy.[4]

This approach to peace-building includes the efforts to develop the instruments of international law, such as the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal for Rwanda (ICTR), and the International Criminal Court (ICC). It also includes drawing upon the various human rights instruments and their monitoring and enforcement mechanisms, through Special Rapporteurs/Representatives of the Commission on Human Rights or of the Secretary-General. In this approach, all of this comes together in a human security approach. Their importance for peace-building is that they offer other avenues, besides direct intervention in a conflict, for

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2. A/50/60, paras. 47-48.
3. See M. Small, Peace-Building in Postconflict Societies, in R. McRae and D. Hubert, Human Security and The New Diplomacy. McGill – Queens University Press, 2001, pp.75-87 at p.78.
4. Id. p. 81.

the international community to reinforce respect for the indigenous institutions for conflict resolution.[5]

I. Peace-Building in United Nations Reform

In his reform programme, Secretary-General Kofi Annan designated the Department of Political Affairs as the focal point for post-conflict peace-building work, to ensure that United Nations efforts in countries that are emerging from crises are fully integrated. It was essential that all participating institutions in the Executive Committee on Peace and Security work closely to ensure that human rights concerns were fully integrated in this process.

The Executive Committee on Peace and Security has approved the following approach worked out by a Task Force chaired by the author:

> "Peace-building activities should include the development of institutional capacity for good governance and the protection and promotion of human rights. UNDP, in close cooperation with OHCHR, should be available for an active role in the development of such programmes. OHCHR should be integrally involved in, and be supportive of the effective coordination by the Resident Coordinator or the in-country United Nations system and of international support, and should promote the integration of human rights in the work of other United Nations agencies and other international institutions, such as the World Bank. Any OHCHR presence should, wherever possible, be placed within the 'UN House'."

II. The Security Council and Peace-building

In a Presidential Statement of 29 December 1998, the Security Council, conscious of the emphasis placed by the Secretary-General on the issue of post-conflict peace-building, in particular in the context of the reform of the United Nations, encouraged him to explore the pos-

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5. Id. pp.84-85.

sibility of establishing post-conflict peace-building structures as part of efforts by the United Nations system to achieve a lasting peaceful solution to conflicts, including in order to ensure a smooth transition from peace-keeping to peace-building and lasting peace.[6]

It is significant, however, that in the deliberations leading up to the adoption of this statement, some delegations (e.g. China, Russia, Brazil) warned against the increasing involvement of the Security Council in internal conflicts. Brazil called on the Council to "consider a return to simple and direct approach to its responsibilities" and noted that because post-conflict peace-building was complex and multi-dimensional, it should not fall within the purview of the Council. Brazil further warned against the Security Council becoming "a kind of resurrected Trusteeship Council". Others (e.g. France, Costa Rica) – on the basis of experience gained in Liberia and elsewhere – maintained that the Council did have a role to play in post-conflict peace-building, but that attention should also be paid to the appropriate competencies of other UN Organs, in particular the General Assembly and ECOSOC. Egypt, Pakistan, India and Indonesia reiterated the position of the last Non-Aligned Summit in Durban that the General Assembly must have a key role in the formulation of post-conflict peace-building activities. They also recalled that only one member state had blocked consensus in the sub-group on post-conflict peace-building established by the General Assembly Working Group on an Agenda for Peace, because of its opposition to the General Assembly playing a key role in this field. Egypt and the Ukraine expressed the hope that the recommendations of the post-conflict peace-building sub-group could still be adopted by consensus. India emphasized that the "Security Council should not mandate peace-building activities until the General Assembly has laid down policy through universal intergovernmental deliberations". In spite of the different viewpoints, the President's statement reaffirmed that the Security Council has the "primary responsibility" for the maintenance of international peace and security, but noted the importance of due involvement of all UN bodies" in post-conflict peace-building efforts. The President's statement also endorsed Russia's proposal calling for reactivation of Article

6. S/PRST/1998/38.

65 of the Charter with regard to ECOSOC's provision of information and assistance to the Security Council, "upon its request".

III. Peace-Building Offices of the Department of Political Affairs

Since the launching of the Secretary-General's reform programme, the United Nations Department of Political Affairs has established and run the following peace-building offices whose human rights programmes have been implemented in close cooperation with the Office of High Commissioner for Human Rights.

A. Abkhazia, Georgia

The Human Rights Office in Abkhazia, Georgia (HROAG) was authorized by the Security Council in October 1996. The role of the Office is to: a) report on human rights; b) promote respect for human rights through advisory services and technical cooperation; c) contribute to the safe return of internally-displaced persons and refugees.

B. Central African Republic

The mandate of MINURCA's human rights component is to: a) provide, as requested by the Government, advice to the national authorities and organizations on human rights issues; b) identify technical assistance needs for capacity-building in this area. The component coordinates with, and seeks guidance from, OHCHR.

C. Liberia

The United Nations Office in Liberia subsumed, in 1997, the United Nations Observer Mission in Liberia. UNOL is mandated, in post-elections Liberia, to help consolidate the peace and prevent a relapse into conflict; facilitate the provision of technical assistance and support by the United Nations system for reconciliation efforts and the establishment of democratic institutions; and facilitate communications between the Government of Liberia and the United Nations on

matters related to peace-building objectives. With specific regard to human rights, UNOL's work focuses on the promotion of human rights amongst both governmental institutions and civil society. UNOL human rights staff have monitored some important trials.

IV. Peace-Building Offices of the Office of High Commissioner for Human Rights

Through presences of the Office of High Commissioner for Human Rights (OHCHR) in the field, international norms are be woven into national legislation and practice; human rights education and advocacy campaigns help prevent violations of human rights; and the international, regional and national bodies devoted to the promotion and protection of human rights join forces with like-minded NGOs and civil society.

OHCHR establishes presences in the field in response to emergency human rights situations, such as occurred in the countries of the Former Yugoslavia; as a reaction to decisions by the Commission on Human Rights, the Security Council or the General Assembly, as in the case of Burundi; or following an agreement between OHCHR and the government concerned, as in Colombia. Field work usually combines promotion and protection activities.

A key objective of OHCHR's field presences is to ensure that international human rights standards are implemented and realized at country level, both in law and practice. This is accomplished by setting up or strengthening national human rights capacities and national human rights institutions, following up on the recommendations of human rights treaty bodies and the Commission on Human Rights, and creating a culture of human rights. The success of OHCHR's field presences depends on the willingness and ability of governments, national institutions, NGOs and UN country teams to launch human rights-related activities on their own, within the context of regional or sub-regional strategies.

Another important aspect of OHCHR's field work is developing the human rights component of complex UN missions, both peacekeeping and peace-making. Thus OHCHR is strengthening coopera-

tion with the Department of Peacekeeping Operations (DPKO) and the Department of Political Affairs (DPA) in, among other places, Angola, Sierra Leone, Liberia, Ethiopia, Eritrea, and East Timor. The enhancement of OHCHR's capacity to plan, coordinate and execute human rights components of UN peace operations is one of the key recommendations of the report of the Brahimi Panel on the United Nations peace operations.

The following field offices of the Office of High Commissioner are essentially peace-building offices.

1. Burundi

The Burundi office of OHCHR is working on a three-pronged approach to the country's problems:

1. Observation and reporting on human rights violations (Observation Unit).
2. Assistance to the judiciary through support for the re-establishment of some of its entities, including training of employees. OHCHR also provides assistance in revising laws and in criminal proceedings and trials, especially for those related to the outbreak of fighting in 1993 (Legal Assistance Programme).
3. Education and training on human rights issues (Promotion Unit).

The main objectives of the observation, promotion and administration of justice programmes are to:

1. Observe and gather information on the current human rights situation.
2. Investigate human rights violations.
3. Monitor detention and the situation of people forced to flee their homes.
4. Work with the Government to ensure follow-up of OHCHR's findings.
5. Report on the human rights situation in Burundi.
6. Establish a human rights culture, strengthen the role and capacity of national human rights institutions, the civil society and the media in protecting human rights, and disseminate information about human rights through training, promotional and educational activities.

7. Reinforce the rule of law by providing assistance to the Judiciary, promoting the implementation of and respect for international human rights instruments and working to ensure fair trials.

Human rights observation

OHCHR visits prisons and detention centres and monitors the functioning of the judicial system across the country. A preventive monitoring system helps ensure that returnees are not unlawfully arrested or detained for allegedly participating in the events of 1993. Together with UNHCR, OHCHR monitors that the return from refugee camps and transit centres occurs with respect for returnees' human rights.

Assistance to the judicial system

Activities include: (1) Providing training to employees of the judicial system, police forces and penitentiary personnel. (2) Providing legal assistance in criminal proceedings related to the start and continuation of the conflict. (3) Reinforcing the capacity of the judicial system, especially to handle litigation on land matters and lawsuits arising from the events of 1993. (4) Training civil servants involved in arrest and detention.

Human rights promotion, education and training

OHCHR seeks to reinforce the capacities of transitional institutions, the army, the civil society and the educational system through training, information, awareness-raising and popularizing the concept of respect For Human Dignity.

2. *Democratic Republic of the Congo*

OHCHR's work in the Democratic Republic of the Congo focuses on two activities:

1. Monitoring the human rights situation and providing support to the mandate of the special rapporteur on the human rights situation in the Congo.

2. Implementing technical cooperation activities, including training for NGO representatives and Government officials, developing a human rights documentation centre, and offering education and promotion programmes.

3. *Colombia*

OHCHR seeks to provide human rights underpinning to peace efforts through the following activities:

(a) Observation

Given the size of Colombia and the magnitude of its human rights problems, the Bogota Office is developing a strategic approach to observation. The Office continues to register all complaints and develop analyses on a countrywide scale. However, because human resources are limited, the Office has had to prioritize "hot spots" and cases of particular seriousness to ensure follow-up of the most critical cases. The observation team has made frequent visits to these explosive zones. But as the war spread over the past year, the number of areas considered "hot spots" has grown and the observation team has been unable to fulfill requests to visit all these sites. The Office opened three regional satellite offices in Medellín, Cali and Bucaramanga in 2001. With a greater presence in these areas, the Office can better prevent human rights violations and encourage the protection of human rights by working with regional and local actors.

(b) Relations with media and human rights promotion

The Bogota Office is seeking to develop a multi-faceted, coherent public-information strategy, including the promotion of international human rights standards. The mass media, political interest groups, public-opinion makers, the academic community, social communicators, NGOs and the private sector are targeted. The Office's strategy includes the production of publications, regular press releases and public statements, editorial opinion pieces in major newspapers, press conferences, the creation of a national award for journalism on human rights and humanitarian reporting, promotional seminars and work-

shops, the enhancement of the Office web site and off-the-record briefings with target audiences.

(c) Technical cooperation and legal advisory services:

The Office has made strong efforts to structure its technical cooperation programme in response to requests from the Government, the civil society and the international community. Seminars and training events are being used. Technical assistance also includes providing legal advisory services with a view to harmonizing national legislation with international norms. Through analytical and investigative studies, the Office aims to strengthen the rule of law and encourage the correct interpretation and application of international norms and standards.

Given the current human rights climate, adversely affected by a multi-sided armed conflict that is subject to frequent, unpredictable change, the principal objective is to observe the human rights situation in the country with the aim of supporting the rule of law and promoting the development of a self-sustaining environment for the protection, promotion and full enjoyment of human rights by all Colombians. This is being tackled through:

1. Observing, monitoring and providing analytical reports to the High Commissioner, so the international community remains fully aware of the human rights situation in Colombia.
2. Advising the Colombian authorities on the formulation and implementation of policies and programmes to promote and protect human rights.
3. Providing technical assistance to selected State and non-governmental institutions to strengthen national capacity in human rights protection, promotion and dissemination.

4. CAMBODIA

The objectives of the OHCHR office in Cambodia are as follows:

Objective 1: Assist the Government and people of Cambodia in promoting and protecting human rights, and support the Special Representative of the Secretary-General (SRSG) in implementing his mandate to promote and protect human rights. The anticipated result is

that human rights issues of concern will be closely observed and individual cases of human rights violations will be investigated. Protection actions, disciplinary sanctions and judicial prosecutions will be initiated and monitored.

Objective 2: Contribute to the establishment of a legal framework and institutions for the promotion and protection of human rights consistent with international human rights standards, and the development of an efficient and participatory law-making process. The anticipated results are that textbook and training aids for a training programme on law-drafting will be developed. Persons from technical ministries, parliament and civil society will be trained on the technicalities of law drafting. Government officials, legislators and civil society leaders will acquire draft-analysis skills, appreciate the need to draft, adopt and implement sound laws, and coordinate their functions through four workshops.

Comments are provided on model draft laws developed for and used by legislators and law drafters with a view to improving the quality of reformulated draft laws. An informal consultative process is being launched so civil society can comment, from a human rights perspective, on major draft laws. Public debate on draft laws is being initiated.

Legal advice and materials drawn from international human rights instruments are being provided to parliamentarians. Parliamentary guidelines on public consultations is being developed and adopted and a consultation mechanism is being established.

Parliamentarians are being sensitized to Parliament's oversight role and techniques, with special focus on human rights policies and practices.

Objective 3: Strengthen the administration of justice, which will help ensure the rule of law and the promotion and protection of human rights. The anticipated results are that the court presidents and the chief prosecutors in the country will be trained and given an opportunity to review their working methods and discuss human rights-related issues with high-ranking officials from the Gendarmerie, police, prison department, Ministry of Justice and human rights organizations. Several workshops are being organized to this end. A report is being produced, recommendations made and regulatory

framework and policies developed for the Supreme Council of Magistracy, the Constitutional Council, the Judicial Reform Council and the Supreme Court. Reports on several court cases and trials with serious human rights implications are being documented; and appropriate actions are being taken. A code of conduct for judges and prosecutors is being developed and adopted.

The Judicial Mentor Programme is being expanded to the Supreme Court and the Court of Appeal, expert assistance being provided to ten courts by eight mentors; legal services are being provided and test cases conducted. Judges are being trained in the application of international human rights standards in the administration of justice.

A core group of people in the provinces is being trained on key substantive and procedural legislation to act as links/intermediaries between poor communities and the judicial system. Training materials used in formal judicial education programmes are being developed and tested and a plan for the implementation of formal training for the judiciary is being developed.

Objective 4: Strengthen the national capacity to secure the rule of law and fair and professional law enforcement, consistent with international human rights standards. The anticipated results are that training plans and materials for systematically teaching human rights to the security forces (military, gendarmes and police) will be developed, security-forces instructors will be trained in effective training methods and thousands of police trained in human rights. Middle-management police officials in the provinces and municipalities will receive formal and on-the-job training on effective procedures for the investigation of cases of sexual abuse of children.

The Cambodian police and international assistance providers are being made aware of organizational reforms needed to improve police performance and compliance with international standards on law enforcement and human rights. Awareness of key human rights issues, such as trafficking of persons and protection of minorities, is being increased among the local branches of the Executive. The capacity to monitor and protect human rights among OHCHR counterparts in the executive, judiciary and legislative branches of Government and in NGOs is being strengthened.

Objective 5: Enhance the capacity of Cambodia to meet its international human rights treaty reporting obligations, and advocate for ratification of additional instruments. The anticipated results are that Cambodia's reports on the implementation of the international treaties will be drafted, and recommendations by treaty bodies requiring priority attention will be identified. Cambodian human rights NGOs will be trained in economic, social and cultural rights and will be encouraged to produce a parallel report on the International Covenant on Economic, Social and Cultural Rights.

The Office advocates and supports ratification of additional human rights conventions and protocols by the Government of Cambodia.

Objective 6: Enhance the capacity of Cambodian NGOs and civil society organizations to carry out human rights protection and promotion activities. The anticipated results are that reports containing an assessment of human rights education programmes are produced by OHCHR and recommendations for effective education strategies formulated. NGOs' capacity to design and implement programmes in the areas of access to justice, the human rights of women, and the advancement of the rights of other groups in need of special protection are being strengthened.

Objective 7: Address human rights concerns in poverty-related issues, in particular by promoting equitable access to and management of land and other natural resources, adequate workers' conditions, and equitable access to basic services. The anticipated results are that the capacity of selected development NGOs to adopt a human rights approach to their work will be developed through the implementation of pilot projects. The capacity of Government departments/bodies and NGOs to address land, environment and labour issues through awareness-raising, advocacy and monitoring will be strengthened. Advice will be provided to other UN agencies, through the United Nations Development Assistance Framework monitoring process, on how to address human rights issues relevant to their programmes.

Objective 8: Create an environment, at the commune level, that encourages free and fair elections by establishing an adequate legal framework, promoting public awareness on the human rights aspects of elections, and monitoring the electoral process. The anticipated

results are that NGOs' and OHCHR's capacity to monitor election-related human rights violations will be strengthened.

5. *Bosnia and Herzegovina*

The principal human rights objective in Bosnia and Herzegovina is the creation of a climate of security by fostering respect for and protection of the rights of the individual. Through its partnership with other UN agencies, the Office helps to mainstream human rights concerns in UN activities, to ensure that members of civil society are informed of their rights, and to assist the Government in understanding its responsibility and ultimate accountability.

The Office focuses on human rights training, gender issues, and promotion of non-discrimination and economic and social rights, particularly through the use of legal mechanisms. In addition, OHCHR seeks to strengthen its regional approach, especially in the areas of trafficking and the return of refugees and displaced persons, in cooperation with OHCHR offices in Croatia and the Federal Republic of Yugoslavia. OHCHR also continues to support the mandate of the Special Rapporteur of the Commission on Human Rights.

OHCHR sees its role in Bosnia and Herzegovina as both a catalyst and reference point. The Office strives to coordinate activities among other international organizations, national and international non-governmental organizations and the Government. In doing so, OHCHR aims to help ensure that human rights are integrated into all policies, programmes and legislation. The ultimate goal of OHCHR is to achieve increased State responsibility for compliance with human rights norms and develop a vigorous civil society that will encourage accountability.

6. *Republic of Croatia*

The principal objective is to strengthen the protection and promotion of human rights in Croatia, consistent with the mandate and objectives of OHCHR and in light of the Memorandum of Understanding signed with the Government in June 2000. This is a crucial time in Croatia, as important advances in human rights made since

the war need to be consolidated and the national capacity to carry on human rights work into the future to be strengthened.

7. Federal Republic of Yugoslavia

The objectives of the Office are to: monitor the human rights situation throughout the FRY, with particular attention paid to early warning and conflict prevention; clarify the fate of prisoners, detainees and missing persons; and build and strengthen the capacities of the Government, United Nations agencies, inter-governmental organizations and NGOs in human rights protection and promotion. The High Commissioner's Special Envoy on Persons Deprived of Liberty in connection with the Kosovo crisis sought to improve communications among the main actors involved in this issue and to ensure attention is given to the human rights of prisoners, detainees and missing persons. In general, the field operation seeks effective country-wide implementation of international human rights standards through a strategy of dialogue with all authorities: Federal, Serbian, Montenegrin, the United Nations Mission in Kosovo (UNMIK) and local actors included in the Kosovo civil administration.

8. El Salvador

The main role of the OHCHR Technical Cooperation Office in El Salvador, established in April 1997, has been to keep human rights on the national agenda after a long-lasting internal conflict which ended with the signature and implementation of peace agreements between the Government and the Frente Farabundo Marti de Liberación Nacional (FMLN).

The Office has sought to support the national initiatives for the establishment and strengthening of democratic institutions and the rule of law with due respect for human rights. The Office was actively engaged in: a) providing advisory services for the revision of domestic legislation vis-à-vis the international human rights norms; b) providing advisory services for the incorporation of a human rights approach in development activities and policy design; c) strengthening national institutions; d) building and strengthening of national capacities for

the promotion and protection of human rights, including fact-finding, monitoring, reporting and raising awareness.

9. *Guatemala*

The Office was established as part of a technical cooperation project signed by OHCHR with the Government of Guatemala in 1996. Its role was to assist the Government in strengthening the national capacity for the consolidation of the rule of law and democracy in the context of the peace process through the promotion and enjoyment of human rights for all. It has been implementing activities aimed at assisting the Office of the Human Rights Ombudsman; organizing training courses for civil society organizations, the Presidential Commission in charge of human rights, and the National Civil Police.

Conclusion

The discussion in the Security Council on peace-building prior to its Presidential Statement on 29 December 1998 is instructive. Nevertheless, one sees evidence of a pragmatic approach including on the interpretation of human rights into post-conflict peace-building.

In the next chapter we shall turn to action by the Security Council to combat international terrorism.

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CHAPTER VII

Combatting International Terrorism

INTRODUCTION

LEGAL AND POLICY PRONOUNCEMENTS OF THE SECURITY COUNCIL

The Security Council, following a tentative start in 1992, made, as from 1998 onwards, major pronouncements of law and policy, which we review below. The growing threats of international terrorism have presented the Security Council with major new challenges. They also pose great risks for human rights. In this chapter we shall see how the Council has faced these new challenges.

(A) RESOLUTION 731 (1992)

In resolution 731 (1992), the Security Council expressed its deep disturbance at the world-wide persistence of acts of international terrorism, including those in which States were directly or indirectly involved, "which endanger or take innocent lives, have a deleterious effect on international relations and jeopardize the security of states". Deeply concerned over results of investigations which implicated officials of the Libyan government and "determined to eliminate international terrorism", the Security Council strongly deplored certain conduct of the Libyan government, urged it to contribute to the elimination of international terrorism and requested the assistance of the Secretary-General.

Several members of the Security Council, before and after the passing of the resolution, declared that the resolution did not constitute a precedent. It is instructive, nevertheless, to review their rationale in support of the competence of the Council to take action on the matter. One line of reasoning advanced was that the Council had dealt

with the issue of terrorism in the past, had issued statements and adopted resolutions on the matter and thus was giving continued attention to an issue with which it had already been concerned.[1]

The component of state involvement in terrorism made the difference for some delegations. As the British Ambassador stated in the debate: "What we are concerned with here is the proper reaction of the international community to the situation arising from Libya's failure, thus far, to respond effectively to the most serious accusations of state involvement in acts of terrorism".[2] Likewise, the representative of the United States argued that "the Council was faced in this case with clear implications of government involvement in terrorism".[3]

The existence of a threat to international peace and security was seen by several delegations. The US Ambassador put the matter thus: "It is ... conduct threatening to us all and directly a threat to international peace and security".[4] The Council, he added, "had to act to deal with threats to international peace and security stemming from extremely serious terrorist attacks".[5] The Hungarian representative believed that the question of eradicating international terrorism had a legitimate place among the concerns of the Security Council, which, on the basis of its mandate under the Charter, was obliged to follow closely any event that might endanger international peace and security.[6] The Austrian representative submitted that "such terrorist attacks strike at the very foundation of modern civilization and jeopardize friendly relations among states and, indeed, endanger their security".[7] This was an issue of manifest concern to the international community, argued the Indian representative. The Council's need to act in the maintenance of international peace and security was therefore legitimate.[8]

The French representative stated: "The exceptional gravity of these attacks and the considerations connected with the restoration of law

1. S/PV.3033, p.87.
2. Ibid., p.104.
3. Ibid., p.80.
4. Ibid., p.79.
5. Ibid., p.80.
6. Ibid., pp.91-92.
7. Ibid., p.92.
8. Ibid., p.94.

and security justify this action in the Security Council".[9] Protection of the lives and safety of people moved some representatives. Venezuela's representative declared: "International impunity endangers international peace and security".[10]

(B) Resolution 1189 (1998)

On 13 August 1998, the Security Council adopted resolution 1189 (1998), having been deeply disturbed by the indiscriminate and outrageous acts of international terrorism that took place on 7 August 1998 in Nairobi, Kenya and Dar-es-Salaam, Tanzania. The Council condemned such acts as having a damaging effect on international relations and jeopardize the security of States. It declared its conviction that the suppression of acts of international terrorism was essential for the maintenance of international peace and security, and reaffirmed the determination of the international community to eliminate international terrorism in all its forms and manifestations.

- Determined to eliminate international terrorism, the Security Council:
- Strongly condemned the terrorist bomb attacks "which claimed hundreds of innocent lives, injured thousands of people and caused massive destruction to property".

Called upon all States and international institutions to cooperate with and provide support and assistance to the ongoing investigations in Kenya, Tanzania and the United States to apprehend the perpetrators of these cowardly criminal acts and to bring them swiftly to justice.

(C) Resolution 1269 (1999)

On 19 October 1999, the Security Council expressed its unequivocal condemnation of terrorism in resolution 1269 (1999). Deeply concerned by the increase in acts of international terrorism which endangered the lives and well-being of individuals worldwide as well as the peace and security of all States, the Security Council unequivo-

9. Ibid., p.82.
10. Ibid., p.100.

cally condemned all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whom committed, in particular those which could threaten international peace and security. The Council called upon all States to implement fully the international anti-terrorist conventions to which they were parties, encouraged all States to consider as a matter of priority adhering to those to which they were not parties, and encouraged also the speedy adoption of pending conventions. It stressed the vital role of the United Nations in strengthening international cooperation in combating terrorism and, emphasized the importance of enhanced coordination among States, international and regional organizations.

The Security Council called upon all States to take, *inter alia*, in the context of such cooperation and coordination, appropriate steps to:

- cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts;
- prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism;
- deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition;
- take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts;
- exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts.

(D) Resolution 1368/2001

On 12 September 2001, the Security Council adopted resolution 1368 (2001) declaring its determination to combat by all means

threats to international peace and security caused by terrorist acts, and recognizing the inherent right of individual or collective self-defence in accordance with the Charter. The Council unequivocally condemned in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and regarded such acts, like any act of international terrorism, as a threat to international peace and security. The Council called on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of those terrorist attacks and stressed that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of those acts would be held accountable.

The Council called on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999. It expressed its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of terrorism, in accordance with its responsibilities under the Charter of the United Nations.

(E) Resolution 1373 (2001)

In resolution 1373 (2001) of 28 September 2001, the Security Council reaffirmed its unequivocal condemnation of the terrorist attacks, which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressed its determination to prevent all such acts. It further reaffirmed that such acts, like any act of international terrorism, constituted a threat to international peace and security.

The Security Council again recognized the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001), and reiterated the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts.

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism, the Security Council called on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism.

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism, the Security Council reaffirmed the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiterated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts.

Acting under Chapter VII of the Charter of the United Nations, the Security Council decided that all States shall:

a. Prevent and suppress the financing of terrorist acts;
b. Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;
c. Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;
d. Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commis-

sion of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons.

The Security Council further decided that all States shall:

a. Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;
b. Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;
c. Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;
d. Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;
e. Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;
f. Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;
g. Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents.

The Security Council called upon all States to:

a. Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and

the threat posed by the possession of weapons of mass destruction by terrorist groups;

b. Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;
c. Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;
d. Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;
e. Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);
f. Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;
g. Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists.

The Security Council noted with concern the close connection between international terrorism and trans-national organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard emphasizes the need to enhance coordination of efforts on national, sub-regional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security.

It declared that acts, methods, and practices of terrorism are contrary to the Purposes and Principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the Purposes and Principles of the United Nations.

The Security Council decided to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of its resolution, with the assistance of appropriate expertise, and called upon all States to report to the Committee, no later than 90 days from the date of adoption of the resolution and thereafter according to a timetable to be proposed by the Committee, on the steps taken to implement this resolution.

The Security Council directed the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of the resolution, and to consider the support it requires, in consultation with the Secretary-General.

The Council expressed its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter.

(f) Resolution 1377 (2001)

On 12 November 2001, the Security Council, meeting at the Ministerial level, adopted resolution 1377 (2001) containing a declaration on the global effort to combat terrorism. The Council declared that acts of international terrorism constituted one of the most serious threats to international peace and security in the twenty-first century, and further declared that acts of international terrorism constituted a challenge to all States and to all of humanity. It reaffirmed its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed. It stressed that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of the Charter of the United Nations.

The Security Council underlined that acts of terrorism endangered innocent lives and the dignity and security of human beings everywhere, threatened the social and economic development of all States and undermined global stability and prosperity.

The Security Council affirmed that a sustained, comprehensive approach involving the active participation and collaboration of all Member States of the United Nations, and in accordance with the Charter of the United Nations and international law, was essential to combat the scourge of international terrorism. It stressed that continuing international efforts to broaden the understanding among civilizations and to address regional conflicts and the full range of global issues, including development issues, would contribute to international cooperation and collaboration, which themselves were necessary to sustain the broadest possible fight against international terrorism.

The Council welcomed the commitment expressed by States to fight the scourge of international terrorism, including during the General Assembly plenary debate from 1 to 5 October 2001, called on all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, and encouraged Member States to take forward work in this area. The Council called on all States to take urgent steps to implement fully resolution 1373 (2001), and to assist each other in doing so, and underlined the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism.

The Council expressed its determination to proceed with the implementation of that resolution in full cooperation with the whole membership of the United Nations, and welcomed the progress made so far by the Counter-Terrorism Committee established by paragraph 6 of resolution 1373 (2001) to monitor implementation of that resolution.

The Council recognized that many States will require assistance in implementing all the requirements of resolution 1373 (2001), and invited States to inform the Counter-Terrorism Committee of areas in which they required such support. In that context, the Council invited the Counter-Terrorism Committee to explore ways in which States can be assisted, and in particular to explore with international, regional and sub-regional organizations:

- the promotion of best-practice in the areas covered by resolution 1373 (2001), including the preparation of model laws as appropriate,

- the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of resolution 1373 (2001),
- the promotion of possible synergies between these assistance programmes.

The Council called on all States to intensify their efforts to eliminate the scourge of international terrorism.

(G) Resolution 1378 (2001)

On 14 November 2001, the Security Council adopted resolution 1378 (2001), reaffirming its previous resolutions on Afghanistan, and supporting international efforts to root out terrorism, in keeping with the Charter of the United Nations. The Council condemned the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaida network and other terrorist groups and for providing safe haven to Usama Bin Laden, Al-Qaida and others associated with them, and in this context supported the efforts of the Afghan people to replace the Taliban regime. The Council reaffirmed its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan, and expressed its concern over the grave humanitarian situation and the continuing serious violations by the Taliban of human rights and international humanitarian law.

The Security Council expressed its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government, both of which:

- should be broad-based, multi-ethnic and fully representative of all the Afghan people and committed to peace with Afghanistan's neighbours,
- should respect the human rights of all Afghan people, regardless of gender, ethnicity or religion,
- should respect Afghanistan's international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan, and
- should facilitate the urgent delivery of humanitarian assistance and the orderly return of refugees and internally displaced persons, when the situation permits.

The Security Council called on all Afghan forces to refrain from acts of reprisal, to adhere strictly to their obligations under human rights and international humanitarian law, and to ensure the safety and security and freedom of movement of United Nations and associated personnel, as well as personnel of humanitarian organizations- It affirmed that the United Nations should play a central role in supporting the efforts of the Afghan people to establish urgently such a new and transitional administration leading to the formation of a new government and expresses its full support for the Secretary-General's Special Representative in the accomplishment of his mandate, and called on Afghans, both within Afghanistan and among the Afghan diaspora, and Member States to cooperate with him.

(H) Presidential Statement of 6 December 2001

At the 4243rd meeting of the Security Council, held on 6 December 2000, in connection with the Council's consideration of the item entitled "The responsibility of the Security Council in the maintenance of international peace and security", the President of the Security Council made a statement on behalf of the Council, expressing its deep concern by the increase, in many regions of the world, of acts of terrorism in all its forms and manifestations. The Council reiterated its condemnation of all acts of terrorism, irrespective of motive, wherever and by whomever committed. It welcomed the efforts of the General Assembly and other organs of the United Nations in the field of combating international terrorism.

The Security Council called on all States that had not done so to consider, as a matter of priority, becoming party to the existing anti-terrorism conventions. The Security Council reaffirmed its resolution 1269 (1999) of 19 October 1999 and called upon all States to implement its provisions fully and expeditiously. The Security Council reiterated its readiness, including on the basis of the relevant reports of the Secretary-General, as provided for in its resolution 1269 (1999) of 19 October 1999, to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security.

(i) Resolution 1390 (2002)

On 16 January 2002, the Security Council adopted resolution 1390 (2002) in which it reaffirmed its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressed its determination to prevent all such acts, noting the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressed its determination to root out this network.

The Council noted "the indictments of Usama bin Laden and his associates by the United States of America for, *inter alia*, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania", and determined that the Taliban had failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000). It condemned the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan. It also condemned the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property.

The Council reaffirmed further that acts of international terrorism constituted a threat to international peace and security. Acting under Chapter VII of the Charter of the United Nations, the Security Council:

"1. *Decided* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and takes note of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and decides to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decided* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333

(2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee";

(a) Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;

(b) Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the Committee determines on a case by case basis only that entry or transit is justified;

(c) Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities."

The Security Council decided that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution. The Council recalled the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and

preparation or perpetration of terrorist acts or in supporting terrorist acts.

The Council requested the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;

(a) to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;

(b) to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;

(c) to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;

(d) to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;

(e) to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;

(f) to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001).

The Council requested all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above.

The Council requested the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution. It urged all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with

the Monitoring Group referred to in paragraph 9 below. It further urged all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of the resolution, and to inform the Committee of the adoption of such measures, and invites States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions.

The Security Council requested the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months.

II. Terrorism and Human Rights

The need to protect human rights in the struggle against terrorism has been highlighted by the Secretary-General, the High Commissioner for Human Rights and by other leaders in the international community. The policy proposition that human rights must not be sacrificed in the struggle against terrorism has received widespread reaffirmation.

A number of international, regional and sub-regional instruments have sought to develop the legal framework for combatting terrorism and some of them have highlighted the protection of human rights. The High Commissioner for Human Rights has been active in warning about the dangers of human rights being disregarded in the struggle against human rights, and made this the subject of her annual report to the Commission on Human Rights in 2002.[11] To set the issues in context, we begin with the link between the issues of human rights and human security.

11. (E/CN.4/2002/18).

(A) Human Rights and Human Security

In his address to the Security Council on 18 January 2002,[12] Secretary-General Kofi Annan emphasised the centrality of human rights in the struggle against terrorism:

> "While we certainly need vigilance to prevent acts of terrorism, and firmness in condemning and punishing them, it will be self-defeating if we sacrifice other key priorities -such as human rights – in the process."

The High Commissioner for Human Rights, Mary Robinson, in her2002 annual report to the Commission on Human Rights, brought out the centrality of human rights for human security as follows:

> "In the immediate aftermath of 11 September, some suggested that human rights could be set aside while security was achieved. Now however, there is a wide recognition that ensuring respect for human rights and dignity throughout the world is the best long-term guarantor of security. Such an approach focuses attention on the elimination of the root causes of violence and therefore isolates terrorists. The Commission on Human Rights is look to for leadership on the basis o0f these values, which are the international community's best answer to terrorism."[13]

(B) The Security Council and human security

How has the Security Council approached the issue of human security? As was seen above, in its resolution 1269 (1999), the Security Council expressed its deep concern over the increase in acts of international terrorism which endangered the lives and well-being of individuals worldwide as well as the peace and security of all States. The Council condemned all acts of terrorism, irrespective of motive, wherever and by whomever committed. The Council unequivocally condemned all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomsoever committed, in particular those which could threaten international peace and security. The

12. SG/SM/8105-SC/7277.
13. E/CN.4/2002/18, para. 59.

Security Council called upon all States to cooperate with one another, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts. The Council called upon all States to take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts. The Council further urged all States to exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts.

Subsequent resolutions of the Security Council built on this policy foundation. In its resolution 1377 of 12 November, 2001, the Security Council declared that acts of international terrorism constituted one of the most serious threats to international peace and security in the twenty-first century and that terrorism constituted a challenge to all States and to all of humanity. It endangered innocent lives and the dignity and security of human beings everywhere, threaten the social and economic development of all States and undermined global stability and prosperity.

The policy framework of the Security Council is important. The Council can be seen to invoke global stability and the peace and security of all States as well as of human beings everywhere. It can be seen calling on States to cooperate for the prevention of terrorism and in bringing perpetrators to justice. It can be seen calling on States to screen asylum-seekers to ensure that they have not participated in terrorist acts – doing so with due regard to international standards of human rights. The significance of these policy pronouncements is that they are the necessary starting point in addressing the nexus between human rights and terrorism. These leads us to the relevant international standards on human rights that must be observed in the struggle against terrorism.

(c) Human rights and terrorism: the key human rights norms

International human rights law recognizes that some rights can be derogated from in times of public emergency. Article 4 of the International Covenant on Civil and Political Rights requires a number of

substantive and procedural safeguards regarding the declaration and implementation of a state of emergency. These are that:

- the nature of the emergency must threaten the life of the nation;
- the existence of a state of emergency must be officially declared;
- measures adopted are necessary to the extent strictly required by the exigencies of the situation;
- derogations are not incompatible with the derogating state's other obligations under international law;
- the derogating state notifies other states parties, through the Secretary-General of the UN, of the provisions it has derogated from and the reasons for such derogation, as well as of the date when the derogation has ceased to apply.

Article 4 also lists provisions that may not be derogated from even in times of public emergency. These are: article 6 (right to life), article 7 (prohibition of torture or cruel, inhuman or degrading punishment, or of medical or scientific experimentation without consent), article 8, paragraphs 1 and 2 (prohibition of slavery, slave-trade and servitude), article 11 (prohibition of imprisonment because of inability to fulfil a contractual obligation), article 15 (the principle of legality in the field of criminal law, i.e. the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty), article 16 (the recognition of everyone as a person before the law), and article 18 (freedom of thought, conscience and religion).

On 24 July 2001, the UN Human Rights Committee adopted General Comment No 29 concerning Article 4 of the ICCPR.[14] The Committee suggested that even during an armed conflict, measures derogating from the Covenant are allowed only if and to the extent that the situation constitutes a threat to the life of the nation. Even then, States should carefully consider the justification of why such a measure is necessary and legitimate in the circumstances. The Committee also clarified the list of elements that cannot be subject to lawful

14. CCPR/C/21/rev.1/Add.11. Available on OHCHR Website, under Treaty-Bodies Data Base.

derogations. These elements include the following: all those deprived of liberty must be treated with respect for their dignity; the prohibition of hostage taking, abductions, or unacknowledged detention; the protection of persons belonging to minorities; the prohibition of unlawful deportation or transfer of population; and that "no declaration of a state of emergency ... may be used as justification for a State party to engage itself ... in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence."

The General Comment also outlines some important principles with regard to the right to a fair trial. It stresses that any trial leading to the imposition of death penalty during a state of emergency must conform to the provisions of the Covenant including those on fair trial. It also emphasises that as the right to a fair trial is explicitly guaranteed under international humanitarian law during armed conflict, these rights cannot be derogated from during other emergency situations.

Article 2 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states: "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."[15]

The compatibility of adopted anti-terrorist measures with the following human rights standards require our particular attention:

- prohibition of discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national ethnic or social origin, property, birth or other status (ICCPR art. 2 and 26),
- the right to liberty and security of the person, including the prohibition of arbitrary arrest or detention (ICCPR art. 9),
- prohibition of torture or other cruel, inhuman or degrading treatment or punishment (ICCPR, arts. 7)
- freedom of movement (ICCPR art. 12), including the right of all persons to leave any country, including one's own country (ICCPR art. 12, para. 4),
- the right of persecuted persons to seek asylum when entering the territory or jurisdiction of the State and the right of non-

15. There are 126 States that have ratified or acceded to the torture Convention.

refoulement (UDHR art. 14 and 1951 Convention relating to the Status of Refugees),

- procedural guarantees related to deportation of an alien (in particular ICCPR art. 9, 13, 14),
- procedural guarantees during arrest and detention, including the rights to outside contacts, access to legal counsel and to be brought before a judge within a reasonable time (ICCPR art. 9 para. 4 and art. 14),
- the right to a fair trial, particularly in the determination of any criminal charge (ICCPR arts. 14),
- prohibition of retroactive criminal laws (ICCPR arts. 15),
- protection against arbitrary interference with privacy, family, home or correspondence (ICCPR art. 17),
- the right to freedom of thought, conscience and religion, including the right to practise one's religion in public or in private (ICCPR art. 18),
- freedom of expression (ICCPR art. 19),
- the right of peaceful assembly (ICCPR art. 21),
- freedom of association (ICCPR art. 22),
- rights of participation (ICCPR art. 25).

It should be emphasised that not every restriction of rights or freedoms constitutes a violation of human rights. There are balances in human rights law between the enjoyment of freedoms and the concern over national security. These balances are reflected in several of the provisions of the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples Rights, the American Convention on Human Rights, and the European Convention on Protection of Human Rights and Fundamental Freedoms.

(D) The relevant practice of UN and regional organizations

A. United Nations

(a) Treaty bodies and national measures to combat terrorism

United Nations human rights treaty bodies have monitored national measures designed to fight terrorism and other threats to national security and unity in several contexts. Most criticisms were voiced in the context of the state reporting procedure. The Human

Rights Committee is the body that has dealt with the phenomenon on the largest number of occasions. The Committee against Torture comes next, having dealt with terrorist-related issues in the context of the inquiry procedure under article 20 of the Convention against Torture, but also in the context of its reporting procedure.

The Human Rights Committee addresses the subject in the context of three different provisions of the Covenant: article 4 (power to declare states of emergencies and derogate from Covenant provisions), article 9 (extension of powers of arrest and detention), and article 14 (possible extension of the jurisdiction of military tribunals to try terrorist offences, absence of certain procedural guarantees in terrorist trials). Its General Comment No.29 on States of emergencies of 24 July 2001 has been referred to above.

In the past eighteen months, the Human Rights Committee has criticized some States parties in respect of their state of emergency legislation. The only direct reference to anti-terrorist legislation adopted after the attacks of September 11 was made in the COBs on the fifth periodic report of the UK, in late October 2001 – here, the Committee recommended to the UK to secure the compatibility of the then draft anti-terrorist legislation with article 4 – the UK subsequently notified the UN and the Committee of its derogation from article 9 ICCPR under said legislation (21 December 2001).

Under the Optional Protocol procedure, there are comparatively few cases in which the Committee has been called upon to deal with allegations of violations of the ICCPR committed vis-à-vis terrorist suspects. Noteworthy is the decision on the case of Victor Polay Campos, concerning the trial and treatment in detention of a former leader of the Tupac Amaru movement. Apart from its criticism of the practice of "faceless judges" trying terrorist offences (mostly military tribunals or commissions of military officers), the Committee considered the conditions of detention of M. Polay Campos, and the treatment he endured during prison transfers contrary to article 7 ICCPR.

(b) Convention Against Torture: Article 21

The Committee Against Torture is developing a practice of country visits in emergency situations. It has so far visited Turkey, Peru and Sri Lanka. It had also been due to visit Egypt, but the visit did not

actually take place. It is interesting to note that the Government of Egypt called upon CAT to abandon its inquiry "so as not to give a wrong indication to the terrorist groups and their supporters", which had perpetrated the terrorist bombing of the Egyptian Museum in 1996. In a report that the CAT nevertheless did, it made the following pertinent findings/recommendations: it is important to prevent security forces and in particular the State Security Intelligence "from acting as a state within the state", as they tend to escape control by any superior authorities, and in particular judicial control. It criticized the inadequate legal and infrastructure to combat the phenomenon of torture in an effective way.

B. OSCE

On 21 September, the then OSCE Chairman-in-Office, representing Romania, made a statement calling on all 55 OSCE participating States to work together to develop an OSCE-wide plan of action for the fight against terrorism. He urged all OSCE States to, "strengthen their legislation, including provisions for a European-wide mandate for the detention and extradition of suspects." He also stated that, "We should not use the fight against terrorism as an excuse for human rights abuses." On 29 November, a joint statement by the UN High Commissioner for Human Rights, the Secretary General of the Council of Europe and the Director of the OSCE Office for Democratic Institutions and Human Rights was issued. The statement condemned all forms of terrorism and noted that all states have the obligation to eradicate terrorism and protect their citizens from terrorist acts. It restated the requirements of UN Security resolution 1373. While emphasizing the essential need of states to strictly adhere to their international obligations to respect human rights.

At the OSCE Ministerial Council meeting in Bucharest, the Bucharest Ministerial Declaration, Decision No. 1 on Combating Terrorism, and its Annex 1, "The Bucharest Plan of Action for Combating Terrorism", all issued on 4 December 2001. The Declaration emphasized the OSCE determination to protect its citizens, while, "safeguarding rule of law, individual liberties and the right to equal justice under law."

On 22 January, the OSCE Ministerial Troika (the current, immediate past and next Chairmen in Office) met and issued a statement on further anti-terrorism measures "to tackle the roots of terrorism, while at the same time urging its 55 participating States to safeguard traditional human rights."

C. Council of Europe

The following is an outline of the key pillars of the human rights jurisprudence of the Council of Europe:

General Principles: In Klass and Others v. Germany (1978), the Court emphasized that some compromise between the requirements for defending democratic society and individual rights was inherent in the system of the Convention. Accordingly, the Court was prepared to take into account the background to the cases submitted to it, particularly problems linked to the prevention of terrorism. States parties did however not enjoy an unlimited discretion to subject persons within their jurisdiction to special measures.

Derogations linked to Article 15 ECHR: Article 15 of the European Convention on Human Rights gives a broad authorization to contracting States to derogate to the obligations set forth by the Convention "in time of war or other public emergency threatening the life of the nation". This Article was referred to by several States – notably in cases where they were confronted with terrorism. Similarly to article 4 of the UN Covenant, derogations are limited by the text of Article 15 itself ("No derogation from Article 2, except in respect of deaths resulting from lawful acts of war, or from Articles 3, 4 (paragraph 1) and 7" and "to the extent strictly required by the exigencies of the situation"). Examining a derogation on the basis of Article 15 in the "Brannigan and Mc Bride" case (1993), the Court agreed, for instance, that a derogation was justified by the reinforcement and the impact of terrorism and that, when deciding to put someone in custody, against the opinion of the judicial authority, the Government did not exceed its margin of appreciation.

Margin of appreciation left to the State party: In the well-known Ireland v. the United Kingdom judgment (1978), the Court recalled that it fell to each State party, with its responsibility for "the life of [its] nation", to determine whether that life was threatened by a "public

emergency" and, if so, how far it was necessary to go in attempting to overcome the emergency. By reason of their direct and continuous contact with the pressing needs of the moment, the national authorities were in principle in a better position than the international judge to decide both on the presence of such an emergency and on the nature and scope of derogations necessary to avert it. Accordingly, in this matter a wide margin of appreciation should be left to the national authorities.

Role of the Court in supervising States: In the same judgment, the Court observed that, at the same time, States parties did not enjoy an unlimited power of appreciation. It was for the Court to rule on whether, in particular, the States had gone beyond the "extent strictly required by the exigencies" of the crisis. The domestic margin of appreciation is thus clearly accompanied by a European supervision. In exercising its supervision the Court must give appropriate weight to such relevant factors as the nature of the rights affected by the derogation, the circumstances leading to, and the duration of, the emergency situation (Brannigan and Mc Bride).

Right to life: Article 2 of the Convention does not exclude the event that a deliberate use of a lethal solution can be justified when it is "absolutely necessary" to prevent some sorts of crimes. This need to be done, however, in very strict conditions in order to respect human life the more as possible, even in regard of persons suspected of preparing a terrorist attack. In Mc Cann and others v. the United Kingdom, the Court stated that it had to carefully scrutinise, not only whether the force used by the soldiers was strictly proportionate to the aim of protecting persons against unlawful violence but also whether the anti-terrorist operation was planned and controlled by the authorities so as to minimise, to the greatest extent possible, recourse to lethal force.

Prohibition of torture or inhuman or degrading treatment or punishment: The fight against terrorism does not authorize the use of torture or inhuman or degrading treatment or punishment, for example during questioning of the suspects. This absolute prohibition was recalled by the Court on many occasions. For example, in Chahal v. the United Kingdom (1996), the Court emphasized that Article 3 of the Convention enshrined one of the most fundamental values of democratic societies. Even in the most difficult circumstances, such as the fight

against terrorism and organized crime, the Convention prohibits in absolute terms torture and inhuman or degrading treatment or punishment. Unlike most of the substantive clauses of the Convention and of its Protocols, article 3 made no provision for exceptions and no derogation from it is permissible under Article 15 § 2 even in the event of a public emergency threatening the life of the nation. Moreover, in Tomasi v. France (1992) the Court underlined that even the requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, could not result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals.

Investigations: Investigations led by the authorities to fight against terrorism need to be done in conformity with the Convention, even if the Court admits that the fight against terrorism can allow the use of specific methods. In Klass v. Germany, the Court thus observed that democratic societies found themselves threatened by highly sophisticated forms of espionage and by terrorism, with the result that the State had to be able, in order effectively to counter such threats, to undertake the secret surveillance of subversive elements operating within its jurisdiction. The Court had therefore to accept that the existence of some legislation granting powers of secret surveillance over the mail, post and telecommunications was, under exceptional conditions, necessary in a democratic society in the interests of national security and/or for the prevention of disorder or crime.

Arrest and detention of persons: The Court accepted that preventing the community against terrorism is a legitimate goal but that this could not justify everything. The fight against terrorism could justify the extension of the police custody, but it could not authorize that there was no judicial control of this custody, or, that there is no prompt enough judicial control. In Brogan and Others v. the United Kingdom thus accepted that the context of terrorism in Northern Ireland had the effect of prolonging the period during which the authorities were in a position to keep a person suspected of serious terrorist offences in custody before bringing him/her before a judge or other judicial officer. The difficulties of judicial control over decisions to arrest and detain suspected terrorists may thus affect the manner of implementation of Article 5 para. 3 (art. 5-3), for example in calling

for appropriate procedural precautions in view of the nature of the suspected offences. However, they could not justify dispensing altogether with "prompt" judicial control.

In Salak v. Turkey, the Court observed once again that the investigation of terrorist offences undoubtedly presented the authorities with special problems. This did not mean, however, that the investigating authorities had "carte blanche" under Article 5 to arrest suspects for questioning, free from effective control by the domestic courts and, ultimately, by the Convention supervisory institutions, whenever they choose to assert that terrorism was involved. What was considered to be at stake there was the importance of Article 5 in the Convention system which enshrined a fundamental human right, namely the protection of the individual against arbitrary interferences by the State with his right to liberty.

Reasonableness suspicion: According to the Court, the "reasonableness" of the suspicion on which an arrest could be based formed an essential part of the safeguard against arbitrary arrest and detention. This presupposed the existence of facts or information which would satisfy an objective observer that the person concerned might have committed the offence. However, what might be regarded as "reasonable" would however depend upon all the circumstances. In this respect, terrorist crime fell into a special category. Because of the attendant risk of loss of life and human suffering, the police were obliged to act with utmost urgency in following up all information, including information from secret sources. Further, the police might frequently have to arrest a suspected terrorist on the basis of information which was reliable but which could not, without putting in jeopardy the source of the information, be revealed to the suspect or produced in court to support a charge. However, the exigencies of dealing with terrorist crime could not justify stretching the notion of "reasonableness" to the point where the essence of the safeguard was impaired

Confidential information: In the "Murray" case (1994), the Court admitted that the use of confidential information was essential to fight terrorist violence and the threat on citizens and the democratic society as a whole. This did not mean, however, that the investigating authorities had "carte blanche" under Article 5 (art. 5) to arrest suspects for

questioning, free from effective control by the domestic courts or by the Convention supervisory institutions, whenever they choose to assert that terrorism was involved (see above para.10).

Anonymous witnesses: Confronted with the need to estimate the conformity to the Convention of certain forms of inquiries and proceedings, the Court admitted, for example, that the use of anonymous testimony was not always incompatible with the Convention (Doorson v. the Netherlands). In some case, indeed, as those linked to terrorism, the witnesses needed to be protected against the eventual risk of retaliation that could bring into play their life, liberty or security: The Court had recognised in principle in Mechelen v. The Netherlands that, provided that the rights of the defence are respected, it might be legitimate for the police authorities to wish to preserve the anonymity of an agent deployed in undercover activities, for his own or his family's protection and so as not to impair his usefulness for future operations.

D. OAU

(a) The OAU Convention on the Prevention and Combating of Terrorism

On 14 July, 1999 the Thirty-fifth Ordinary Session of the Assembly of Heads of State and Government of the OAU, meeting in Algiers, Algeria, adopted the OAU Convention on the Prevention and Combating of Terrorism. The adoption of the Convention was motivated by the desire to establish a coordinated legal framework for combating terrorism in Africa. To date, the convention has been signed by thirty-nine countries, six of which have ratified it (Algeria, Angola, Egypt, Eritrea, Kenya and Tunisia). It requires fifteen ratifications to enter into force.

Definition of terrorism

The Convention does not define terrorism as such, but Article 1 defines *terrorist acts* as:

(a) any act which is a violation of the criminal laws of a State Party and which may endanger the life, physical integrity or freedom of, or cause serious injury or death to, any person, any number or group of

persons or causes or may cause damage to public or private property, natural resources, environmental or cultural heritage and is calculated or intended to:

(i intimidate, put in fear, force, coerce or induce any government, body, institution, the general public or any segment thereof, to do or abstain from doing any act, or to adopt or abandon a particular standpoint, or to act according to certain principles; or

(ii) disrupt any public service, the delivery of any essential service to the public or to create a public emergency; or

(iii)create general insurrection in a State;

(b) any promotion, sponsoring, contribution to, command, aid, incitement, encouragement, attempt, threat, conspiracy, organizing, or procurement of any person, with the intent to commit any act referred to in paragraph (a) (i) to (iii).

Terrorism as a threat and impediment to the enjoyment of human rights

The Convention recognizes that terrorism poses a threat and impediment to the enjoyment of certain human rights. Thus the preamble refers to, *inter alia*, "the need to promote human and moral values based on tolerance and rejection of all forms of terrorism irrespective of their motivations"; "the legitimate right of peoples to self-determination and independence pursuant to the principles of international law and the provisions of the Charters of the Organization of African Unity and the United Nations as well as the African Charter on Human and Peoples' Rights"; "terrorism constitutes a serious violation of human rights and, in particular, the rights to physical integrity, life, freedom and security, and impedes socio-economic development through destabilization of States".

However, Article 3 provides that notwithstanding the provisions of Article 1 [defining terrorist acts], struggles waged by peoples in accordance with the principles of international law for their self-determination, including armed struggles against colonialism, occupation, aggression and foreign domination, shall not be considered as terrorist acts. Furthermore, political, philosophical, ideological, racial, ethnic, religious or other motives shall not be justifiable defences against terrorist acts.

Non-derogation from international humanitarian law and human rights

Significantly, Article 22(1) stipulates that:

> Nothing in the Convention shall be interpreted as derogating from the general principles of international law, in particular the principles of international humanitarian law, as well as the African Charter on Human and Peoples' Rights.

In this respect, it is appropriate to recall that the African Charter on Human and Peoples' Rights protects, in Articles 4 to 7, a number of specific rights which are of particular relevance in the fight against terrorism and when prosecuting terrorist suspects: the rights to life and integrity Article 4); the right to dignity (Article 5); the right to liberty and security of the person (Article 6); and rights to fair trial, including the right to the presumption of innocence, the right to legal defence, the right to a hearing by an impartial court or tribunal and the right to appeal (Article 7).

Safeguarding the human rights of terrorist suspects

The Convention recognizes that States do not enjoy unlimited discretion when investigating, arresting and prosecuting terrorist suspects within their jurisdiction. This must be done in conformity with the provisions of the Convention. In particular, Article 7(3) provides that any detained suspects shall be entitled to:

(a) communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in whose territory that person habitually resides;
(b) be visited by a representative of that State;
(c) be assisted by a lawyer of his or her choice;
(d) be informed of his or her rights under sub-paragraphs (a), (b), and (c).

Furthermore, Article 7(4) enjoins States Parties to ensure that their national laws enable full effect to be given to the rights enumerated above. State Parties are also called upon to enact the necessary legislation and adopt other legitimate measures aimed at giving effect to the provisions of the Convention and in conformity with it.

(b) The Dakar Declaration on Terrorism

Following the 11 September events, some African leaders felt the need to renew their collective efforts to fight terrorism not only in African but in the wider international community. President Abdoulaye Wade of Senegal took the initiative in this regard by convening a summit of African leaders in Dakar, Senegal, to discuss the problem. The summit, held on 17 October, 2001, adopted a Declaration.

The Dakar Declaration expressed concern that the development of terrorism continued to constitute an unacceptable infringement of the most essential human rights and democracy, as well as a threat to world peace and security. It condemned the 11 September attacks against the United States and reiterated Africa's commitment to fight terrorism on the continent without any restriction based on political, philosophical, ideological, racial, ethnic, religious and other considerations. It also took note of security Council resolutions 1368 and 1373, and appealed to all African countries to ratify as a matter of urgency the OAU Convention on the Prevention and Combating of Terrorism and similar UN instruments, and to take the necessary legal, diplomatic, financial and other measures to fight terrorism at national, subregional, regional and global levels.

E. OAS

(i) The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights has had to deal with a *high number of cases involving a state of emergency.* Nevertheless, it has surprisingly continued to refuse addressing the question of *human rights violations by non-State actors.*[16]

16. See in this regard Inter-American Commission on Human Rights, Third Report on the Human Rights Situation in Colombia, 26 February 1999, OEA/Ser.L/V/II.102, Doc. 9 rev. 1, Ch. I, para. 5."Because of its unique attributes, rights and obligations under domestic and international law, the State is necessarily the focus of the Commission's scrutiny, rather than the other actors who perpetrate violence in Colombia. It is the State alone that is charged with upholding the law, maintaining order, dispensing justice and performing international legal obligations. For these reasons, the Commission cannot and does not treat the Colombian State on the same level as the other violent actors in that country".

In December 2001, in a resolution on terrorism and human rights, the Commission declared that "[s]tates have the right and indeed the duty to defend themselves against this international crime within the framework of international instruments that require domestic laws and regulations to conform with international commitments" but reminded that "military courts may not try civilians, except when no civilian courts exist or where trial by such courts is materially impossible. Even under such circumstances, the IACHR has pointed out that the trial must respect the minimum guarantees established under international law, which include non-discrimination between citizens and others who find themselves under the jurisdiction of a State, an impartial judge, the right to be assisted by freely-chosen counsel, and access by defendants to evidence brought against them together with the opportunity to contest it".[17]

(ii) The Inter-American Court of Human Rights

Although seemingly shier than the Commission, the Inter-American Court of Human Rights has been also more straightforward in criticizing the practice of states during states of emergency. The Court has indeed considered that the exercise of emergency powers has often led to the subversion of the democratic order and has taken two advisory opinions[18] on this question as well as very important decisions that were going far in terms of remedies granted to the victims.

The main decisions of the Court on emergency questions are Castillo Petruzzi v. Peru[19] where the Court found that the military trials of four Chilean civilians violated several rights guaranteed under the American Convention, and ordered Peru to nullify the military courts' judgments, retry the Chileans in civilian courts in compliance with the rights guaranteed by the Convention, and "adopt appropriate measures to amend the domestic laws that place civilians under the jurisdiction of the military courts" and *Loayza Tamayo v. Peru*,[20] the case of a University professor who was prosecuted for, and acquitted

17. Inter-American Commission on Human Rights Resolution, Terrorism and Human Rights, 12 December 2001, www.cidh.org.
18. Advisory opinion OC-8/87 and Advisory opinion OC-9/87, op. cit.
19. *Castillo Petruzzi v. Peru*, Inter-Am. Ct. H. R. (ser. C) No. 52 (1999).
20. *Loayza Tamayo v. Peru*, Inter.-Am. Ct. H.R. (ser. C) No. 3, (1997).

of, treason in a military court, and then convicted and sentenced to 20 years in prison by the "faceless special tribunal of the civil courts", where the Court ordered Peru to nullify the judgment and to "adopt the internal legal measures necessary to adapt [the emergency decrees] to the [American Convention]".

(i) Military Courts. Going further that the Human Rights Committee in its General Comment Nr. 13, the Inter-American Court has several times maintained that the object of a military justice system is to maintain order and discipline within the armed forces and hold that military courts had no jurisdiction over civilians, even in emergency situations.[21] Examining the Peruvian military courts in the *Castillo Petruzzi* Case, the Court stated that there was a right to be tried before one's natural judge, which imposed an absolute limit to changes of judicial competencies.[22]

(ii) Habeas Corpus. In its first advisory opinion[23] on questions related to states of emergency, the Court suggested that the remedy of *habeas corpus* acquire all its importance during states of emergency because it allows a court to assess whether any violations of non-derogable rights have been committed, particularly the right to humane treatment. The Court also underlined that article 27 "does not mean, however, that the suspension of guarantees implies a temporary suspension of the rule of law, nor does it authorize those in power to act in disregard of the principle of legality by which they are bound at all times". *Habeas corpus* is thus considered as a non-derogable right.

(iii) Judicial guarantees. With regard to the last part of article 27 on emergency powers, the Court considered that it was not appropriate to make a list of non-derogable rights to the extent that the non-derogable judicial guarantees depended from the right that was at stake (e.g, the right to humane treatment or the right to a name), the facts that give rise to the question and the juridical order and practice

21. See also *Loayza Tamayo v. Peru* and *Cesti Hurtado v. Peru.*
22. In this case, the Court has also considered that Peruvian military courts did not meet the other requirements of article 8 (1) of the American Convention of being independent and impartial because their judges had been appointed by the Minister of Defence, because of their dependence upon the military hierarchy, and because of the military's legal authority both for combating terrorism and for trying those captured.
23. Advisory opinion OC-8/87, op. cit.

of each State party. Nevertheless, the Court concluded that the essential guarantees of article 27, and which may thus never be suspended, comprise *habeas corpus, amparo* and other effective remedy permitting to guarantee non-derogable rights and that these judicial guarantees should be exercised within the principles of article 8 of the Convention (due process).

(iv) Freedom from Ex Post Facto Laws. In the Castillo Petruzzi case, the Court held that the prohibition of ex post facto laws as enshrined in article 9 of the American Convention implied that, in criminal law, the norm should be formulated unequivocally and clearly define the reprehensible conduct so that it is distinguishable from other conducts.

Conclusion

International terrorism blatantly disregards human rights. The Security Council has declared that any act of international terrorism threatens international peace and security. It has called on all States to punish the perpetrators. It has also stressed the importance of preventive measures. In the next chapter we turn to the Security Council's role in the prevention of conflicts, focusing on the human rights dimensions of conflict prevention.

CHAPTER VIII

Security Council Protection in Practice

INTRODUCTION

This chapter presents the protection practice of the Security Council from the perspectives of anticipatory and preventive protection, mitigatory and curative protection, and remedial and compensatory protection.

A. ANTICIPATORY AND PREVENTIVE PROTECTION

I. THE PREVENTIVE APPROACH

As was seen in an earlier chapter, the first summit of the Security Council, held on 31 January 1992, registered the preventive approach. Accordingly, it requested Secretary-General Boutros Boutros-Ghali to prepare and submit to the UN membership a report, together with suggestions, on ways and means for enhancing the capacity of the United Nations for preventive diplomacy, peacemaking and peacekeeping. The statement containing the request to the Secretary-General for a report recognized the existence of non-military as well as military threats to peace and security. In their interventions before the Council, as we saw above,[1] many of the Heads of State and Government participating in the meeting highlighted the importance of democracy, the rule of law, respect for human rights and the protection of minority rights.

The statement also recognized that there was a role not only for the Security Council but for other competent organs of the United Nations such as the General Assembly, the Economic and Social Coun-

1. Supra, p. 61.

cil, the Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities. Clearly, the Security Council could not spread itself across the entire range of human rights activities. At the same time human rights could no longer be marginal to the activities of the Council. How has the Council framed its role?

II. Preventive peace-keeping

The Vienna Conference on Human Rights (1993) announced a determination to take *new steps forward* in the commitment of the international community with a view to achieving sustained progress in human rights endeavours. It expressed grave concern about continuing human rights violations in all parts of the world and about *the lack of sufficient and effective remedies* for the victims. It therefore recommended that the United Nations assume a more active role in the promotion and protection of human rights. Recognising the important role of human rights components in specific arrangements concerning some peacekeeping operations by the United Nations, the World Conference recommended that the Secretary-General take into account the reporting experience and capabilities of the former Centre for Human Rights (now the OHCHR) and human rights mechanisms in conformity with the Charter of the United Nations.

Effective international protection requires anticipatory and preventive measures, mitigatory and remedial measures, and measures of redress and compensation. While some mechanisms have been established for tackling violations of human rights after they have begun, and for providing limited redress, preventive measures are singularly lacking. This is a major deficiency in the international protection system. In the political sectors of the United Nations incipient efforts have been made, as was seen in an earlier chapter, to develop systems of early warning and preventive diplomacy. The human rights programme has to catch up in this area. It has begun to play a part in the human rights components of peacekeeping operations and, as the World Conference indicated, this is a role that should be developed and accentuated.

However, there are still important conceptual breakthroughs to be made in the international protection system, and one of them is to

draw upon the experience and techniques of peacekeeping in taking *new steps forward*, as called for by the World Conference. Some time ago, the NGO Committee on Human Rights organised a programme at United Nations Headquarters on Human Rights Day devoted to a comparison of the techniques of peacekeeping and human rights. The idea was to encourage resort to the methods and techniques of peacekeeping in the human rights programme. Since then we have seen the development of electoral assistance and monitoring, and the inclusion of human rights components in peacekeeping operations.

We are seeing, however, an evolution in the problematique of human rights violations which will require more accent on preventive measures in the international protection system of the future. Even as more and more countries embrace the values of democracy, the rule of law and respect for human rights, internal conflicts, ethnic and religious clashes, are causing great violence and brutality. It is much more difficult to deal with such conflicts after they have broken out – when passions are high and the desire for vengeance proliferates. In situations of potential internal conflict, or in situations where population groups straddle one or more nations, with a potential for strife and exploitation, preventive peacekeeping could be a valuable way of defusing problems and avoiding their eruption. There has, however, been only one preventive peacekeeping operation to date: the United Nations peacekeeping operations in the Former Yugoslav Republic of Macedonia, which was highly acclaimed as the first, successful, preventive deployment in the history of peacekeeping operations. Because of its great relevance to the development of new forms of human rights protection, especially of the preventive type, the experience of this first preventive peacekeeping operation is offered below.

(a) The initial idea for a preventive deployment

The initiative for a preventive deployment first came from the Co-Chairmen of the International Conference on the Former Yugoslavia.[2] In a letter of 18 November,1992 to the United Nations Secretary-General, they informed the Secretary-General that there was a growing

2. The author was Director and Political Adviser to the Co-Chairmen, Cyrus Vance and Lord Owen, and worked on this initiative.

feeling among persons following the situation in the former Yugoslavia that there was a need to take preventive measures to avoid the outbreak of violence in Macedonia and Kosovo. They recalled that they had warned the Security Council a few days earlier, on 13 November, that there would be a tragedy of dreadful proportions if conflict were to break out in Macedonia or Kosovo, engulfing the neighbouring countries.

Elaborating upon their idea, the Co-Chairmen said that in terms of preventive diplomacy it would be desirable to put United Nations personnel, under the aegis of UNPROFOR, into Macedonia so as to provide a calming influence for all sides and give a sense of stability. They suggested to the Secretary-General:

> "the deployment of a contingent of UNPROFOR personnel within Macedonia, who could have their headquarters in Skopje and be distributed in the main population centres, as well as on the Macedonian borders with Serbia (including Kosovo) and Albania. Their efforts would be complemented by those of the CSCE, which already had a small 'spill-over mission' in Skopje".

The Co-Chairmen suggested that, as a start, about a dozen United Nations military and police officers, with supporting political staff, could be sent, who could be stationed in Skopje and could travel to the border areas. In the light of their experience and recommendations, the United Nations presence could be built up as needed. The Co-Chairmen were conscious of the shortage of United Nations resources and they were seeking to indicate a way to implement their recommendation even in the face of that shortage.

(b) The Secretary-General follows up

Following receipt of the Co-Chairmen's recommendation, Secretary-General Boutros Boutros-Ghali advised the Security Council that he would be sending an exploratory mission to Macedonia to look into the possibility of establishing a preventive deployment of United Nations peacekeepers in Macedonia. The Security Council concurred and the exploratory mission eventually made the following recommendations:

(a) "that a small UNPROFOR presence be established on the Macedonian side of the republic's borders with Albania and

the Federal Republic of Yugoslavia (Serbia and Montenegro) with an essentially preventive mandate of monitoring and reporting any developments in the border areas which could undermine confidence and stability in Macedonia or threaten its territory.

(b) "that a small group of United Nations civilian police should be deployed in the border areas to monitor the Macedonian border police."

The rationale for the latter deployment was that incidents arising from illegal attempts to cross the border had led to increased tension on the Macedonian side. The Mission believed that the presence of a small United Nations civilian police detachment would have a calming effect.

On 9 December,1992 the Secretary-General reported to the Council on the findings of the exploratory mission, together with his recommendations.(S/24923). On 11 December,1992,the Security Council authorised the Secretary-General to establish a presence of the United Nations Protection Force (UNPROFOR) in the Former Yugoslav Republic of Macedonia. The Council requested that the Secretary-General deploy immediately the military, civil affairs, and administrative personnel he had recommended in his report, as well as police monitors.

(c) Implementation

In mid-December, 1992, a United Nations team discussed practical arrangements with the Government in Skopje. The first UNCIVPOL monitors arrived on 27 December. They were eventually deployed along the northern and western borders. On 28 December, a reconnaissance team went to the country to make the necessary arrangements for the interim deployment of a Canadian company. On 7 January,1993,a Canadian company arrived in the country pending the arrival of a joint battalion from Finland, Norway and Sweden. On 25 January, Brigadier-General Finn Saermark-Thomsen of Denmark, who had been designated Commander of the Macedonia Command of UNPROFOR, arrived in Skopje. On 18 February, the Nordic battalion took over the operation from the Canadian company.

The Nordic battalion was 434-strong, composed of three rifle companies. It was deployed on the western border from Debar northward and on the northern border up to the border with Bulgaria. At the beginning there were 19 United Nations Military Observers (UNMOs) in the area of operations. The western border south of Debar was covered solely by UNMOs.

From early January,1993,the northern border and the western border north of Debar were constantly monitored from observation posts and by regular patrols, with a view to reporting any activities that might increase tension or threaten peace and stability. The UNMOs conducted regular patrols in their area of operations to monitor the situation. They also carried out a programme of visits to border villages aimed at gaining the coincidence of their inhabitants and assisting in defusing possible inter-ethnic tensions.

While carrying out their border visiting programme, the UNMOs were approached by representatives of different ethnic groups who lodged various complaints about alleged discriminatory practices by the authorities. In those cases where the complaints were relevant to the mandate of the mission, they were brought to the attention of the appropriate authorities. Some were also brought to the attention of the competent international bodies, such as the International Conference on the Former Yugoslavia.

UNCIVPOL conducted regular patrols to specific crossings and the border areas in general on a daily basis. UNCIVPOL received through local mayors, a number of complaints concerning the local border police. In those cases where there appeared *prima facie* to be a basis for the complaint, UNCIVPOL took up the matter with the relevant police authorities.

The Civil Affairs component of the mission established, from the outset, an information programme to explain the role of UNPROFOR in the country. UNPROFOR maintained close coordination with the CSCE mission in the country.

By the middle of 1993, UNPROFOR's assessment was that it had to that point been successful in its preventive mandate in the country. It was concerned, however about the internal situation and the possibility of instability should there be an increase in inter-ethnic tensions, a possibility which, it reported, was repeatedly mentioned by local and

international sources. A related concern was about the deterioration of the economic situation ensuing from the implementation of sanctions and which could contribute to a climate of heightened inter-ethnic tensions.

The preventive deployment would go on to render invaluable service in dealing with sources of tension and in defusing potential ethnic strife. It was one of the most successful peace-keeping missions ever.

III. Protection forces

(a) Yugoslavia

The situation in Yugoslavia came to the Security Council at the request of the government of Yugoslavia (as did the situations in Liberia and Somalia). The Security Council worked closely with the Secretary-General and his representatives, who undertook a series of missions of fact-finding and good offices to the area. The Security Council, upon the recommendation of the Secretary-General, first deployed UN observers, then UN forces to promote maintenance of a cease-fire, to extend protection to vulnerable communities and to provide security for the provision of humanitarian relief and assistance.

The creation of the first-ever United Nations protection forces is of special interest. The United Nations Protection Force (UNPROFOR) was established on 21 February 1992 by Security Council Resolution 743. It included military, police and civilian components. It was deployed in certain areas designated as United Nations protected areas. Those were areas in which inter-communal tensions had led to armed conflict previously.

The agreement of 5 June 1992 on the reopening of Sarajevo airport for humanitarian purposes was also significant. That agreement provided for UNPROFOR to establish a special regime for the airport, and to supervise and control its implementation and functioning. All parties undertook to facilitate these processes, together with the handover of the airport to UNPROFOR. All local civilian personnel required for the operation of the airport were to be employed on a basis of non-discrimination and to be supervised and controlled by UNPROFOR. Under the supervision of the United Nations, humanitarian aid would be delivered to Sarajevo and beyond in a non-dis-

criminatory manner and on a sole basis of need. The parties undertook to facilitate such deliveries, to place no obstacle in their way and to ensure the security of those engaged in this humanitarian work. To ensure the safe movement of humanitarian aid and related personnel, security corridors between the airport and the city were to be established and to function under the control of UNPROFOR.[3]

(b)The Great Lakes of Africa: proposal for a humanitarian task force

In a resolution of 1996 on the Great Lakes area of Africa, the Council requested the Secretary-General, in consultation with his Special Envoy and the Coordinator of Humanitarian Affairs, with the United Nations High Commissioner for Refugees, with the OAU, with the Special Envoy of the European Union and with all the States concerned:

(a) To draw up a concept of operations and framework for a humanitarian task force, with military assistance if necessary, drawing initially on immediately available contributions from Member States, with the objectives of:
   - Delivering short-term humanitarian assistance and shelter to refugees and displaced persons in eastern Zaire;
   - Assisting the United Nations High Commissioner for Refugees with the protection and voluntary repatriation of refugees and displaced persons;
   - Establishing humanitarian corridors for the delivery of humanitarian assistance and to assist the voluntary repatriation of refugees after carefully ascertaining their effective will to repatriate;

(b) To seek the cooperation of the Government of Rwanda in, and to ensure international support for, further measures, including the deployment of additional international monitors, as appropriate, to build confidence and ensure a safe return of refugees."[4]

The Council welcomed the offers made by Member States, in consultation with the States concerned in the region, concerning the

3. S/24075, 6 June 1992, Annex. Security Council Resolution 758.
4. S/RES/1078 (1996), 9 November, 1996.

establishment for humanitarian purposes of a temporary multinational force to facilitate the immediate return of humanitarian organizations and the effective delivery by civilian relief organizations of humanitarian aid to alleviate the immediate suffering of displaced persons, refugees and civilians at risk in eastern Zaire, and to facilitate the voluntary, orderly repatriation of refugees by the United Nations High Commissioner for Refugees as well as the voluntary return of displaced persons, and invited other interested States to offer to participate in these efforts." [5]

Unfortunately, the lack of support on the part of Member States resulted in the non-implementation of this resolution.

IV. SAFE AREAS AND SAFE HAVENS

The Council has resorted to Safe Areas/Safe Havens in situations such as Bosnia and Liberia.

Resolution 836 of the Security Council marked a watershed in the United Nations' handling of the situation in the former Yugoslavia. In that resolution, the Security Council reiterated its alarm at the grave and intolerable situation in the Republic of Bosnia and Herzegovina arising from serious violations of international humanitarian law. It reaffirmed once again that any taking of territory by force or any practice of "ethnic cleansing" was unlawful and totally unacceptable. Alarmed by the plight of the civilian population in the territory of the Republic of Bosnia and Herzegovina, in particular in Sarajevo, Bihac, Srebrenica, Gorazde, Tuzla and Zepa, and determined to ensure the protection of the civilian population in safe areas and to promote a lasting political solution, the Security Council decided to extend the mandate of UNPROFOR in order to enable it, in the safe areas referred to in resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992) of 14 September 1992.

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5. Resolution 1080 (1996), Great Lakes.

The Security Council affirmed that these safe areas were a temporary measure and that the primary objective remained to reverse the consequences of the use of force and to allow all persons displaced from their homes in the Republic of Bosnia and Herzegovina to return to their homes in peace.

The Security Council authorized UNPROFOR, in addition to the mandate defined in resolutions 770 (1992) of 13 August 1992 and 776 (1992), in carrying out this new mandate, acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys. The Security Council further decided that, notwithstanding paragraph 1 of resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate. It requested the Member States concerned, the Secretary-General and UNPROFOR to coordinate closely on the measures they were taking and to report to the Council through the Secretary-General.

Unfortunately, as events turned out, the Security Council would not be able to raise the means required to enforce these decisions, and there has been much criticism of the declaration of Safe Areas without the means to protect them. Nevertheless, the designation of Safe Areas remains an important innovation in the Protection Practice of the Security Council.

In a resolution of 31 May 1996, the Council signalled its firm conviction that Monrovia should be treated as a Safe Haven.[6]

V. Rapid humanitarian response

In a Presidential Statement adopted in 1996, the Security Council called "on all parties in the region [affected by a conflict] to allow

6. S/RES/1059, 31 May 1996.

humanitarian agencies and non-governmental organizations to deliver humanitarian assistance to those in need and to ensure the safety of all refugees as well as the security and freedom of movement of all international humanitarian personnel. It underlines the urgent need for the orderly voluntary repatriation and resettlement of refugees, and the return of displaced persons, which are crucial elements for the stability of the region."[7] On another occasion, it called "upon all those concerned in the region to create favourable and safe conditions to facilitate the delivery of international humanitarian assistance to those in need and to ensure the safety of all refugees as well as the security and freedom of movement of all international humanitarian personnel."[8]

VI. Contingency Planning

In relation to the situation then prevailing in Burundi, the Council declared it was "gravely concerned at the continued deterioration of the security situation in Burundi, in particular at reports of a downward spiral of violence which had resulted in further large-scale killings in Buhoro and Kivyuka, and at the increasing flow of refugees from Burundi. The Council was deeply concerned that relief organizations had been prevented from delivering vital humanitarian and development assistance in Burundi, and at the suffering which this imposed on the people of Burundi. It called on the parties and all concerned to refrain from any action that could aggravate the problem of refugees:

"The Security Council reiterated the importance it attached to the contingency planning called for in paragraph 13 of resolution 1049 (1996), and noted the consultations which had already taken place. In the light of recent developments, it requested the Secretary-General and Member States concerned to continue to facilitate, as matters of urgency, contingency planning for a rapid humanitarian response in the event of widespread violence or a serious deterioration in the humanitarian situation in Burundi. It also encouraged the Secretary-General further to pursue planning for steps that might be taken to support a possible political agreement."[9]

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7. S/PRST/1996/44, 1 October, 1996.
8. S/RES/1078 (1996), para.5

B. Mitigatory and Curative Protection

Introduction

There is growing evidence of the quest of the Security Council to help mitigate and end gross violations of human rights and humanitarian law.

I. Protection of civilians in armed conflicts

On 19 February 1999, the Council adopted a Presidential Statement condemning attacks and acts of violence directed at civilians in conflict situations. The Council expressed its grave concern at the growing civilian toll of armed conflict and noted with distress that civilians now accounted for the vast majority of casualties in armed conflict and were increasingly directly targeted by combatants and armed elements. The Council condemned attacks or acts of violence in situations of armed conflict directed against civilians, especially women, children and other vulnerable groups, including also refugees and internally displaced persons, in violation of the relevant rules of international law, including those of international humanitarian and human rights law. The Council was especially concerned about attacks on humanitarian workers, in violation of the rules of international law.

The Council called upon all parties concerned to comply strictly with their obligations under international law, in particular, their relevant obligations under the Hague Conventions, the Geneva Conventions of 1949 and their Additional Protocols of 1977, and the United Nations Convention on the Rights of the Child of 1989, as well as with all decisions of the Security Council. It strongly condemned the deliberate targeting by combatants of civilians in armed conflict and demands that all concerned put an end to such violations of international humanitarian and human rights law. It expressed its willingness to respond, in accordance with the Charter of the United Nations, to situations in which civilians, as such, have been targeted or humanitarian assistance to civilians has been deliberately obstructed.

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9. S/PRST/1996/24, 15 May 1996.

The Council also condemned all attempts to incite violence against civilians in situations of armed conflict and called upon States to fulfil their obligations to take action at the national level. It affirmed the need to bring to justice, in an appropriate manner, individuals who incite or cause violence against civilians in situations of armed conflict or who otherwise violate international humanitarian and human rights law. In this regard, the Council reaffirmed the importance of the work being done by the ad hoc Tribunals for the former Yugoslavia and Rwanda and called upon all States to cooperate with the Tribunals, in accordance with the relevant Security Council resolutions. The Council acknowledged the historic significance of the adoption of the Rome Statute of the International Criminal Court.

The Council considered that a comprehensive and coordinated approach by Member States and international organizations and agencies was required in order to address the problem of the protection of civilians in situations of armed conflicts. To this end, the Council requested the Secretary-General to submit a report containing concrete recommendations to the Council on ways the Council, acting within its sphere of responsibility, could improve the physical and legal protection of civilians in situations of armed conflict. The report should also identify contributions the Council could make toward effective implementation of existing humanitarian law. The report should examine whether there are any significant gaps in existing legal norms, through the review of recent reports in this regard. The Council encouraged the Secretary-General to consult the Inter-Agency Standing Committee in formulating his recommendations.

II. Condemnation of gross violations

The condemnation of gross violations of human rights has become a regular feature of the work of the Security Council, as the following additional examples will show:

Resolution 769 (1992): condemned resolutely the abuses committed against the civilian population, particularly on ethnic grounds.

Resolution 770 (1992): demanded that unimpeded and continuous access to all camps, prisons and detention centres be granted immediately to the ICRC and other relevant humani-

tarian organizations and that all detainees therein receive humane treatment, including adequate food, shelter and medical care.

Resolution 771 (1992): condemned grave breaches of international humanitarian law.

Resolution 779 (1992): endorsed the principle that all statements or commitments made under duress, particularly those relating to land and property were wholly and void and that all displaced persons have the right to return in peace to their former homes.

Resolution 780 (1992): established a Commission of Experts to investigate allegations of war crimes and crimes against humanity.

Resolution 787 (1992): reaffirmed that any taking of territory by force or any practice of 'ethnic cleansing' is unlawful and unacceptable and will not be permitted to affect the outcome of the negotiations on constitutional arrangements for the Republic of Bosnia and Herzegovina and insisted that all displaced persons be enabled to return in peace to their former homes. It also condemned all violations of international humanitarian law, including in particular the practice of 'ethnic cleansing' and the deliberate impeding of the delivery of food and medical supplies to the civilian population of the Republic of Bosnia and Herzegovina, and reaffirms that those that commit or order the commission of such acts will be held individually responsible in respect of such acts.

Resolution 798 (1992): strongly condemned acts of unspeakable brutality.

Resolution 808 (1992): establishment an international tribunal for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the Former Yugoslavia since 1991. The jurisdiction of this tribunal was subsequently extended to Rwanda.

Resolution 1067 (1996): condemned the use of weapons against civil aircraft in flight as being incompatible with elementary considerations of humanity, the rules of customary international law as codified in article 3bis of the Chicago convention,

and the standards and recommended practices set out in the annexes of the Convention.[10]

Resolution 1076 (1996): denounced the discrimination against girls and women and other violations of human rights and international humanitarian law in Afghanistan.[11]

19 December 1996: The Members of the Security Council of the United Nations vigorously condemned the occupation of the residence of the Ambassador of Japan in Lima, Peru, and the taking of hostages by terrorist elements. This intolerable act constitutes also an assault against the international community as a whole.[12]

In a Presidential Statement (S/PRST/1998/2) adopted on 19 January 1999, the Security Council strongly condemned the massacre of Kosovo Albanians in the village of Racak in Southern Kosovo, Federal Republic of Yugoslavia, on 15 January 1999, as reported by the Organization for Security and Cooperation in Europe (OSCE) Kosovo Verification Mission (KVM). It noted with deep concern that the report of the KVM stated that the victims had been civilians, including women and at least one child. The Council also took note of the statement by the Head of the KVM that the responsibility for the massacre lay with Federal Republic of Yugoslavia security forces, and that uniformed members of both the Federal Republic of Yugoslavia armed forces and Serbian special police had been involved. The Council emphasized the need for an urgent and full investigation of the facts and urgently called upon the Federal Republic of Yugoslavia to work with the International Tribunal for the former Yugoslavia and KVM to ensure that those responsible are brought to justice.

The Security Council deplored the decision by Belgrade to declare KVM Head of Mission Walker persona non grata and reaffirmed its full support for Mr. Walker and the efforts of the OSCE to facilitate a peaceful settlement. It called upon Belgrade to rescind this decision and to cooperate fully with Mr. Walker and the KVM.

The Security Council also deplored the decision by the Federal Republic of Yugoslavia to refuse access to the prosecutor of the Inter-

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10. S/RES/1067,26 July, 1996.
11. S/RES/1076 (1996), 22 October, 1996.
12. Statement made by the President of the Security Council on 19 December, 1996.

national Tribunal and called upon the Federal Republic of Yugoslavia to cooperate fully with the International Tribunal in carrying out an investigation in Kosovo, in line with the call for cooperation with the International Tribunal in its resolutions 1160 (1998) of 31 March 1998, 1199 (1998) of 23 September 1998 and 1203 (1998) of 24 October 1998.

III. Sanction relief

Under article 24, 39 and 41 of the United Nations Charter, 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 may call upon Member States to apply such measures in order to maintain or restore international peace and security. During the last decade, the Security Council has imposed economic sanctions against several countries. Such sanctions have drawn the attention of different United Nations human rights bodies and mechanisms to their possible impact on the enjoyment of human rights.

A note by the President of the Security Council on the Work of the Sanctions Committees, dated 29 January 1999, noted that the sanctions committees should monitor, throughout the sanctions regime, the humanitarian impact of sanctions on vulnerable groups, including children, and make required adjustments of the exemption mechanisms to facilitate the delivery of humanitarian assistance. The indicators for assessment developed by the Secretariat could be used by the committees. Foodstuffs, pharmaceuticals and medical supplies should be exempted from United Nations sanctions regimes. Basic or standard medical and agricultural equipment and basic or standard educational items should also be exempted. Consideration should be given to the drawing up of lists for that purpose. Other essential humanitarian goods should be considered for exemption. In this regard, it was recognized that efforts should be made to allow the population of the targeted countries to have access to appropriate resources and procedures for financing humanitarian imports.

Analysis of this issue brought the Committee on Economic, Social

and Cultural Rights[13] to the adoption of General Comment No 8 (1997) "The relationship between economic sanctions and respect for economic, social and cultural rights". That General Comment was based on several cases involving States parties to the International Covenant on Economic, Social and Cultural Rights. The Committee declared that:

- Although it does not in any way call into question the necessity for economic sanctions in appropriate cases in accordance with Chapter VII of the Charter of the United Nations or other applicable international law, those provisions of the Charter that relate to human rights (Articles 1, 55 and 56) must still be considered to be fully applicable while imposing such sanctions;
- Economic sanctions almost always have a dramatic impact on the rights recognized in the International Covenant on Economic, Social and Cultural Rights. They often cause significant disruption in the distribution of food, pharmaceuticals and sanitation supplies, jeopardize the quality of food and the availability of clean drinking water, severely interfere with the functioning of basic health and education systems, and undermine the right to work.
- Unintentionally, economic sanctions can lead to reinforcement of the power of oppressive élites, the emergence, almost invariably, of a black market and the generation of huge windfall profits for the privileged élites which manage it, enhancement of the control of the governing élites over the population at large, and restriction of opportunities to seek asylum or to manifest political opposition.
- While attempting to persuade the governing élite to conform to international law through applying political and economic pressure, the collateral infliction of suffering upon the most vulnerable groups must be fully recognized and taken into account.

13. The Committee on Economic, Social and Cultural Rights, composed of independent experts, has been established by ECOSOC to monitor the implementation of the International Covenant on Economic, Social and Cultural Rights.

- Humanitarian exemptions to sanctions regimes established by the Security Council designed to permit the flow of essential goods and services destined for humanitarian purposes do not have this effect and are very limited in scope.[14] The Committee underlines that they do not address, for example, the question of access to primary education, nor do they provide for repairs to infrastructures which are essential for the provision of clean water, adequate health care etc.
- The imposition of sanctions does not in any way nullify or diminish the human rights obligations of a State party under the International Covenant on Economic, Social and Cultural Rights. In times of particular hardship, those obligations assume greater practical importance. The State remains under an obligation to ensure the absence of discrimination in relation to the enjoyment of human rights, and to take all possible measures, including negotiations with other States and the international community, to reduce to a minimum the negative impact upon the rights of vulnerable groups within the society.
- When the international community takes upon itself even partial responsibility for the situation within a country (whether under Chapter VII of the Charter or otherwise), it also unavoidably assumes a responsibility to do all within its power to protect the economic, social and cultural rights of the affected population.

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14. Ms Graça Machel, Special Rapporteur on the impact of armed conflict on children, stated: "humanitarian exemptions tend to be ambiguous and are interpreted arbitrarily and inconsistently. ... Delays, confusion and the denial of requests to import essential humanitarian goods cause resource shortages. ...[Their effects] inevitably fall most heavily on the poor" - Report to the General Assembly: Impact of Armed Conflict on Children (A/51/306, annex, para. 128).
A study "Toward More Humane and Effective Sanctions Management: Enhancing the Capacity of the United Nations System, Executive Summary", prepared at the request of the UNDHA on behalf of the IASC, 6 October 1997 (L. Minear, et al.), underlines that the review procedures applied under sanctions committees established by the Security Council "remain cumbersome and aid agencies still encounter difficulties in obtaining approval for exempted supplies. ... [The] committees neglect larger problems of commercial and governmental violations in the form of black-marketing, illicit trade, and corruption."

The Sub-Commission on the Promotion and Protection of Human Rights in its resolution 1997/35 "Adverse consequences of economic sanctions on the enjoyment of human rights" pointed out that economic sanctions "most seriously affect the innocent population, in particular the weak and the poor, especially women and children, (and..) have a tendency to aggravate the imbalances in income distribution already present in the countries concerned". The Sub-Commission therefore appealed to all States concerned to reconsider the adoption of economic sanctions, "even if the legitimate goals pursued are not attained yet, if after a reasonable period of time they appear not to be bringing about the desired changes in policy [...]." In its decision 1999/110, the Sub-Commission reaffirmed that measures such as embargoes should be limited in time and in no way affect innocent civilian populations. In this context, the Sub-Commission reaffirmed the need "to respect the Charter of the United Nations, the Universal Declaration of Human Rights and the relevant provisions of the Geneva Conventions of 1949 and the two Additional Protocols thereto which prohibit the starvation of civilian populations and the destruction of what is indispensable to their survival."

C. Remedial and Compensatory Protection

Introduction

In the area of remedial protection, the protection practice of the Security Council is particularly promising.

I. Accountability and International Tribunals

The concern of the Security Council with accountability for grave violations of human rights and humanitarian law comes across well from the following letter of the President of the Security Council to the Secretary-General:

> "I have the honour to inform you that your letter of 31 January 2000 attaching the report of the International Commission of Inquiry on East Timor (A/54/726-S/2000/59) has been brought to the attention

of the members of the Security Council. Grave violations of international humanitarian and human rights law have been committed; those responsible for these violations should be brought to justice as soon as possible.

"The members of the Security Council welcome the commitment of the Government of Indonesia, as set out in the letter to you dated 26 January 2000 from the Minister for Foreign Affairs of Indonesia, Alwi Shihab (A/54/727-S/2000/65, annex), to bring those responsible to justice through Indonesia's national judicial system. To that end, they encourage Indonesia to institute a swift, comprehensive, effective and transparent legal process, in conformity with international standards of justice and due process of law. In this context, Council members recognize that the accountability of those responsible for the aforementioned violations would be a key factor in ensuring reconciliation and stability in East Timor. They are particularly conscious that early and effective action by the Government of Indonesia would contribute to improved relations between the peoples of Indonesia and East Timor.

"The members of the Security Council share your belief that the United Nations has its role to play in this process in order to help safeguard the rights of the people of East Timor, promote reconciliation and ensure future social and political stability. The members of the Council welcome your intention to assist in this effort. In this regard, they encourage you to consult with the Government of Indonesia on any assistance it may need from the United Nations in taking this process forward.

"The members of the Security Council would be grateful if you could inform the Council on further developments in order to assist its consideration of the situation in East Timor."[15]

II. Justice

In establishing the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY), and the corresponding Tribunal for the situation in

15. Letter dated 18 February 2000 from the President of the Security Council to the Secretary-General

Rwanda, the Security Council defined its position regarding the principles of international law applicable to violations of international humanitarian law. Article 2 of the Statute of the Tribunal gave it power to prosecute persons committing or ordering to be committed grave breaches of the Geneva Conventions of 12 August 1949, namely the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

a. wilful killing;
b. torture or inhuman treatment, including biological experiments;
c. wilfully causing great suffering or serious injury to body or health;
d. extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
e. compelling a prisoner of war or a civilian to serve in the forces of a hostile power;
f. wilfully depriving a prisoner of war or a civilian of the rights of fair and regular trial;
g. unlawful deportation or transfer or unlawful confinement of a civilian;
h. taking civilians as hostages.

Article 3 gave the Tribunal power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

a. employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;
b. wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
c. attack, or bombardment, by whatever means, of undefended towns, villages, dwellings, or buildings;
d. seizure of, destruction or wilful damage done to institutions dedicated to religion, charity and education, the arts and sciences, historic monuments and works of art and science;
e. plunder of public or private property.

Under Article 4, the Tribunal was given the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. killing members of the group;
b. causing serious bodily or mental harm to members of the group;
c. deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. imposing measures intended to prevent births within the group;
e. forcibly transferring children of the group to another group.

The following acts shall be punishable:

a. genocide;
b. conspiracy to commit genocide;
c. direct and public incitement to commit genocide;
d. attempt to commit genocide;
e. complicity in genocide.

Pursuant to Article 5, the Tribunal also has the power to prosecute persons responsible for the following crimes when committed in armed conflict, whether international or internal in character, and directed against any civilian population:

a. murder;
b. extermination;
c. enslavement;
d. deportation;
e. imprisonment;
f. torture;
g. rape;
h. persecutions on political, racial and religious grounds;
i. other inhumane acts.

The Tribunal was given jurisdiction over natural persons pursuant to the provisions of its Statute. A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime. The official position of any accused person, whether as Head of State or Government or as a responsible Government official, shall not relieve such person of criminal responsibility nor mitigate punishment. The fact that any of the acts referred to in articles 2 to 5 of the present Stat-

ute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof. The fact that an accused person acted pursuant to an order of a Government or of a superior shall not relieve him of criminal responsibility, but may be considered in mitigation of punishment if the International Tribunal determines that justice so requires.

The International Tribunal and national courts have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991. The International Tribunal has primacy over national courts. At any stage of the procedure, the International Tribunal may formally request national courts to defer to the competence of the International Tribunal in accordance with the present Statute and the Rules of Procedure and Evidence of the International Tribunal.

In establishing the International Tribunal for Rwanda, the Security Council took note of the reports of the Special Rapporteur for Rwanda of the United Nations Commission on Human Rights (S/1994/1157, annex I and annex II).

In the Statute of the International Tribunal for Rwanda, the Security Council, in Article 1, gave it the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994, in accordance with the provisions of the present Statute.

Under Article 2 of its Statute, the International Tribunal for Rwanda has the power to prosecute persons committing genocide as defined in paragraph 2 of this article or of committing any of the other acts enumerated in paragraph 3 of this article.

Genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

a. Killing members of the group;
b. Causing serious bodily or mental harm to members of the group;

c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
d. Imposing measures intended to prevent births within the group;
e. Forcibly transferring children of the group to another group.

The following acts shall be punishable:

a. Genocide;
b. Conspiracy to commit genocide;
c. Direct and public incitement to commit genocide;
d. Attempt to commit genocide;
e. Complicity in genocide.

In accordance with Article 3 of its Statute, the International Tribunal for Rwanda has the power to prosecute persons responsible for the following crimes when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds:

a. Murder;
b. Extermination;
c. Enslavement;
d. Deportation;
e. Imprisonment;
f. Torture;
g. Rape;
h. Persecutions on political, racial and religious grounds;
i. Other inhumane acts.

Pursuant to Article 4 of its Statute, the International Tribunal for Rwanda has the power to prosecute persons committing or ordering to be committed serious violations of Article 3 common to the Geneva Conventions of 12 August 1949 for the Protection of War Victims, and of Additional Protocol II thereto of 8 June 1977. These violations shall include, but shall not be limited to:

a. Violence to life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;
b. Collective punishments;
c. Taking of hostages;
d. Acts of terrorism;

e. Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;
f. Pillage;
g. The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples;
h. Threats to commit any of the foregoing acts.

The Statute of the International Tribunal for Rwanda has provisions similar to the Tribunal for the Former Yugoslavia in respect of: personal jurisdiction, individual criminal responsibility, and concurrent jurisdiction.

III. Special court for Sierra Leone

On 14 August 2000, the Security Council adopted resolution 1315 out of deep concern at the very serious crimes committed within the territory of Sierra Leone against the people of Sierra Leone and United Nations and associated personnel and at the prevailing situation of impunity. The Council reaffirmed the importance of compliance with international humanitarian law, and reaffirmed further that persons who commit or authorize serious violations of international humanitarian law are individually responsible and accountable for those violations and that the international community will exert every effort to bring those responsible to justice in accordance with international standards of justice, fairness and due process of law.

Recognizing the desire of the Government of Sierra Leone for assistance from United Nations in establishing a strong and credible Court that will meet the objectives of bringing justice and ensuring lasting peace, the Security Council requested the Secretary-General to negotiate an agreement with the Government of Sierra Leone to create an independent special court consistent with its resolution, and expressed its readiness to take further steps expeditiously upon receiving and reviewing the report of the Secretary-General referred to below. The Council recommended that the subject matter jurisdiction of the special court should include notably crimes against humanity, war crimes and other serious violations of international humanitarian

law, as well as crimes under relevant Sierra Leonean law committed within the territory of Sierra Leone. It further recommended that the special court should have personal jurisdiction over persons who bear the greatest responsibility for the commission of the crimes referred to above, including those leaders who, in committing such crimes, had threatened the establishment of and implementation of the peace process in Sierra Leone.

The Council emphasized the importance of ensuring the impartiality, independence and credibility of the process, in particular with regard to the status of the judges and the prosecutors.

IV. Compensation

The United Nations Compensation Commission (UNCC) is a subsidiary organ of the United Nations Security Council. It was established in accordance with Security Council resolutions 687 (1991) and 692 (1991) to pay compensation for losses and damages suffered by individuals, corporations, Governments and international organizations as a direct result of Iraq's unlawful invasion and occupation of Kuwait (2 August 1990 to 2 March 1991).

The Commission is composed of the Governing Council, panels of Commissioners, and a secretariat. The Governing Council is the policy-making organ of the UNCC. Its composition is the same as that of the fifteen-member Security Council at any given time. The Governing Council provides overall policy guidance and acts on recommendations regarding compensation for claimants made by the panels of Commissioners. The panels of Commissioners review and evaluate the claims submitted by Governments on behalf of their nationals, their companies or on their own behalf. On the basis of their reviews, undertaken in instalments of claims, the panels recommend compensation awards to the Governing Council. The secretariat, headed by the Executive Secretary, services and provides assistance to the Governing Council and the panels of Commissioners. The secretariat also administers the United Nations Compensation Fund.

The Commission, within the filing deadlines, has received 2.6 million claims. The total asserted value of these claims (i.e., the amount sought by the claimants) amounts to over US$320 billion. Ninety-six Governments have filed claims, as well as thirteen offices of three

international organizations, which have filed claims on behalf of individuals not in a position to submit their claims through a Government.

As of the beginning of March 2002, the Commission has resolved over 99 per cent of the claims submitted, consisting of the claims of individuals for departure from Kuwait or Iraq (category "A" claims), the claims of individuals for serious personal injury or death (category "B" claims), the claims of individuals for losses up to US$100,000 (category "C" claims), the claims of individuals for losses over US$100,000 (category "D" claims), the claims of corporations, other private legal entities and public sector enterprises (category "E" claims), and the claims of Governments and international organizations (category "F" claims). The Commission has resolved all category "A", "B" and "C" claims. There are approximately 9,500 claims in categories "D", "E" and "F" still to be resolved.

Claims resolved to date have been awarded compensation amounting to approximately US$35.9 billion out of a total amount claimed of over US$105 billion.

To date, the Commission has made available to Governments and international organizations approximately US$13.8 billion for distribution to successful claimants in all categories. Funds to pay the awards of compensation are drawn from the United Nations Compensation Fund which receives up to 30 per cent of the revenue generated by the export of Iraqi petroleum and petroleum products. At present, the Compensation Fund receives 25 per cent of the proceeds under the "oil-for-food" mechanism in accordance with Security Council resolution 1382 (2001).

V. Constitutional issues

In the Tadic case before the International Criminal Tribunal for Yugoslavia, arguments were put forward by the Appellant in support of the contention that the establishment of the International Tribunal was invalid under the Charter of the United Nations or that it was not duly established by law. The Trial Chamber summarized the claims of the Appellant as follows:

> "It is said that, to be duly established by law, the International Tribunal should have been created either by treaty, the consensual act

> of nations, or by amendment of the Charter of the United Nations, not by resolution of the Security Council. Called in aid of this general proposition are a number of considerations: that before the creation of the International Tribunal in 1993 it was never envisaged that such an ad hoc criminal tribunal might be set up; that the General Assembly, whose participation would at least have guaranteed full representation of the international community, was not involved in its creation; that it was never intended by the Charter that the Security Council should, under Chapter VII, establish a judicial body, let alone a criminal tribunal; that the Security Council had been inconsistent in creating this Tribunal while not taking a similar step in the case of other areas of conflict in which violations of international humanitarian law may have occurred; that the establishment of the International Tribunal had neither promoted, nor was capable of promoting, international peace, as the current situation in the former Yugoslavia demonstrates; that the Security Council could not, in any event, create criminal liability on the part of individuals and that this is what its creation of the International Tribunal did; that there existed and exists no such international emergency as would justify the action of the Security Council; that no political organ such as the Security Council is capable of establishing an independent and impartial tribunal; that there is an inherent defect in the creation, after the event, of ad hoc tribunals to try particular types of offences and, finally, that to give the International Tribunal primacy over national courts is, in any event and in itself, inherently wrong." (Decision at Trial, at para. 2.)

The Appeals Chamber of the Tribunal noted that these arguments raised a series of constitutional issues which all turned on the limits of the power of the Security Council under Chapter VII of the Charter of the United Nations and determining what action or measures could be taken under this Chapter, particularly the establishment of an international criminal tribunal. The Appeals Chamber formulated and dealt with the following issues:

1. Was there really a threat to the peace justifying the invocation of Chapter VII as a legal basis for the establishment of the International Tribunal?
2. Assuming such a threat existed, was the Security Council authorized, with a view to restoring or maintaining peace, to take any measures at its own discretion, or was it bound to

choose among those expressly provided for in Articles 41 and 42 (and possibly Article 40 as well)?

3. In the latter case, how can the establishment of an international criminal tribunal be justified, as it does not figure among the ones mentioned in those Articles, and is of a different nature?

(i) The power of the Security Council to invoke Chapter VII

Asking the question, what is the extent of the powers of the Security Council under Article 39 and the limits thereon, if any, the Appeals Chamber noted that the Security Council plays the central role in the application of both parts of the Article. It was the Security Council that makes the *determination* that there exists one of the situations justifying the use of the "exceptional powers" of Chapter VII. And it was also the Security Council that chose the reaction to such a situation: it either made *recommendations* (i.e., opted not to use the exceptional powers but to continue to operate under Chapter VI) or decided to use the exceptional powers by ordering measures to be taken in accordance with Articles 41 and 42 with a view to maintaining or restoring international peace and security.

The situations justifying resort to the powers provided for in Chapter VII were a "threat to the peace", a "breach of the peace" or an "act of aggression." While the "act of aggression" was more amenable to a legal determination, the "threat to the peace" was more of a political concept. But the determination that there existed such a threat was not a totally unfettered discretion, as it had to remain, at the very least, within the limits of the Purposes and Principles of the Charter.

(ii) The range of measures envisaged under Chapter VII

The Appeals Chamber held that once the Security Council determined that a particular situation posed a threat to the peace or that there existed a breach of the peace or an act of aggression, it enjoyed a wide margin of discretion in choosing the course of action: it could either continue, in spite of its determination, to act via recommendations, i.e., as if it were still within Chapter VI ("Pacific Settlement of Disputes") or it could exercise its exceptional powers under Chapter VII. In the words of Article 39, it would then "decide what measures

shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security." (United Nations Charter, art. 39.)

The Appeals Chamber addressed the question whether the choice of the Security Council was limited to the measures provided for in Articles 41 and 42 of the Charter, or whether it had even larger discretion in the form of general powers to maintain and restore international peace and security under Chapter VII at large. It noted that in the latter case, one did not have to locate every measure decided by the Security Council under Chapter VII within the confines of Articles 41 and 42, or possibly Article 40. In any case, under both interpretations, the Security Council had a broad discretion in deciding on the course of action and evaluating the appropriateness of the measures to be taken. The language of Article 39 was quite clear as to the channelling of the very broad and exceptional powers of the Security Council under Chapter VII through Articles 41 and 42. Those two Articles left to the Security Council such a wide choice as not to warrant searching, on functional or other grounds, for even wider and more general powers than those already expressly provided for in the Charter. Those powers were coercive vis-à-vis the culprit State or entity. But they were also mandatory vis-à-vis the other Member States, who are under an obligation to cooperate with the Organization (Article 2, paragraph 5, Articles 25, 48) and with one another (Articles 49), in the implementation of the action or measures decided by the Security Council.

(iii) The establishment of the International Tribunal as a measure under Chapter VII

The Appeals Chamber held that, as with the determination of the existence of a threat to the peace, a breach of the peace or an act of aggression, the Security Council had a very wide margin of discretion under Article 39 to choose the appropriate course of action and to evaluate the suitability of the measures chosen, as well as their potential contribution to the restoration or maintenance of peace. But here again, this discretion was not unfettered; moreover, it was limited to the measures provided for in Articles 41 and 42. Indeed, in the case at hand, this last point served as a basis for the Appellant's contention of invalidity of the establishment of the International Tribunal. The

Appeals Chamber recalled that in its resolution 827, the Security Council considered that "in the particular circumstances of the former Yugoslavia", the establishment of the International Tribunal "would contribute to the restoration and maintenance of peace" and indicated that, in establishing it, the Security Council was acting under Chapter VII (S.C. Res. 827, U.N. Doc. S/RES/827 (1993)). However, it did not specify a particular Article as a basis for this action.

The Appeals Chamber noted that the Appellant had attacked the legality of this decision at different stages before the Trial Chamber as well as before the Appeals Chamber on at least three grounds:

(a) that the establishment of such a tribunal was never contemplated by the framers of the Charter as one of the measures to be taken under Chapter VII; as witnessed by the fact that it figures nowhere in the provisions of that Chapter, and more particularly in Articles 41 and 42 which detailed these measures;

(b) that the Security Council was constitutionally or inherently incapable of creating a judicial organ, as it was conceived in the Charter as an executive organ, hence not possessed of judicial powers which could be exercised through a subsidiary organ;

(c) that the establishment of the International Tribunal had neither promoted, nor was capable of promoting, international peace, as demonstrated by the prevailing situation in the former Yugoslavia.

The Appeals Chamber proceeded to deal with these issues:

(a) What article of Chapter VII serves as a basis for the establishment of a tribunal?

The Appeals Chamber recalled that the establishment of an international criminal tribunal was not expressly mentioned among the enforcement measures provided for in Chapter VII, and more particularly in Articles 41 and 42. The establishment of the International Tribunal was not a measure under Article 42, as those were measures of a military nature, implying the use of armed force. Nor could it be considered a "provisional measure" under Article 40. These measures, as their denomination indicated, were intended to act as a "holding operation", producing a "stand-still" or a "cooling-off" effect, "without prejudice to the rights, claims or position of the parties concerned."

(United Nations Charter, art. 40.) They were akin to emergency police action rather than to the activity of a judicial organ dispensing justice according to law. Moreover, not being enforcement action, according to the language of Article 40 itself ("before making the recommendations or deciding upon the measures provided for in Article 39"), such provisional measures were subject to the Charter limitation of Article 2, paragraph 7, and the question of their mandatory or recommendatory character was subject to great controversy; all of which rendered inappropriate the classification of the International Tribunal under these measures.

Prima facie, the International Tribunal matched perfectly the description in Article 41 of "measures not involving the use of force." The Appellant, however, had argued before both the Trial Chamber and the Appeals Chamber, that:

> "...[I]t is clear that the establishment of a war crimes tribunal was not intended. The examples mentioned in this article focus upon economic and political measures and do not in any way suggest judicial measures." (Brief to Support the Motion [of the Defence] on the Jurisdiction of the Tribunal before the Trial Chamber of the International Tribunal, 23 June 1995 (Case No. IT-94-1-T), at para. 3.2.1 (hereinafter Defence Trial Brief).)

It had also been argued that the measures contemplated under Article 41 were all measures to be undertaken by Member States, which was not the case with the establishment of the International Tribunal. The Appeals Chamber answered this submission as follows:

> "35. The first argument does not stand by its own language. Article 41 reads as follows:
>
> '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.' (United Nations Charter, art. 41.)
>
> It is evident that the measures set out in Article 41 are merely illustrative examples which obviously do not exclude other measures.

All the Article requires is that they do not involve 'the use of force'. It is a negative definition.

That the examples do not suggest judicial measures goes some way towards the other argument that the Article does not contemplate institutional measures implemented directly by the United Nations through one of its organs but, as the given examples suggest, only action by Member States, such as economic sanctions (though possibly coordinated through an organ of the Organization). However, as mentioned above, nothing in the Article suggests the limitation of the measures to those implemented by States. The Article only prescribes what these measures cannot be. Beyond that it does not say or suggest what they have to be.

Moreover, even a simple literal analysis of the Article shows that the first phrase of the first sentence carries a very general prescription which can accommodate both institutional and Member State action. The second phrase can be read as referring particularly to one species of this very large category of measures referred to in the first phrase, but not necessarily the only one, namely, measures undertaken directly by States. It is also clear that the second sentence, starting with 'These [measures]' not 'Those [measures]', refers to the species mentioned in the second phrase rather than to the 'genus' referred to in the first phrase of this sentence.

36. Logically, if the Organization can undertake measures which have to be implemented through the intermediary of its Members, it can a fortiori undertake measures which it can implement directly via its organs, if it happens to have the resources to do so. It is only for want of such resources that the United Nations has to act through its Members. But it is of the essence of 'collective measures' that they are collectively undertaken. Action by Member States on behalf of the Organization is but a poor substitute *faute de mieux*, or a 'second best' for want of the first. This is also the pattern of Article 42 on measures involving the use of armed force."

In sum, the Appeals Chamber held, the establishment of the International Tribunal fell squarely within the powers of the Security Council under Article 41.

(b) Can the Security Council establish a subsidiary organ with judicial powers?

The argument that the Security Council, not being endowed with judicial powers, could not establish a subsidiary organ possessed of such powers was untenable: it resulted from a fundamental misunderstanding of the constitutional set-up of the Charter. Plainly, the Security Council was not a judicial organ and was not provided with judicial powers (though it may incidentally perform certain quasi-judicial activities such as effecting determinations or findings). The principal function of the Security Council was the maintenance of international peace and security, in the discharge of which the Security Council exercised both decision-making and executive powers.

The establishment of the International Tribunal by the Security Council did not signify, however, that the Security Council had delegated to it some of its own functions or the exercise of some of its own powers. Nor did it mean, in reverse, that the Security Council was usurping for itself part of a judicial function which did not belong to it but to other organs of the United Nations according to the Charter. The Security Council had resorted to the establishment of a judicial organ in the form of an international criminal tribunal as an instrument for the exercise of its own principal function of maintenance of peace and security, i.e., as a measure contributing to the restoration and maintenance of peace in the former Yugoslavia.

The Appeals Chamber noted that the General Assembly had not needed to have military and police functions and powers in order to be able to establish the United Nations Emergency Force in the Middle East ("UNEF") in 1956. Nor did the General Assembly have to be a judicial organ possessed of judicial functions and powers in order to be able to establish the United Nations Administrative Tribunal. In its advisory opinion in the Effect of Awards, the International Court of Justice, in addressing practically the same objection, had declared:

> "[T]he Charter does not confer judicial functions on the General Assembly [. . .] By establishing the Administrative Tribunal, the General Assembly was not delegating the performance of its own functions: it was exercising a power which it had under the Charter to regulate staff relations." (Effect of Awards, at 61.)

(c) Was the establishment of the International Tribunal an appropriate measure?

The argument here had been directed against the discretionary power of the Security Council in evaluating the appropriateness of the chosen measure and its effectiveness in achieving its objective, the restoration of peace. The Appeals Chamber held that Article 39 left the choice of means and their evaluation to the Security Council, which enjoyed wide discretionary powers in this regard; and it could not have been otherwise, as such a choice involved political evaluation of highly complex and dynamic situations. It would be a total misconception of what were the criteria of legality and validity in law to test the legality of such measures *ex post facto* by their success or failure to achieve their ends (in the present case, the restoration of peace in the former Yugoslavia, in quest of which the establishment of the International Tribunal had been but one of many measures adopted by the Security Council).

For the aforementioned reasons, the Appeals Chamber considered that the International Tribunal had been lawfully established as a measure under Chapter VII of the Charter.

(d) Was the establishment of the International Tribunal contrary to the general principle whereby courts must be "established by law"?

The Appellant had challenged the establishment of the International Tribunal by contending that it has not been established by law. The entitlement of an individual to have a criminal charge against him determined by a tribunal established by law was provided in Article 14, paragraph 1, of the International Covenant on Civil and Political Rights. It provides:

> "In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law." (ICCPR, art. 14, para. 1.)

Similar provisions could be found in Article 6(1) of the European Convention on Human Rights, which stated:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law [. . .]"(European Convention for the

> Protection of Human Rights and Fundamental Freedoms, 4 November 1950, art. 6, para. 1, 213 U.N.T.S. 222 (hereinafter ECHR))

and in Article 8(1) of the American Convention on Human Rights, which provided:

> "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent and impartial tribunal, previously established by law." (American Convention on Human Rights, 22 November 1969, art. 8, para. 1, O.A.S. Treaty Series No. 36, at 1, O.A.S. Off. Rec. OEA/Ser. L/V/II.23 doc. rev. 2 (hereinafter ACHR).)"

The Appellant had argued that the right to have a criminal charge determined by a tribunal established by law was one which formed part of international law as a "general principle of law recognized by civilized nations", one of the sources of international law in Article 38 of the Statute of the International Court of Justice. In support of this assertion, the Appellant emphasised the fundamental nature of the "fair trial" or "due process" guarantees afforded in the International Covenant on Civil and Political Rights, the European Convention on Human Rights and the American Convention on Human Rights. The Appellant asserted that they are minimum requirements in international law for the administration of criminal justice.

The Appeals Chamber was not satisfied that the requirements laid down in these three conventions must apply not only in the context of national legal systems but also with respect to proceedings conducted before an international court. This Chamber was, however, satisfied that the principle that a tribunal must be established by law, as explained below, was a general principle of law imposing an international obligation which only applied to the administration of criminal justice in a municipal setting. It followed from this principle that it was incumbent on all States to organize their system of criminal justice in such a way as to ensure that all individuals were guaranteed the right to have a criminal charge determined by a tribunal established by law. That did not mean, however, that, by contrast, an international criminal court could be set up at the mere whim of a group of governments. Such a court ought to be rooted in the rule of law and offer all guaran-

tees embodied in the relevant international instruments. Then the court may be said to be "established by law."

Indeed, there were three possible interpretations of the term "established by law." First, as the Appellant had argued, "established by law" could mean established by a legislature. The Appellant had claimed that the International Tribunal had been the product of a "mere executive order" and not of a "decision making process under democratic control, necessary to create a judicial organisation in a democratic society." Therefore the Appellant maintained that the International Tribunal had not been "established by law." (Defence Appeal Brief, at para. 5.4.)

The case law applying the words "established by law" in the European Convention on Human Rights had favoured this interpretation of the expression. That case law bore out the view that the relevant provision was intended to ensure that tribunals in a democratic society must not depend on the discretion of the executive; rather they should be regulated by law emanating from Parliament. (See Zand v. Austria, App. No. 7360/76, 15 Eur. Comm'n H.R. Dec. & Rep. 70, at 80 (1979); Piersack v. Belgium, App. No. 8692/79, 47 Eur. Ct. H.R. (ser. B) at 12 (1981); Crociani, Palmiotti, Tanassi and D'Ovidio v. Italy, App. Nos. 8603/79, 8722/79, 8723/79 & 8729/79 (joined) 22 Eur. Comm'n H.R. Dec. & Rep. 147, at 219 (1981).) Or, put another way, the guarantee was intended to ensure that the administration of justice was not a matter of executive discretion, but was regulated by laws made by the legislature.

The Appeals Chamber held, however, that it was clear that the legislative, executive and judicial division of powers largely followed in most municipal systems did not apply to the international setting nor, more specifically, to the setting of an international organization such as the United Nations. Among the principal organs of the United Nations the divisions between judicial, executive and legislative functions were not clear cut. Regarding the judicial function, the International Court of Justice was clearly the "principal judicial organ" (see United Nations Charter, art. 92). There was, however, no legislature, in the technical sense of the term, in the United Nations system and, more generally, no Parliament in the world community. In other

words, there existed no corporate organ formally empowered to enact laws directly binding on international legal subjects.

It was impossible to classify the organs of the United Nations into the above-discussed divisions which existed in the national law of States. Indeed, the Appellant had agreed that the constitutional structure of the United Nations did not follow the division of powers often found in national constitutions. Consequently the separation of powers element of the requirement that a tribunal be "established by law" found no application in an international law setting. The aforementioned principle could only impose an obligation on States concerning the functioning of their own national systems.

A second possible interpretation was that the words "established by law" referred to establishment of international courts by a body which, though not a Parliament, had a limited power to take binding decisions. In the view of the Appeals Chamber, one such body was the Security Council when, acting under Chapter VII of the United Nations Charter, it made decisions binding by virtue of Article 25 of the Charter.

According to the Appellant, however, there must be something more for a tribunal to be "established by law." The Appellant had taken the position that, given the differences between the United Nations system and national division of powers, discussed above, the conclusion must be that the United Nations system was not capable of creating the International Tribunal unless there was an amendment to the United Nations Charter. The Appeals Chamber disagreed. It did not follow from the fact that the United Nations had no legislature that the Security Council was not empowered to set up the International Tribunal if it was acting pursuant to an authority found within its constitution, the United Nations Charter. The Appeals Chamber was of the view that the Security Council was endowed with the power to create the International Tribunal as a measure under Chapter VII in the light of its determination that there exists a threat to the peace.

In addition, the establishment of the International Tribunal had been repeatedly approved and endorsed by the "representative" organ of the United Nations, the General Assembly: that body not only participated in its setting up, by electing the Judges and approving the budget, but had also expressed its satisfaction with, and encourage-

ment of the activities of the International Tribunal in various resolutions. (See G.A. Res. 48/88 (20 December 1993) and G.A. Res. 48/143 (20 December 1993), G.A. Res. 49/10 (8 November 1994) and G.A. Res. 49/205 (23 December 1994).)

The third possible interpretation of the requirement that the International Tribunal be "established by law" was that its establishment must be in accordance with the rule of law. This appeared to be the most sensible and most likely meaning of the term in the context of international law. For a tribunal such as the International Tribunal to be established according to the rule of law, it must be established in accordance with the proper international standards; it must provide all the guarantees of fairness, justice and even-handedness, in full conformity with internationally recognized human rights instruments. This interpretation of the guarantee that a tribunal be "established by law" was borne out by an analysis of the International Covenant on Civil and Political Rights. As noted by the Trial Chamber, at the time Article 14 of the International Covenant on Civil and Political Rights was being drafted, it was sought, unsuccessfully, to amend it to require that tribunals should be "pre-established" by law and not merely "established by law" (Decision at Trial, at para. 34). Two similar proposals to that effect had been made (one by the representative of Lebanon and one by the representative of Chile); if adopted, their effect would have been to prevent all ad hoc tribunals. In response, the delegate from the Philippines had noted the disadvantages of using the language of "pre-established by law":

> "If [the Chilean or Lebanese proposal was approved], a country would never be able to reorganize its tribunals. Similarly it could be claimed that the Nürnberg tribunal was not in existence at the time the war criminals had committed their crimes." (See E/CN.4/SR 109. United Nations Economic and Social Council, Commission on Human Rights, 5th Sess., Sum. Rec. 8 June 1949, U.N. Doc. 6.)

As noted by the Trial Chamber in its Decision, there was wide agreement that, in most respects, the International Military Tribunals at Nuremberg and Tokyo had given the accused a fair trial in a procedural sense (Decision at Trial, at para. 34). The important consideration in determining whether a tribunal had been "established by law" was not whether it had been pre-established or established for a spe-

cific purpose or situation; what was important was that it be set up by a competent organ in keeping with the relevant legal procedures, and should that it observes the requirements of procedural fairness.

This concern about *ad hoc* tribunals that function in such a way as not to afford the individual before them basic fair trial guarantees also underlay the United Nations Human Rights Committee's interpretation of the phrase "established by law" contained in Article 14, paragraph 1, of the International Covenant on Civil and Political Rights. While the Human Rights Committee had not determined that "extraordinary" tribunals or "special" courts were incompatible with the requirement that tribunals be established by law, it had taken the position that the provision was intended to ensure that any court, be it "extraordinary" or not, should genuinely afford the accused the full guarantees of fair trial set out in Article 14 of the International Covenant on Civil and Political Rights. (See General Comment on Article 14, H.R. Comm. 43rd Sess., Supp. No. 40, at para. 4, U.N. Doc. A/43/40 (1988), Cariboni v. Uruguay H.R.Comm. 159/83. 39th Sess. Supp. No. 40 U.N. Doc. A/39/40.) A similar approach has been taken by the Inter-American Commission. (See, e.g., Inter-Am C.H.R., Annual Report 1972, OEA/Ser. P, AG/doc. 305/73 rev. 1, 14 March 1973, at 1; Inter-Am C.H.R., Annual Report 1973, OEA/Ser. P, AG/doc. 409/174, 5 March 1974, at 2-4.) The practice of the Human Rights Committee with respect to State reporting obligations indicated its tendency to scrutinise closely "special" or "extraordinary" criminal courts in order to ascertain whether they ensure compliance with the fair trial requirements of Article 14.

An examination of the Statute of the International Tribunal, and of the Rules of Procedure and Evidence adopted pursuant to that Statute led the Appeals Chamber to the conclusion that it had been established in accordance with the rule of law. The fair trial guarantees in Article 14 of the International Covenant on Civil and Political Rights had been adopted almost verbatim in Article 21 of the Statute. Other fair trial guarantees appeared in the Statute and the Rules of Procedure and Evidence. For example, Article 13, paragraph 1, of the Statute ensured the high moral character, impartiality, integrity and competence of the Judges of the International Tribunal, while various other provisions in the Rules ensure equality of arms and fair trial.

Conclusion

From the practice of the Security Council reviewed in this work, it could be concluded that the human rights ethic has entered the Security Council in a significant way even if it is not predominant. Perhaps the strongest strand in the practice of the Council relates to justice and accountability in the face of gross violations of human rights.

The practice of the Security Council suggests that it could become engaged in human rights situations such as the following:

- those which entail threats to, or breaches of, international peace and security;
- those which involve a breakdown of governmental authority in the country concerned;
- those which entail a flouting of the authority of the United Nations;
- those which involve a high magnitude of human suffering or crimes against humanity;
- where the government so requests;
- where the conscience of the international community is shocked.

The Security Council's composition and characteristics are such that it is unlikely to become engaged in situations involving one of its Permanent Members. At least one of the Permanent Members is known to take a conservative approach to the Council's role in dealing with human rights issues – even if it has demonstrated a great deal of flexibility in practice.

It would be wise to expect incremental developments in the role of the Security Council in dealing with gross human rights violations rather than quantum leaps. The Security Council is not meant to duplicate the role of the human rights organs, nor to supplant them. It is meant to complement and support them and to take action in situations where the exercise of its authority could bring protection to

those at risk – such as the deployment of preventive peace-keepers or observers or the deployment of protection forces.

Perhaps the most important thing the human rights community could do would be to make sure that Members of the Security Council are kept abreast of the trends and currents on human rights and, in particular, that the Council is briefed about the human rights dimensions of situations on its agenda. The work of the thematic and country rapporteurs of the Commission on Human Rights comes to mind particularly in this regard.

From the practice of the Security Council, the following strands of the emerging protection concept could be identified for future application and development:

i. the deployment of preventive peace-keepers or observers for protection purposes;
ii. the insistence on negotiated solutions and national dialogue in dealing with internal conflicts;
iii. emphasis on democracy, the rule of law, and respect for human rights in negotiating solutions to internal conflicts;
iv. the call for justice for the victims of gross violations of human rights;
v. the establishment of human rights components in peace-keeping operations;
vi. the inclusion of human rights mandates in peace-building operations;
vii. the designation of protected and safe areas – provided they are backed up;
viii. the establishment of protection forces;
ix. support for the International Criminal Court;
x. support for nationally-established courts such as that which the Security Council called for in Sierra Leone;
xi. focusing on groups at risk such as children, women, and HIV/AIDS victims;
xii. showing a human face, where called for, in the imposition of sanctions;
xiii. continued adoption of resolutions and Presidential statements that bring the Council in line with the conscience of the international community;

xiv. listening to the voices of the human rights movement and taking their information and insights into account in its work;
xv. being a strong agent of human rights protection where people are at risk and use of the authority of the Security Council is called for.

At the outset of this work, we indicated the policy framework within which the Security Council operates. These included: the legislative and normative principle; the principle of democratic legitimacy; the principle of justice; the principle of respect for human rights and humanitarian law during conflicts; the conflict prevention principle; the peace-making principle; the peace-keeping principle; the peace-building principle; the protection principle; the confidence-building principle; the political principle; the power principle. In the future work of the Security Council, it will be important to accentuate the principle of justice and the protection principle. A Security Council that is moved by considerations of justice and by a willingness to act for the protection of those at risk will be faithful to the Charter's vision of peace grounded in economic and social justice and respect for human rights.

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ANNEX I

CONDEMNATION OF TERRORISM
RESOLUTION 1189 (1998)

Adopted by the Security Council at its 3915th meeting, on 13 August 1998

The Security Council,

Deeply disturbed by the indiscriminate and outrageous acts of international terrorism that took place on 7 August 1998 in Nairobi, Kenya and Dar-es-Salaam, Tanzania,

Condemning such acts which have a damaging effect on international relations and jeopardize the security of States,

Convinced that the suppression of acts of international terrorism is essential for the maintenance of international peace and security, and *reaffirming* the determination of the international community to eliminate international terrorism in all its forms and manifestations,

Also reaffirming the obligations of Member States under the Charter of the United Nations,

Stressing that every Member State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

Mindful of General Assembly resolution 52/164 of 15 December 1997 on the International Convention for the Suppression of Terrorist Bombings,

Recalling that, in the statement issued on 31 January 1992 (S/23500) on the occasion of the meeting of the Security Council at the level of Heads of State and Government, the Council expressed its deep concern over acts of international terrorism, and emphasized the need for the international community to deal effectively with all such criminal acts,

Also stressing the need to strengthen international cooperation between States in order to adopt practical and effective measures to

prevent, combat and eliminate all forms of terrorism affecting the international community as a whole,

Commending the responses of the Governments of Kenya, Tanzania and the United States of America to the terrorist bomb attacks in Kenya and Tanzania,

Determined to eliminate international terrorism,

1. *Strongly condemns* the terrorist bomb attacks in Nairobi, Kenya and Dar-es-Salaam, Tanzania on 7 August 1998 which claimed hundreds of innocent lives, injured thousands of people and caused massive destruction to property;

2. *Expresses* its deep sorrow, sympathy and condolences to the families of the innocent victims of the terrorist bomb attacks during this difficult time;

3. *Calls upon* all States and international institutions to cooperate with and provide support and assistance to the ongoing investigations in Kenya, Tanzania and the United States to apprehend the perpetrators of these cowardly criminal acts and to bring them swiftly to justice;

4. *Expresses* its sincere gratitude to all States, international institutions and voluntary organizations for their encouragement and timely response to the requests for assistance from the Governments of Kenya and Tanzania, and *urges* them to assist the affected countries, especially in the reconstruction of infrastructure and disaster preparedness;

5. *Calls upon* all States to adopt, in accordance with international law and as a matter of priority, effective and practical measures for security cooperation, for the prevention of such acts of terrorism, and for the prosecution and punishment of their perpetrators;

6. *Decides* to remain seized of the matter.

ANNEX II

CONDEMNATION OF TERRORISM
RESOLUTION 1269 (1999)

Adopted by the Security Council at its 4053rd meeting, on 19 October 1999

The Security Council,

Deeply concerned by the increase in acts of international terrorism which endangers the lives and well-being of individuals worldwide as well as the peace and security of all States,

Condemning all acts of terrorism, irrespective of motive, wherever and by whomever committed,

Mindful of all relevant resolutions of the General Assembly, including resolution 49/60 of 9 December 1994, by which it adopted the Declaration on Measures to Eliminate International Terrorism,

Emphasizing the necessity to intensify the fight against terrorism at the national level and to strengthen, under the auspices of the United Nations, effective international cooperation in this field on the basis of the principles of the Charter of the United Nations and norms of international law, including respect for international humanitarian law and human rights,

Supporting the efforts to promote universal participation in and implementation of the existing international anti-terrorist conventions, as well as to develop new international instruments to counter the terrorist threat,

Commending the work done by the General Assembly, relevant United Nations organs and specialized agencies and regional and other organizations to combat international terrorism,

Determined to contribute, in accordance with the Charter of the United Nations, to the efforts to combat terrorism in all its forms,

Reaffirming that the suppression of acts of international terrorism, including those in which States are involved, is an essential contribution to the maintenance of international peace and security,

1. *Unequivocally condemns* all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed, in particular those which could threaten international peace and security;

2. *Calls upon* all States to implement fully the international anti-terrorist conventions to which they are parties, *encourages* all States to consider as a matter of priority adhering to those to which they are not parties, and *encourages also* the speedy adoption of the pending conventions;

3. *Stresses* the vital role of the United Nations in strengthening international cooperation in combating terrorism and, *emphasizes* the importance of enhanced coordination among States, international and regional organizations;

4. *Calls upon* all States to take, *inter alia*, in the context of such cooperation and coordination, appropriate steps to:

– cooperate with each other, particularly through bilateral and multilateral agreements and arrangements, to prevent and suppress terrorist acts, protect their nationals and other persons against terrorist attacks and bring to justice the perpetrators of such acts;

– prevent and suppress in their territories through all lawful means the preparation and financing of any acts of terrorism;

– deny those who plan, finance or commit terrorist acts safe havens by ensuring their apprehension and prosecution or extradition;

– take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not participated in terrorist acts;

– exchange information in accordance with international and domestic law, and cooperate on administrative and judicial matters in order to prevent the commission of terrorist acts;

5. *Requests* the Secretary-General, in his reports to the General Assembly, in particular submitted in accordance with its resolution 50/53 on measures to eliminate international terrorism, to pay special attention to the need to prevent and fight the threat to international peace and security as a result of terrorist activities;

6. *Expresses* its readiness to consider relevant provisions of the reports mentioned in paragraph 5 above and to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security;

7. *Decides* to remain seized of this matter.

ANNEX III

CONDEMNATION OF TERRORISM
RESOLUTION 1368 (2001)

Adopted by the Security Council at its 4370th meeting, on 12 September 2001

The Security Council,

Reaffirming the principles and purposes of the Charter of the United Nations,

Determined to combat by all means threats to international peace and security caused by terrorist acts,

Recognizing the inherent right of individual or collective self-defence in accordance with the Charter,

1. *Unequivocally condemns* in the strongest terms the horrifying terrorist attacks which took place on 11 September 2001 in New York, Washington, D.C. and Pennsylvania and *regards* such acts, like any act of international terrorism, as a threat to international peace and security;

2. *Expresses* its deepest sympathy and condolences to the victims and their families and to the people and Government of the United States of America;

3. *Calls* on all States to work together urgently to bring to justice the perpetrators, organizers and sponsors of these terrorist attacks and *stresses* that those responsible for aiding, supporting or harbouring the perpetrators, organizers and sponsors of these acts will be held accountable;

4. *Calls also* on the international community to redouble their efforts to prevent and suppress terrorist acts including by increased cooperation and full implementation of the relevant international anti-terrorist conventions and Security Council resolutions, in particular resolution 1269 (1999) of 19 October 1999;

5. *Expresses* its readiness to take all necessary steps to respond to the terrorist attacks of 11 September 2001, and to combat all forms of

terrorism, in accordance with its responsibilities under the Charter of the United Nations;

6. *Decides* to remain seized of the matter.

ANNEX IV

International Cooperation Against Terrorism Resolution 1373 (2001)

Adopted by the Security Council at its 4385th meeting, on 28 September 2001

The Security Council,

Reaffirming its resolutions 1269 (1999) of 19 October 1999 and 1368 (2001) of 12 September 2001,

Reaffirming also its unequivocal condemnation of the terrorist attacks which took place in New York, Washington, D.C. and Pennsylvania on 11 September 2001, and expressing its determination to prevent all such acts,

Reaffirming further that such acts, like any act of international terrorism, constitute a threat to international peace and security,

Reaffirming the inherent right of individual or collective self-defence as recognized by the Charter of the United Nations as reiterated in resolution 1368 (2001),

Reaffirming the need to combat by all means, in accordance with the Charter of the United Nations, threats to international peace and security caused by terrorist acts,

Deeply concerned by the increase, in various regions of the world, of acts of terrorism motivated by intolerance or extremism,

Calling on States to work together urgently to prevent and suppress terrorist acts, including through increased cooperation and full implementation of the relevant international conventions relating to terrorism,

Recognizing the need for States to complement international cooperation by taking additional measures to prevent and suppress, in their territories through all lawful means, the financing and preparation of any acts of terrorism,

Reaffirming the principle established by the General Assembly in its declaration of October 1970 (resolution 2625 (XXV)) and reiter-

ated by the Security Council in its resolution 1189 (1998) of 13 August 1998, namely that every State has the duty to refrain from organizing, instigating, assisting or participating in terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts,

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

1. *Decides* that all States shall:

(a)Prevent and suppress the financing of terrorist acts;

(b)Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts;

(c)Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities;

(d)Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons;

2. *Decides also* that all States shall:

(a)Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists;

(b)Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information;

(c)Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens;

(d)Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens;

(e)Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts;

(f)Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings;

(g)Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents;

3. *Calls* upon all States to:

(a)Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups;

(b)Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts;

(c)Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts;

(d)Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999;

(e)Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001);

(f)Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts;

(g)Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists;

4. *Notes* with concern the close connection between international terrorism and transnational organized crime, illicit drugs, money-laundering, illegal arms-trafficking, and illegal movement of nuclear, chemical, biological and other potentially deadly materials, and in this regard *emphasizes* the need to enhance coordination of efforts on national, subregional, regional and international levels in order to strengthen a global response to this serious challenge and threat to international security;

5. *Declares* that acts, methods, and practices of terrorism are contrary to the purposes and principles of the United Nations and that knowingly financing, planning and inciting terrorist acts are also contrary to the purposes and principles of the United Nations;

6. *Decides* to establish, in accordance with rule 28 of its provisional rules of procedure, a Committee of the Security Council, consisting of all the members of the Council, to monitor implementation of this resolution, with the assistance of appropriate expertise, and *calls upon* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement this resolution;

7. *Directs* the Committee to delineate its tasks, submit a work programme within 30 days of the adoption of this resolution, and to consider the support it requires, in consultation with the Secretary-General;

8. *Expresses* its determination to take all necessary steps in order to ensure the full implementation of this resolution, in accordance with its responsibilities under the Charter;

9. *Decides* to remain seized of this matter.

ANNEX V

COMBATTING TERRORISM (S/PRST/2000/38)

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4243rd meeting of the Security Council, held on 6 December 2000, in connection with the Council's consideration of the item entitled "The responsibility of the Security Council in the maintenance of international peace and security, the President of the Security Council made the following statement on behalf of the Council:

"The Security Council takes note with appreciation of the briefing of Under-Secretary-General Mr. Hans Corell regarding follow-up measures to resolution 1269 (1999) of 19 October 1999.

"The Security Council is deeply concerned by the increase, in many regions of the world, of acts of terrorism in all its forms and manifestations. The Council reiterates its condemnation of all acts of terrorism, irrespective of motive, wherever and by whomever committed. It welcomes the efforts of the General Assembly and other organs of the United Nations in the field of combating international terrorism.

"The Security Council calls on all States that have not done so to consider, as a matter of priority, becoming party to the existing anti-terrorism conventions.

"The Security Council reaffirms its resolution 1269 (1999) of 19 October 1999 and calls upon all States to implement its provisions fully and expeditiously.

"The Security Council reiterates its readiness, including on the basis of the relevant reports of the Secretary-General, as provided for in its resolution 1269 (1999) of 19 October 1999, to take necessary steps in accordance with its responsibilities under the Charter of the United Nations in order to counter terrorist threats to international peace and security.

"The Security Council will remain seized of this matter."

ANNEX VI

GLOBAL EFFORT TO COMBAT TERRORISM RESOLUTION 1377 (2001)

Adopted by the Security Council at its 4413th meeting, on 12 November 2001

The Security Council,

Decides to adopt the attached declaration on the global effort to combat terrorism.

ANNEX

The Security Council,

Meeting at the Ministerial level,

Recalling its resolutions 1269 (1999) of 19 October 1999, 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001,

Declares that acts of international terrorism constitute one of the most serious threats to international peace and security in the twenty-first century,

Further declares that acts of international terrorism constitute a challenge to all States and to all of humanity,

Reaffirms its unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, regardless of their motivation, in all their forms and manifestations, wherever and by whomever committed,

Stresses that acts of international terrorism are contrary to the purposes and principles of the Charter of the United Nations, and that the financing, planning and preparation of as well as any other form of support for acts of international terrorism are similarly contrary to the purposes and principles of the Charter of the United Nations,

Underlines that acts of terrorism endanger innocent lives and the dignity and security of human beings everywhere, threaten the social and economic development of all States and undermine global stability and prosperity,

Affirms that a sustained, comprehensive approach involving the active participation and collaboration of all Member States of the United Nations, and in accordance with the Charter of the United Nations and international law, is essential to combat the scourge of international terrorism,

Stresses that continuing international efforts to broaden the understanding among civilizations and to address regional conflicts and the full range of global issues, including development issues, will contribute to international cooperation and collaboration, which themselves are necessary to sustain the broadest possible fight against international terrorism,

Welcomes the commitment expressed by States to fight the scourge of international terrorism, including during the General Assembly plenary debate from 1 to 5 October 2001, *calls on* all States to become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, and encourages Member States to take forward work in this area,

Calls on all States to take urgent steps to implement fully resolution 1373 (2001), and to assist each other in doing so, and *underlines* the obligation on States to deny financial and all other forms of support and safe haven to terrorists and those supporting terrorism,

Expresses its determination to proceed with the implementation of that resolution in full cooperation with the whole membership of the United Nations, and *welcomes* the progress made so far by the Counter-Terrorism Committee established by paragraph 6 of resolution 1373 (2001) to monitor implementation of that resolution,

Recognizes that many States will require assistance in implementing all the requirements of resolution 1373 (2001), and *invites* States to inform the Counter-Terrorism Committee of areas in which they require such support,

In that context, invites the Counter-Terrorism Committee to explore ways in which States can be assisted, and in particular to explore with international, regional and subregional organizations:

- the promotion of best-practice in the areas covered by resolution 1373 (2001), including the preparation of model laws as appropriate,

- the availability of existing technical, financial, regulatory, legislative or other assistance programmes which might facilitate the implementation of resolution 1373 (2001),
- the promotion of possible synergies between these assistance programmes,

Calls on all States to intensify their efforts to eliminate the scourge of international terrorism.

ANNEX VII

TERRORISM
RESOLUTION 1378 (2001)

Adopted by the Security Council at its 4415th meeting, on 14 November 2001

The Security Council,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Supporting international efforts to root out terrorism, in keeping with the Charter of the United Nations, and *reaffirming* also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001,

Recognizing the urgency of the security and political situation in Afghanistan in light of the most recent developments, particularly in Kabul,

Condemning the Taliban for allowing Afghanistan to be used as a base for the export of terrorism by the Al-Qaida network and other terrorist groups and for providing safe haven to Usama Bin Laden, Al-Qaida and others associated with them, and in this context supporting the efforts of the Afghan people to replace the Taliban regime,

Welcoming the intention of the Special Representative to convene an urgent meeting of the various Afghan processes at an appropriate venue and *calling on* the United Front and all Afghans represented in those processes to accept his invitation to that meeting without delay, in good faith and without preconditions,

Welcoming the Declaration on the Situation in Afghanistan by the Foreign Ministers and other Senior Representatives of the Six plus Two of 12 November 2001, as well as the support being offered by other international groups,

Taking note of the views expressed at the meeting of the Security Council on the situation in Afghanistan on 13 November 2001,

Endorsing the approach outlined by the Special Representative of the Secretary-General at the meeting of the Security Council on 13 November 2001,

Reaffirming its strong commitment to the sovereignty, independence, territorial integrity and national unity of Afghanistan,

Deeply concerned by the grave humanitarian situation and the continuing serious violations by the Taliban of human rights and international humanitarian law,

1. *Expresses* its strong support for the efforts of the Afghan people to establish a new and transitional administration leading to the formation of a government, both of which:

– should be broad-based, multi-ethnic and fully representative of all the Afghan people and committed to peace with Afghanistan's neighbours,

– should respect the human rights of all Afghan people, regardless of gender, ethnicity or religion,

– should respect Afghanistan's international obligations, including by cooperating fully in international efforts to combat terrorism and illicit drug trafficking within and from Afghanistan, and

– should facilitate the urgent delivery of humanitarian assistance and the orderly return of refugees and internally displaced persons, when the situation permits;

2. *Calls* on all Afghan forces to refrain from acts of reprisal, to adhere strictly to their obligations under human rights and international humanitarian law, and to ensure the safety and security and freedom of movement of United Nations and associated personnel, as well as personnel of humanitarian organizations;

3. *Affirms* that the United Nations should play a central role in supporting the efforts of the Afghan people to establish urgently such a new and transitional administration leading to the formation of a new government and *expresses* its full support for the Secretary-General's Special Representative in the accomplishment of his mandate, and calls on Afghans, both within Afghanistan and among the Afghan diaspora, and Member States to cooperate with him;

4. *Calls* on Member States to provide:

– support for such an administration and government, including through the implementation of quick-impact projects,

– urgent humanitarian assistance to alleviate the suffering of Afghan people both inside Afghanistan and Afghan refugees, including in demining, and

– long-term assistance for the social and economic reconstruction and rehabilitation of Afghanistan and welcomes initiatives towards this end;

5. *Encourages* Member States to support efforts to ensure the safety and security of areas of Afghanistan no longer under Taliban control, and in particular to ensure respect for Kabul as the capital for all the Afghan people, and especially to protect civilians, transitional authorities, United Nations and associated personnel, as well as personnel of humanitarian organizations;

6. *Decides* to remain actively seized of the matter.

ANNEX VIII

COMBATTING TERRORISM
RESOLUTION 1390 (2002)*

Adopted by the Security Council at its 4452nd meeting, on 16 January 2002

The Security Council,

Recalling its resolutions 1267 (1999) of 15 October 1999, 1333 (2000) of 19 December 2000 and 1363 (2001) of 30 July 2001,

Reaffirming its previous resolutions on Afghanistan, in particular resolutions 1378 (2001) of 14 November 2001 and 1383 (2001) of 6 December 2001,

Reaffirming also its resolutions 1368 (2001) of 12 September 2001 and 1373 (2001) of 28 September 2001, and *reiterating* its support for international efforts to root out terrorism, in accordance with the Charter of the United Nations,

Reaffirming its unequivocal condemnation of the terrorist attacks which took place in New York, Washington and Pennsylvania on 11 September 2001, expressing its determination to prevent all such acts, *noting* the continued activities of Usama bin Laden and the Al-Qaida network in supporting international terrorism, and expressing its determination to root out this network,

Noting the indictments of Usama bin Laden and his associates by the United States of America for, inter alia, the 7 August 1998 bombings of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania,

Determining that the Taliban have failed to respond to the demands in paragraph 13 of resolution 1214 (1998) of 8 December 1998, paragraph 2 of resolution 1267 (1999) and paragraphs 1, 2 and 3 of resolution 1333 (2000),

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* Reissued for technical reasons.

Condemning the Taliban for allowing Afghanistan to be used as a base for terrorists training and activities, including the export of terrorism by the Al-Qaida network and other terrorist groups as well as for using foreign mercenaries in hostile actions in the territory of Afghanistan,

Condemning the Al-Qaida network and other associated terrorist groups, for the multiple criminal, terrorist acts, aimed at causing the deaths of numerous innocent civilians, and the destruction of property,

Reaffirming further that acts of international terrorism constitute a threat to international peace and security,

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

1. *Decides* to continue the measures imposed by paragraph 8 (c) of resolution 1333 (2000) and *takes note* of the continued application of the measures imposed by paragraph 4 (b) of resolution 1267 (1999), in accordance with paragraph 2 below, and *decides* to terminate the measures imposed in paragraph 4 (a) of resolution 1267 (1999);

2. *Decides* that all States shall take the following measures with respect to Usama bin Laden, members of the Al-Qaida organization and the Taliban and other individuals, groups, undertakings and entities associated with them, as referred to in the list created pursuant to resolutions 1267 (1999) and 1333 (2000) to be updated regularly by the Committee established pursuant to resolution 1267 (1999) hereinafter referred to as "the Committee";

(a)Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled, directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly, for such persons' benefit, by their nationals or by any persons within their territory;

(b)Prevent the entry into or the transit through their territories of these individuals, provided that nothing in this paragraph shall oblige any State to deny entry into or require the departure from its territories of its own nationals and this paragraph shall not apply where entry or transit is necessary for the fulfilment of a judicial process or the

Committee determines on a case by case basis only that entry or transit is justified;

(c)Prevent the direct or indirect supply, sale and transfer, to these individuals, groups, undertakings and entities from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities;

3. *Decides* that the measures referred to in paragraphs 1 and 2 above will be reviewed in 12 months and that at the end of this period the Council will either allow these measures to continue or decide to improve them, in keeping with the principles and purposes of this resolution;

4. *Recalls* the obligation placed upon all Member States to implement in full resolution 1373 (2001), including with regard to any member of the Taliban and the Al-Qaida organization, and any individuals, groups, undertakings and entities associated with the Taliban and the Al-Qaida organization, who have participated in the financing, planning, facilitating and preparation or perpetration of terrorist acts or in supporting terrorist acts;

5. *Requests* the Committee to undertake the following tasks and to report on its work to the Council with its observations and recommendations;

(a)to update regularly the list referred to in paragraph 2 above, on the basis of relevant information provided by Member States and regional organizations;

(b)to seek from all States information regarding the action taken by them to implement effectively the measures referred to in paragraph 2 above, and thereafter to request from them whatever further information the Committee may consider necessary;

(c)to make periodic reports to the Council on information submitted to the Committee regarding the implementation of this resolution;

(d)to promulgate expeditiously such guidelines and criteria as may be necessary to facilitate the implementation of the measures referred to in paragraph 2 above;

(e)to make information it considers relevant, including the list referred to in paragraph 2 above, publicly available through appropriate media;

(f)to cooperate with other relevant Security Council Sanctions Committees and with the Committee established pursuant to paragraph 6 of its resolution 1373 (2001);

6. *Requests* all States to report to the Committee, no later than 90 days from the date of adoption of this resolution and thereafter according to a timetable to be proposed by the Committee, on the steps they have taken to implement the measures referred to in paragraph 2 above;

7. *Urges* all States, relevant United Nations bodies, and, as appropriate, other organizations and interested parties to cooperate fully with the Committee and with the Monitoring Group referred to in paragraph 9 below;

8. *Urges* all States to take immediate steps to enforce and strengthen through legislative enactments or administrative measures, where appropriate, the measures imposed under domestic laws or regulations against their nationals and other individuals or entities operating on their territory, to prevent and punish violations of the measures referred to in paragraph 2 of this resolution, and to inform the Committee of the adoption of such measures, and *invites* States to report the results of all related investigations or enforcement actions to the Committee unless to do so would compromise the investigation or enforcement actions;

9. *Requests* the Secretary-General to assign the Monitoring Group established pursuant to paragraph 4 (a) of resolution 1363 (2001), whose mandate expires on 19 January 2002, to monitor, for a period of 12 months, the implementation of the measures referred to in paragraph 2 of this resolution;

10. *Requests* the Monitoring Group to report to the Committee by 31 March 2002 and thereafter every 4 months;

11. *Decides* to remain actively seized of the matter.

ANNEX IX

HUMANITARIAN ASPECTS OF ISSUES BEFORE THE SECURITY COUNCIL S/PRST/2000/7

13 March 2000

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4110th meeting of the Security Council, held on 9 March 2000 in connection with the Council's consideration of the item entitled "Maintaining peace and security: Humanitarian aspects of issues before the Security Council, the President of the Security Council made the following statement on behalf of the Council:

"The Security Council has considered the humanitarian aspects of issues before the Council.

"The Security Council recalls its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and reaffirms the Purposes and Principles of the United Nations Charter. The Council also reaffirms its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States.

"The Security Council recognizes the importance of the humanitarian dimension to the maintenance of international peace and security and to its consideration of humanitarian issues relating to the protection of all civilians and other non-combatants in situations of armed conflict. The Council recognizes that humanitarian crises can be both causes and consequences of conflicts and that they can affect the Council's efforts to prevent and end conflicts, and to deal with other threats to international peace and security.

"The Security Council affirms that timely consideration of the following humanitarian issues contributes to the prevention of escalation of conflicts and to the maintenance of international peace and secu-

rity: access for United Nations and associated personnel, other humanitarian personnel and humanitarian supplies to the war-affected civilians; humanitarian components in peace agreements and peacekeeping operations;coordination between the Council and the relevant United Nations organs and agencies and regional bodies; and resource constraints.

"The Security Council reaffirms its concern for the well-being and rights of war-affected civilians and reiterates its call to all parties to a conflict to ensure safe and unimpeded access in accordance with international law by humanitarian personnel to such civilians. The Council recognizes that cooperation of all parties concerned is vital foreffectiveness and safety in providing humanitarian assistance. In this regard, the Council reiterates its call for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel and humanitarian personnel. The Council stresses the importance of providing assistance to all those in need, with particular emphasis on women and children and other vulnerable groups affected by armed conflict, in accordance with the principle of impartiality.

"The Security Council notes that full and timely support for humanitarian components can be critical in ensuring and enhancing the sustainability of any peace agreement and post-conflict peacebuilding. It emphasizes the importance of inclusion of humanitarian elements in peace negotiations and agreements, including the issue of prisoners of war, detainees and missing persons and others protected by international humanitarian law. The Council invites the Secretary-General to encourage the early consideration of such humanitarian elements in peace negotiations sponsored or supported by the United Nations, as appropriate. In cases of peace negotiations sponsored or supported directly by Member States, the Council calls on Member States to draw, as appropriate, upon the capacity of United Nations funds, programmes and specialized agencies as well asother relevant international humanitarian organizations and regional bodies.

"The Security Council also notes that in some instances the integration of humanitarian components into peacekeeping operations would contribute effectively to their carrying out their mandate. In this regard, the Council notes the importance of adequate training for

peacekeeping personnel in international humanitarian law and human rights and with regard to the special situations of women and children as well as vulnerable population groups. The Council notes with appreciation the inclusion of personnel to handle child protection issues in some recent peacekeeping operations, and encourages the inclusion of such personnel in future operations, particularly in the context of demobilization and reintegration of child soldiers and where there are large number of displaced and other war-affected children. The Council welcomes and encourages efforts by the United Nations to sensitize peacekeeping personnel in the prevention and control of HIV/AIDS and other communicable diseases.

"The Security Council underlines the importance of effective coordination among relevant United Nations organs and agencies, regional bodies, other intergovernmental and international organizations and other humanitarian actors in the field in situations of ongoing conflict and peace-building through, inter alia, the development of strategic frameworks, and expresses its willingness to consider ways to improve such coordination. In this regard, the Council notes the need for further improvement of communication, information flows and coordination between the peacekeeping, humanitarian and development aspects of United Nations action.

"The Security Council recognizes the role played by international humanitarian organizations and non-governmental organizations in providing humanitarian assistance and alleviating the impact of humanitarian crises, and further recognizes the specific mandate of the International Committee of the Red Cross in this regard. It emphasizes the importance for these organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities.

"The Security Council notes with concern that inadequate financial support can undermine efforts to address human suffering in certain contexts. The Council recognizes the need for appropriate financial support for humanitarian activities, and calls for adequate funding of humanitarian activities, bilateral or otherwise, in particular in support of multilateral efforts. The Council notes the importance of early engagement and dispersal of funds from the international financial institutions. The Council also notes with satisfaction that its previ-

ous statements calling for full support to the United Nations Consolidated Appeals have had a positive impact, and expresses its willingness to continue to encourage a generous response to such appeals.

"The Security Council encourages the Secretary-General to continue to include the humanitarian situation in his regular briefing to the Council on countries under review, including on the funding status of the United Nations Consolidated Appeals, where appropriate. It further requests the Secretary-General to ensure that his regular country reports continue to include a substantive, analytical section on humanitarian issues and their impact on international efforts to implement United Nations mandated activities

"The Security Council will remain seized of the matter."

ANNEX X

WOMEN AND PEACE AND SECURITY
RESOLUTION 1325 (2000)

Adopted by the Security Council at its 4213th meeting, on 31 October 2000

The Security Council,

Recalling its resolutions 1261 (1999) of 25 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000, as well as relevant statements of its President, and *recalling also* the statement of its President to the press on the occasion of the United Nations Day for Women's Rights and International Peace (International Women's Day) of 8 March 2000 (SC/6816),

Recalling also the commitments of the Beijing Declaration and Platform for Action (A/52/231) as well as those contained in the outcome document of the twenty-third Special Session of the United Nations General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the Twenty-First Century" (A/S-23/10/Rev.1), in particular those concerning women and armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations and the primary responsibility of the Security Council under the Charter for the maintenance of international peace and security,

Expressing concern that civilians, particularly women and children, account for the vast majority of those adversely affected by armed conflict, including as refugees and internally displaced persons, and increasingly are targeted by combatants and armed elements, and *recognizing* the consequent impact this has on durable peace and reconciliation,

Reaffirming the important role of women in the prevention and resolution of conflicts and in peace-building, and *stressing* the importance of their equal participation and full involvement in all efforts for

the maintenance and promotion of peace and security, and the need to increase their role in decision-making with regard to conflict prevention and resolution,

Reaffirming also the need to implement fully international humanitarian and human rights law that protects the rights of women and girls during and after conflicts,

Emphasizing the need for all parties to ensure that mine clearance and mine awareness programmes take into account the special needs of women and girls,

Recognizing the urgent need to mainstream a gender perspective into peacekeeping operations, and in this regard *noting* the Windhoek Declaration and the Namibia Plan of Action on Mainstreaming a Gender Perspective in Multidimensional Peace Support Operations (S/2000/693),

Recognizing also the importance of the recommendation contained in the statement of its President to the press of 8 March 2000 for specialized training for all peacekeeping personnel on the protection, special needs and human rights of women and children in conflict situations,

Recognizing that an understanding of the impact of armed conflict on women and girls, effective institutional arrangements to guarantee their protection and full participation in the peace process can significantly contribute to the maintenance and promotion of international peace and security,

Noting the need to consolidate data on the impact of armed conflict on women and girls,

1. *Urges* Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict;

2. *Encourages* the Secretary-General to implement his strategic plan of action (A/49/587) calling for an increase in the participation of women at decision-making levels in conflict resolution and peace processes;

3. *Urges* the Secretary-General to appoint more women as special representatives and envoys to pursue good offices on his behalf, and in

this regard *calls on* Member States to provide candidates to the Secretary-General, for inclusion in a regularly updated centralized roster;

4. *Further urges* the Secretary-General to seek to expand the role and contribution of women in United Nations field-based operations, and especially among military observers, civilian police, human rights and humanitarian personnel;

5. *Expresses* its willingness to incorporate a gender perspective into peacekeeping operations, and *urges* the Secretary-General to ensure that, where appropriate, field operations include a gender component;

6. *Requests* the Secretary-General to provide to Member States training guidelines and materials on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures, *invites* Member States to incorporate these elements as well as HIV/AIDS awareness training into their national training programmes for military and civilian police personnel in preparation for deployment, and *further requests* the Secretary-General to ensure that civilian personnel of peacekeeping operations receive similar training;

7. *Urges* Member States to increase their voluntary financial, technical and logistical support for gender-sensitive training efforts, including those undertaken by relevant funds and programmes, inter alia, the United Nations Fund for Women and United Nations Children's Fund, and by the Office of the United Nations High Commissioner for Refugees and other relevant bodies;

8. *Calls on* all actors involved, when negotiating and implementing peace agreements, to adopt a gender perspective, including, inter alia:

(a)The special needs of women and girls during repatriation and resettlement and for rehabilitation, reintegration and post-conflict reconstruction;

(b)Measures that support local women's peace initiatives and indigenous processes for conflict resolution, and that involve women in all of the implementation mechanisms of the peace agreements;

(c)Measures that ensure the protection of and respect for human rights of women and girls, particularly as they relate to the constitution, the electoral system, the police and the judiciary;

9. *Calls upon* all parties to armed conflict to respect fully international law applicable to the rights and protection of women and girls, especially as civilians, in particular the obligations applicable to them under the Geneva Conventions of 1949 and the Additional Protocols thereto of 1977, the Refugee Convention of 1951 and the Protocol thereto of 1967, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Optional Protocol thereto of 1999 and the United Nations Convention on the Rights of the Child of 1989 and the two Optional Protocols thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

10. *Calls on* all parties to armed conflict to take special measures to protect women and girls from gender-based violence, particularly rape and other forms of sexual abuse, and all other forms of violence in situations of armed conflict;

11. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity, and war crimes including those relating to sexual and other violence against women and girls, and in this regard *stresses* the need to exclude these crimes, where feasible from amnesty provisions;

12. *Calls upon* all parties to armed conflict to respect the civilian and humanitarian character of refugee camps and settlements, and to take into account the particular needs of women and girls, including in their design, and recalls its resolutions 1208 (1998) of 19 November 1998 and 1296 (2000) of 19 April 2000;

13. *Encourages* all those involved in the planning for disarmament, demobilization and reintegration to consider the different needs of female and male ex-combatants and to take into account the needs of their dependants;

14. *Reaffirms* its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their potential impact on the civilian population, bearing in mind the special needs of women and girls, in order to consider appropriate humanitarian exemptions;

15. *Expresses* its willingness to ensure that Security Council missions take into account gender considerations and the rights of

women, including through consultation with local and international women's groups;

16. *Invites* the Secretary-General to carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution, and *further invites* him to submit a report to the Security Council on the results of this study and to make this available to all Member States of the United Nations;

17. *Requests* the Secretary-General, where appropriate, to include in his reporting to the Security Council progress on gender mainstreaming throughout peacekeeping missions and all other aspects relating to women and girls;

18. *Decides* to remain actively seized of the matter.

ANNEX XI

WOMEN AND PEACE AND SECURITY
S/PRST/2001/31

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4402nd meeting of the Security Council, held on 31 October 2001, in connection with the first anniversary of the Council's adoption of its resolution 1325 (2000) of 31 October 2000 on the item entitled "Women and peace and security", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council reaffirms its commitment to the implementation of its resolution 1325 (2000) of 31 October 2000 and welcomes the efforts by the United Nations system, Member States, civil society organizations and other relevant actors in promoting the equal participation and full involvement of women in the maintenance and promotion of peace and security and in implementing the provisions of resolution 1325 (2000).

"The Council further reaffirms its strong support for increasing the role of women in decision-making with regard to conflict prevention and resolution and renews its call on States to include women in the negotiations and implementation of peace accords, constitutions and strategies for resettlement and rebuilding and to take measures to support local women's groups and indigenous processes for conflict resolution. In this regard it recognizes the efforts of the Mano River Women's Peace Network in facilitating peace and dialogue in the Mano River Union region. It is also encouraged by the inclusion of women in the political decision-making bodies in Burundi, Somalia and in East Timor.

"The Security Council underscores the importance of promoting an active and visible policy of mainstreaming a gender perspective in all policies and programmes while addressing armed conflicts, in particular peacekeeping operations in keeping with the statement of the President of the Security Council on 8 March 2000.

"The Council therefore reiterates its request to the Secretary-General to include, where appropriate, in his reporting to the Security Council, progress in gender mainstreaming throughout United Nations peacekeeping missions and on other aspects relating to women and girls. It expresses its intention to give full consideration to these reports and to take appropriate action. The Council also reaffirms its call for the inclusion of gender components as appropriate, in peacekeeping operations.

"The Security Council renews its support for gender-sensitive training guidelines and material on the protection, rights and the particular needs of women, as well as on the importance of involving women in all peacekeeping and peace-building measures. The Council calls upon all troop-contributing countries to include these elements in their national training programmes for peacekeepers.

"The Council welcomes the specific proposals made by the Secretary-General aimed at strengthening the Best Practices Unit of the Department of Peacekeeping Operations with the appointment of gender advisers at sufficiently senior levels.

"It also welcomes the practical efforts including the preparation of complementary reports, already made by the United Nations and its agencies, funds, programmes and regional bodies, in particular those participating in the Administrative Committee on Coordination (ACC) Inter-agency Task Force on Women, Peace and Security to implement all aspects of resolution 1325 (2000), as well as the timely issuance of the publication Gender Perspective in Disarmament, which gives a clear indication of ways in which women can be fully involved and the benefits to the parties concerned.

"The Security Council notes with satisfaction that the Secretary-General's study requested under paragraph 16 of its resolution 1325 (2000) on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution is under way and welcomes the coordinated comprehensive input of the United Nations and all the relevant agencies, funds and programmes of the United Nations system and looks forward to its review.

"The Security Council is concerned that there are still no women appointed as Special Representatives or Special Envoys of the Secre-

tary-General to peace missions, and urges Member States to redouble their efforts to nominate women candidates to the Secretary-General. The Council also urges the Secretary-General to appoint women as Special Representatives and Envoys to pursue good offices on his behalf in accordance with his strategic plan of action (A/49/587, para. 2).

"The Security Council recognizes the need to implement fully international humanitarian and human rights law that protects the rights of civilians including women and girls during and after conflicts and calls on all parties to armed conflicts to take special measures to protect women and girls from gender-based violence, and all other forms of violence.

"The Security Council remains actively seized of the matter and expresses its willingness to consider as appropriate, the gender dimensions of armed conflict in carrying out its responsibility of maintaining international peace and security under the Charter of the United Nations."

ANNEX XII

PROTECTION FORCES
RESOLUTION 836 (1993)

Adopted by the Security Council at its 3228th meeting, on 4 June 1993

The Security Council,

Reaffirming its resolution 713 (1991) of 25 September 1991 and all subsequent relevant resolutions,

Reaffirming in particular its resolutions 819 (1993) of 16 April 1993 and 824 (1993) of 6 May 1993, which demanded that certain towns and their surrounding areas in the Republic of Bosnia and Herzegovina should be treated as safe areas,

Reaffirming the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina and the responsibility of the Security Council in this regard,

Condemning military attacks, and actions that do not respect the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina, which, as a State Member of the United Nations, enjoys the rights provided for in the Charter of the United Nations,

Reiterating its alarm at the grave and intolerable situation in the Republic of Bosnia and Herzegovina arising from serious violations of international humanitarian law,

Reaffirming once again that any taking of territory by force or any practice of "ethnic cleansing" is unlawful and totally unacceptable,

Commending the Government of the Republic of Bosnia and Herzegovina and the Bosnian Croat party for having signed the Vance-Owen Plan,

Gravely concerned at the persistent refusal of the Bosnian Serb party to accept the Vance-Owen Plan and *calling upon* that party to accept the Peace Plan for the Republic of Bosnia and Herzegovina in full,

Deeply concerned by the continuing armed hostilities in the territory of the Republic of Bosnia and Herzegovina which run totally counter to the Peace Plan,

Alarmed by the resulting plight of the civilian population in the territory of the Republic of Bosnia and Herzegovina in particular in Sarajevo, Bihac, Srebrenica, Gorazde, Tuzla and Zepa,

Condemning the obstruction, primarily by the Bosnian Serb party, of the delivery of humanitarian assistance,

Determined to ensure the protection of the civilian population in safe areas and to promote a lasting political solution,

Confirming the ban on military flights in the airspace of the Republic of Bosnia and Herzegovina, established by resolutions 781 (1992) of 9 October 1992, 786 (1992) of 10 November 1992 and 816 (1993) of 31 March 1993,

Affirming that the concept of safe areas in the Republic of Bosnia and Herzegovina as contained in resolutions 819 (1993) and 824 (1993) was adopted to respond to an emergency situation, and *noting* that the concept proposed by France in document S/25800 and by others could make a valuable contribution and should not in any way be taken as an end in itself, but as a part of the Vance-Owen process and as a first step towards a just and lasting political solution,

Convinced that treating the towns and surrounding areas referred to above as safe areas will contribute to the early implementation of that objective,

Stressing that the lasting solution to the conflict in the Republic of Bosnia and Herzegovina must be based on the following principles: immediate and complete cessation of hostilities; withdrawal from territories seized by the use of force and "ethnic cleansing"; reversal of the consequences of "ethnic cleansing" and recognition of the right of all refugees to return to their homes; and respect for the sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina,

Noting also the crucial work being done throughout the Republic of Bosnia and Herzegovina by the United Nations Protection Force (UNPROFOR), and the importance of such work continuing,

Determining that the situation in the Republic of Bosnia and Herzegovina continues to be a threat to international peace and security,

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

1. *Calls* for the full and immediate implementation of all its relevant resolutions;

2. *Commends* the Peace Plan for the Republic of Bosnia and Herzegovina as contained in document S/25479;

3. *Reaffirms* the unacceptability of the acquisition of territory by the use of force and the need to restore the full sovereignty, territorial integrity and political independence of the Republic of Bosnia and Herzegovina;

4. *Decides* to ensure full respect for the safe areas referred to in resolution 824 (1993);

5. *Decides* to extend to that end the mandate of UNPROFOR in order to enable it, in the safe areas referred to in resolution 824 (1993), to deter attacks against the safe areas, to monitor the cease-fire, to promote the withdrawal of military or paramilitary units other than those of the Government of the Republic of Bosnia and Herzegovina and to occupy some key points on the ground, in addition to participating in the delivery of humanitarian relief to the population as provided for in resolution 776 (1992) of 14 September 1992;

6. *Affirms* that these safe areas are a temporary measure and that the primary objective remains to reverse the consequences of the use of force and to allow all persons displaced from their homes in the Republic of Bosnia and Herzegovina to return to their homes in peace, beginning, *inter alia*, with the prompt implementation of the provisions of the Vance-Owen Plan in areas where those have been agreed by the parties directly concerned;

7. *Requests* the Secretary-General, in consultation, *inter alia*, with the Governments of the Member States contributing forces to UNPROFOR:

(a)To make the adjustments or reinforcement of UNPROFOR which might be required by the implementation of the present resolution, and to consider assigning UNPROFOR elements in support of the elements entrusted with protection of safe areas, with the agreement of the Governments contributing forces;

(b)To direct the UNPROFOR Force Commander to redeploy to the extent possible the forces under his command in the Republic of Bosnia and Herzegovina;

8. *Calls upon* Member States to contribute forces, including logistic support, to facilitate the implementation of the provisions regarding the safe areas, *expresses its gratitude* to Member States already providing forces for that purpose and *invites* the Secretary-General to seek additional contingents from other Member States;

9. *Authorizes* UNPROFOR, in addition to the mandate defined in resolutions 770 (1992) of 13 August 1992 and 776 (1992), in carrying out the mandate defined in paragraph 5 above, acting in self-defence, to take the necessary measures, including the use of force, in reply to bombardments against the safe areas by any of the parties or to armed incursion into them or in the event of any deliberate obstruction in or around those areas to the freedom of movement of UNPROFOR or of protected humanitarian convoys;

10. *Decides* that, notwithstanding paragraph 1 of resolution 816 (1993), Member States, acting nationally or through regional organizations or arrangements, may take, under the authority of the Security Council and subject to close coordination with the Secretary-General and UNPROFOR, all necessary measures, through the use of air power, in and around the safe areas in the Republic of Bosnia and Herzegovina, to support UNPROFOR in the performance of its mandate set out in paragraphs 5 and 9 above;

11. *Requests* the Member States concerned, the Secretary-General and UNPROFOR to coordinate closely on the measures they are taking to implement paragraph 10 above and to report to the Council through the Secretary-General;

12. *Invites* the Secretary-General to report to the Council, for decision, if possible within seven days of the adoption of the present resolution, on the modalities of its implementation, including its financial implications;

13. *Further invites* the Secretary-General to submit to the Council, not later than two months after the adoption of the present resolution, a report on the implementation of and compliance with the present resolution;

14. *Emphasizes* that it will keep open other options for new and tougher measures, none of which is prejudged or excluded from consideration;

15. *Decides* to remain actively seized of the matter, and *undertakes* to take prompt action, as required.

ANNEX XIII

PROTECTION OF CIVILIANS IN ARMED CONFLICT S/PRST/1999/6

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 3978th meeting of the Security Council, held on 12 February 1999 in connection with the Council's consideration of the item entitled "Protection of civilians in armed conflict", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council has considered the matter of protection of civilians in armed conflict.

"The Security Council expresses its grave concern at the growing civilian toll of armed conflict and notes with distress that civilians now account for the vast majority of casualties in armed conflict and are increasingly directly targeted by combatants and armed elements. The Council condemns attacks or acts of violence in situations of armed conflict directed against civilians, especially women, children and other vulnerable groups, including also refugees and internally displaced persons, in violation of the relevant rules of international law, including those of international humanitarian and human rights law.

"The Security Council is especially concerned about attacks on humanitarian workers, in violation of the rules of international law.

"The Security Council notes that large-scale human suffering is a consequence and sometimes a contributing factor to instability and further conflict, whether due to displacement, violent assault or other atrocities. Bearing in mind its primary responsibility for the maintenance of international peace and security, the Council affirms the need for the international community to assist and protect civilian populations affected by armed conflict. The Council calls upon all parties concerned to ensure the safety of civilians and guarantee the unimpeded and safe access of United Nations and other humanitarian personnel to those in need. In this regard, the Council recalls the

statement of its President of 19 June 1997 (S/PRST/1997/34) and also recalls its resolution 1208 (1998) of 19 November 1998 on the status and treatment of refugees.

"The Security Council expresses particular concern at the harmful impact of armed conflict on children and, in this regard, recalls the statement of its President of 29 June 1998 (S/PRST/1998/18).

"The Security Council calls upon all parties concerned to comply strictly with their obligations under international law, in particular their relevant obligations under the Hague Conventions, the Geneva Conventions of 1949 and their Additional Protocols of 1977, and the United Nations Convention on the Rights of the Child of 1989, as well as with all decisions of the Security Council.

"The Security Council strongly condemns the deliberate targeting by combatants of civilians in armed conflict and demands that all concerned put an end to such violations of international humanitarian and human rights law. The Council expresses its willingness to respond, in accordance with the Charter of the United Nations, to situations in which civilians, as such, have been targeted or humanitarian assistance to civilians has been deliberately obstructed.

"The Security Council also condemns all attempts to incite violence against civilians in situations of armed conflict and calls upon States to fulfil their obligations to take action at the national level. The Council affirms the need to bring to justice, in an appropriate manner, individuals who incite or cause violence against civilians in situations of armed conflict or who otherwise violate international humanitarian and human rights law. In this regard, the Council reaffirms the importance of the work being done by the ad hoc Tribunals for the former Yugoslavia and Rwanda and calls upon all States to cooperate with the Tribunals, in accordance with the relevant Security Council resolutions. The Council acknowledges the historic significance of the adoption of the Rome Statute of the International Criminal Court.

"The Security Council notes the deleterious impact of the proliferation of arms, in particular small arms, on the security of civilians, including refugees and other vulnerable populations. In this regard, it recalls its resolution 1209 (1998) of 19 November 1998 which, *inter alia*, stressed the importance of all Member States, and in particular States involved in manufacturing and marketing of weapons, restrict-

ing arms transfers which could provoke or prolong armed conflicts or aggravate existing tensions or armed conflicts in Africa, and which urged international collaboration in combating illegal arms flows in Africa.

"The Security Council expresses concern over the widening gap between the rules of international humanitarian law and their application. The Council welcomes the commemorative events planned to mark the fiftieth anniversary of the Geneva Conventions and the centenary of the First International Peace Conference of The Hague. These occasions provide an opportunity for a further exploration of ways and means by which the international community may enhance the compliance of parties to an armed conflict with the relevant rules of international law, including those of international humanitarian law.

"The Security Council welcomes the continuing contribution to the implementation of international humanitarian law of the International Committee of the Red Cross.

"The Security Council considers that a comprehensive and coordinated approach by Member States and international organizations and agencies is required in order to address the problem of the protection of civilians in situations of armed conflicts. To this end, the Council requests the Secretary-General to submit a report containing concrete recommendations to the Council by September 1999 on ways the Council, acting within its sphere of responsibility, could improve the physical and legal protection of civilians in situations of armed conflict. The report should also identify contributions the Council could make towards effective implementation of existing humanitarian law. The report should examine whether there are any significant gaps in existing legal norms, through the review of recent reports in this regard. The Council encourages the Secretary-General to consult the Inter-Agency Standing Committee in formulating his recommendations.

"The Security Council affirms its intention to review the recommendations of the Secretary-General in accordance with its responsibilities under the Charter of the United Nations."

ANNEX XIV

CONDEMNATION OF TARGETING CHILDREN IN ARMED CONFLICT RESOLUTION 1261 (1999)

Adopted by the Security Council at its 4037th meeting, on 25 August 1999

The Security Council,

Recalling the statements of its President of 29 June 1998 (S/PRST/1998/18), 12 February 1999 (S/PRST/1999/6) and 8 July 1999 (S/PRST/1999/21),

Noting recent efforts to bring to an end the use of children as soldiers in violation of international law, in International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour which prohibits forced or compulsory labour, including the forced or compulsory recruitment of children for use in armed conflict, and in the Rome Statute of the International Criminal Court in which conscripting or enlisting children under the age of fifteen into national armed forces or using them to participate actively in hostilities is characterized as a war crime,

1. *Expresses* its grave concern at the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development;

2. *Strongly condemns* the targeting of children in situations of armed conflict, including killing and maiming, sexual violence, abduction and forced displacement, recruitment and use of children in armed conflict in violation of international law, and attacks on objects protected under international law, including places that usually have a significant presence of children such as schools and hospitals, and *calls on* all parties concerned to put an end to such practices;

3. *Calls upon* all parties concerned to comply strictly with their obligations under international law, in particular the Geneva Conven-

tions of 12 August 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977 and the United Nations Convention on the Rights of the Child of 1989, and *stresses* the responsibility of all States to bring an end to impunity and their obligation to prosecute those responsible for grave breaches of the Geneva Conventions of 12 August 1949;

4. *Expresses* its support for the ongoing work of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund (UNICEF), the United Nations High Commissioner for Refugees (UNHCR), other parts of the United Nations system and other relevant international organizations dealing with children affected by armed conflict, and *requests* the Secretary-General to continue to develop coordination and coherence among them;

5. *Welcomes* and *encourages* efforts by all relevant actors at the national and international level to develop more coherent and effective approaches to the issue of children and armed conflict;

6. *Supports* the work of the open-ended inter-sessional working group of the Commission on Human Rights on a draft optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, and *expresses* the hope that it will make further progress with a view to finalizing its work;

7. *Urges* all parties to armed conflicts to ensure that the protection, welfare and rights of children are taken into account during peace negotiations and throughout the process of consolidating peace in the aftermath of conflict;

8. *Calls upon* parties to armed conflicts to undertake feasible measures during armed conflicts to minimize the harm suffered by children, such as "days of tranquillity" to allow the delivery of basic necessary services, and *further calls upon* all parties to armed conflicts to promote, implement and respect such measures;

9. *Urges* all parties to armed conflicts to abide by concrete commitments made to ensure the protection of children in situations of armed conflict;

10. *Urges* all parties to armed conflicts to take special measures to protect children, in particular girls, from rape and other forms of sexual abuse and gender-based violence in situations of armed conflict

and to take into account the special needs of the girl child throughout armed conflicts and their aftermath, including in the delivery of humanitarian assistance;

11. *Calls upon* all parties to armed conflicts to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict;

12. *Underscores* the importance of the safety, security and freedom of movement of United Nations and associated personnel to the alleviation of the impact of armed conflict on children, and *urges* all parties to armed conflicts to respect fully the status of United Nations and associated personnel;

13. *Urges* States and all relevant parts of the United Nations system to intensify their efforts to ensure an end to the recruitment and use of children in armed conflict in violation of international law through political and other efforts, including promotion of the availability of alternatives for children to their participation in armed conflict;

14. *Recognizes* the deleterious impact of the proliferation of arms, in particular small arms, on the security of civilians, including refugees and other vulnerable populations, particularly children, and, in this regard, *recalls* resolution 1209 (1998) of 19 November 1998 which, *inter alia*, stresses the importance of all Member States, and in particular States involved in manufacturing and marketing of weapons, restricting arms transfers which could provoke or prolong armed conflicts or aggravate existing tensions or armed conflicts, and which urges international collaboration in combating illegal arms flows;

15. *Urges* States and the United Nations system to facilitate the disarmament, demobilization, rehabilitation and reintegration of children used as soldiers in violation of international law, and *calls upon*, in particular, the Special Representative of the Secretary-General for Children and Armed Conflict, UNICEF, the UNHCR and other relevant agencies of the United Nations system to intensify their efforts in this regard;

16. *Undertakes*, when taking action aimed at promoting peace and security, to give special attention to the protection, welfare and rights of children, and *requests* the Secretary-General to include in his reports recommendations in this regard;

17. *Reaffirms* its readiness when dealing with situations of armed conflict:

(a)to continue to support the provision of humanitarian assistance to civilian populations in distress, taking into account the particular needs of children including, *inter alia*, the provision and rehabilitation of medical and educational services to respond to the needs of children, the rehabilitation of children who have been maimed or psychologically traumatized, and child-focused mine clearance and mine-awareness programmes;

(b)to continue to support the protection of displaced children including their resettlement by UNHCR and others as appropriate; and

(c)whenever adopting measures under Article 41 of the Charter of the United Nations, to give consideration to their impact on children, in order to consider appropriate humanitarian exemptions;

18. *Reaffirms* also its readiness to consider appropriate responses whenever buildings or sites which usually have a significant presence of children are specifically targeted in situations of armed conflict, in violation of international law;

19. *Requests* the Secretary-General to ensure that personnel involved in United Nations peacemaking, peacekeeping and peacebuilding activities have appropriate training on the protection, rights and welfare of children, and *urges* States and relevant international and regional organizations to ensure that appropriate training is included in their programmes for personnel involved in similar activities;

20. *Requests* the Secretary-General to submit to the Council by 31 July 2000 a report on the implementation of this resolution, consulting all relevant parts of the United Nations system and taking into account other relevant work;

21. *Decides* to remain actively seized of the matter

ANNEX XV

PROTECTION OF CIVILIANS IN ARMED CONFLICT RESOLUTION 1265 (1999)

Adopted by the Security Council at its 4046th meeting, on 17 September 1999

The Security Council,

Recalling the statement of its President of 12 February 1999 (S/PRST/1999/6),

Having considered the report of the Secretary-General of 8 September 1999 (S/1999/957) submitted to the Security Council in accordance with the above- mentioned statement,

Taking note of the reports of the Secretary-General of 13 April 1998 on the "Causes of Conflict and the Promotion of Durable Peace and Sustainable Development in Africa" (S/1998/318) and 22 September 1998 on the "Protection for Humanitarian Assistance to Refugees and Others in Conflict Situations" (S/1998/883), in particular their analysis related to the protection of civilians,

Noting that civilians account for the vast majority of casualties in armed conflicts and are increasingly targeted by combatants and armed elements, *gravely concerned* by the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and *recognizing* the consequent impact this will have on durable peace, reconciliation and development,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and *underlining* the importance of taking measures aimed at conflict prevention and resolution,

Stressing the need to address the causes of armed conflict in a comprehensive manner in order to enhance the protection of civilians on a long-term basis, including by promoting economic growth, pov-

erty eradication, sustainable development, national reconciliation, good governance, democracy, the rule of law and respect for and protection of human rights,

Expressing its deep concern at the erosion in respect for international humanitarian, human rights and refugee law and principles during armed conflict, in particular deliberate acts of violence against all those protected under such law, and *expressing also* its concern at the denial of safe and unimpeded access to people in need,

Underlining the importance of the widest possible dissemination of international humanitarian, human rights and refugee law and of relevant training for, *inter alia*, civilian police, armed forces, members of the judicial and legal professions, civil society and personnel of international and regional organizations,

Recalling the statement of its President of 8 July 1999 (S/PRST/1999/21), and *emphasizing* its call for the inclusion, as appropriate, within specific peace agreements and, on a case-by-case basis, within United Nations peacekeeping mandates, of clear terms for the disarmament, demobilization and reintegration of ex-combatants, including the safe and timely disposal of arms and ammunition,

Mindful of the particular vulnerability of refugees and internally displaced persons, and *reaffirming* the primary responsibility of States to ensure their protection, in particular by maintaining the security and civilian character of refugee and internally displaced person camps,

Underlining the special rights and needs of children in situations of armed conflict, including those of the girl-child,

Recognizing the direct and particular impact of armed conflict on women as referred to in paragraph 18 of the report of the Secretary-General and, in this regard, *welcoming* the ongoing work within the United Nations system on the implementation of a gender perspective in humanitarian assistance and on violence against women,

1. *Welcomes* the report of the Secretary-General of 8 September 1999, and *takes note* of the comprehensive recommendations contained therein;

2. *Strongly condemns* the deliberate targeting of civilians in situations of armed conflict as well as attacks on objects protected under

international law, and *calls on* all parties to put an end to such practices;

3. *Emphasizes* the importance of preventing conflicts which could endanger international peace and security and, in this context, *highlights* the importance of implementing appropriate preventive measures to resolve conflicts, including the use of United Nations and other dispute settlement mechanisms and of preventive military and civilian deployments, in accordance with the relevant provisions of the Charter of the United Nations, resolutions of the Security Council and relevant international instruments;

4. *Urges* all parties concerned to comply strictly with their obligations under international humanitarian, human rights and refugee law, in particular those contained in the Hague Conventions of 1899 and 1907 and in the Geneva Conventions of 1949 and their Additional Protocols of 1977, as well as with the decisions of the Security Council;

5. *Calls on* States which have not already done so to consider ratifying the major instruments of international humanitarian, human rights and refugee law, and to take appropriate legislative, judicial and administrative measures to implement these instruments domestically, drawing on technical assistance, as appropriate, from relevant international organizations including the International Committee of the Red Cross and United Nations bodies;

6. *Emphasizes* the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and serious violations of international humanitarian law, *affirms* the possibility, to this end, of using the International Fact-Finding Commission established by Article 90 of the First Additional Protocol to the Geneva Conventions, *reaffirms* the importance of the work being done by the ad hoc Tribunals for the former Yugoslavia and Rwanda, *stresses* the obligation of all States to cooperate fully with the Tribunals, and *acknowledges* the historic significance of the adoption of the Rome Statute of the International Criminal Court which is open for signature and ratification by States;

7. *Underlines* the importance of safe and unhindered access of humanitarian personnel to civilians in armed conflict, including refugees and internally displaced persons, and the protection of humanitarian assistance to them, and *recalls* in this regard the statements of its

President of 19 June 1997 (S/PRST/1997/34) and 29 Septem-ber 1998 (S/PRST/1998/30);

8. *Emphasizes* the need for combatants to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of international humanitarian organizations, and *recalls* in this regard the statements of its President of 12 March 1997 (S/PRST/1997/13) and 29 September 1998;

9. *Takes note* of the entry into force of the Convention on the Safety of United Nations and Associated Personnel of 1994, *recalls* the relevant principles contained therein, *urges* all parties to armed conflicts to respect fully the status of United Nations and associated personnel and, in this regard, *condemns* attacks and the use of force against United Nations and associated personnel, as well as personnel of international humanitarian organizations, and *affirms* the need to hold accountable those who commit such acts;

10. *Expresses* its willingness to respond to situations of armed conflict where civilians are being targeted or humanitarian assistance to civilians is being deliberately obstructed, including through the consideration of appropriate measures at the Council's disposal in accordance with the Charter of the United Nations, and *notes*, in that regard, the relevant recommendations contained in the report of the Secretary-General;

11. *Expresses* its willingness to consider how peacekeeping mandates might better address the negative impact of armed conflict on civilians;

12. *Expresses* its support for the inclusion, where appropriate, in peace agreements and mandates of United Nations peacekeeping missions, of specific and adequate measures for the disarmament, demobilization and reintegration of ex-combatants, with special attention given to the demobilization and reintegration of child soldiers, as well as clear and detailed arrangements for the destruction of surplus arms and ammunition and, in this regard, *recalls* the statement of its President of 8 July 1999;

13. *Notes* the importance of including in the mandates of peacemaking, peacekeeping and peace-building operations special protection and assistance provisions for groups requiring particular attention, including women and children;

14. *Requests* the Secretary-General to ensure that United Nations personnel involved in peacemaking, peacekeeping and peace-building activities have appropriate training in international humanitarian, human rights and refugee law, including child and gender-related provisions, negotiation and communication skills, cultural awareness and civilian-military coordination, and *urges* States and relevant international and regional organizations to ensure that appropriate training is included in their programmes for personnel involved in similar activities;

15. *Underlines* the importance of civilian police as a component of peacekeeping operations, *recognizes* the role of police in assuring the safety and well-being of civilians and, in this regard, *acknowledges* the need to enhance the capacity of the United Nations for the rapid deployment of qualified and well-trained civilian police;

16. *Reaffirms* its readiness, whenever measures are adopted under Article 41 of the Charter of the United Nations, to give consideration to their impact on the civilian population, bearing in mind the needs of children, in order to consider appropriate humanitarian exemptions;

17. *Notes* that the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and have a potential to exacerbate and prolong conflicts, endanger the lives of civilians and undermine security and the confidence required for a return to peace and stability;

18. *Takes note* of the entry into force of the Convention on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction of 1997 and the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980, *recalls* the relevant provisions contained therein, and *notes* the beneficial effect that their implementation will have on the safety of civilians;

Reiterates its grave concern at the harmful and widespread impact of armed conflict on children, *recalls* its resolution 1261 (1999) of

25 August 1999, and *reaffirms* the recommendations contained therein;

20. *Stresses* the importance of consultation and cooperation between the United Nations, the International Committee of the Red Cross and other relevant organizations, including regional organizations, on follow-up to the report of the Secretary-General and *encourages* the Secretary-General to continue consultations on this subject and to take concrete actions aimed at enhancing the capacity of the United Nations to improve the protection of civilians in armed conflict;

21. *Expresses its willingness also* to work in cooperation with regional organizations to examine how these bodies might better enhance the protection of civilians in armed conflict;

22. *Decides* to establish immediately an appropriate mechanism to review further the recommendations contained in the report of the Secretary-General and to consider appropriate steps by April 2000 in accordance with its responsibilities under the Charter of the United Nations;

23. *Decides* to remain actively seized of the matter.

ANNEX XVI

PROTECTION OF CIVILIANS IN ARMED CONFLICT RESOLUTION 1296 (2000)

Adopted by the Security Council at its 4130th meeting, on 19 April 2000

The Security Council,

Recalling its resolution 1265 (1999) of 17 September 1999, the statement of its President of 12 February 1999 (S/PRST/1999/6) and other relevant resolutions and statements of its President,

Having considered the report of the Secretary-General of 8 September 1999 on the Protection of Civilians in Armed Conflict (S/1999/957),

Expressing its appreciation to the informal Working Group established pursuant to resolution 1265 (1999) for its work,

Expressing further its regret that civilians account for the vast majority of casualties in armed conflicts and increasingly are targeted by combatants and armed elements, *reaffirming* its concern at the hardships borne by civilians during armed conflict, in particular as a result of acts of violence directed against them, especially women, children and other vulnerable groups, including refugees and internally displaced persons, and *recognizing* the consequent impact this has on durable peace, reconciliation and development,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, and *underlining* the importance of taking measures aimed at conflict prevention and resolution,

Reaffirming its commitment to the Purposes of the Charter of the United Nations as set out in Article 1 (1-4) of the Charter, and to the Principles of the Charter as set out in Article 2 (1-7) of the Charter, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and to respect for the sovereignty of all States,

Underlining the need for all parties concerned to comply with the provisions of the Charter of the United Nations and with rules and principles of international law, in particular international humanitarian, human rights and refugee law, and to implement fully the relevant decisions of the Security Council,

1. *Emphasizes* the need, when considering ways to provide for the protection of civilians in armed conflict, to proceed on a case-by-case basis, taking into account the particular circumstances, and *affirms* its intention to take into account relevant recommendations contained in the report of the Secretary-General of 8 September 1999 when carrying out its work;

2. *Reaffirms* its strong condemnation of the deliberate targeting of civilians or other protected persons in situations of armed conflict, and *calls upon* all parties to put an end to such practices;

3. *Notes* that the overwhelming majority of internally displaced persons and other vulnerable groups in situations of armed conflict are civilians and, as such, are entitled to the protection afforded to civilians under existing international humanitarian law;

4. *Reaffirms* the importance of adopting a comprehensive approach to conflict prevention, *invites* Member States and the Secretary-General to bring to its attention any matter which in their opinion may threaten the maintenance of international peace and security, *affirms* in this regard its willingness to consider, in the light of its discussion of such matters, the establishment, in appropriate circumstances, of preventive missions, and *recalls*, in this regard, the statement of its President of 30 November 1999 (S/PRST/1999/34);

5. *Notes that* the deliberate targeting of civilian populations or other protected persons and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law in situations of armed conflict may constitute a threat to international peace and security, and, in this regard, *reaffirms* its readiness to consider such situations and, where necessary, to adopt appropriate steps;

6. *Invites* the Secretary-General to continue to refer to the Council relevant information and analysis where he believes that such information or analysis could contribute to the resolution of issues before it;

7. *Expresses* its intention to collaborate with representatives of the relevant regional and subregional organizations, where appropriate, in order further to improve opportunities for the resolution of armed conflicts and the protection of civilians in such conflict;

8. *Underlines* the importance of safe and unimpeded access of humanitarian personnel to civilians in armed conflicts, *calls upon* all parties concerned, including neighbouring States, to cooperate fully with the United Nations Humanitarian Coordinator and United Nations agencies in providing such access, *invites* States and the Secretary-General to bring to its attention information regarding the deliberate denial of such access in violation of international law, where such denial may constitute a threat to international peace and security, and, in this regard, *expresses* its willingness to consider such information and, when necessary, to adopt appropriate steps;

9. *Reaffirms* its grave concern at the harmful and widespread impact of armed conflict on civilians, including the particular impact that armed conflict has on women, children and other vulnerable groups, and *further reaffirms* in this regard the importance of fully addressing their special protection and assistance needs in the mandates of peacemaking, peacekeeping and peace-building operations;

10. *Expresses* its intention, where appropriate, to call upon the parties to a conflict to make special arrangements to meet the protection and assistance requirements of women, children and other vulnerable groups, including through the promotion of "days of immunization" and other opportunities for the safe and unhindered delivery of basic necessary services;

11. *Emphasizes* the importance for humanitarian organizations to uphold the principles of neutrality, impartiality and humanity in their humanitarian activities and recalls, in this regard, the statement of its President of 9 March 2000 (S/PRST/2000/7);

12. *Reiterates* its call to all parties concerned, including non-State parties, to ensure the safety, security and freedom of movement of United Nations and associated personnel, as well as personnel of humanitarian organizations, and *recalls*, in this regard, the statement of its President of 9 February 2000 (S/PRST/2000/4);

13. *Affirms* its intention to ensure, where appropriate and feasible, that peacekeeping missions are given suitable mandates and adequate

resources to protect civilians under imminent threat of physical danger, including by strengthening the ability of the United Nations to plan and rapidly deploy peacekeeping personnel, civilian police, civil administrators, and humanitarian personnel, utilizing the stand-by arrangements as appropriate;

14. *Invites* the Secretary-General to bring to its attention situations where refugees and internally displaced persons are vulnerable to the threat of harassment or where their camps are vulnerable to infiltration by armed elements and where such situations may constitute a threat to international peace and security, *expresses*, in this regard, its willingness to consider such situations and, where necessary, adopt appropriate steps to help create a secure environment for civilians endangered by conflicts, including by providing support to States concerned in this regard, and *recalls*, in this regard, its resolution 1208 (1998) of 19 November 1998;

15. *Indicates* its willingness to consider the appropriateness and feasibility of temporary security zones and safe corridors for the protection of civilians and the delivery of assistance in situations characterized by the threat of genocide, crimes against humanity and war crimes against the civilian population;

16. *Affirms* its intention to include in the mandates of United Nations peacekeeping operations, where appropriate and on a case-by-case basis, clear terms for activities related to the disarmament, demobilization and reintegration of ex-combatants, including in particular child soldiers, as well as for the safe and timely disposal of surplus arms and ammunition, *emphasizes* the importance of incorporating such measures in specific peace agreements, where appropriate and with the consent of the parties, *also emphasizes* in this regard the importance of adequate resources being made available, and *recalls* the statement of its President of 23 March 2000 (S/PRST/2000/10);

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

18. *Affirms* that, where appropriate, United Nations peacekeeping missions should include a mass-media component that can disseminate information about international humanitarian law and human rights law, including peace education and children's protection, while also giving objective information about the activities of the United Nations, and *further affirms* that, where appropriate, regional peacekeeping operations should be encouraged to include such mass-media components;

19. *Reiterates* the importance of compliance with relevant provisions of international humanitarian, human rights and refugee law and of providing appropriate training in such law, including child and gender-related provisions, as well as in negotiation and communications skills, cultural awareness, civil-military coordination and sensitivity in the prevention of HIV/AIDS and other communicable diseases, to personnel involved in peacemaking, peacekeeping and peace-building activities, *requests* the Secretary-General to disseminate appropriate guidance and to ensure that such United Nations personnel have the appropriate training, and *urges* relevant Member States, as necessary and feasible, to disseminate appropriate instructions and to ensure that appropriate training is included in their programmes for personnel involved in similar activities;

20. *Takes note* of the entry into force of the Convention on the Use, Stockpiling, Production and Transfer of Anti-personnel Mines and their Destruction of 1997 and the amended Protocol on Prohibitions or Restrictions on the Use of Mines, Booby Traps and Other Devices (Protocol II) annexed to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980, *recalls* the relevant provisions contained therein, *notes* the beneficial impact that their implementation will have on the safety of civilians and *encourages* those in a position to do so to support humanitarian mine action, including by providing financial assistance to this end;

21. *Notes* that the excessive accumulation and destabilizing effect of small arms and light weapons pose a considerable impediment to the provision of humanitarian assistance and have a potential to exac-

erbate and prolong conflicts, endanger civilians and undermine security and the confidence required for a return to peace and stability;

22. *Recalls* the decision of the members of the Council set out in the Note by its President of 17 April 2000 (S/2000/319) to establish on a temporary basis an informal Working Group of the Security Council on the general issue of sanctions, and *requests* the informal Working Group to consider the recommendations contained in the report of the Secretary-General of 8 September 1999 relating to its mandate;

23. *Recalls* the letter of its President to the President of the General Assembly of 14 February 2000 (S/2000/119), *takes note* of the letter to its President from the President of the General Assembly of 7 April 2000 (S/2000/298) enclosing a letter from the Chairman of the Special Committee on Peacekeeping Operations of 1 April 2000, *welcomes* in this regard the work by the Committee with reference to the recommendations in the report of the Secretary-General of 8 September 1999 which relate to its mandate, and *encourages* the General Assembly to continue consideration of these aspects of the protection of civilians in armed conflict;

24. *Requests* the Secretary-General to continue to include in his written reports to the Council on matters of which it is seized, as appropriate, observations relating to the protection of civilians in armed conflict;

25. *Requests* the Secretary-General to submit by 30 March 2001 his next report on the protection of civilians in armed conflict, with a view to requesting additional such reports in future, *further requests* the Secretary-General to include in this report any additional recommendations on ways the Council and other Organs of the United Nations, acting within their sphere of responsibility, could further improve the protection of civilians in situations of armed conflict, and *encourages* the Secretary-General to consult the Inter-Agency Standing Committee in the preparation of the reports;

26. *Decides* to remain seized of the matter.

ANNEX XVII

IMPACT OF ARMED CONFLICT ON CHILDREN RESOLUTION 1314 (2000)

Adopted by the Security Council at its 4185th meeting, on 11 August 2000

The Security Council,

Recalling its resolution 1261 (1999) of 28 August 1999,

Further recalling its resolutions 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000, 1306 (2000) of 5 July 2000 and the statements of its President of 29 June 1998 (S/PRST/1998/18), 12 February 1999 (S/PRST/1999/6), 8 July 1999 (S/PRST/1999/21), 30 November 1999 (S/PRST/1999/34) and 20 July 2000 (S/PRST/25),

Welcoming the adoption by the General Assembly on 25 May 2000 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict,

Bearing in mind the purposes and principles of the Charter of the United Nations, and the primary responsibility of the Security Council for the maintenance of international peace and security,

Underlining the need for all parties concerned to comply with the provisions of the Charter of the United Nations and with the rules and principles of international law, in particular international humanitarian, human rights and refugee law, and to implement fully the relevant decisions of the Security Council, *and recalling* the relevant provisions on the protection of children contained in International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, the Rome Statute of the International Criminal Court and the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction,

Noting the regional initiatives on war-affected children, including within the Organization for Security and Cooperation in Europe, the West African Conference on War-Affected Children held in Accra,

Ghana, in April 2000, and the forthcoming International Conference on War-Affected Children to be held in Winnipeg, Canada from 10 to 17 September 2000,

Having considered the report of the Secretary-General of 19 July 2000 on the implementation of resolution 1261 (1999) on Children and Armed Conflict (S/2000/712),

1. *Reaffirms* its strong condemnation of the deliberate targeting of children in situations of armed conflict and the harmful and widespread impact of armed conflict on children, and the long-term consequences this has for durable peace, security and development;

2. *Emphasizes* the responsibility of all States to put an end to impunity and to prosecute those responsible for genocide, crimes against humanity and war crimes, and, in this regard, *stresses* the need to exclude these, where feasible, from amnesty provisions and relevant legislation;

3. *Urges* all parties to armed conflict to respect fully international law applicable to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obligations applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989 and the Optional Protocol thereto of 25 May 2000, and to bear in mind the relevant provisions of the Rome Statute of the International Criminal Court;

4. *Urges* Member States in a position to do so to sign and ratify the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict;

5. *Expresses* support for the ongoing work of the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund, the United Nations High Commissioner for Refugees, other parts of the United Nations system and other relevant international organizations dealing with children affected by armed conflict;

6. *Urges* Member States and parties to armed conflict to provide protection and assistance to refugees and internally displaced persons, as appropriate, the vast majority of whom are women and children;

7. *Calls upon* all parties to armed conflict to ensure the full, safe and unhindered access of humanitarian personnel and the delivery of humanitarian assistance to all children affected by armed conflict;

8. *Expresses its grave concern* at the linkages between the illicit trade in natural resources and armed conflict, as well as the linkages between the illicit trafficking in small arms and light weapons and armed conflict, which can prolong armed conflict and intensify its impact on children, and in this regard *expresses* its intention to consider taking appropriate steps, in accordance with the Charter of the United Nations;

9. *Notes* that the deliberate targeting of civilian populations or other protected persons, including children, and the committing of systematic, flagrant and widespread violations of international humanitarian and human rights law, including that relating to children, in situations of armed conflict may constitute a threat to international peace and security, and in this regard *reaffirms* its readiness to consider such situations and, where necessary to adopt appropriate steps;

10. *Urges* all parties to abide by the concrete commitments they have made to the Special Representative of the Secretary-General for Children and Armed Conflict as well as relevant United Nations bodies to ensure the protection of children in situations of armed conflict;

11. *Requests* parties to armed conflict to include, where appropriate, provisions for the protection of children, including the disarmament, demobilization and reintegration of child combatants, in peace negotiations and in peace agreements and the involvement of children, where possible, in these processes;

12. *Reaffirms* its readiness to continue to include, where appropriate, child protection advisers in future peacekeeping operations;

13. *Underlines* the importance of giving consideration to the special needs and particular vulnerabilities of girls affected by armed conflict, including, *inter alia*, those heading households, orphaned, sexually exploited and used as combatants, and *urges* that their human rights, protection and welfare be incorporated in the development of policies and programmes, including those for prevention, disarmament, demobilization and reintegration;

14. *Reiterates* the importance of ensuring that children continue to have access to basic services during the conflict and post-conflict periods, including, *inter alia*, education and health care;

15. *Indicates its willingness*, when imposing measures under Article 41 of the Charter of the United Nations, to consider assessing the potential unintended consequences of sanctions on children and to take appropriate steps to minimize such consequences;

16. *Welcomes* recent initiatives by regional and subregional organizations and arrangements for the protection of children affected by armed conflict, and *urges* them to:

(a)Consider establishing, within their secretariats, child protection units for the development and implementation of policies, activities and advocacy for the benefit of children affected by armed conflict, including children in the design and implementation of such policies and programmes where possible;

(b)Consider including child protection staff in their peace and field operations and providing training to members of their peace and field operations on the rights and protection of women and children;

(c)Undertake initiatives to curb the cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children, the illicit movement of small arms and the illicit trade in natural resources;

(d)Allocate resources, as applicable, during policy and programme development for the benefit of children affected by armed conflict;

(e)Integrate a gender perspective into all policies, programmes and projects;

(f)Consider declaring regional initiatives towards full implementation of the prohibition of the use of child soldiers in violation of international law;

17. *Encourages* Member States, relevant parts of the United Nations system and regional organizations and arrangements to undertake efforts to obtain the release of children abducted during armed conflict and their family reunification;

18. *Urges* Member States and relevant parts of the United Nations system to strengthen the capacities of national institutions and local

civil society for ensuring the sustainability of local initiatives for the protection of children;

19. *Calls on* Member States, relevant parts of the United Nations system, and civil society to encourage the involvement of young persons in programmes for peace consolidation and peace-building;

20. *Encourages* the Secretary-General to continue to include in his written reports to the Council on matters of which the Council is seized, as appropriate, observations relating to the protection of children in armed conflict;

21. *Requests* the Secretary-General to submit a report to the Security Council on the implementation of this resolution and of resolution 1261 (1999) by 31 July 2001;

22. *Decides* to remain actively seized of this matter.

ANNEX XVIII

PROTECTION OF WOMEN, CHILDREN AND OTHER VULNERABLE GROUPS RESOLUTION 1379 (2001)

Adopted by the Security Council at its 4423rd meeting, on 20 November 2001

The Security Council,

Recalling its resolution 1314 (2000) of 11 August 2000,

Further recalling its resolutions 1261 (1999) of 28 August 1999, 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000, 1306 (2000) of 5 July 2000, 1308 (2000) of 17 July 2000 and 1325 (2000) of 31 October 2000 and the statements of its President of 29 June 1998 (S/PRST/1998/18), 12 February 1999 (S/PRST/1999/6), 8 July 1999 (S/PRST/1999/21), 30 November 1999 (S/PRST/1999/34), 20 July 2000 (S/PRST/2000/25) and of 31 August 2001 (S/PRST/2001/21),

Recognizing the harmful and widespread impact of armed conflict on children and the long-term consequences this has for durable peace, security and development,

Bearing in mind the purposes and principles of the Charter of the United Nations and *recalling* the primary responsibility of the Security Council for the maintenance of international peace and security and, in this connection, its commitment to address the impact of armed conflict on children,

Underlining the need for all parties concerned to comply with the provisions of the Charter of the United Nations and with international law, in particular those regarding children,

Having considered the report of the Secretary-General of 7 September 2001 on the implementation of resolution 1314 (2000) on children and armed conflict,

1. *Expresses*, accordingly, its determination to give the fullest attention to the question of the protection of children in armed conflict when considering the matters of which it is seized;

2. *Expresses* its readiness explicitly to include provisions for the protection of children, when considering the mandates of peacekeeping operations, and reaffirms, in this regard, its readiness to continue to include, where appropriate, child protection advisers in peacekeeping operations;

3. *Supports* the ongoing work of the Secretary-General, the Special Representative of the Secretary-General for Children and Armed Conflict, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights, other agencies of the United Nations system and other international organizations dealing with children affected by armed conflict;

4. *Expresses* its intention, where appropriate, to call upon the parties to a conflict to make special arrangements to meet the protection and assistance requirements of women, children and other vulnerable groups, including through the promotion of "days of immunization" and other opportunities for the safe and unhindered delivery of basic necessary services;

5. *Underlines* the importance of the full, safe and unhindered access of humanitarian personnel and goods and the delivery of humanitarian assistance to all children affected by armed conflict;

6. *Expresses* its intention to consider taking appropriate steps, in accordance with the Charter of the United Nations, to address the linkages between armed conflict and terrorism, the illicit trade in precious minerals, the illicit trafficking in small arms and light weapons, and other criminal activities, which can prolong armed conflict or intensify its impact on civilian populations, including children;

7. *Undertakes* to consider, as appropriate when imposing measures under Article 41 of the Charter of the United Nations, the economic and social impact of sanctions on children, with a view to providing appropriate humanitarian exemptions that take account of their specific needs and their vulnerability and to minimize such impact;

8. *Calls upon* all parties to armed conflict to:

(a)Respect fully the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict, in particular the Geneva Conventions of 1949 and the obliga-

tions applicable to them under the Additional Protocols thereto of 1977, the United Nations Convention on the Rights of the Child of 1989, the Optional Protocol thereto of 25 May 2000, and the amended Protocol II to the Convention on Prohibition or Restriction on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, the International Labour Organization Convention No. 182 on the Elimination of the Worst Forms of Child Labour and the Ottawa Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, and notes the inclusion as a war crime in the Rome Statute of the conscription or enlistment of children under the age of fifteen years into the national armed forces or using them to participate actively in hostilities;

(b)Provide protection and assistance to refugees and internally displaced persons, the majority of whom are women and children, in accordance with applicable international norms and standards;

(c)Take special measures to promote and protect the rights and meet the special needs of girls affected by armed conflict, and to put an end to all forms of violence and exploitation, including sexual violence, particularly rape;

(d)Abide by the concrete commitments they have made to the Special Representative of the Secretary-General for Children and Armed Conflict, as well as relevant United Nations bodies, to ensure the protection of children in situations of armed conflict;

(e)Provide protection of children in peace agreements, including, where appropriate, provisions relating to the disarmament, demobilization, reintegration and rehabilitation of child soldiers and the reunification of families, and to consider, when possible, the views of children in those processes;

9. *Urges* Member States to:

(a)Put an end to impunity, prosecute those responsible for genocide, crimes against humanity, war crimes, and other egregious crimes perpetrated against children and exclude, where feasible, these crimes from amnesty provisions and relevant legislation, and ensure that post-conflict truth-and-reconciliation processes address serious abuses involving children;

(b)Consider appropriate legal, political, diplomatic, financial and material measures, in accordance with the Charter of the United Nations, in order to ensure that parties to armed conflict respect international norms for the protection of children;

(c)Consider, where appropriate, measures that may be taken to discourage corporate actors, within their jurisdiction, from maintaining commercial relations with parties to armed conflicts that are on the Security Council's agenda, when those parties are violating applicable international law on the protection of children in armed conflict;

(d)Consider measures against corporate actors, individuals and entities under their jurisdiction that engage in illicit trade in natural resources and small arms, in violation of relevant Security Council resolutions and the Charter of the United Nations;

(e)Consider ratifying the Optional Protocol to the Convention on the Rights of the Child on Involvement of Children in Armed Conflict and the International Labour Organization Convention No. 182 on the Elimination of the Worst Forms of Child Labour;

(f)Consider further steps for the protection of children, especially in the context of the International Decade for a Culture of Peace and Non-violence for the Children of the World (2001-2010);

10. *Requests* the Secretary-General to:

(a)Take the protection of children into account in peacekeeping plans submitted to the Security Council, inter alia, by including, on a case by case basis, child protection staff in peacekeeping and, as appropriate, peace-building operations and strengthening expertise and capacity in the area of human rights, where necessary;

(b)Ensure that all peacekeeping personnel receive and follow appropriate guidance on HIV/AIDS and training in international human rights, humanitarian and refugee law relevant to children;

(c)Continue and intensify, on a case by case basis, monitoring and reporting activities by peacekeeping and peace-building support operations on the situation of children in armed conflict;

11. *Requests* the agencies, funds and programmes of the United Nations to:

(a)Coordinate their support and assistance to parties to armed conflict in fulfilling their obligations and commitments to children;

(b)Take account of ways of reducing child recruitment that is contrary to accepted international standards when formulating development assistance programmes;

(c)Devote particular attention and adequate resources to the rehabilitation of children affected by armed conflict, particularly their counselling, education and appropriate vocational opportunities, as a preventive measure and as a means of reintegrating them into society;

(d)Ensure that the special needs and particular vulnerabilities of girls affected by armed conflict, including those heading households, orphaned, sexually exploited and used as combatants, are duly taken into account in the design of development assistance programmes, and that adequate resources are allocated to such programmes;

(e)Integrate HIV/AIDS awareness, prevention, care and support into emergency, humanitarian, and post-conflict programmes;

(f)Support the development of local capacity to address post-conflict child rehabilitation and reintegration concerns;

(g)Promote a culture of peace, including through support for peace education programmes and other non-violent approaches to conflict prevention and resolution, in peace-building activities;

12. *Encourages* the international financial institutions and regional financial and development institutions to:

(a)Devote part of their assistance to rehabilitation and reintegration programmes conducted jointly by agencies, funds, programmes and State parties to conflicts that have taken effective measures to comply with their obligations to protect children in situations of armed conflict, including the demobilization and reintegration of child soldiers, in particular those who have been used in armed conflicts contrary to international law;

(b)Contribute resources for quick-impact projects in conflict zones where peacekeeping operations are deployed or are in the process of deployment;

(c)Support the efforts of the regional organizations engaged in activities for the benefit of children affected by armed conflict, by providing them with financial and technical assistance, as appropriate;

13. *Urges* regional and subregional organizations and arrangements to:

(a)Consider establishing, within their secretariats, child protection mechanisms for the development and implementation of policies, activities and advocacy for the benefit of children affected by armed conflict, and consider the views of children in the design and implementation of such policies and programmes where possible;

(b)Consider including child protection staff in their peacekeeping and field operations and provide training to members of such operations on the rights and protection of children;

(c)Take steps leading to the elimination of cross-border activities deleterious to children in times of armed conflict, such as the cross-border recruitment and abduction of children, the sale of or traffic in children, attacks on camps and settlements of refugees and internally displaced persons, the illicit trade in precious minerals, the illicit trafficking in small arms and light weapons, and other criminal activities;

(d)Develop and expand regional initiatives to prevent the use of child soldiers in violation of international law and to take appropriate measures to ensure the compliance by parties to armed conflict with obligations to protect children in armed conflict situations;

14. *Requests* the Secretary-General to continue to include in his written reports to the Council on conflict situations his observations concerning the protection of children and recommendations in this regard;

15. *Requests* the Secretary-General to submit a report to the Council by 31 October 2002 on the implementation of this resolution and of resolutions 1261 (1999) and 1314 (2000);

16. *Requests* the Secretary-General to attach to his report a list of parties to armed conflict that recruit or use children in violation of the international obligations applicable to them, in situations that are on the Security Council's agenda or that may be brought to the attention of the Security Council by the Secretary-General, in accordance with Article 99 of the Charter of the United Nations, which in his opinion may threaten the maintenance of international peace and security;

17. *Decides* to remain actively seized of this matter.

ANNEX XIX

PROTECTION OF UN PERSONNEL IN CONFLICT ZONES S/PRST/2000/4

11 February 2000

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4100th meeting of the Security Council, held on 9 February 2000, in connection with the Council's consideration of the item entitled "Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council is gravely concerned at continued attacks against United Nations and associated personnel, and humanitarian personnel, which are in violation of international law including international humanitarian law.

"The Security Council recalls its resolution 1265 (1999) of 17 September 1999, and reaffirms the statements of its President of 31 March 1993, on the safety of United Nations forces and personnel deployed in conditions of strife (S/25493), of 12 March 1997, on condemnation of attacks on United Nations personnel (S/PRST/1997/13), of 19 June 1997, on the use of force against refugees and civilians in conflict situations (S/PRST/1997/34), and of 29 September 1998, on protection for humanitarian assistance to refugees and others in conflict situations (S/PRST/1998/30). The Council also recalls General Assembly resolution 54/192, on the safety and security of humanitarian personnel and protection of United Nations personnel.

"The Security Council also recalls the report of the Secretary-General on the strengthening of the coordination of emergency humanitarian assistance of the United Nations, and its Addendum on the safety and security of humanitarian personnel and protection of United Nations personnel (A/54/154 and Add.1), and looks forward to

the report of the Secretary-General pursuant to resolution 54/192 of 17 December 1999, to be submitted to the General Assembly in May 2000, which should contain a detailed analysis and recommendations addressing the scope of legal protection under the Convention on the Safety of United Nations and Associated Personnel of 1994.

"The Security Council notes with satisfaction the entry into force of the Convention on the Safety of United Nations and Associated Personnel of 1994, recognizes its importance for addressing the security of such personnel and recalls the relevant principles contained therein. The Council encourages all States to become party to and respect fully their obligations under the relevant instruments, including the 1994 Convention above referred.

"The Security Council recalls that, on a number of occasions, it has condemned attacks and the use of force against United Nations and associated personnel, and humanitarian personnel. It strongly deplores the fact that incidents of violence have continued, leading to a rising toll of casualties among United Nations, associated and humanitarian personnel. The Council strongly condemns the acts of murder and various forms of physical and psychological violence, including abduction, hostage-taking, kidnapping, harassment and illegal arrest and detention to which such personnel have been subjected, as well as acts of destruction and looting of their property, all of which are unacceptable.

"The Security Council also recalls that the primary responsibility for the security and protection of United Nations and associated personnel, and humanitarian personnel, lies with the host State. The Council urges States and non-State parties to respect fully the status of United Nations and associated personnel, and to take all appropriate steps, in accordance with the purposes and principles of the Charter of the United Nations and the rules of international law, to ensure the safety and security of United Nations and associated personnel, and humanitarian personnel, and underlines the importance of unhindered access to populations in need.

"The Security Council urges States to fulfil their responsibility to act promptly and effectively in their domestic legal systems to bring to justice all those responsible for attacks and other acts of violence

against such personnel, and to enact effective national legislation as required for that purpose.

"The Security Council will continue to stress in its resolutions the imperative for humanitarian assistance missions and personnel to have safe and unimpeded access to civilian populations and, in this context, is prepared to consider taking all appropriate measures at its disposal to ensure the safety and security of such personnel.

"The Security Council welcomes the inclusion as a war crime in the Rome Statute of the International Criminal Court, of attacks intentionally directed against personnel involved in a humanitarian assistance or peacekeeping mission as long as they are entitled to the protection given to civilians under the international law of armed conflict, and notes the role that the Court could play in bringing to justice those responsible for serious violations of international humanitarian law.

"The Security Council expresses the view that improving the security of United Nations and associated personnel, and humanitarian personnel, may require, inter alia, the development and strengthening of all aspects of the current safety and security regime in place, as well as the adoption of effective action to address the impunity of those who commit crimes against such personnel.

"The Security Council recognizes the importance of issuing clear, appropriate and feasible mandates for peacekeeping operations, to ensure that they are applied in a timely, efficient and objective manner, and of ensuring that all new and ongoing United Nations field operations, include appropriate modalities for the safety and security of United Nations and associated personnel, and humanitarian personnel. The Council underscores that United Nations personnel have the right to act in self-defence.

"The Security Council encourages the Secretary-General to complete the process of conducting a general and comprehensive review of security in peacekeeping operations, with a view to elaborating and undertaking further specific and practical measures to increase the safety and security of United Nations and associated personnel, and humanitarian personnel.

"The Security Council considers it important that a comprehensive security plan be developed for every peacekeeping and humanitar-

ian operation and that, during early elaboration and implementation of that plan, Member States and the Secretariat cooperate fully in order to ensure, inter alia, an open and immediate exchange of information on security issues.

"The Security Council, bearing in mind the need to reinforce the responsibility of the host State for the physical security of United Nations and associated personnel, also underlines the importance of including in each status-of-forces agreement and status-of-missions agreement specific and practical measures based on the provisions of the Convention on the Safety of United Nations and Associated Personnel of 1994.

"The Security Council recalls the obligations of all United Nations personnel and associated personnel, and humanitarian personnel, to observe and respect the national laws of the host State in accordance with international law and the Charter of the United Nations.

"The Security Council believes it is essential to continue to strengthen security arrangements, to improve their management, and to allocate adequate resources to the safety and security of United Nations and associated personnel, and humanitarian personnel."

ANNEX XX

PREVENTIVE ACTION AGAINST THREATS TO INTERNATIONAL PEACE AND SECURITY S/PRST/1999/34

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4073rd meeting of the Security Council, held on 30 November 1999 in connection with the Council's consideration of the item entitled "Role of the Security Council in the prevention of armed conflicts", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council has considerd, within its primary responsibility for the maintenance of international peace and security, its role in the prevention of armed conflicts. The Council emphasizes the need fully to respect and implement the principles and provisions of the Charter of the United Nations and norms of international law, in particular in this context those related to prevention of armed conflicts and settlement of disputes by peaceful means. It affirms its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States. The Council also affirms the need for respect for human rights and the rule of law. It will give special attention to the humanitarian consequences of armed conflicts. The Council recognizes the importance of building a culture of prevention of armed conflicts and the need for a contribution from all principal organs of the United Nations in that regard.

"The Security Council stresses the importance of a coordinated international response to economic, social, cultural or humanitarian problems, which are often the root causes of armed conflicts. Recognizing the need for the development of effective long-term strategies, it emphasizes the need for all United Nations organs and agencies to pursue preventive strategies and to take action within their respective areas of competence to assist Member States to eradicate poverty,

strengthen development cooperation and assistance and promote respect for human rights and fundamental freedoms.

"The Security Council recognizes that early warning, preventive diplomacy, preventive deployment, preventive disarmament and post-conflict peace-building are interdependent and complementary components of a comprehensive conflict prevention strategy. The Council emphasizes its continuing commitment to addressing the prevention of armed conflicts in all regions of the world.

"The Security Council is aware of the importance of its early consideration of situations which might deteriorate into armed conflicts. In this context it underlines the importance of the settlement of disputes by peaceful means, in accordance with Chapter VI of the Charter of the United Nations. The Council recalls that parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, have an obligation to seek peaceful means of settlement.

"The Security Council reaffirms its responsibility under the Charter of the United Nations to take action on its own initiatives in order to maintain international peace and security. The results of the Council's mission to Jakarta and Dili from 6 to 12 September 1999 demonstrate that such missions undertaken with the consent of the host country and with clear goals can be useful if dispatched in a timely and appropriate manner. The Council expresses intention to support, with appropriate follow-up action, efforts to prevent conflict by the Secretary-General through such areas as fact-finding missions, good offices and other activities requiring action by his envoys and Special Representatives.

"The Security Council emphasizes the important role of the Secretary-General in the prevention of armed conflicts. The Council expresses its readiness to consider appropriate preventive action in response to the matters brought to its attention by States or the Secretary-General and which it deems likely to threaten international peace and security. It invites the Secretary-General to present to the members of the Council periodic reports on such disputes, including, as appropriate, early warnings and proposals for preventive measures. In this regard the Council encourages the Secretary-General to improve further his capacity to identify potential threats to international peace

and security and invites him to indicate any requirements to fulfil these capacities, including the development of Secretariat's expertise and resources.

"The Security Council recalls that the United Nations Preventive Deployment Force, as the first United Nations preventive deployment mission, has prevented the spillover of conflict and tensions from the region to the host country. The Council will continue to consider the establishment of such preventive missions in appropriate circumstances.

"The Security Council will also consider other preventive measures such as the establishment of demilitarized zones and preventive disarmament. While fully conscious of the responsibilities of other United Nations organs, it emphasizes the crucial importance of disarmament and the non-proliferation of weapons of mass destruction and the means of their delivery for the maintenance of international peace and security. In particular, progress in preventing and combating the excessive and destabilizing accumulation of and illicit trafficking in small arms and light weapons is of vital importance to the prevention of armed conflicts. The Council will also take appropriate measures in situations of post-conflict peace-building aimed at preventing the recurrence of armed conflicts, including through adequate programmes for the disarmament, demobilization and reintegration of ex-combatants. The Council acknowledges the increasingly important role of the civilian components of multifunctional peacekeeping operations and will look towards their playing a greater role in wider preventive efforts.

"The Security Council recalls the provisions of Article 39 of the Charter of the United Nations concerning measures to prevent armed conflicts. Such measures may include targeted sanctions, in particular arms embargoes and other enforcement measures. In imposing such measures the Council will pay special attention to their likely effectiveness in achieving clearly defined objectives, while avoiding negative humanitarian consequences as much as possible.

"The Security Council recognizes the link between the prevention of armed conflicts, the facilitation of the peaceful settlement of disputes and the promotion of security for the civilian population, in particular the protection of human life. Furthermore, the Council

underlines that the existing international criminal tribunals represent useful instruments to combat impunity and can, by helping to deter crimes against humanity, contribute to the prevention of armed conflicts. In this context the Council acknowledges the historic significance of the adoption of the Rome Statute of the International Criminal Court.

"The Security Council recognizes the important role that regional organizations and arrangements are playing in the prevention of armed conflicts, including through the development of confidence- and security-building measures. The Council also emphasizes the importance of supporting and improving regional capacities for early warning. It emphasizes the importance of cooperation between the United Nations and regional organizations in preventive activities in accordance with Chapter VIII of the Charter of the United Nations. The Council welcomes meetings between the United Nations, including the Security Council, and regional organizations, and encourages participants to continue to focus those meetings on issues related to prevention of armed conflicts.

"The Security Council will continue to review its activities and strategies for the prevention of armed conflicts. It will consider the possibility of holding further orientation debates and strengthening its cooperation with the Economic and Social Council. The Council will also consider the possibility of a meeting at the level of Foreign Ministers on the issue of prevention of armed conflicts during the Millennium Assembly.

"The Security Council will remain seized of the matter."

ANNEX XXI

CONFLICT PREVENTION
RESOLUTION 1366 (2001)

Adopted by the Security Council at its 4360th meeting, on 30 August 2001

The Security Council,

Recalling its resolutions 1196 (1998) of 16 September 1998, 1197 (1998) of 18 September 1998, 1208 (1998) of 19 November 1998, 1209 (1998) of 19 November 1998; 1265 (1999) of 17 September 1999, 1296 (2000) of 19 April 2000, 1318 (2000) of 7 September 2000, 1325 (2000) of 31 October 2000 and 1327 (2000) of 13 November 2000,

Recalling also the statements of its President of 16 September 1998 (S/PRST/1998/28), 24 September 1998 (S/PRST/1998/29), 30 November 1998 (S/PRST/1998/35), 24 September 1999 (S/PRST/1999/28), 30 November 1999 (S/PRST/1999/34), 23 March 2000 (S/PRST/2000/10), 20 July 2000 (S/PRST/2000/25), 20 February 2001 (S/PRST/2001/5) and 22 March 2001 (S/PRST/2001/10),

Having considered the report of the Secretary-General on the Prevention of Armed Conflict (S/2001/574) and in particular the recommendations contained therein relating to the role of the Security Council,

Reiterating the purposes and principles enshrined in the Charter of the United Nations and *reaffirming* its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States,

Mindful of the consequences of armed conflict on relations between and among States, the economic burden on the nations involved as well as on the international community, and above all, the humanitarian consequences of conflicts,

Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security and *reaffirming* its role in the prevention of armed conflicts,

Stressing the need for the maintenance of regional and international peace and stability and friendly relations among all States, and *underlining* the overriding political, humanitarian and moral imperatives as well as the economic advantages of preventing the outbreak and escalation of conflicts,

Emphasizing the importance of a comprehensive strategy comprising operational and structural measures for prevention of armed conflict; and recognizing the ten principles outlined by the Secretary-General in his report on prevention of armed conflicts,

Noting with satisfaction the increased recourse, with consent of receiving Member States, to Security Council missions to areas of conflict or potential conflict, which among others, can play an important role in the prevention of armed conflicts,

Reiterating that conflict prevention is one of the primary responsibilities of Member States,

Recognizing the essential role of the Secretary-General in the prevention of armed conflict and the importance of efforts to enhance his role in accordance with Article 99 of the Charter of the United Nations,

Recognizing the role of other relevant organs, offices, funds and programmes and the specialized agencies of the United Nations, and other international organizations including the World Trade Organization and the Bretton Woods institutions; as well as the role of non-governmental organizations, civil society actors and the private sector in the prevention of armed conflict,

Stressing the necessity of addressing the root-causes and regional dimensions of conflicts, *recalling* the recommendations contained in the report of the Secretary-General on Causes of Conflicts and the Promotion of Durable Peace and Sustainable Development in Africa of 13 April 1998 (S/1998/318) and *underlining* the mutually supportive relationship between conflict prevention and sustainable development,

Expressing serious concern over the threat to peace and security caused by the illicit trade in and the excessive and destabilizing accumulation of small arms and light weapons in areas of conflict and their potential to exacerbate and prolong armed conflicts,

Emphasizing the importance of adequate, predictable and properly targeted resources for conflict prevention and of consistent funding for long-term preventive activities,

Reiterating that early warning, preventive diplomacy, preventive deployment, practical disarmament measures and post-conflict peacebuilding are interdependent and complementary components of a comprehensive conflict prevention strategy,

Underlining the importance of raising awareness of and ensuring respect for international humanitarian law, *stressing* the fundamental responsibility of Member States to prevent and end impunity for genocide, crimes against humanity and war crimes, *recognizing* the role of the ad hoc tribunals for the former Yugoslavia and Rwanda in deterring the future occurrence of such crimes thereby helping to prevent armed conflict; and *stressing* the importance of international efforts in accordance with the Charter of the United Nations in this regard,

Reiterating the shared commitment to save people from the ravages of armed conflicts, *acknowledging* the lessons to be learned for all concerned from the failure of preventive efforts that preceded such tragedies as the genocide in Rwanda (S/1999/1257) and the massacre in Srebrenica (A/54/549), and *resolving* to take appropriate action within its competence, combined with the efforts of Member States, to prevent the recurrence of such tragedies,

1. *Expresses* its determination to pursue the objective of prevention of armed conflict as an integral part of its primary responsibility for the maintenance of international peace and security;

2. *Stresses* that the essential responsibility for conflict prevention rests with national Governments, and that the United Nations and the international community can play an important role in support of national efforts for conflict prevention and can assist in building national capacity in this field and *recognizes* the important supporting role of civil society;

3. *Calls upon* Member States as well as regional and subregional organizations and arrangements to support the development of a comprehensive conflict prevention strategy as proposed by the Secretary-General;

4. *Emphasizes* that for the success of a preventive strategy, the United Nations needs the consent and support of the Government concerned and, if possible the cooperation of other key national actors and underlines in this regard that the sustained political will of neighbouring States, regional allies or other Member States who would be well placed to support United Nations efforts, is necessary;

5. *Expresses* its willingness to give prompt consideration to early warning or prevention cases brought to its attention by the Secretary-General and in this regard, *encourages* the Secretary-General to convey to the Security Council his assessment of potential threats to international peace and security with due regard to relevant regional and sub-regional dimensions, as appropriate, in accordance with Article 99 of the Charter of the United Nations;

6. *Undertakes* to keep situations of potential conflict under close review as part of a conflict prevention strategy and expresses its intention to consider cases of potential conflict brought to its attention by any Member State, or by a State not a Member of the United Nations or by the General Assembly or on the basis of information furnished by the Economic and Social Council;

7. *Expresses* its commitment to take early and effective action to prevent armed conflict and to that end to employ all appropriate means at its disposal including, with the consent of the receiving States, its missions to areas of potential conflict;

8. *Reiterates* its call to Member States to strengthen the capacity of the United Nations in the maintenance of international peace and security and in this regard urges them to provide the necessary human, material and financial resources for timely and preventive measures including early warning, preventive diplomacy, preventive deployment, practical disarmament measures and peace-building as appropriate in each case;

9. *Reaffirms* its role in the peaceful settlement of disputes and *reiterates* its call upon the Member States to settle their disputes by peaceful means as set forth in Chapter VI of the Charter of the United Nations including by use of regional preventive mechanisms and more frequent resort to the International Court of Justice;

10. *Invites* the Secretary-General to refer to the Council information and analyses from within the United Nations system on cases of

serious violations of international law, including international humanitarian law and human rights law and on potential conflict situations arising, inter alia, from ethnic, religious and territorial disputes, poverty and lack of development and expresses its determination to give serious consideration to such information and analyses regarding situations which it deems to represent a threat to international peace and security;

11. *Expresses* its intention to continue to invite the Office of the United Nations Emergency Relief Coordinator and other relevant United Nations agencies to brief its members on emergency situations which it deems to represent a threat to international peace and security and *supports* the implementation of protection and assistance activities by relevant United Nations agencies in accordance with their respective mandates;

12. *Expresses* its willingness to consider preventive deployment upon the recommendation of the Secretary-General and with the consent of the Member States concerned;

13. *Calls upon* all Member States to ensure timely and faithful implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15) adopted on 20 July 2001 and to take all necessary measures at national, regional and global levels to prevent and combat the illicit flow of small arms and light weapons in areas of conflict;

14. *Expresses* its willingness to make full use of information from the Secretary-General provided to him inter alia, under paragraph 33 section II of the Programme of Action in its efforts to prevent armed conflict;

15. *Stresses* the importance of the inclusion, as part of a conflict prevention strategy, of peace-building components including civilian police within peacekeeping operations on a case-by-case basis to facilitate a smooth transition to the post conflict peace-building phase and the ultimate conclusion of the mission;

16. *Decides* to consider inclusion as appropriate, of a disarmament, demobilization and reintegration component in the mandates of United Nations peacekeeping and peace-building operations with particular attention to the rehabilitation of child soldiers;

17. *Reiterates* its recognition of the role of women in conflict prevention and *requests* the Secretary-General to give greater attention to gender perspectives in the implementation of peacekeeping and peacebuilding mandates as well as in conflict prevention efforts;

18. *Supports* the enhancement of the role of the Secretary-General in conflict prevention including by increased use of United Nations interdisciplinary fact-finding and confidence-building missions to regions of tension, developing regional prevention strategies with regional partners and appropriate United Nations organs and agencies, and improving the capacity and resource base for preventive action in the Secretariat;

19. *Endorses* the call of the Secretary-General for support to the follow-up processes launched by the Third and Fourth High-level United Nations-Regional Organizations Meetings in the field of conflict prevention and peace-building, and to provide increased resources for the development of regional capacities in these fields;

20. *Calls* for the enhancement of the capacity for conflict prevention of regional organizations, in particular in Africa, by extending international assistance to, inter alia, the Organization of African Unity and its successor organization, through its Mechanism of Conflict Prevention, Management and Resolution, as well as to the Economic Community of West African States and its Mechanism for Prevention, Management and Resolution of Conflicts, Peacekeeping and Security;

21. *Stresses* the need to create conditions for durable peace and sustainable development by addressing the root-causes of armed conflict and to this end, *calls upon* Member States and relevant bodies of the United Nations system to contribute to the effective implementation of the United Nations Declaration and Programme of Action for a Culture of Peace (A/53/243);

22. *Looks forward to* further consideration of the report of the Secretary-General on Prevention of Armed Conflict by the General Assembly and the Economic and Social Council, as well as other actors including the Bretton Woods institutions and *supports* the development of a system-wide coordinated and mutually supportive approach to prevention of armed conflict;

23. *Decides* to remain actively seized of the matter.

ANNEX XXII

ROLE OF THE SECURITY COUNCIL IN THE PREVENTION OF ARMED CONFLICT
S/PRST/2000/25

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4174th meeting of the Security Council, held on 20 July 2000, in connection with the Council's consideration of the item entitled "Role of the Security Council in the prevention of armed conflicts", the President of the Security Council stated that the following statement by the President would be issued as a document of the Security Council in accordance with the understanding reached among the members of the Council:

"The Security Council recalls the statements of its President of 30 November 1999 (S/PRST/1999/34), 16 September 1998 (S/PRST/1998/28), 24 September 1998 (S/PRST/1998/29), 30 November 1998 (S/PRST/1998/35), and 23 March 2000 (S/PRST/2000/10), and further recalls resolutions 1196 (1998) of 16 September 1998, 1197 (1998) of 18 September 1998, 1208 (1998) of 19 November 1998, and 1209 (1998) of 19 November 1998. Bearing in mind its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, it reaffirms its role in taking appropriate steps aimed at the prevention of armed conflicts. It affirms its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States. The Council also affirms the need for respect for human rights and the rule of law.

"The Security Council stresses the need for the maintenance of regional and international peace and stability and friendly relations among all States, and underlines the overriding humanitarian and moral imperative as well as the economic advantages of preventing the outbreak and escalation of conflicts. It highlights, in this regard, the need to create a culture of prevention. The Council reaffirms its belief that early warning, preventive diplomacy, preventive deployment, pre-

ventive disarmament, and post-conflict peace-building are interdependent and complementary components of a comprehensive conflict prevention strategy. The Council emphasizes its continuing commitment to addressing the prevention of armed conflicts in all regions of the world.

"The Security Council recognizes that peace is not only the absence of conflict, but requires a positive, dynamic, participatory process where dialogue is encouraged and conflicts are solved in a spirit of mutual understanding and cooperation. Bearing in mind that causes of conflict are often nurtured in the minds of human beings, the Council calls on Member States, relevant bodies of the United Nations system and other relevant organizations to promote a culture of peace. It recognizes the importance of appropriate implementation of the Declaration and Programme of Action on a Culture of Peace, adopted by the General Assembly on 13 September 1999 (A/RES/53/243), for preventing violence and conflicts as well as strengthening efforts aimed at the creation of conditions of peace and its consolidation through post-conflict peace-building.

"The Security Council recalls its important role in the peaceful settlement of disputes under Chapter VI of the Charter of the United Nations. It reaffirms the importance of its consideration of all situations which might deteriorate into armed conflicts and to consider follow-up action, as appropriate. In this regard, it expresses continued willingness to consider the use of Council missions, with the consent of host countries, in order to determine whether any dispute, or any situation which might lead to international friction or give rise to a dispute, is likely to endanger the maintenance of international peace and security, and to make recommendations for action by the Security Council, as appropriate.

"The Security Council highlights the importance of the full support of all States for the efforts of the Security Council and other relevant United Nations organs and agencies in developing and implementing appropriate strategies for the prevention of armed conflicts in accordance with the provisions of the Charter of the United Nations. The Council underlines the importance of the peaceful settlement of disputes and recalls the obligation of the parties to disputes to seek actively a peaceful solution in accordance with the provisions of

Chapter VI of the Charter of the United Nations. The Council also recalls the obligation of all Member States to accept and carry out its decisions, including those for the prevention of armed conflict.

"The Security Council also stresses the importance of a coordinated international response to economic, social, cultural and humanitarian problems, which are often the root causes of armed conflicts.

"The Security Council recalls the essential role of the Secretary-General in the prevention of armed conflicts in accordance with Article 99 of the Charter of the United Nations, and expresses its willingness to take appropriate preventive action in response to matters brought to its attention by States or the Secretary-General and which it deems likely to endanger the maintenance of international peace and security. The Council encourages the ongoing efforts within the United Nations system to enhance its early warning capacity, and notes in this regard the importance of drawing on information from a variety of sources, given the multiple factors that contribute to conflict. It invites the Secretary-General to make recommendations to the Council, taking into account the views of Member States, and in light of past experiences, on the most effective and appropriate early warning strategies, bearing in mind the need to link early warning with early response. The Council invites the Secretary-General to present to the Council reports on such disputes, including, as appropriate, early warning and proposals for preventive measures.

"The Security Council recognizes the important role regional organizations and arrangements play in the prevention of armed conflicts, including through the development of confidence- and security-building measures, and re-emphasizes the need for effective and sustained cooperation and coordination between the United Nations and these regional organizations and arrangements in the prevention of armed conflict, in accordance with the provisions of Chapter VIII of the Charter of the United Nations. It expresses its willingness, within its responsibilities, to support the efforts of the Secretary-General in collaborating with the leadership of regional organizations and arrangements in order to develop strategies and programmes to be employed at the regional level. In this regard, it encourages the strengthening of modalities of cooperation between the United Nations and regional organizations and arrangements, including in

early warning and the mutual exchange of information. It recognizes the need to enhance the capacity of the Organization of African Unity and, in particular, its Mechanism for Conflict Prevention, Management and Resolution.

"The Security Council recognizes the importance of effective post-conflict peace-building strategies in preventing the re-emergence of conflicts. In this context, it also recognizes the need for close cooperation among bodies of the United Nations system and with other organizations and arrangements in the area of post-conflict peacebuilding, and expresses its willingness to consider ways to improve such cooperation. It also stresses that the design of peacekeeping mandates which fully take into account operational military requirements and other relevant situations on the ground could help prevent the re-emergence of conflicts. It highlights the importance of strengthening its cooperation with the Economic and Social Council, in accordance with Article 65 of the Charter of the United Nations, in the area of the prevention of armed conflicts, including in addressing the economic, social, cultural and humanitarian problems which are often the root causes of conflicts. It underlines that economic rehabilitation and reconstruction constitute important elements in the long-term development of post-conflict societies and the maintenance of lasting peace, and stresses the importance of international assistance in this regard.

"The Security Council highlights the importance of preventive deployment in armed conflicts and reiterates its willingness to consider the deployment, with the consent of the host country, of preventive missions in appropriate circumstances.

"The Security Council recalls the emphasis it placed in its statement of 23 March 2000 on the process of disarmament, demobilization and re-integration, which can be vital in stabilizing post-conflict situations, reducing the likelihood of renewed violence and facilitating the transition from conflict to normalcy and development. The Council will also take appropriate measures, with the consent of the State concerned, aimed at preventing the recurrence of armed conflicts, through, inter alia, developing adequate programmes for the disarmament, demobilization and re-integration of ex-combatants, including child soldiers.

"The Security Council recognizes the important role of women in the prevention and resolution of conflicts and in peace-building. It stresses the importance of their increased participation in all aspects of the conflict prevention and resolution process.

"The Security Council recognizes the fact that the illegal exploitation of and trade in natural resources, particularly diamonds, can contribute to the escalation of conflicts. The Council is particularly concerned that the proceeds from the illegal exploitation of and trade in high value commodities such as diamonds are providing funds for arms purchases, thus aggravating conflicts and humanitarian crises, in particular in Africa. It therefore expresses its willingness to seek the cooperation of Member States and the business community in curbing the illegal exploitation of and trade in these resources, particularly diamonds, and in effectively implementing the measures imposed by its relevant resolutions aimed at curbing illicit diamond flows.

"The Security Council, while fully conscious of the responsibilities of other United Nations organs, emphasizes the crucial importance of disarmament and the non-proliferation of weapons of mass destruction and the means of their delivery for the maintenance of international peace and security.

"The Security Council also highlights, in particular, the importance of preventive disarmament in averting armed conflicts, and expresses concern that the proliferation, excessive and destabilizing accumulation and circulation of small arms and light weapons in many parts of the world have contributed to the intensity and duration of armed conflicts and pose a threat to peace and security. It calls upon States, international organizations and the business community to increase their efforts for prevention of illicit trafficking in small arms and light weapons.

"The Security Council also emphasizes the importance of continued coordinated regional and international action with regard to small arms and welcomes initiatives such as the Organization of American States Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, the European Union/Southern African Development Community Action Programme for Tackling Arms Trafficking in Southern Africa and the Economic Community of West African States

Moratorium on light weapons. It welcomes and encourages efforts to prevent and combat the excessive and destabilizing accumulation of and the illicit trafficking in small arms.

"The Security Council underlines the vital importance of effective national regulations and controls on small arms transfers. The Council also encourages Governments to exercise the highest degree of responsibility in these transactions. It also calls for complementary supply- and demand-side measures, including those against illegal diversion and re-export. It also underlines the obligation of all States to enforce existing arms interdiction measures. The Council emphasizes that the prevention of illicit trafficking is of immediate concern in the global search for ways and means to curb the excessive and destabilizing accumulation of small arms, especially in regions of conflict.

"The Security Council recognizes the importance of adequate, stable and predictable resources for preventive action. The Council also recognizes the importance of consistent funding for long-term preventive activities. The Council encourages the consideration of conflict prevention in development assistance strategies and recognition of the need to ensure a smooth transition from emergency humanitarian assistance to development in the post-conflict stage.

"The Security Council acknowledges the important activities supported by the Trust Fund for Preventive Action and encourages Member States to contribute to this Trust Fund.

"The Security Council recognizes the increasing demand for civilian police as a critical element in peacekeeping operations as part of the general approach to conflict prevention. It calls upon Member States to explore ways to meet this demand in a timely and effective way. The Council invites the Secretary-General to include his recommendations in this respect in the report on conflict prevention requested below.

"The Security Council underlines the need for continued in-depth consideration of this issue and, in this regard, invites the Secretary-General to submit to the Council, by May 2001, a report containing an analysis, and recommendations on initiatives within the United Nations, taking into account previous experience and the views and considerations expressed by Member States, on the prevention of armed conflict.

"The Security Council affirms that a reformed, strengthened and effective United Nations remains central to the maintenance of peace and security of which prevention is a key component and underlines the importance of enhancing the capacity of the Organization in preventive action, peacekeeping and peace-building.

"The Security Council recalls the statement of its President of 30 November 1999 and reaffirms its willingness to consider the possibility of a meeting at the level of Foreign Ministers on the issue of the prevention of armed conflicts during the Millennium Assembly.

"The Security Council will remain seized of the matter."

ANNEX XXIII

Conflict Prevention, Peace-Making and Peace-Keeping in Africa S/PRST/2001/10

Statement by the President of the Security Council

At the 4302nd meeting of the Security Council, held on 22 March 2001, in connection with the Council's consideration of the item entitled "Ensuring an effective role of the Security Council in the maintenance of international peace and security, particularly in Africa — Letter dated 28 February 2001 from the Acting Permanent Representative of Ukraine to the United Nations addressed to the President of the Security Council (S/2001/185)", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council recalls the decisions and recommendations contained in the declaration on ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa, adopted at its meeting at the level of Heads of State and Government in the course of the Millennium Summit (resolution 1318 (2000) of 7 September 2000, annex), and the open debate held on 7 March 2001 to review its implementation. The Council takes note with interest of the important views expressed by non-members at this debate.

"The Security Council notes the progress achieved in translating the commitments made at its Summit meeting into practical results and expresses its determination to intensify efforts to this end. The Council underlines the importance of the Declaration as a contribution towards the development of a well-targeted strategy and shared vision in the maintenance of international peace and security and of the deeper and broader involvement of Member States and the wider international community in that regard.

"The Security Council will consider and take appropriate action on the Secretary-General's forthcoming report on conflict prevention,

his recommendations on the strengthening of the United Nations capacity to develop peace-building strategies, the report prepared by its Working Group on General Issues of Sanctions, and the recommendations on improving the three-way relationship between the Council, the troop-contributing countries and the Secretariat to be prepared by its Working Group on Peacekeeping Operations, and reiterates its intention to review periodically the implementation of its resolution 1327 (2000) of 13 November 2000 on strengthening peacekeeping operations.

"The Security Council underlines the need for closer cooperation and interaction within the United Nations system in addressing the challenges to peace and security, including the root causes of conflicts, and intends to continue taking concrete steps in advancing this goal. The Council also expresses its willingness to continue to develop productive working relationships with regional and subregional organizations in addressing conflict.

"The Security Council decides to conduct a further review, with the active participation of non-members, of the implementation of the commitments made at its meeting at the level of Heads of State and Government."

ANNEX XXIV

Recommendations on United Nations Peace-Keeping Operations Resolution 1327 (2000)

Adopted by the Security Council at its 4220th meeting, on 13 November 2000

The Security Council,

Recalling its resolution 1318 (2000) of 7 September 2000, adopted at its meeting at the level of Heads of State and Government in the course of the Millennium Summit,

Reaffirming its determination to strengthen United Nations peacekeeping operations,

Stressing that peacekeeping operations should strictly observe the purposes and principles of the Charter of the United Nations,

Having welcomed the report of the Panel on United Nations Peace Operations (S/2000/809) and *welcoming* the report of the Secretary-General on its implementation (S/2000/1081),

Having considered the recommendations in the report of the Panel on United Nations Peace Operations which fall within its area of responsibility,

1. *Agrees* to adopt the decisions and recommendations contained in the annex to the resolution;

2. *Decides* to review periodically the implementation of the provisions contained in the annex;

3. *Decides* to remain actively seized of the matter.

Annex

The Security Council,

I.

Resolves to give peacekeeping operations clear, credible and achievable mandates;

Recognizes the critical importance of peacekeeping operations having, where appropriate and within their mandates, a credible deterrent capability;

Urges the parties to prospective peace agreements, including regional and subregional organizations and arrangements, to coordinate and cooperate fully with the United Nations from an early stage in negotiations, bearing in mind the need for any provisions for a peacekeeping operation to meet minimum conditions, including the need for a clear political objective, the practicability of the designated tasks and timelines, and compliance with the rules and principles of international law, in particular international humanitarian, human rights and refugee law;

Requests the Secretary-General, in this regard, to make necessary arrangements for the appropriate involvement of the United Nations in peace negotiations that are likely to provide for the deployment of United Nations peacekeepers;

Further requests the Secretary-General to keep it regularly and fully informed of the progress in such negotiations with his analysis, assessment and recommendations, and to report to the Council on the conclusion of any such peace agreement, on whether it meets the minimum conditions for United Nations peacekeeping operations;

Requests the Secretariat to continue to provide comprehensive political briefings on relevant issues before the Council;

Requests regular military briefings from the Secretariat, including by the Military Adviser, the Force Commander or the Force Commander-designate, both prior to the establishment of a peacekeeping operation and in the implementation phase, and *requests* that these briefings report on key military factors such as, where appropriate, the chain of command, force structure, unity and cohesion of the force, training and equipment, risk assessment and rules of engagement;

Requests regular civilian police briefings from the Secretariat in a similar vein, both prior to the establishment and in the implementation phase of peacekeeping operations with significant civilian police components;

Requests the Secretariat to provide the Council with regular, comprehensive humanitarian briefings for countries where there are United Nations peacekeeping operations;

Encourages the Secretary-General, during the planning and preparation of a peacekeeping operation, to take all possible measures at his disposal to facilitate rapid deployment, and *agrees* to assist the Secretary-General, wherever appropriate, with specific planning mandates requesting him to take the necessary administrative steps to prepare the rapid deployment of a mission;

Undertakes, when establishing or enlarging a peacekeeping operation, to request formally that the Secretary-General proceed to the implementation phase of the mandate upon receipt of firm commitments to provide sufficient numbers of adequately trained and equipped troops and other critical mission support elements;

Encourages the Secretary-General to begin his consultations with potential troop contributors well in advance of the establishment of peacekeeping operations, and *requests* him to report on his consultations during the consideration of new mandates;

Recognizes that the problem of the commitment gap with regard to personnel and equipment for peacekeeping operations requires the assumption by all Member States of the shared responsibility to support United Nations peacekeeping;

Emphasizes the importance of Member States taking the necessary and appropriate steps to ensure the capability of their peacekeepers to fulfil the mandates assigned to them, *underlines* the importance of international cooperation in this regard, including the training of peacekeepers, and invites Member States to incorporate HIV/AIDS awareness training into their national programmes in preparation for deployment;

Underlines the importance of an improved system of consultations among the troop-contributing countries, the Secretary-General and the Security Council, in order to foster a common understanding of the situation on the ground, of the mission's mandate and of its implementation;

Agrees, in this regard, to strengthen significantly the existing system of consultations through the holding of private meetings with troop-contributing countries, including at their request, and without prejudice to the provisional rules of procedure of the Security Council, in particular when the Secretary-General has identified potential troop-contributing countries for a new or ongoing peacekeeping oper-

ation, during the implementation phase of an operation, when considering a change in, or renewal or completion of a peacekeeping mandate, or when a rapid deterioration in the situation on the ground threatens the safety and security of United Nations peacekeepers;

II.

Undertakes to ensure that the mandated tasks of peacekeeping operations are appropriate to the situation on the ground, including such factors as the prospects for success, the potential need to protect civilians and the possibility that some parties may seek to undermine peace through violence;

Emphasizes that the rules of engagement for United Nations peacekeeping forces should be fully consistent with the legal basis of the operation and any relevant Security Council resolutions and clearly set out the circumstances in which force may be used to protect all mission components and personnel, military or civilian, and that the rules of engagement should support the accomplishment of the mission's mandate;

Requests the Secretary-General, following full consultations with the United Nations membership, in particular troop-contributing countries, to prepare a comprehensive operational doctrine for the military component of United Nations peacekeeping operations and submit it to the Security Council and the General Assembly;

III.

Stresses the need to improve the information gathering and analysis capacity of the Secretariat, with a view to improving the quality of advice to both the Secretary-General and the Security Council, and welcomes, in this regard, the clarifications provided by the Secretary-General in his implementation report on his plans for the establishment of the Executive Committee on Peace and Security Information and Strategic Analysis Secretariat (S/2000/1081);

IV.

Stresses the importance of the United Nations being able to respond and deploy a peacekeeping operation rapidly upon the adoption by the Security Council of a resolution establishing its mandate, and *notes* that rapid deployment is a comprehensive concept that will require improvements in a number of areas;

Calls on all relevant parties to work towards the objective of meeting the timelines for United Nations peacekeeping operations of deployment of a traditional peacekeeping operation within 30 days and of a complex operation within 90 days of the adoption of a Security Council resolution establishing its mandate;

Welcomes the Secretary-General's intention to use these timelines as the basis for evaluating the capacity of existing systems to provide field missions with the human, material, financial and information assets that they require;

Welcomes the proposal of the Panel on United Nations Peace Operations to create integrated mission task forces, and *urges* the Secretary-General to pursue this or any other related capabilities that would improve United Nations planning and support capacities;

Emphasizes the need for the Secretariat to provide the leadership of a peacekeeping operation with strategic guidance and plans for anticipating and overcoming any challenges to the implementation of a mandate, and stresses that such guidance should be formulated in cooperation with the mission leadership;

Welcomes the proposals of the Panel on United Nations Peace Operations on improving the capacity of the United Nations to deploy military, civilian police and other personnel rapidly, including through the United Nations standby arrangements system, and urges the Secretary-General to consult current and potential troop-contributing countries on how best to achieve this important objective;

Undertakes to consider the possibility of using the Military Staff Committee as one of the means of enhancing the United Nations peacekeeping capacity.

V.

Emphasizes that the biggest deterrent to violent conflict is addressing the root causes of conflict, including through the promotion of sustainable development and a democratic society based on a strong rule of law and civic institutions, including adherence to all human rights — civil, political, economic, social and cultural;

Concurs with the Secretary-General that every step taken towards reducing poverty and achieving broad-based economic growth is a step towards conflict prevention;

Stresses the important role of the Secretary-General in the prevention of armed conflicts, and *looks forward* to his report on this issue, which is to be submitted to Member States by May 2001;

Expresses its continued willingness to consider the use of Council missions, with the consent of host countries, in order to determine whether any dispute, or situation which might lead to international tension or give rise to a dispute, is likely to endanger the maintenance of international peace and security, and to make recommendations for action by the Council where appropriate;

Recalls the statements of its President of 20 July 2000 (PRST/2000/25) and 30 November 1999 (PRST/1999/34) on the prevention of armed conflict and welcomes, in this context, the Secretary-General's intention to send fact-finding missions to areas of tension more frequently;

Recalls resolution 1296 (2000) of 19 April 2000 on the protection of civilians in armed conflict, and *looks forward* to receiving the Secretary-General's follow-up report in this context;

Reaffirms the important role of women in the prevention and resolution of conflicts and in post-conflict peace-building, and *fully endorses* the urgent need to mainstream a gender perspective into peacekeeping operations;

Calls for the full implementation of its resolution 1325 (2000) of 31 October 2000;

VI.

Welcomes the decision by the Secretary-General to instruct the Executive Committee on Peace and Security to formulate a plan on the strengthening of the United Nations capacity to develop peace-building strategies and to implement programmes in support of them, and *requests* the Secretary-General to submit recommendations to the Security Council and the General Assembly on the basis of this plan;

Recognizes that stronger measures to reduce poverty and promote economic growth are important for the success of peace-building;

Emphasizes, in this regard, the need for more effective coordination of disarmament, demobilization and reintegration programmes, and *reaffirms* that adequate and timely funding for these programmes is critical to the success of peace processes;

Welcomes the Secretary-General's intention to spell out more clearly, when presenting future concepts of operations, what the United Nations system can do to help strengthen local rule of law and human rights institutions, drawing on existing civilian police, human rights, gender and judicial expertise;

VII.

Welcomes the Secretary-General's intention to conduct a needs assessment of the areas in which it would be feasible and useful to draft a simple, common set of interim rules of criminal procedure.

ANNEX XXV

UNITED NATIONS PEACE-KEEPING OPERATIONS S/PRST/2001/3

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4270th meeting of the Security Council, held on 31 January 2001, in connection with the Council's consideration of the item entitled "Strengthening cooperation with troop-contributing countries", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council has given further consideration to the question of strengthening cooperation between the Council, the troop-contributing countries and the Secretariat. In this connection, the Council stresses the importance of full implementation of provisions of resolution 1327 (2000) of 13 November 2000 and in the statements of its President of 28 March 1996 (S/PRST/1996/13) and 3 May 1994 (S/PRST/1994/22). The Council takes note of the views expressed at its debate on the subject 'Strengthening Cooperation with Troop-Contributing Countries' at its 4257th meeting on 16 January 2001. The Council recognizes the scope for further improvement in its relations with troop-contributing countries and the need to work together with a common purpose towards shared goals.

"The Security Council recognizes that in view of the increasing complexity of peacekeeping operations, there is a need for a transparent three-way relationship between the Security Council, the Secretariat and the troop-contributing countries that will foster a new spirit of partnership, cooperation and confidence.

"Recognizing that the experience and expertise of troop-contributing countries in theatres of operation can greatly assist the planning process, the Security Council reiterates its agreement to hold consultations with troop-contributing countries in a timely manner at different stages of a United Nations peacekeeping operation, in particular when the Secretary-General has identified potential troop-contribut-

ing countries for a new or ongoing peacekeeping operation, during the implementation phase of an operation, when considering a change to, or renewal of, or completion of a peacekeeping mandate, or when a rapid deterioration in the situation on the ground threatens the safety and security of United Nations peacekeepers.

"The Security Council will seek to ensure that all private meetings as provided for in resolution 1327 (2000) between members of the Council, the troop-contributing countries and the Secretariat are substantive, representative, meaningful and provide for a full exchange of views. The Council stresses the importance of full participation by all those involved and encourages troop-contributing countries to take the initiative to call for meaningful exchanges of information. The President of the Council will provide, where appropriate, a detailed report of consultations with the troop-contributing countries to the Council.

"The Security Council stresses the usefulness of full and comprehensive briefings by the Secretariat at private meetings with the troop-contributing countries, including, where appropriate, military factors.

"The Security Council encourages the Secretary-General to continue his efforts to improve coordination and cooperation on peacekeeping issues within the United Nations system and the Secretariat.

"The Security Council encourages the Secretary-General to raise public awareness globally of the positive contribution of peacekeeping operations and the role played by peacekeepers from various troop-contributing countries.

"The Security Council acknowledges that the Secretariat must be able to rely on sufficient human and financial resources to respond to the demands placed on it. It underlines the importance of follow-up to the report of the Panel on Peace Operations (S/2000/809) with a view to strengthening the Department of Peacekeeping Operations and other relevant departments of the Secretariat involved in peacekeeping.

"The Security Council reiterates that the problem of the commitment gap with regard to personnel and equipment for peacekeeping operations requires the assumption by all Member States of the shared responsibility to support United Nations peacekeeping.

"The Security Council acknowledges that the delay in reimbursement causes severe budgetary constraints to troop-contributing countries. It urges all Member States to pay their assessed contributions in full and on time, so that peacekeeping operations can stand on a solid financial basis.

"The Security Council decides to establish a Working Group of the Whole on United Nations peacekeeping operations. The Working Group will not replace the private meetings with the troop-contributing countries. The Working Group will address both generic peacekeeping issues relevant to the responsibilities of the Council, and technical aspects of individual peacekeeping operations, without prejudice to the competence of the Special Committee on Peacekeeping Operations. Where appropriate, the Working Group will seek the views of the troop-contributing countries, including through meetings between the Working Group and the troop-contributing countries, with a view to their views being taken into account by the Council.

"As a first step, the Working Group is tasked to undertake an in-depth consideration of, *inter alia*, all the proposals made in the course of the Council's public meeting on 16 January 2001, including ways to improve the three-way relationship between the Council, the troop-contributing countries and the Secretariat and to report to the Council by 30 April 2001. An indicative list of all the ideas and proposals arising from the meeting on 16 January 2001 will be forwarded to the Working Group for its consideration."

ANNEX XXVI

United Nations Peace-Keeping Operations Resolution 1353 (2001)

Adopted by the Security Council at its 4326th meeting, on 13 June 2001

The Security Council,

Reaffirming its resolutions 1318 (2000) of 7 September 2000 and 1327 (2000) of 13 November 2000 and the statements by its President of 3 May 1994 (S/PRST/1994/22) and 28 March 1996 (S/PRST/1996/13), and all other relevant statements by its President,

Recalling also the statement of its President of 31 January 2001 (S/PRST/2001/3),

Taking into consideration the views expressed at its debate on the subject "Strengthening cooperation with troop-contributing countries" at its 4257th meeting on 16 January 2001,

Reaffirming its commitment to the Purposes of the Charter of the United Nations as set out in Article 1, paragraphs 1 to 4, of the Charter, and to the Principles of the Charter as set out in Article 2, paragraphs 1 to 7, of the Charter, including its commitment to the principles of the political independence, sovereign equality and territorial integrity of all States, and to respect for the sovereignty of all States,

Reaffirming its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, *reiterating* its commitment to enhance the capacity of the United Nations in this area, and *emphasizing* its willingness to take all necessary steps within its competence to that end,

Recalling the relevant recommendations in the report of the Panel on United Nations Peace Operations (S/2000/809), and *reaffirming* its support for all efforts to strengthen the efficiency and effectiveness of United Nations peacekeeping operations,

Stressing the need to ensure the safety and security of peacekeepers and other United Nations and associated personnel, including humanitarian personnel,

Stressing the need to improve the relationship between the Security Council, the troop-contributing countries and the Secretariat to foster a spirit of partnership, cooperation, confidence and mutual trust,

Recognizing the need to strengthen cooperation with troop-contributing countries, as part of a series of measures to ensure more coherent and integrated concepts of operations and to enhance managerial efficiency and operational effectiveness of United Nations peacekeeping operations,

Noting that relevant provisions contained in the annexes to the present resolution pertain also to strengthening cooperation with countries contributing civilian police and other personnel,

1. *Agrees* to adopt the decisions and recommendations contained in the annexes to the present resolution;

2. *Requests* its Working Group on Peacekeeping Operations to continue its work on strengthening the capacity of the United Nations to establish and support efficient and effective peacekeeping operations;

3. *Undertakes* to follow closely the implementation of the agreed measures for cooperation with troop-contributing countries, and requests its Working Group for Peacekeeping Operations to assess within six months of the adoption of this resolution the efficiency and effectiveness of the agreed measures, consider their further improvement taking into account the proposals of the troop-contributing countries and to report to the Council on these matters;

4. *Decides* to remain actively seized of the matter.

ANNEX I

A. *STATEMENT OF PRINCIPLES ON COOPERATION WITH TROOP-CONTRIBUTING COUNTRIES*

The Security Council

1. *Recognizes* that its partnership with troop-contributing countries can be strengthened by the assumption by Member States, in par-

ticular those with the greatest capacity and means to do so, of their shared responsibility to provide personnel, assistance and facilities to the United Nations for the maintenance of international peace and security;

2. *Encourages* Member States to take steps to bridge the commitment gap with regard to personnel and equipment for specific United Nations peacekeeping operations;

3. *Emphasizes* the importance of troop-contributing countries taking the necessary and appropriate steps to ensure the capability of their peacekeepers to fulfil the missions' mandate, and *underlines* the importance of bilateral and international cooperation in this regard, including in the area of training, logistics and equipment;

4. *Underlines* the importance of ensuring that national contingents participating in United Nations peacekeeping operations receive effective and appropriate support from the Secretariat, including in the area of training, logistics and equipment;

5. *Stresses* the need to ensure that the Secretariat is given sufficient human and financial resources to fulfil these tasks, and that these resources be used efficiently and effectively;

6. *Underlines* that consultations between the Security Council, the Secretariat and troop-contributing countries should enhance the ability of the Security Council to make appropriate, effective and timely decisions in fulfilling its responsibilities;

7. *Underlines also* the need to maintain a comprehensive approach to improving the effectiveness of peacekeeping operations from their conception, including in preparing contingency plans for volatile situations, and promoting cohesive exit strategies;

B. Operational issues

1. *Encourages* international cooperation and support for peacekeeping training, including the establishment of regional peacekeeping training centres, and *stresses* the need for technical support from the Secretary-General to such centres;

2. *Requests* the Secretary-General to include information on his consultations with troop-contributing countries in his regular reports to the Security Council on individual peacekeeping operations, and *undertakes* to take account of the views expressed in these consulta-

tions and in its meetings with troop-contributing countries when taking decisions on such operations;

3. *Also requests* the Secretary-General to convene assessments meetings with interested delegations, in particular troop-contributing countries, at appropriate stages of each peacekeeping operation as a part of his efforts to draw the lessons that can be learned, which should be taken into account in the conduct and planning of current and future operations;

4. *Further requests* the Secretary-General to take into account in the conduct of peacekeeping operations and in the regular lessons-learned process, the operational experiences of national contingents while in the field or following departure;

5. *Undertakes* to inform troop-contributing countries fully of the terms of reference of missions of the Security Council involving peacekeeping operations and subsequently of the conclusions of the missions;

6. *Expresses* its view that the conduct of reconnaissance visits to the mission area by countries committing troops can be highly valuable in preparing for effective participation in peacekeeping operations, and *encourages* support for such visits;

7. *Urges* the Secretary-General to take further steps to implement the proposal of the Panel on United Nations Peace Operations to create integrated mission task forces, and to pursue other related capabilities to improve United Nations planning and support capacities;

8. *Stresses* the need to improve the information and the analysis capacity of the United Nations Secretariat, with a view to improving the quality of advice to the Secretary-General, the Security Council and the troop-contributing countries;

9. *Stresses also* that the Secretariat's advice to the Security Council and the troop-contributing countries should include a range of recommendations for action on the basis of an objective assessment of the situation on the ground, rather than what Member States are presumed to be willing to support;

10. *Underlines* the importance of an effective mission-specific public information and communications capacity within peacekeeping operations, in particular through campaigns to improve awareness

of the objectives and scope of the mission within the local population in the mission area;

11. *Stresses* the need for an effective public information programme to generate international public support for United Nations peacekeeping operations, and *stresses* also in this regard the need for special programmes, in particular in troop-contributing countries, to project the contribution of peacekeepers;

12. *Underlines* in this regard the need for an effective public information capacity within the United Nations, and *takes note* in this regard of the proposals made by the Secretary-General to strengthen Secretariat planning and support for public information in peacekeeping operations (S/2000/1081);

C. *Other mechanisms*

1. *Undertakes* to continue to consider the possibility of using the Military Staff Committee as one of the means of enhancing United Nations peacekeeping operations;

2. *Expresses* its belief that Groups of Friends of the Secretary-General, as well as other informal mechanisms which might include troop-contributing countries, Security Council members, donors and the countries in the region, can play a useful role in increasing the coherence and effectiveness of United Nations action, and *stresses* that they should conduct their work in close cooperation with the Security Council;

D. *Follow-up*

1. *Expresses* its intention to assess within six months the efficiency and effectiveness of its meetings with troop-contributing countries, with a view to the possibility of further improvement to the current system, including through the consideration of specific proposals of troop-contributing countries for new mechanisms;

2. *Decides* to strengthen cooperation with the troop-contributing countries in addition to and on the basis of the principles and provisions contained in the resolution and the present annex by improving and expanding existing consultation mechanisms as elaborated in

annex II, with a view to ensuring proper reflection of the views and concerns of troop-contributing countries.

ANNEX II

FORMAT, PROCEDURES AND DOCUMENTATION OF MEETINGS WITH THE TROOP-CONTRIBUTING COUNTRIES

The consultations with troop-contributing countries will take place in the following formats:

A. Public or private meetings of the Security Council with the participation of troop-contributing countries;

B. Consultation meetings with the troop-contributing countries;

C. Meetings between the Secretariat and troop-contributing countries;

A. PUBLIC OR PRIVATE MEETINGS OF THE SECURITY COUNCIL

1. The Security Council will hold public or private meetings with the participation of troop-contributing countries, including at their request, and without prejudice to the provisional rules of procedure of the Security Council, in order to ensure a full and high-level consideration of issues of critical importance to a specific peacekeeping operation;

2. Such meetings may be held, in particular, when the Secretary-General has identified potential troop-contributing countries for a new or ongoing peacekeeping operation, when considering a change in, or renewal or completion of a peacekeeping mandate, or when there is a rapid deterioration in the situation on the ground, including when it threatens the safety and security of United Nations peacekeepers;

B. CONSULTATION MEETINGS WITH THE TROOP-CONTRIBUTING COUNTRIES

1. Consultation meetings with troop-contributing countries will continue as the principal means of consultation, and will continue to be convened and chaired by the President of the Security Council;

2. Such consultation meetings may be convened, including at the request of troop-contributing countries, as appropriate at different stages of peacekeeping operations, including:

(a)Mission planning, including the development of the concept of operations and the elaboration of the mandate of a new operation;

(b)Any change in the mandate, in particular the broadening or narrowing of the scope of the mission, the introduction of new or additional functions or components, or a change in the authorization to use force;

(c)The renewal of a mandate;

(d)Significant or serious political, military or humanitarian developments;

(e)A rapid deterioration of the security situation on the ground;

(f)The termination, withdrawal or scaling down in size of the operation, including the transition from peacekeeping to post-conflict peace-building;

(g)Before and after Council missions to a specific peacekeeping operation;

3. The following parties will be invited to these meetings:

(a)Countries contributing troops, military observers or civilian police to the peacekeeping operation;

(b)Prospective troop-contributing countries as identified by the Secretary-General;

(c)Relevant United Nations bodies and agencies, when they have specific contributions to make to the issue under discussion;

(d)Other bodies and agencies, as observers, as appropriate;

(e)Countries that make special contributions, such as other civilian personnel, contributions to trust funds, logistics, equipment and facilities and other contributions, as appropriate;

(f)The host country/countries, as observers, as appropriate;

(g)The representative of a regional or subregional organization or arrangement, contributing troops as appropriate;

(h)Regional organizations, as observers when not contributing troops, as appropriate;

4. Such consultation meetings will, as appropriate, include consideration of:

(a)Preparations for the establishment of a peacekeeping mandate by the Security Council;

(b)Operational issues, including the concept of operations, mission planning, authorization to use force, the chain of command, force

structure, the unity and cohesion of the force, training and equipment, risk assessment and deployment;

(c)Significant concerns of or recommendations by the Secretary-General, as set out in his report, a briefing note from the Secretariat or the Secretariat's oral briefing;

(d)The specific concerns of troop-contributing countries, including those communicated to the President of the Security Council;

(e)Progress in the accomplishment of the mission's tasks in different areas or mission components;

5. The following measures will be ensured to improve the quality and effectiveness of such consultations:

(a)An informal paper setting out the agenda, including issues to be covered and drawing attention to relevant background documentation, will be circulated by the President of the Security Council to the participants when inviting them to attend these meetings;

(b)The Secretary-General should ensure, within the constraints of the Security Council's programme of work, that reports requested by the Security Council on specific peacekeeping operations are issued in good time to allow the timely holding of meetings with troop-contributing countries before discussion among Security Council members;

(c)The Secretariat should also make fact sheets available to all participants at the beginning of these meetings;

(d)The Secretary-General should ensure, where possible, that briefings are given by senior personnel working with the mission in the field;

(e)The Secretary-General should ensure that briefings consist of an objective assessment and analysis of the political, military, humanitarian and human rights situations, where appropriate;

(f)The Secretary-General should add value to the briefings by making them more user-friendly, including through the exploitation of information technology;

6. The following arrangements will be made to ensure timely and appropriate communication of the concerns and views of troop-contributing countries, as expressed at the consultation meetings, to the members of the Security Council so that these concerns and views can receive due consideration:

- The President of the Security Council will prepare, with the assistance of the Secretariat, and make available a summary of the content of such meetings;
- The summary of discussion will be distributed to Council members in advance of informal consultations or of the next meeting on the relevant peacekeeping operation, where appropriate;

C. Meetings between the Secretariat and troop-contributing countries

The Security Council supports the existing practice of meetings between the Secretariat and troop-contributing countries to discuss matters concerning specific peacekeeping operations, and also the participation at such meetings, where appropriate, of Special Representatives of the Secretary-General, Force Commanders and Civilian Police Commissioners.

Other forms of consultations

The Security Council notes that the forms of consultations mentioned herein are not exhaustive and that consultations may take a variety of other forms, including formal or informal communication between the President of the Council or its members, the Secretary-General and the troop-contributing countries and, as appropriate, with other countries especially affected, including countries from the region concerned.

ANNEX XXVII

DISARMAMENT, DEMOBILIZATION, REINTEGRATION S/PRST/2000/10

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4119th meeting of the Security Council, held on 23 March 2000 in connection with the Council's consideration of the item entitled "Maintenance of peace and security and post-conflict peace-building", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council recalls the statement of its President of 8 July 1999 (S/PRST/1999/21) and welcomes the report of the Secretary-General on the Role of United Nations Peacekeeping in Disarmament, Demobilization and Reintegration of 11 February 2000 (S/2000/101). The Council recalls its primary responsibility for the maintenance of international peace and security and reaffirms its commitment to the principles of the political independence, sovereignty and territorial integrity of all States in conducting all peacekeeping and peace-building activities and the need for States to comply with their obligations under international law.

"The Security Council has considered the matter of disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment as part of its overall and continuing effort to contribute to enhancing the effectiveness of United Nations peacekeeping and peace-building activities in conflict situations around the world.

"The Security Council underlines that disarmament, demobilization and reintegration of ex-combatants are mutually supportive and that the success of the process is dependent on the success of each of its steps. The Council stresses that the political commitment of the parties involved in a peace process is a precondition for the success of disarmament, demobilization and reintegration programmes. The Council reaffirms that disarmament and demobilization must take place in a secure and safe environment, which will give ex-combatants

the confidence to lay down their arms, and underlines the importance of international assistance for long-term economic and social development to facilitate successful reintegration. In this regard, the Council notes that disarmament, demobilization and reintegration must be addressed comprehensively so as to facilitate a smooth transition from peacekeeping to peace-building.

"The Security Council recognizes that the mandates of peacekeeping missions increasingly include oversight of disarmament, demobilization and reintegration as one of their functions. The Council further recognizes the importance of incorporating, as appropriate, within specific peace agreements, with the consent of the parties, and on a case-by-case basis within United Nations peacekeeping mandates, clear terms for the disarmament, demobilization and reintegration of ex-combatants, including the safe and timely collection and disposal of arms and ammunition. The Council emphasizes that the international community's advocacy is essential in this regard. The Council also underlines the necessity of a clear definition of tasks and division of responsibilities among all actors involved in the disarmament, demobilization and reintegration process, including United Nations agencies and programmes, and that this should be reflected, where relevant, in the mandates of peacekeeping operations.

"The Security Council recognizes that effective action to curb the illegal flow of small arms and light weapons into areas of conflict can contribute to the success of disarmament, demobilization and reintegration programmes, and encourages further efforts and cooperation at the national, subregional, regional and global levels to this end.

"The Security Council underlines in particular the importance of disarming, demobilizing and reintegrating child soldiers, as well as taking into account the problems faced by war-affected children in mission areas. It is therefore imperative that child soldiers be fully included in disarmament, demobilization and reintegration programmes, and that programmes also be designed to address the special needs of all war-affected children, taking into account differences in sex and age, and their differing experiences in the course of armed conflict, with particular attention to girls. In this regard, the Council requests the Secretary-General to consult relevant United Nations agencies, including the United Nations Children's Fund, the Office of

the Special Representative of the Secretary-General for Children and Armed Conflict, and other relevant organizations with expertise in the field with a view to the development of appropriate programmes, and underlines the importance of coordination in this regard.

"The Security Council welcomes the initiative of the Secretary-General to include within all peacekeeping operations personnel with appropriate training in international, humanitarian, human rights and refugee law, including child- and gender-related provisions. In this regard, the Council welcomes the inclusion of a child protection adviser in some of the recent peacekeeping operations, and encourages the Secretary-General to include such personnel in future operations as appropriate. The Council stresses the importance of addressing, in particular, the needs of women ex-combatants, notes the role of women in conflict resolution and peace-building and requests the Secretary-General to take that into account.

"The Security Council recognizes that adequate and timely funding for disarmament, demobilization and reintegration is critical to the successful implementation of a peace process, and calls for coordination of voluntary and assessed funding to that end, including among all elements of the United Nations system. The Council welcomes the increasing involvement of the World Bank in disarmament, demobilization and reintegration processes and stresses the importance of support of Member States for its activities in this area. The Council further encourages other international financial institutions to become involved.

"The Security Council stresses that training of peacekeepers in the disarmament, demobilization and reintegration of ex-combatants continues to be an important asset in the implementation of these activities in mission areas. In that regard, the Council notes that the review by the Secretary-General of lessons learned from disarmament, demobilization and reintegration experiences may assist Member States and others in their training efforts. The Council encourages the Secretary-General to explore avenues of cooperation with existing and new peacekeeping training centres in the implementation of such training programmes.

"The Security Council takes note that the ultimate success of the disarmament, demobilization and reintegration process may require

efforts long after the withdrawal of multidisciplinary peacekeeping operations. In this regard, the post-conflict United Nations presence, including the deployment, as appropriate, of a follow-on mission, may help support the advances made and further make progress on the matter.

"The Security Council encourages the Secretary-General to continue to address this issue on a regular basis and to draw to its attention any new developments in this area.

"The Security Council will remain seized of the matter."

ANNEX XXVIII

SMALL ARMS
S/PRST/2001/21

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4362nd meeting of the Security Council, held on 31 August 2001, in continuation of its consideration of the item entitled "Small arms" at its 4355th meeting on 2 August 2001, the President of the Security Council made the following statement on behalf of the Council:

"The Security Council reaffirms the statement of its President of 24 September 1999 (S/PRST/1999/28) and its Resolution 1209 (1998) of 19 November 1998, and notes with grave concern that the destabilizing accumulation and uncontrolled spread of small arms and light weapons in many regions of the world increases the intensity and duration of armed conflicts, undermines the sustainability of peace agreements, impedes the success of peace-building, frustrates efforts aimed at the prevention of armed conflict, hinders considerably the provision of humanitarian assistance, and compromises the effectiveness of the Security Council in discharging its primary responsibility for the maintenance of international peace and security. The Security Council expressed grave concern at the harmful impact of small arms and light weapons on civilians in situations of armed conflict, particularly on vulnerable groups such as women and children and recalls in this regard its resolutions 1296 (2000) of 19 April 2000 and 1314 (2000) of 11 August 2000.

"The Security Council further notes with satisfaction the growing awareness within the international community of the problem of the illicit trade in small arms and light weapons as a challenge that involves security, humanitarian and development dimensions. In this regard the Council welcomes recent global and regional initiatives such as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects;

the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime; the Document on Small Arms and Light Weapons adopted by the Organization for Security and Cooperation in Europe (OSCE); the Resolution on Small Arms of the Council of Ministers of the European Union; the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons; and the extension of the Economic Community of West African States (ECOWAS) Moratorium on the Production and Trade in Small Arms and Light Weapons.

"The Security Council welcomes the adoption of the Programme of Action of the United Nations Conference in the Illicit Trade in Small Arms and Light Weapons in all its Aspects, and calls on all Member States to take the required measures to promptly implement the recommendations contained therein. The Council recognizes its responsibility in assisting in the implementation of this Programme of Action, and stresses that the success of this Programme depends on the political will and efforts of Member States to implement its measures at the national, regional and global levels, as well as on the provision of international cooperation and assistance and on the follow-up agreed by the Conference, including the convening of a Review Conference no later than 2006.

"The Security Council reaffirms the inherent right of individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations and, subject to the Charter, the right of each State to import, produce and retain small arms and light weapons for its self-defence and security needs. Bearing in mind the considerable volume of licit trade in small arms and light weapons, the Council underlines the vital importance of effective national regulations and controls for this trade. In this regard, arms-exporting countries should exercise the highest degree of responsibility in small arms and light weapons transactions, and all countries have the responsibility to prevent their illegal diversion and re-export, so as to stem the leakage of legal weapons to illegal markets. The Security Council also stresses the importance of international cooperation to enable States to identify

and trace in a timely and reliable manner illicit small arms and light weapons.

"The Security Council underlines the importance of practical disarmament measures in averting armed conflicts and encourages States and relevant international and regional organizations to facilitate the appropriate cooperation of civil society actors in activities related to the prevention and combating of the excessive and destabilizing accumulation of and illicit trafficking in small arms and light weapons, including facilitating greater awareness and better understanding of the nature and scope of this problem.

"The Security Council recognizes the important role of regional and subregional organizations in providing useful information and perspectives on the regional and subregional dimensions that characterize arms flows to conflicts, and underscores the importance of regional agreements and cooperation in this regard.

"The Security Council emphasizes the importance of the effective collection and control of small arms and light weapons, and of their storage and destruction, as appropriate, in the context of disarmament, demobilization and reintegration (DDR) programmes, as well as other measures that may contribute to the effective disposal of small arms and light weapons, and to prevention of the spread of these weapons to other regions. To this end, the Council welcomes the publication by the Secretary-General of the Handbook on Environmentally Sound Methods of Destruction of Small Arms, Light Weapons, Ammunition and Explosives. The Council stresses the importance of incorporating, on a case by case basis, in the negotiation, consolidation and implementation of peace agreements, as well as in the mandates of United Nations peacekeeping operations, appropriate provisions for the disarmament, demobilization and reintegration of ex-combatants, taking into account the special needs of child soldiers.

"The Security Council reiterates its call for the effective implementation of arms embargoes imposed by the Council in its relevant resolutions, and encourages Member States to provide the Sanctions Committees with available information on alleged violations of arms embargoes. The Security Council expresses its determination to continue to improve the efficiency of the arms embargoes imposed by the Council on a case by case basis, including through the establishment of

specific monitoring mechanisms or similar arrangements as appropriate. The Council stresses the need to engage the relevant international organizations, non-governmental organizations, business and financial institutions and other actors at the international, regional and local levels to contribute to the implementation of arms embargoes.

"The Security Council stresses the need for cooperation and sharing of information among the Member States, and among the different Sanctions Committees on arms traffickers that have violated arms embargoes established by the Council. This information could also be provided to Interpol's International Weapons and Explosives Tracking System (IWETS) database or any other relevant database that may be developed for this purpose.

"The Security Council stresses the need for innovative strategies to address the relationship between the illicit exploitation of natural and other resources and the purchase and trade in illegal weapons in those situations under its consideration. The Council expresses its intention to continue to consider employing effective measures to prevent the illicit exploitation of natural and other resources from fuelling those conflicts. In this regard, information on financial or other transactions fuelling the illicit flow of arms to those conflicts should be made available to the Council.

"The Security Council requests the Secretary-General to include in his reports regarding relevant situations under consideration in the Council, analytical assessments on the illicit trade in small arms and light weapons including, to the extent possible and within available resources, availability, stockpiling, lines of supply, brokering, transportation arrangements and financial networks for these weapons, as well as their humanitarian impact, especially on children.

"The Security Council recognizes the role of the Secretary-General in supporting the coordination of all United Nations activities to combat the illicit trade in small arms and light weapons. In this connection, the Security Council requests the Secretary-General to submit a report of the Council by September 2002 containing specific recommendations on ways and means in which the Council may contribute to deal with the question of illicit trade in small arms and light weapons in situations under its consideration, taking into account the views

of Member States, recent experiences in the field and the contents of this Statement."

ANNEX XXVIX

IMPLEMENTATION OF ARMS EMBARGO
S/PRST/1999/28

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4048th meeting of the Security Council, held on 24 September 1999 in connection with the Council's consideration of the item entitled "Small arms", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council recalls its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security, in view of which its attention is drawn inevitably to small arms and light weapons as the most frequently used weapons in the majority of recent armed conflicts.

"The Security Council notes with grave concern that the destabilizing accumulation of small arms has contributed to the intensity and duration of armed conflicts. The Council also notes that the easy availability of small arms can be a contributing factor to undermining peace agreements, complicating peace-building efforts and impeding political, economic and social development. In this regard, the Council acknowledges that the challenge posed by small arms is multifaceted and involves security, humanitarian and development dimensions.

"The Security Council is deeply concerned that countries involved in, emerging from, or close to protracted armed conflicts are particularly vulnerable to violence resulting from the indiscriminate use of small arms in armed conflict. In this regard, the Council recalls the report of the Secretary-General on the Protection of Civilians in Armed Conflict of 8 September (S/1999/957) and its resolution 1265 (1999) of 17 September 1999.

"The Security Council emphasizes that the right of individual and collective self-defence recognized in Article 51 of the Charter of the United Nations and the legitimate security demands of all countries

should be fully taken into account. The Council recognizes that small arms are traded globally for legitimate security and commercial considerations. Bearing in mind the considerable volume of this trade, the Council underlines the vital importance of effective national regulations and controls on small arms transfers. The Council also encourages the Governments of arms-exporting countries to exercise the highest degree of responsibility in these transactions.

"The Security Council emphasizes that the prevention of illicit trafficking is of immediate concern in the global search for ways and means to curb the wrongful use of small arms, including their use by terrorists.

"The Security Council welcomes the various initiatives that are currently under way, globally and regionally, to address the issue. These initiatives at the regional level include the Economic Community of West African States moratorium on the production and trade in small arms, the Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, the European Union Joint Action on Small Arms and the European Union Code of Conduct on Arms Exports. At the global level, the Council welcomes the negotiation process on the elaboration of an international convention against transnational organized crime, including a draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials.

"The Security Council emphasizes the importance of regional cooperation in tackling the issue of illicit trafficking in small arms. Initiatives, such as the work done by the Southern African Development Community and the Southern African Regional Police Commissioners Coordinating Organisation, illustrate how regional cooperation can be harnessed to tackle small arms proliferation. The Council recognizes that while regions may sometimes benefit from the experiences of others, one region's experience cannot be extended to others without taking into account their different characteristics.

"The Security Council also welcomes and encourages efforts to prevent and combat the excessive and destabilizing accumulation of and illicit trafficking in small arms and invites Member States to involve civil society in these efforts.

"The Security Council notes with satisfaction the growing attention paid within the United Nations system to the problems associated with the destabilizing accumulation of small arms. The Council welcomes the initiative by the Secretary-General for Coordinated Action on Small Arms (CASA), designed to ensure a coherent and coordinated approach to the small arms issue within the United Nations system.

"The Security Council notes that although the humanitarian impact of small arms in a conflict situation is verifiably serious, a detailed analysis is not available. The Council therefore requests the Secretary-General to specifically include the humanitarian and socio-economic implications of the excessive and destabilizing accumulation and transfer of small arms and light weapons, including their illicit production and trade, in relevant studies he is currently undertaking.

"The Security Council calls for effective implementation of arms embargoes, imposed by the Council in its relevant resolutions. The Council encourages Member States to provide the Sanctions Committees with available information on alleged violations of arms embargoes and recommends that the Chairmen of the Sanctions Committees invite relevant persons from organs, organizations and Committees of the United Nations system, as well as other intergovernmental and regional organizations and other parties concerned, to provide information on issues relating to the implementation and enforcement of arms embargoes.

"The Security Council also calls for measures to discourage arms flows to countries or regions engaged in or emerging from armed conflicts. The Council encourages Member States to establish and abide by voluntary national or regional moratoria on arms transfers with a view to facilitating the process of reconciliation in these countries or regions. The Council recalls the precedents for such moratoria and the international support extended for their implementation.

"The Security Council recognizes the importance of incorporating, as appropriate, within specific peace agreements, with the consent of the parties, and on a case-by-case basis within United Nations peacekeeping mandates, clear terms for the disarmament, demobilization and reintegration of ex-combatants, including the safe and timely

disposal of arms and ammunition. The Council requests the Secretary-General to provide the negotiators of peace accords with a record of best practice based upon experience in the field.

"The Security Council requests the Secretary-General to develop a reference manual for use in the field on ecologically safe methods of weapons destruction in order better to enable Member States to ensure the disposal of weapons voluntarily surrendered by civilians or retrieved from former combatants. The Council invites Member States to facilitate the preparation of such a manual.

"The Security Council welcomes the recommendations of the Group of Governmental Experts on Small Arms (A/54/258), including the convening of an international conference on the illicit arms trade in all its aspects no later than 2001, noting the offer by Switzerland to host the conference. The Council encourages Member States to participate actively and constructively in the conference and any preparatory meetings, taking into account the recommendations contained in this Statement, with a view to ensuring that the conference makes a meaningful and lasting contribution to reducing the incidence of illicit arms trafficking."

ANNEX XXX

A Comprehensive Approach to Peace-Building S/PRST/2001/5

Statement by the President of the Security Council

At the 4278th meeting of the Security Council, held on 20 February 2001, in connection with the Council's consideration of the item entitled "Peace-building: towards a comprehensive approach", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council recalls the open debate held at its 4274th meeting on 5 February 2001 on 'Peace-building: towards a comprehensive approach'. The Council recalls also the statements of its President in relation to activities of the United Nations in preventive diplomacy, peacemaking, peacekeeping and post-conflict peace-building. The Security Council welcomes the convening by the Secretary-General of the Fourth High-level United Nations-Regional Organizations Meeting and notes with interest its results, in particular the 'Framework for cooperation in peace-building' as conveyed by the Secretary-General to the President of the Security Council in his letter of 12 February 2001 (S/2001/138).

"The Security Council reaffirms its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security. The Council emphasizes the need for full respect for the purposes and principles of the Charter of the United Nations and the relevant provisions of international law, in particular those related to prevention of armed conflicts and settlement of disputes by peaceful means.

"The Security Council reaffirms that the quest for peace requires a comprehensive, concerted and determined approach that addresses the root causes of conflicts, including their economic and social dimensions.

"The Security Council recognizes that peacemaking, peacekeeping and peace-building are often closely interrelated. The Council stresses that this interrelationship requires a comprehensive approach in order to preserve the results achieved and prevent the recurrence of conflicts. To this effect, the Council reiterates the value of including, as appropriate, peace-building elements in the mandates of peacekeeping operations.

"The Security Council recognizes that peace-building is aimed at preventing the outbreak, the recurrence or continuation of armed conflict and therefore encompasses a wide range of political, developmental, humanitarian and human rights programmes and mechanisms. This requires short and long-term actions tailored to address the particular needs of societies sliding into conflict or emerging from it. These actions should focus on fostering sustainable institutions and processes in areas such as sustainable development, the eradication of poverty and inequalities, transparent and accountable governance, the promotion of democracy, respect for human rights and the rule of law and the promotion of a culture of peace and non-violence.

"The Security Council further reaffirms that a comprehensive and integrated strategy in peace-building must involve all the relevant actors in this field, taking into account the unique circumstances of each conflict situation. The Council emphasizes that a well-planned and coordinated peace-building strategy can play a significant role in conflict prevention. In this connection, the Council underlines that international efforts in peace-building must complement and not supplant the essential role of the country concerned.

"The Security Council notes that the experiences of the United Nations and regional organizations and other actors in peace-building point to the need for enhancing peace-building activities by formulating a strategy based on the interdependence between sustainable peace, security and development in all its dimensions.

"The Security Council stresses that, to be successful, such a peace-building strategy should meet, inter alia, the following basic criteria: relevance, coherence and consistency of programmes and actions; the consent and cooperation of the authorities of the State concerned where they exist; continuity in and conclusion of the process; coopera-

tion and coordination among organizations and other actors involved; and cost-effectiveness of the overall peace-building operation.

"The Security Council strongly encourages the United Nations system and regional and subregional organizations, donor countries and the international financial institutions to consider undertaking initiatives such as: utilization of the mechanism of consolidated appeals, the joint holding of pledging conferences to mobilize expeditiously international political support and the essential resource requirements; ensuring prompt financing of quick start-up peace-building projects; and strengthening mechanisms that promote development and self-reliance by improving capacity-building activities.

"The Security Council also underlines that successful peace-building is predicated on an effective and an unambiguous division of labour, based on the comparative advantage of different implementing bodies, between all the international partners, including the United Nations system, the international financial institutions, regional and subregional organizations, non-governmental organizations and the wider international community. In this regard, the Council strongly encourages all those actors to enhance their cooperation in areas such as the early identification of situations where peace-building is required; the definition of objectives and priority areas of peace-building; the development of an integrated operational response through mutual consultation; joint monitoring of peace-building activities; and establishing repertories of best practices and lessons learned in the area of peace-building.

"The Security Council stresses the importance of mainstreaming a gender perspective into peace agreements and peace-building strategies and of involving women in all peace-building measures.

"The Security Council further encourages the United Nations and regional and subregional organizations to establish consultative processes to ensure that peace settlements and agreements mediated by these organizations include commitments by the parties to the conflict to concerted action in different areas of peace-building, and stresses the need to identify such areas at early stages of the negotiation of peace agreements.

"The Security Council recognizes that the repatriation and resettlement of refugees and internally displaced persons as well as the dis-

armament, demobilization and reintegration of ex-combatants should not be seen in isolation but must be carried out in the context of a broader search for peace, stability and development, with special emphasis on the revival of economic activities and reparation of the social fabric.

"The Security Council considers it essential to provide speedy operational solutions to the exceptional and urgent needs of countries emerging from or on the verge of conflict, through innovative and flexible means, including quick impact programmes which translate into concrete and visible improvements in the daily lives of their local populations.

"To enhance further the effectiveness of the United Nations in addressing conflicts at all stages, from prevention to settlement to post-conflict peace-building, the Security Council reiterates its willingness to consider ways to improve its cooperation with other United Nations bodies and organs directly concerned by peace-building, in particular the General Assembly and the Economic and Social Council which have a primary role in this field.

"The Security Council recalls the essential role of the Secretary-General in peace-building, in particular in the establishment of strategies in this field and their implementation and recognizes the need to strengthen the coordination and analysis capacity of the Secretariat in order to allow the Secretary-General to fulfil his responsibilities in this area.

"The Security Council recognizes the need for the early involvement on the ground of peace-building actors and an orderly assumption of their responsibilities. To this effect and in order to avoid any gap between peacekeeping and peace-building, the Council expresses its determination, where appropriate, to consult at various stages of any peacekeeping operation that includes peace-building elements and in particular when the operation is being established, with the State concerned and with relevant actors who are primarily responsible for coordinating and implementing aspects of peace-building activities, such as the General Assembly, the Economic and Social Council, the United Nations funds and programmes, the international financial institutions, regional organizations and major donor countries.

"The Security Council recognizes that troop-contributing countries may be involved in peace-building activities and that, within the existing system of consultations with these countries, relevant peace-building activities should be discussed.

"The Security Council encourages close cooperation between the authorities of the State concerned and the international community in elaborating programmes of peace-building activities where the commitment by the parties could be formalized in written communications.

"The Security Council underlines the importance of the presence of special representatives of the Secretary-General or other suitable United Nations coordination arrangements, such as the resident coordinator system, in coordinating the elaboration and implementation of peace-building programmes by international organizations and donor countries in close cooperation with local authorities, taking into account ongoing activities. The Council stresses that any United Nations peace-building presence should have the necessary personnel and financial resources to discharge its mandate.

"The Security Council stresses the importance of its being kept regularly informed of the progress achieved as well as of difficulties encountered in peace-building in countries where a peacekeeping operation had been mandated by the Security Council.

"The Security Council reiterates that efforts to ensure lasting solutions to conflicts and to maintain the momentum for peace in any given country or region require an increased solidarity, sustained political will and timely and adequate resources on the part of the international community.

"The Security Council recalls the decision by the Secretary-General to instruct the Executive Committee on Peace and Security to formulate a plan on the strengthening of the United Nations capacity to develop peace-building strategies and to implement programmes in support of them, and looks forward to the submission by him of recommendations to the Security Council and the General Assembly on the basis of this plan.

"The Security Council will remain seized of the matter."

ANNEX XXXI

POST-CONFLICT PEACE-BUILDING
S/PRST/1999/21

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4021st meeting of the Security Council, held on 8 July 1999 in connection with the Council's consideration of the item entitled "Maintenance of peace and security and post-conflict peace-building" the President of the Security Council made the following statement on behalf of the Council:

"The Security Council recalls its primary responsibility under the Charter of the United Nations for the maintenance of international peace and security. The Council also recalls the statements made by its President in relation to activities of the United Nations in preventive diplomacy, peacemaking, peacekeeping and post-conflict peace-building.

"The Security Council has considered the matter of disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment as part of its overall and continuing effort to contribute to enhancing the effectiveness of United Nations peacekeeping and peace-building activities in conflict situations around the world.

"The Security Council is seriously concerned that in a number of conflicts, armed fighting among various parties or factions continues despite the conclusion of peace agreements by the warring parties and the presence of United Nations peacekeeping missions on the ground. It recognizes that a major contributory factor to such a situation has been the continued availability of large amounts of armaments, in particular small arms and light weapons, to conflicting parties. The Council emphasizes that in order to achieve settlement, parties to a conflict must work towards the successful disarmament, demobilization and reintegration of ex-combatants, including child soldiers whose special needs should be seriously addressed.

"The Security Council recognizes that disarmament, demobilization and reintegration cannot be seen in isolation but rather, as a continuous process which is rooted in and feeds into a broader search for peace, stability and development. Effective disarmament of ex-combatants represents an important indicator of progress towards post-conflict peace-building and normalization of the situation. The demobilization effort is only possible when there is some level of disarmament and its success can only be achieved when there is effective rehabilitation and reintegration into society of ex-combatants. Disarmament and demobilization must take place in a secure and safe environment, which will give ex-combatants the confidence to lay down their arms. Taking into account that the process is closely linked to economic and social issues, the question must be addressed comprehensively so as to facilitate a smooth transition from peacekeeping to peace-building.

"The Security Council emphasizes that for disarmament, demobilization and reintegration to be successful, there must be political will and a clear commitment by the parties concerned to achieve peace and stability. At the same time, it is vital that such commitment by the parties be reinforced by political will and consistent, effective and determined support from the international community to guarantee the achievement of sustainable peace, including through its contributions of long-term assistance for development and trade.

"The Security Council affirms its commitment to the principles of the political independence, sovereignty and territorial integrity of all States in conducting peace-building activities, and the need for States to comply with their obligations under international law. Bearing this in mind, the Council stresses the need for the implementation, with the consent of the parties, of practical measures to promote the success of the process which, *inter alia*, may include the following:

"(a)The inclusion, as appropriate, within specific peace agreements and, on a case-by-case basis, within United Nations peacekeeping mandates, of clear terms for disarmament, demobilization and reintegration of ex-combatants, including the safe and timely disposal of arms and ammunition;

"(b)The establishment by Governments contributing to peacekeeping operations of databases of experts on disarmament, demobili-

zation and reintegration of ex-combatants. In this context, training in disarmament and demobilization could be a useful component of national programmes for the preparation of peacekeeping troops;

"(c)The prevention and reduction of the excessive and destabilizing flow, accumulation and illegitimate use of small arms and light weapons. In this context, the relevant Security Council resolutions and existing United Nations arms embargoes should be strictly implemented.

"The Security Council is of the view that techniques for executing and coordinating programmes related to the process of disarmament, demobilization and reintegration of ex-combatants and the problems associated with it should be given in-depth consideration. It takes note with appreciation of the efforts by the Secretary-General, United Nations bodies, Member States and international and regional organizations aimed at developing general principles and practical guidelines for disarmament, demobilization and reintegration of ex-combatants in a peacekeeping environment.

"The Security Council underlines the need to address this issue on a regular basis, and in this regard, requests the Secretary-General to submit to the Council, within a period of six months, a report containing his analysis, observations and recommendations, in particular those relating to principles and guidelines as well as practices, experiences and lessons learned to facilitate its further consideration of the matter. The report should pay special attention to the problems of disarmament and demobilization of child soldiers and their reintegration into society.

"The Security Council will remain seized of the matter."

ANNEX XXXII

MILLENNIUM SUMMIT DECLARATION RESOLUTION 1318 (2000)

Adopted by the Security Council at its 4194th meeting, on 7 September 2000

The Security Council,

Decides to adopt the attached declaration on ensuring an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa.

ANNEX

The Security Council,

Meeting at the level of Heads of State and Government in the course of the Millennium Summit to discuss the need to ensure an effective role for the Security Council in the maintenance of international peace and security, particularly in Africa,

I.

Pledges to uphold the Purposes and Principles of the Charter of the United Nations, *reaffirms* its commitment to the principles of sovereign equality, national sovereignty, territorial integrity and political independence of all States, and *underlines* the need for respect for human rights and the rule of law;

Reaffirms the importance of adhering to the principles of the non-threat or non-use of force in international relations in any manner inconsistent with the Purposes of the United Nations, and of peaceful settlement of international disputes;

Recalls its primary responsibility for the maintenance of international peace and security, and *resolves* to strengthen the central role of the United Nations in peacekeeping and to ensure the effective functioning of the collective security system established by the Charter;

II.

Pledges to enhance the effectiveness of the United Nations in addressing conflict at all stages from prevention to settlement to post-conflict peace-building;

Reaffirms its determination to give equal priority to the maintenance of international peace and security in every region of the world and, in view of the particular needs of Africa, to give special attention to the promotion of durable peace and sustainable development in Africa, and to the specific characteristics of African conflicts;

III.

Strongly encourages the development within the United Nations system and more widely of comprehensive and integrated strategies to address the root causes of conflicts, including their economic and social dimensions;

Affirms its determination to strengthen United Nations peacekeeping operations by:

- Adopting clearly defined, credible, achievable and appropriate mandates,
- Including in those mandates effective measures for the security and safety of United Nations personnel and, wherever feasible, for the protection of the civilian population,
- Taking steps to assist the United Nations to obtain trained and properly equipped personnel for peacekeeping operations,
- Strengthening consultations with troop-contributing countries when deciding on such operations;

Agrees to support:

- the upgrading of United Nations capacity for planning, establishing, deploying and conducting peacekeeping operations,
- the provision of a more up-to-date and sounder foundation for financing peacekeeping operations;

Underlines the importance of enhancing the United Nations capacity for rapid deployment of peacekeeping operations and *urges* Member States to provide sufficient and timely resources;

IV.

Welcomes the report of the Panel on United Nations Peace Operations of 21 August (S/2000/809), and *decides* to consider the recommendations which fall within its area of responsibility expeditiously;

V.

Stresses the critical importance of the disarmament, demobilization and reintegration of ex-combatants, and emphasizes that such programmes should normally be integrated into the mandates of peacekeeping operations;

VI.

Calls for effective international action to prevent the illegal flow of small arms into areas of conflict;

Decides to continue to take resolute action in areas where the illegal exploitation and trafficking of high-value commodities contributes to the escalation or continuation of conflict;

Stresses that the perpetrators of crimes against humanity, crimes of genocide, war crimes, and other serious violations of international humanitarian law should be brought to justice;

Emphasizes its determination to continue to sensitize peacekeeping personnel in the prevention and control of HIV/AIDS in all operations;

VII.

Calls for the strengthening of cooperation and communication between the United Nations and regional or subregional organizations or arrangements, in accordance with Chapter VIII of the Charter, and in particular in respect of peacekeeping operations;

Emphasizes the importance of continued cooperation and effective coordination between the United Nations and the Organization of African Unity and African subregional organizations in addressing conflict in Africa, and of enhanced support for the Organization of African Unity Mechanism for Conflict Prevention, Management and Resolution;

VIII.

Underlines that the ultimate responsibility for resolving disputes and conflicts lies with the parties themselves and that peacekeeping operations aimed at helping to implement a peace accord can succeed only to the extent that there is a genuine and lasting commitment to peace by all parties concerned;

Calls upon all States to intensify efforts to secure a world free of the scourge of war.

ANNEX XXXIII

SITUATION IN AFRICA
S/PRST/2002/2

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4465th meeting of the Security Council, held on 31 January 2002, in connection with the Council's consideration of the item entitled "The situation in Africa", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council expresses its appreciation to H.E. Mr. Amara Essy, Secretary-General of the Organization of African Unity (OAU), as well as the Ministers who participated in the Public Meeting on the 'Situation in Africa' on 29 January 2002 for their invaluable contributions to the debate on the "Situation in Africa".

"The Security Council reaffirms the principles of political independence, sovereignty, and territorial integrity of all States and their obligation to settle their dispute by peaceful means.

"The Security Council, recalling its primary responsibility for the maintenance of international peace and security as well as the provisions of Chapter VIII of the Charter of the United Nations, underscores the importance of partnership and enhanced coordination and cooperation, based on complementarity and comparative advantage, between the United Nations, the OAU and subregional organizations in Africa in the promotion of regional peace and stability. It welcomes the decision of the OAU Summit held in Lusaka in July 2001 to undertake a review of the structures, procedures and working methods of the Central Organ of the Mechanism for Conflict Prevention, Management and Resolution (CPMR). It emphasizes the importance of enhanced cooperation and of ensuring better coordination between the United Nations and the OAU with the view to achieving a lasting solution to conflicts. In this regard, it requests the Secretary-General to encourage the United Nations Liaison Office to the OAU in Addis Ababa to interact more closely with the OAU Mechanism for CPMR

on the conflicts in Africa. The Security Council expresses its readiness to deepen its cooperation with the OAU and subregional organizations and invite them to inform it at the earliest possible stage over their decisions and initiatives that could have implications relating to its responsibilities under the Charter.

"The Security Council calls on the United Nations system to intensify its cooperation, including assistance within existing resources, to the OAU and subregional organizations in Africa in the field of capacity-building, particularly in early warning conflict prevention and peacekeeping. It also stresses the importance of effective interaction between the United Nations system and the OAU and subregional organizations through the exchange of information and analysis at the conflict prevention stage; coordination and clear understanding of respective roles in forwarding peace processes; and coordinated support to national and regional peace-building efforts. In this regard, the Security Council welcomes the establishment of the United Nations Office in West Africa and requests the Secretary-General to take all necessary measures for that Office to be fully operational.

"The Security Council notes with satisfaction that good offices missions carried out by prominent political leaders of Africa facilitated significant progress in the political settlement of certain conflicts; it encourages the OAU and subregional organizations, taking into account the specific situation of conflicts, to seek appointment of such figures as Special Envoys as well as to employ where appropriate the traditional methods of conflict resolution including the establishment of Councils of Elders; the Security Council stresses the importance of the preventive character of such efforts and emphasizes the need for their proper coordination. The Security Council stresses the specific needs of women and children in peace processes and encourages the strengthening of the role of women and youth in the search for solutions to conflicts in Africa.

"The Security Council encourages the ongoing efforts undertaken by the international community in addressing the root causes of conflicts in Africa as indicated in the Report of the Secretary-General on the Causes of Conflicts and the Promotion of Durable Peace and Sustainable Development in Africa (A/52/871-S/1998/318). The Security

Council, bearing in mind the linkages between conflicts in Africa and inter alia poverty and development, the illicit proliferation of small arms and light weapons, the problems of refugees and internally displaced persons, the illegal exploitation of natural resources and, social exclusion as a source of intra-State conflicts, reaffirms its continued commitment in addressing these problems and encourages the OAU as well as subregional organizations and international financial institutions to do likewise. The Security Council stresses that the early resumption of international cooperation and development aid to countries where a peace process is being implemented is of critical importance for the success of this peace process and further stresses the importance of the role of the donor community and international financial institutions in this regard.

"The Security Council stresses that good governance, democracy, rule of law, and the respect of human rights and the fight against poverty are essential for peace, stability and sustainable development in Africa. It also stresses the importance of national reconciliation through dialogue in respective countries. It expresses its strong support to the decisions of the OAU Heads of State and Government at the Algiers Summit held in 1999 denying recognition to Governments that come to power through unconstitutional means and notes with satisfaction that this decision is being implemented. It reaffirms that resolution of conflicts in Africa requires, above all, the political will and courage of the parties themselves to seek peace.

"The Security Council expresses concern over the effects of conflicts on civilian population including violations of human rights, in particular those affecting the most vulnerable groups such as the elderly, women and children. It emphasizes the responsibility of States concerned to put an end to impunity and prosecute those responsible for such acts.

"The Security Council underlines the need to address the problem of refugees and internally displaced persons which in addition to humanitarian consequences constitute a burden on the affected countries and which may become a source of conflict. It notes the shortfall in funding for refugee and internally displaced persons programmes in Africa and reiterates its call upon the international community to pro-

vide such programmes with the necessary financial resources, taking into account the substantial needs in Africa.

"The Security Council, recalling its resolution 1308 of 17 July 2000, inter alia recognizing that the HIV/AIDS pandemic is also exacerbated by the conditions of violence and instability and constitutes a potential risk to stability and security, reiterates that the pandemic, if unchecked, may pose a risk to stability and security. The Council urges the international community and donors to coordinate their efforts in the fight against HIV/AIDS.

"The Security Council reiterates the importance of disarmament, demobilization and reintegration (DDR) in the process of conflict resolution and post-conflict peace-building, and notes the lack of adequate resources for effective reintegration programmes. In this regard, it urges the international community to support such programmes, including through the implementation of quick-impact projects.

"The Security Council notes that African States can contribute to peace and security in the continent by implementing transparency and confidence-building measures. In this regard, the Security Council reiterates its call on all States to implement the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.

"The Security Council welcomes the participation of the Economic and Social Council (ECOSOC) to its Public Meeting on the Situation in Africa on 29 January 2002. It reaffirms the importance of strengthening its cooperation, through greater interaction, with the ECOSOC, in accordance with Article LXV of the Charter of the United Nations, in the area of the prevention of armed conflicts, including in addressing the economic, social, cultural and humanitarian problems. The Security Council, taking note of the time it devotes to discussing African conflicts and the specificity of the problems of Africa, underlines that economic rehabilitation and reconstruction constitute important elements in the long-term development of post-conflict societies and the maintenance of lasting peace and calls for greater international assistance in this regard. The Security Council expresses its resolve to seek to establish the political conditions for non-recurrence of a particular conflict before withdrawing any peacekeeping operation.

"The Security Council commends and supports the efforts of African countries within the framework of the fight against international terrorism.

"The Security Council welcomes the ongoing transformation of the OAU into the African Union and encourages and supports the principles of the New Partnership for African Development (NEPAD) to create the conditions for development and to enhance economic integration in Africa. It recognizes that sound economic policies will further enhance peace and stability in the region. It calls upon the donor countries and the Bretton Woods institutions to continue assisting Africa in implementing the Heavily Indebted Poor Countries initiatives and to work with African governments, through the NEPAD, to create necessary conditions to attract and mobilize public and private sector resources in support of economic growth and poverty reduction.

"The Security Council notes the usefulness of its meeting with the Secretary-General of OAU and stresses the importance of holding such consultations on a regular basis, at least once a year, in the future.

"The Security Council recognizes the need for adequate measures to prevent and resolve conflicts in Africa, and will consider the setting up of an ad hoc Working Group to monitor the above recommendations and to enhance coordination with ECOSOC."

ANNEX XXXIV

HIV/AIDS
S/PRST/2001/16

STATEMENT BY THE PRESIDENT OF THE SECURITY COUNCIL

At the 4339th meeting of the Security Council, held on 27 June 2001, in connection with the Council's consideration of the item entitled "The responsibility of the Security Council in the maintenance of international peace and security: HIV/AIDS and international peacekeeping operations", the President of the Security Council made the following statement on behalf of the Council:

"The Security Council welcomes the successful holding of the Twenty-sixth Special Session of the General Assembly on HIV/AIDS, and encourages further action to address the problem of HIV/AIDS.

"The Security Council recalls its resolution 1308 (2000) of 17 July 2000, in which the Council, bearing in mind its primary responsibility for the maintenance of international peace and security, and emphasizing the important roles of the General Assembly and the Economic and Social Council in addressing the social and economic factors that lead to the spread of HIV/AIDS, inter alia, recognized that the HIV/AIDS pandemic is also exacerbated by conditions of violence and instability, and stressed that the HIV/AIDS pandemic, if unchecked, may pose a risk to stability and security.

"The Security Council therefore welcomes the fact that the declaration adopted at the Twenty-sixth Special Session of the General Assembly addresses HIV/AIDS in conflict and disaster affected regions, and contains a number of practical measures at the national and international levels, to be met within given time-frames, to reduce the impact of conflict and disasters on the spread of HIV/AIDS, including the provision of awareness and training for personnel employed by United Nations agencies and other relevant organizations, the development of national strategies to address the spread of HIV amongst national uniformed services, as required, and the inclu-

sion of HIV/AIDS awareness and training into guidelines designed for personnel involved in international peacekeeping operations.

"The Security Council also recalls its open debate on 19 January 2001, taking stock of progress made since the adoption of resolution 1308 (2000). The Council notes the progress made in the implementation of the resolution, and commends the increased cooperation in this regard between the Department of Peacekeeping Operations (DPKO) and the Joint United Nations Programme on HIV/AIDS (UNAIDS) through the Memorandum of Understanding between them signed in January 2001. Further, the Council welcomes the efforts to develop practical measures, such as the planned joint United Nations field assessment missions to major peacekeeping operations, and the development of the HIV/AIDS Awareness Card for Peacekeeping Operations to be distributed to all peacekeeping operations after testing in the United Nations Mission in Sierra Leone. The Council also welcomes the fact that the cooperation framework signed in May this year between UNAIDS and the United Nations Development Fund for Women (UNIFEM) expresses their intention to cooperate in the follow-up to resolution 1308 (2000), as well as resolution 1325 (2000) of 31 October 2000 on women, peace and security.

"The Security Council recognizes that further efforts are necessary to reduce the negative impact of conflict and disasters on the spread of HIV/AIDS, and to develop the capacity of peacekeepers to become advocates and actors for awareness and prevention of HIV transmission. The Council encourages continued efforts with regard to relevant training for peacekeeping, pre-deployment orientation, and increased international cooperation by interested Member States in areas such as prevention, voluntary and confidential testing and counselling, treatment for personnel, and the exchange of best practices and countries' policies in this regard. The Council encourages UNAIDS and DPKO to further pursue the implementation of resolution 1308 (2000), including through the consideration of further efforts to enhance cooperation, such as the inclusion of HIV/AIDS advisers in peacekeeping operations, and revision, as required, of relevant codes of conduct.

"The Security Council expresses its intention to contribute within its competence to the attainment of the relevant objectives in the dec-

laration adopted at the Twenty-sixth Special Session of the General Assembly in carrying out the Council's work, in particular in its follow-up to resolution 1308 (2000)."

ANNEX XXXV

Observance by United Nations Forces of International Humanitarian Law: Secretary-General's Bulletin

The Secretary-General, for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control, promulgates the following:

Section 1
Field of application

1.1 The fundamental principles and rules of international humanitarian law set out in the present bulletin are applicable to United Nations forces when in situations of armed conflict they are actively engaged therein as combatants, to the extent and for the duration of their engagement. They are accordingly applicable in enforcement actions, or in peacekeeping operations when the use of force is permitted in self-defence.

1.2 The promulgation of this bulletin does not affect the protected status of members of peacekeeping operations under the 1994 Convention on the Safety of United Nations and Associated Personnel or their status as non-combatants, as long as they are entitled to the protection given to civilians under the international law of armed conflict.

Section 2
Application of national law

The present provisions do not constitute an exhaustive list of principles and rules of international humanitarian law binding upon military personnel, and do not prejudice the application thereof, nor do they replace the national laws by which military personnel remain bound throughout the operation.

Section 3
Status-of-forces agreement

In the status-of-forces agreement concluded between the United Nations and a State in whose territory a United Nations force is deployed, the United Nations undertakes to ensure that the force shall conduct its operations with full respect for the principles and rules of the general conventions applicable to the conduct of military personnel. The United Nations also undertakes to ensure that members of the military personnel of the force are fully acquainted with the principles and rules of those international instruments. The obligation to respect the said principles and rules is applicable to United Nations forces even in the absence of a status-of-forces agreement.

Section 4
Violations of international humanitarian law

In case of violations of international humanitarian law, members of the military personnel of a United Nations force are subject to prosecution in their national courts.

Section 5
Protection of the civilian population

5.1 The United Nations force shall make a clear distinction at all times between civilians and combatants and between civilian objects and military objectives. Military operations shall be directed only against combatants and military objectives. Attacks on civilians or civilian objects are prohibited.

5.2 Civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.

5.3 The United Nations force shall take all feasible precautions to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians or damage to civilian property.

5.4 In its area of operation, the United Nations force shall avoid, to the extent feasible, locating military objectives within or near densely populated areas, and take all necessary precautions to protect the civilian population, individual civilians and civilian objects against the dangers resulting from military operations. Military installations and

equipment of peacekeeping operations, as such, shall not be considered military objectives.

5.5 The United Nations force is prohibited from launching operations of a nature likely to strike military objectives and civilians in an indiscriminate manner, as well as operations that may be expected to cause incidental loss of life among the civilian population or damage to civilian objects that would be excessive in relation to the concrete and direct military advantage anticipated.

5.6 The United Nations force shall not engage in reprisals against civilians or civilian objects.

Section 6
Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

6.5 It is forbidden to order that there shall be no survivors.

6.6 The United Nations force is prohibited from attacking monuments of art, architecture or history, archaeological sites, works of art, places of worship and museums and libraries which constitute the cultural or spiritual heritage of peoples. In its area of operation, the United Nations force shall not use such cultural property or their immediate surroundings for purposes which might expose them to

destruction or damage. Theft, pillage, misappropriation and any act of vandalism directed against cultural property is strictly prohibited.

6.7 The United Nations force is prohibited from attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, such as foodstuff, crops, livestock and drinking-water installations and supplies.

6.8 The United Nations force shall not make installations containing dangerous forces, namely dams, dikes and nuclear electrical generating stations, the object of military operations if such operations may cause the release of dangerous forces and consequent severe losses among the civilian population.

6.9 The United Nations force shall not engage in reprisals against objects and installations protected under this section.

Section 7
Treatment of civilians and persons hors de combat

7.1 Persons not, or no longer, taking part in military operations, including civilians, members of armed forces who have laid down their weapons and persons placed *hors de combat* by reason of sickness, wounds or detention, shall, in all circumstances, be treated humanely and without any adverse distinction based on race, sex, religious convictions or any other ground. They shall be accorded full respect for their person, honour and religious and other convictions.

7.2 The following acts against any of the persons mentioned in section 7.1 are prohibited at any time and in any place: violence to life or physical integrity; murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishment; reprisals; the taking of hostages; rape; enforced prostitution; any form of sexual assault and humiliation and degrading treatment; enslavement; and pillage.

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

7.4 Children shall be the object of special respect and shall be protected against any form of indecent assault.

Section 8
Treatment of detained persons

The United Nations force shall treat with humanity and respect for their dignity detained members of the armed forces and other persons who no longer take part in military operations by reason of detention. Without prejudice to their legal status, they shall be treated in accordance with the relevant provisions of the Third Geneva Convention of 1949, as may be applicable to them *mutatis mutandis*. In particular:

(a)Their capture and detention shall be notified without delay to the party on which they depend and to the Central Tracing Agency of the International Committee of the Red Cross (ICRC), in particular in order to inform their families;

(b)They shall be held in secure and safe premises which provide all possible safeguards of hygiene and health, and shall not be detained in areas exposed to the dangers of the combat zone;

(c)They shall be entitled to receive food and clothing, hygiene and medical attention;

(d)They shall under no circumstances be subjected to any form of torture or ill-treatment;

(e)Women whose liberty has been restricted shall be held in quarters separated from men's quarters, and shall be under the immediate supervision of women;

(f)In cases where children who have not attained the age of sixteen years take a direct part in hostilities and are arrested, detained or interned by the United Nations force, they shall continue to benefit from special protection. In particular, they shall be held in quarters separate from the quarters of adults, except when accommodated with their families;

(g)ICRC's right to visit prisoners and detained persons shall be respected and guaranteed.

Section 9
Protection of the wounded, the sick, and medical and relief personnel

9.1 Members of the armed forces and other persons in the power of the United Nations force who are wounded or sick shall be respected and protected in all circumstances. They shall be treated

humanely and receive the medical care and attention required by their condition, without adverse distinction. Only urgent medical reasons will authorize priority in the order of treatment to be administered.

9.2 Whenever circumstances permit, a suspension of fire shall be arranged, or other local arrangements made, to permit the search for and identification of the wounded, the sick and the dead left on the battlefield and allow for their collection, removal, exchange and transport.

9.3 The United Nations force shall not attack medical establishments or mobile medical units. These shall at all times be respected and protected, unless they are used, outside their humanitarian functions, to attack or otherwise commit harmful acts against the United Nations force.

9.4 The United Nations force shall in all circumstances respect and protect medical personnel exclusively engaged in the search for, transport or treatment of the wounded or sick, as well as religious personnel.

9.5 The United Nations force shall respect and protect transports of wounded and sick or medical equipment in the same way as mobile medical units.

9.6 The United Nations force shall not engage in reprisals against the wounded, the sick or the personnel, establishments and equipment protected under this section.

9.7 The United Nations force shall in all circumstances respect the Red Cross and Red Crescent emblems. These emblems may not be employed except to indicate or to protect medical units and medical establishments, personnel and material. Any misuse of the Red Cross or Red Crescent emblems is prohibited.

9.8 The United Nations force shall respect the right of the families to know about the fate of their sick, wounded and deceased relatives. To this end, the force shall facilitate the work of the ICRC Central Tracing Agency.

9.9 The United Nations force shall facilitate the work of relief operations which are humanitarian and impartial in character and conducted without any adverse distinction, and shall respect personnel, vehicles and premises involved in such operations.

Section 10
Entry into force

The present bulletin shall enter into force on 12 August 1999.

(*Signed*) Kofi A. Annan
Secretary-General

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