

A. Security Council Resolution 794 (1992)

[Source: UN Doc. S/RES/794 (December 3, 1992). Available on <http://www.un.org/documents/>]

N.B. As per the disclaimer, neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The Security Council,

[...]

Determining that the magnitude of the human tragedy caused by the conflict in Somalia, further exacerbated by the obstacles being created to the distribution of humanitarian assistance, constitutes a threat to international peace and security,

Gravely alarmed by the deterioration of the humanitarian situation in Somalia and underlining the urgent need for the quick delivery of humanitarian assistance in the whole country, [...]

Responding to the urgent calls from Somalia for the international community to take measures to ensure the delivery of humanitarian assistance in Somalia,

Expressing grave alarm at continuing reports of widespread violations of international humanitarian law occurring in Somalia, including reports of violence and threats of violence against personnel participating lawfully in impartial humanitarian relief activities; deliberate attacks on non-combatants, relief consignments and vehicles, and medical and relief facilities; and impeding the delivery of food and medical supplies essential for the survival of the civilian population,

Dismayed by the continuation of conditions that impede the delivery of humanitarian supplies to destinations within Somalia, and in particular reports of looting of relief supplies destined for starving people, attacks on aircraft and ships bringing in humanitarian relief supplies, and attacks on the Pakistani UNOSOM contingent in Mogadishu, [...]

Sharing the Secretary-General's assessment that the situation in Somalia is intolerable and that it has become necessary to review the basic premises and principles of the United Nations effort in Somalia, and that UNOSOM's existing course would not in present circumstances be an adequate response to the tragedy in Somalia,

Determined to establish as soon as possible the necessary conditions for the delivery of humanitarian assistance wherever needed in Somalia [...],

[...]

Determined further to restore peace, stability and law and order with a view to facilitating the process of a political settlement under the auspices of the United Nations, aimed at national reconciliation in Somalia, and encouraging the Secretary-General and his Special Representative to continue and intensify their work at the national and regional levels to promote these objectives, [...]

1. *Reaffirms* its demand that all parties, movements and factions in Somalia immediately cease hostilities, maintain a cease-fire throughout the country, and cooperate with the Special Representative of the Secretary-General as well as with the military forces to be established pursuant to the authorization given in paragraph 10 below in order to promote the process of relief distribution, reconciliation and political settlement in Somalia;
2. *Demands* that all parties, movements and factions in Somalia take all measures necessary to facilitate the efforts of the United Nations, its specialized agencies and humanitarian organizations to provide urgent humanitarian assistance to the affected population in Somalia;
3. *Also demands* that all parties, movements and factions in Somalia take all measures necessary to ensure the safety of United Nations and all other personnel engaged in the delivery of humanitarian assistance, including the military forces to be established pursuant to the authorization given in paragraph 10 below;
4. *Further demands* that all parties, movements and factions in Somalia immediately cease and desist from all breaches of international humanitarian law including from actions such as those described above;
5. *Strongly condemns* all violations of international humanitarian law occurring in Somalia, including in particular the deliberate impeding of the delivery of food and medical supplies essential for the survival of the

civilian population, and affirms that those who commit or order the commission of such acts will be held individually responsible in respect of such acts;

6. *Decides* that the operations and the further deployment of the 3,500 personnel of the United Nations Operation in Somalia (UNOSOM) authorized by [...] resolution 775 (1992) should proceed at the discretion of the Secretary-General in the light of his assessment of conditions on the ground [...];

7. *Endorses* the recommendation by the Secretary-General [...] that action under Chapter VII of the Charter of the United Nations should be taken in order to establish a secure environment for humanitarian relief operations in Somalia as soon as possible;

8. *Welcomes* the offer by a Member State described in the Secretary-General's letter to the Council of November 29, 1992 (S/24868) concerning the establishment of an operation to create such a secure environment; [...]

10. *Acting* under Chapter VII of the Charter of the United Nations, authorizes the Secretary-General and Member States cooperating to implement the offer referred to in paragraph 8 above to use all necessary means to establish as soon as possible a secure environment for humanitarian relief operations in Somalia; [...]

B. Security Council Resolution 814 (1993)

[Source: UN Doc. S/RES/814 (March 26, 1993). Available on <http://www.un.org/documents/>]

The Security Council,

[...]

Commending the efforts of Member States acting pursuant to resolution 794 (1992) to establish a secure environment for humanitarian relief operations in Somalia,

Acknowledging the need for a prompt, smooth and phased transition from the Unified Task Force (UNITAF) to the expanded United Nations Operation in Somalia (UNOSOM II),

Regretting the continuing incidents of violence in Somalia and the threat they pose to the reconciliation process, [...]

Noting with deep regret and concern the continuing reports of widespread violations of international humanitarian law and the general absence of the rule of law in Somalia, [...]

Acknowledging the fundamental importance of a comprehensive and effective programme for disarming Somali parties, including movements and factions, [...]

Determining that the situation in Somalia continues to threaten peace and security in the region, [...]

Acting under Chapter VII of the Charter of the United Nations, [...]

5. *Decides* to expand the size of the UNOSOM force and its mandate [UNOSOM II]

[...]

7. *Emphasizes* the crucial importance of disarmament and the urgent need to build on the efforts of UNITAF [...];

9. *Further demands* that all Somali parties, including movements and factions, take all measures to ensure the safety of the personnel of the United Nations and its agencies as well as the staff of the International Committee of the Red Cross (ICRC), intergovernmental organizations and non-governmental organizations engaged in providing humanitarian and other assistance to the people of Somalia in rehabilitating their political institutions and economy and promoting political settlement and national reconciliation; [...]

12. *Requests* the Secretary-General to provide security, as appropriate, to assist in the repatriation of refugees and the assisted resettlement of displaced persons, utilizing UNOSOM II forces, paying particular attention to those areas where major instability continues to threaten peace and security in the region;

13. *Reiterates* its demand that all Somali parties, including movements and factions, immediately cease and desist from all breaches of international humanitarian law and *reaffirms* that those responsible for such acts be held individually accountable;

14. *Requests* the Secretary-General, through his Special Representative, to direct the Force Commander of UNOSOM II to assume responsibility for the consolidation, expansion and maintenance of a secure environment throughout Somalia, taking account of the particular circumstances in each locality, on an expedited basis in accordance with the recommendations contained in his report of March 3, 1993, and in this regard to organize a prompt, smooth and phased transition from UNITAF to UNOSOM II; [...]

Discussion

1. a. Are the demands made by the resolutions on the protection of humanitarian convoys in line with the pertinent rules of IHL? Does IHL provide a right to humanitarian aid? If so, for whom? Only for civilians? Also in non-international armed conflicts? (GC IV, Arts 23, 59 and 142, P I, Arts 69, 70 and 81; P II, Art. 18)

- b. Does the UN's recent practice, as part of its peacekeeping mandate, of sending troops to ensure effective provision of humanitarian relief reaffirm the right to humanitarian assistance? (Security Council Resolutions 794, para. 10, and 814, para. 14)
- c. Do attacks on personnel providing relief supplies constitute a violation of IHL? Are they grave breaches of IHL? Even attacks on armed UN forces providing relief? (GC IV, Arts 3, 4, 23, 27, 59, 142 and 147, P I, Arts 50, 51(2), 69, 70, 81 and 85; P II, Arts 4(2)(a), 13(2) and 18)

2. a. If the UN forces are authorized to use force to establish and maintain a secure environment in Somalia for providing humanitarian aid, does the UN become a party to the conflict and hence internationalize a non-international armed conflict? Or can the UN forces be considered for purposes of the applicability of IHL as armed forces of the troop-contributing States (which are Parties to the Geneva Conventions), and can any hostilities be considered as an armed conflict between those States and the party responsible for the opposing forces? Does Somalia thereby become an occupied territory to which Convention IV applies? Which provisions of Convention IV applicable to occupied territories can appropriately apply to such a UN presence which contradicts its own basic aims?

b. The Security Council authorizes the UN forces "to use all necessary means" (Resolution 794, para. 10). Are such measures limited by IHL? If so, by the IHL of international or non-international conflicts? Is the UN a Party to the Conventions and Protocols? Can the UN conceivably be a party to an international armed conflict in the sense of Art. 2 common to the Conventions? What do you think of the argument that IHL cannot formally apply to these or any other UN operations, because they are not armed conflicts between equal partners but law enforcement actions by the international community authorized by the Security Council representing international legality, and their aim is not to make war but to enforce peace?

c. Can you imagine why the UN and its Member States do not want to recognize the *de jure* applicability of IHL to UN operations or to establish precisely which principles and spirit of IHL they recognize as being applicable to UN operations?

d. Do attacks on the Pakistani UNOSOM contingent constitute a violation of IHL? Are they grave breaches of IHL? Are the members of that contingent civilians or combatants? Are they "taking no active part in hostilities"? Even if they are creating a secure environment for humanitarian relief to be brought to Somalia?

3. Do the resolutions enforce *jus ad bellum* or *jus in bello*, or both? Is such mixing of the two detrimental to respect for IHL?