

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.

[Source: United Nations, <http://www.un.org/secureworld/report.pdf>; Highlights in the original]

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FIFTY-NINTH SESSION, AGENDA ITEM 55, FOLLOW-UP TO THE OUTCOME OF THE MILLENNIUM SUMMIT

NOTE BY THE SECRETARY-GENERAL

[...]

1. I asked Anand Panyarachun, former Prime Minister of Thailand, to chair the High-level Panel on Threats, Challenges and Change [...].
2. I asked the High-level Panel to assess current threats to international peace and security; to evaluate how our existing policies and institutions have done in addressing those threats; and to make recommendations for strengthening the United Nations so that it can provide collective security for all in the twenty-first century.

[...]

A more secure world: our shared responsibility Report of the High-level Panel on Threats, Challenges and Change

[...]

PART ONE TOWARDS A NEW SECURITY CONSENSUS

[...]

II. The case for comprehensive collective security

[...]

B. The limits of self-protection

1. No State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. Every State requires the cooperation of other States to make itself secure. [...]

C. Sovereignty and responsibility

1. [...] Whatever perceptions may have prevailed when the Westphalian system first gave rise to the notion of State sovereignty, today it clearly carries with it the obligation of a State to protect the welfare of its own peoples and meet its obligations to the wider international community. [...]

D. Elements of a credible collective security system

1. To be credible and sustainable a collective security system must be effective, efficient and equitable. [...]

PART TWO COLLECTIVE SECURITY AND THE CHALLENGE OF PREVENTION

[...]

IV. Conflict between and within States

[...]

C. Meeting the challenge of prevention

1. *Better international regulatory frameworks and norms*

[...]

1. In the area of legal mechanisms, there have been few more important recent developments than the Rome Statute creating the International Criminal Court. In cases of mounting conflict, early indication by the Security Council that it is carefully monitoring the conflict in question and that it is willing to use its powers under the Rome Statute might deter parties from committing crimes against humanity and violating the laws of war. **The Security Council should stand ready to use the authority it has under the Rome Statute to refer cases to the International Criminal Court.**
2. More legal mechanisms are necessary in the area of natural resources, fights over which have often been an obstacle to peace. Alarmed by the inflammatory role of natural resources in wars in Sierra Leone, Angola and the Democratic Republic of the Congo, civil society organizations and the Security Council have turned to the "naming and shaming" of, and the imposition of sanctions against, individuals

and corporations involved in illicit trade, and States have made a particular attempt to restrict the sale of “conflict diamonds”. [...]

3. **The United Nations should work with national authorities, international financial institutions, civil society organizations and the private sector to develop norms governing the management of natural resources for countries emerging from or at risk of conflict. [...]**

VI. Terrorism

[...]

B. Meeting the challenge of prevention

[...]

2. Better counter-terrorism instruments

[...]

1. However, the Security Council must proceed with caution. The way entities or individuals are added to the terrorist list maintained by the Council and the absence of review or appeal for those listed raise serious accountability issues and possibly violate fundamental human rights norms and conventions. **The Al-Qaida and Taliban Sanctions Committee should institute a process for reviewing the cases of individuals and institutions claiming to have been wrongly placed or retained on its watch lists. [...]**

4. Defining terrorism

[...]

1. Since 1945, an ever stronger set of norms and laws – including the Charter of the United Nations, the Geneva Conventions and the Rome Statute for the International Criminal Court – has regulated and constrained States’ decisions to use force and their conduct in war – for example in the requirement to distinguish between combatants and civilians, to use force proportionally and to live up to basic humanitarian principles. Violations of these obligations should continue to be met with widespread condemnation and war crimes should be prosecuted.
2. The norms governing the use of force by non-State actors have not kept pace with those pertaining to States. This is not so much a legal question as a political one. Legally, virtually all forms of terrorism are prohibited by one of 12 international counter-terrorism conventions, international customary law, the Geneva Conventions or the Rome Statutes. Legal scholars know this, but there is a clear difference between this scattered list of conventions and little-known provisions of other treaties and the compelling normative framework, understood by all, that should surround the question of terrorism. The United Nations must achieve the same degree of normative strength concerning non-State use of force as it has concerning State use of force. Lack of agreement on a clear and well-known definition

undermines the normative and moral stance against terrorism and has stained the United Nations image. Achieving a comprehensive convention on terrorism, including a clear definition, is a political imperative.

[...]

1. Nevertheless, we believe there is particular value in achieving a consensus definition within the General Assembly, [...].
2. That definition of terrorism should include the following elements:
 - a. Recognition, in the preamble, that State use of force against civilians is regulated by the Geneva Conventions and other instruments, and, if of sufficient scale, constitutes a war crime by the persons concerned or a crime against humanity;
 - b. Restatement that acts under the 12 preceding anti-terrorism conventions are terrorism, and a declaration that they are a crime under international law; and. restatement that terrorism in time of armed conflict is prohibited by the Geneva Conventions and Protocols;

[..]

1. a. Description of terrorism as “any action, in addition to actions already specified by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004), that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purpose of such an act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act”.

[...]

PART THREE COLLECTIVE SECURITY AND THE USE OF FORCE

[...]

IX. Using force: rules and guidelines

[...]

A. *The question of legality*

[...]

1. *Article 51 of the Charter of the United Nations and self-defence*

1. The language of this article is restrictive: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken measures to maintain international peace and security”. However, a

threatened State, according to long established international law, can take military action as long as the threatened attack is *imminent*, no other means would deflect it and the action is proportionate. [...]

2. We do not favour the rewriting or reinterpretation of Article 51.

2. *Chapter VII of the Charter of the United Nations and external threats*

[...]

3. *Chapter VII of the Charter of the United Nations, internal threats and the responsibility to protect*

[...]

1. **We endorse the emerging norm that there is a collective international responsibility to protect, exercisable by the Security Council authorizing military intervention as a last resort, in the event of genocide and other largescale killing, ethnic cleansing or serious violations of international humanitarian law which sovereign Governments have proved powerless or unwilling to prevent.**

B. *The question of legitimacy*

[...]

1. In considering whether to authorize or endorse the use of military force, the Security Council should always address – whatever other considerations it may take into account – at least the following five basic criteria of legitimacy:
 - a. ***Seriousness of threat.*** Is the threatened harm to State or human security of a kind, and sufficiently clear and serious, to justify *prima facie* the use of military force? In the case of internal threats, does it involve genocide and other large-scale killing, ethnic cleansing or serious violations of international humanitarian law, actual or imminently apprehended?
 - b. ***Proper purpose.*** Is it clear that the primary purpose of the proposed military action is to halt or avert the threat in question, whatever other purposes or motives may be involved?
 - c. ***Last resort.*** Has every non-military option for meeting the threat in question been explored, with reasonable grounds for believing that other measures will not succeed?
 - d. ***Proportional means.*** Are the scale, duration and intensity of the proposed military action the minimum necessary to meet the threat in question?
 - e. ***Balance of consequences.*** Is there a reasonable chance of the military action being successful in meeting the threat in question, with the consequences of action not likely to be worse than the consequences of inaction?
2. The above guidelines for authorizing the use of force should be embodied in declaratory resolutions of the Security Council and General Assembly.

[...]

X. Peace enforcement and peacekeeping capability

[...]

1. Discussion of the necessary capacities has been confused by the tendency to refer to peacekeeping missions as “Chapter VI operations” and peace enforcement missions as “Chapter VII operations” – meaning consent-based or coercion-based, respectively. [...]
2. Both characterizations are to some extent misleading. There is a distinction between operations in which the robust use of force is integral to the mission from the outset (e.g., responses to cross-border invasions or an explosion of violence, in which the recent practice has been to mandate multinational forces) and operations in which there is a reasonable expectation that force may not be needed at all (e.g., traditional peacekeeping missions monitoring and verifying a ceasefire or those assisting in implementing peace agreements, where blue helmets are still the norm).
3. But both kinds of operation need the authorization of the Security Council (Article 51 self-defence cases apart), and in peacekeeping cases as much as in peace-enforcement cases it is now the usual practice for a Chapter VII mandate to be given (even if that is not always welcomed by troop contributors). This is on the basis that even the most benign environment can turn sour [...] and that it is desirable for there to be complete certainty about the mission's capacity to respond with force, if necessary. On the other hand, the difference between Chapter VI and VII mandates can be exaggerated: there is little doubt that peacekeeping missions operating under Chapter VI (and thus operating without enforcement powers) have the right to use force in self-defence – and this right is widely understood to extend to “defence of the mission”.

[...]

XII. Protecting civilians

1. In many civil wars, combatants target civilians and relief workers with impunity. Beyond direct violence, deaths from starvation, disease and the collapse of public health dwarf the numbers killed by bullets and bombs. Millions more are displaced internally or across borders. Human rights abuses and gender violence are rampant.
2. Under international law, the primary responsibility to protect civilians from suffering in war lies with belligerents – State or non-State. International humanitarian law provides minimum protection and standards applicable to the most vulnerable in situations of armed conflict, including women, children and refugees, and must be respected.
3. **All combatants must abide by the provisions of the Geneva Conventions. All Member States should sign, ratify and act on all treaties relating to the protection of civilians, such as the Genocide Convention, the Geneva Conventions, the Rome Statute of the International Criminal Court and all refugee conventions.**
4. Humanitarian aid is a vital tool for helping Governments to fulfil this responsibility. Its core purpose is to protect civilian victims, minimize their suffering and keep them alive during the conflict so that when war ends they have the opportunity to rebuild shattered lives. The provision of assistance is a necessary part of this effort. Donors must fully and equitably fund humanitarian protection and assistance operations.
5. The Secretary-General, based in part on work undertaken by the United Nations High Commissioner for

Refugees and strong advocacy efforts by non-governmental organizations, has prepared a 10-point platform for action for the protection of civilians in armed conflict. The Secretary-General's 10-point platform for action should be considered by all actors – States, NGOs and international organizations – in their efforts to protect civilians in armed conflict.

6. From this platform, particular attention should be placed on the question of access to civilians, which is routinely and often flagrantly denied. United Nations humanitarian field staff, as well as United Nations political and peacekeeping representatives, should be well trained and well supported to negotiate access. Such efforts also require better coordination of bilateral initiatives. The Security Council can use field missions and other diplomatic measures to enhance access to and protection of civilians.
7. Particularly egregious violations, such as occur when armed groups militarize refugee camps, require emphatic responses from the international community, including from the Security Council acting under Chapter VII of the Charter of the United Nations. Although the Security Council has acknowledged that such militarization is a threat to peace and security, it has not developed the capacity or shown the will to confront the problem. **The Security Council should fully implement resolution 1265 (1999) on the protection of civilians in armed conflict.**
8. Of special concern is the use of sexual violence as a weapon of conflict. The human rights components of peacekeeping operations should be given explicit mandates and sufficient resources to investigate and report on human rights violations against women. Security Council resolution 1325 (2000) on women, peace and security and the associated Independent Experts' Assessment provide important additional recommendations for the protection of women. **The Security Council, United Nations agencies and Member States should fully implement its recommendations.**